# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRM-M-12938 of 2016**
**Date of Decision: July 13, 2016**

Surinder Madaan ....Petitioner

Versus

State of Punjab and another ...Respondents

**CRM-M-12974 of 2016**

Surinder Madaan ....Petitioner

Versus

State of Punjab and another ...Respondents

**CRM-M-12975 of 2016**

Surinder Madaan ....Petitioner

Versus

State of Punjab and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Mr. Rajiv Dhawan, Advocate
for the petitioners.(in all the three petitions).

**FATEH DEEP SINGH, J.**

Through these three different petitions all under Section 482 Cr.P.C. the petitioner accused/Surinder Madaan has sought to impugn and seek quashment of different summoning orders dated 27.01.2015, 27.01.2015 and 09.07.2014 respectively summoning him as an accused in three different criminal complaints No.13134 of 2015 (hereinafter referred to as first complaint) No.7776 of 2015 (hereinafter referred to as second complaint) No.13136 of 2015 (hereinafter referred to as third complaint) all under Section 138 of the Negotiable Instruments Act, 1988 (in short' 'the Act') preferred by the same very complainant M/s AGG Exporters on account of consanguinity of facts between the same very parties over the same series of transaction and, thus, all these three petitions are being conjointly taken up and disposed off together.

The brief facts and allegations of the complainant are that it is a partnership firm carrying on business of Auto tyres and tubes at Ludhiana, whereas, accused No.1. M/s M.V. Sales is a partnership firm comprising of accused No.2/Varundeep Singh and the present petitioner accused No.3/Surinder Madaan. It is the stand of the complainant that the accused firm has been appointed as a consignee agent by the complainant vide agreement dated 7.2.2012 and, thus, on account of business transaction as on 31.3.2014 a sum of ₹28,90,377/- was outstanding against the accused. It is alleged that in pursuance of this outstanding liability accused had issued cheque bearing No.000050 dated 2.4.2014 for sum of ₹10,00,000 in a first complaint case, cheque No.000049 dated 2.4.2014 for sum of ₹10,00,000/- in a second complaint case and cheque No.000096 dated

1.4.2014 for sum of ₹8,90,000 in a third complaint case all drawn on Bank of Baroda, Zirakpur. It is alleged that complainant assured that he had sufficient amount and the cheques would be honoured and on the basis of which assurance the complainant has deposited the same for encashment but the same were returned back on account of insufficiency of fund vide memos dated 3.4.2014, 3,4,2014 and 28.04.2014 in first, second and third complaint respectively. It is thereafter, the complainant side issued legal notice and after requisite period led to the filing of the present complaints.

The contentions of the learned counsel for the petitioner that the petitioner is a sleeping partner and had no role in the commission of the offence and that it was the accused Varundeep Singh, who was responsible in running affairs of the firm. Under Section 139 of the Act raises a rebuttable presumption that the holder of the cheque had received the cheque in discharge of whole or in part of the liability. Admittedly, the petitioner is a partner in this accused-firm. The perusal of the complaint prima facie shows that legal notice was duly served upon the firm and the partners and there is no response to these notices by the petitioner denying the contention therein to that effect that he was having no role in the running of the firm. More so, there are contentions of the complainant that the petitioner too was responsible for running affairs of the firm and it is mentioned in para 6 of the complaint to the effect that *" the said cheque was issued by the accused with each other's consent while assuring the complainant that the same was a good instrument and shall be duly encashed by their Bank upon its presentation".*

Thus, the same sufficiently rebuts the contentions of the petitioner's counsel that he has no role to play in the running of the affairs of the firm. Since the stand of the petitioner is based on facts and evidence and this Court in exercise of powers under Section 482 Cr.P.C. cannot merely on these contentions accepts the averment and it is only at the time to trial such a recourse is available to the petitioner. The petitioner has been summoned and in view of the law laid down in ***Urmila Devi vs. Yudhveer Singh 2013(15) SCC 624*** is an 'intermediatory order' and, thus, a revision lies against such an order and since the petitioner has directly come to this Court without having recourse to these Statutory provisions or that being a complaint petitioner ought to have either exercised his option under Section 245 Cr.P.C. by moving concerned Magistrate for his discharge. Since a Statutory provision has been enshrined in the Code and in view of the ratio laid down in the case of **Urmila Devi (supra)** the present petition under Section 482 Cr.P.C is highly uncalled for otherwise as well and the petitioner ought to have recourse to these statutory provisions and cannot call upon this Court to exercise powers under Section 482 Cr.P.C. In the light of the same there is no merit in the present petitions which are dismissed in limine.

**(FATEH DEEP SINGH)**
**JUDGE**

**July 13, 2016**
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