

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-23526 of 2014 (O&M)
Date of decision: February 19, 2016.

Surinder Kumar Vij

... **Petitioner**

v.

Harbhajan Singh

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Mansur Ali, Advocate for the petitioner.

Mr. Sandeep Jain, Advocate for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral):

Present petition is for quashing complaint No.304/17.5.2011 titled as "Harbhajan Singh v/s Smile Start Empires Pvt. Ltd. And others" (Annexure P-6) under Section 138 and 141 of the Negotiable Instruments Act, 1881 read with Section 420 IPC and the summoning order dated 17.5.2013 (Annexure P-7) pending in the Court of learned Judicial Magistrate First Class, Panchkula.

The respondent-complainant, filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short the Act) against Smile Star Empires Pvt. Limited, company incorporated under the Companies Act, 1956, and against its Directors stating that in order to discharge the legal liability a cheque bearing No.32501 of dated 31.3.2013 was issued for Rs.2.50 crores, which was dishonoured. Present petitioner, Surinder Kumar Vij claims that he had resigned from the said Company on 1.3.2013, therefore, he cannot be held liable under Section 138 of the Act.

I have heard learned counsel for the parties.

Before this Court, the copy of the resignation letter dated 1.3.2013 (Annexure P-1) has been produced. The communication dated 7.3.2013 (Annexure P-3) from the Company shows that vide letter dated 7.3.2013, the resignation was accepted with effect from 1.3.2013. Form 32 issued by the Registrar of Companies shows that the resignation was incorporated to have been accepted with effect from 1.3.2013. The plea of learned counsel for the respondent is that the letter Annexure P-4 shows that the resignation was forwarded to the Registrar of Companies only on 28.8.2013, therefore, the present petitioner is liable as a Director of the Company as on 31.3.2013 (date of issuing of cheque).

I am of the view that once the resignation is accepted by the Company on 7.3.2013 it became effective from 1.3.2013 and was incorporated by the Registrar of Companies to have been accepted with effect from 1.3.2013. The mere fact that the said resignation was communicated to the Registrar of Companies only on 28.8.2013 cannot be stretched to hold that the present petitioner was working as a Director of the Company as on 31.3.2013 when the cheque in issue was issued. Since it is found that the present petitioner was no more one of the Directors of the Company on 31.3.2013 when the cheque was issued, therefore, he is not liable under Section 138 of the Act. Accordingly, impugned complaint as well as the summoning qua the present petitioner stand quashed.

The petition stands allowed accordingly.

February 19, 2016.
kadyan

[Kuldip Singh]
Judge