IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 245

Criminal Miscellaneous No.M-28059 of 2013 (O & M)
Date of Decision: *September 26, 2016*

Sanjay Gambhir

..... PETITIONER

VERSUS

Raj Mumar

..... RESPONDENT

. . .

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

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PRESENT: - Mr. Animesh Sharma, Advocate, for the petitioner.

Ms. Charu Sharma, Advocate, for the respondent.

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Jaspal Singh, J

1. By virtue of instant petition, preferred under Section 482 Cr.P.C., petitioner has sought quashing of Criminal Complaint No.50434/10 dated January 04, 2010 captioned as 'Raj Kumar vs. M/s D.D. Merchant Bankers Ltd. & others' under Section 138/141 of the Negotiable Instruments Act, 1881 (for short, 'Act') as well as summoning order dated July 16, 2010 (Annexure P-1) and subsequent proceedings arising therefrom.

2. Undoubtedly, vide order dated July 16, 2010, petitioner has been summoned to face trial under Section 138 of the Act.

3. The first and foremost contention of learned counsel for the petitioner is that the criminal complaint as well as impugned order

of summoning and consequent proceedings are not sustainable in the eyes of law for the simple reason that neither petitioner is signatory of the cheque nor he was Director of the Company at the relevant time. Similarly, he was also cannot be said to be responsible officer for carrying the business of the Company.

4. Learned counsel for the petitioner further contends that even if allegations unfolded in the complaint are taken to be true on their face value and accepted in its entirety, they do not constitute even prima facie offence or make out a case against the petitioner. Thus, in such a situation, the complaint as well as summoning order are liable to be quashed. To buttress this contention, learned counsel has relied upon various judgments rendered by the Hon'ble Apex Court, some of which, we can have the reference i.e. State of West Bengal vs. Swapan Kumar Guha, *AIR 1982 SC 949*; Madhav Rao Jiwaji Rao Scindia vs. Sambhaji Rao Chand Raj Rao Angre & others, *1988(1) RCR 565 SC*; State of Haryana vs. Bhajan Lal, *1991(1) RCR 383 SC* as well as State of Haryana & others vs. Ch. Bhajan Lal & others, *1992 (Suppl) SCC 335*.

5. While relying upon another judgment of Hon'ble Apex Court delivered in Harshendra Kumar D. vs. Rebatilata Koley & others *(2011) 3 SCC 351*, it has been urged by learned counsel for the petitioner that criminal prosecution is a serious matter as it affects the liberty of the person. Moreover, petitioner has already resigned from the post of Director much prior to the issuance of cheque by the Company, he cannot be made liable.

6. While concluding his arguments, it has been stressed by learned counsel for the petitioner that since the complaint as well as impugned orders suffer from various illegalities and infirmities, the same are liable to be quashed with special costs.

7. On the other hand, learned counsel for the respondent has argued with vehemence that there is no infirmity, illegality or impropriety in the complaint as well as summoning order. The cheque was issued by the Company and petitioner being one of the Directors, who as otherwise responsible for conducting the business of Company, cannot be absolved of the liability.

8. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and minutely gone through the record available as well as various judgments cited during the course of arguments, but fine legal as well as factual force in the contentions projected by learned counsel for the petitioner.

9. Concededly, cheques dated May 28, 2009 and November 10, 2009 were issued by the Company (M/s D.D. Merchants, F-1/9, Okhla Industrial Area, Phase – 1, New Delhi). A perusal of the aforesaid cheques, copies of which are available on file, though bear the stamp of Company yet these are not signed by the petitioner, rather by some other person. Petitioner was appointed as one of the Directors of the Company on March 08, 1996 but ceased to be so w.e.f. December 28, 2007. This fact is evident from Annexure P-3.

10. Such a question came for determination before the Hon'ble Apex Court in case Harshendra Kumar D. (supra) and it was

categorically observed that once the facts leave no manner of doubt that on the date of commission of the offence by the Company, petitioner was not the Director of the Company, he cannot be held vicariously liable for any criminal act and summoning of such a person tantamount to an abuse of process of the court. Relevant extract of the judgment reads as under:-

> "27. As noticed above, the appellant resigned from the post of Director on 2-3-2004. The dishonoured cheques were issued by the Company on 30-4-2004, i.e., much after the appellant had resigned from the post of Director of the Company. The acceptance of appellant's resignation is duly reflected in the resolution dated 2-3-2004. Then in the prescribed form (Form 32), the Company informed to the Registrar of Companies on 4-3-2004 about appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court.
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> 28. These appeals are, accordingly, allowed. The judgment of the Calcutta High Court dated 6-9-2007 and the summons issued by the Metropolitan Magistrate, Calcutta to the appellant are set aside. The complaints as against the appellant stand quashed."

11. If the instant case is scrutinized and scanned in the light of the observations made in the above referred authority, it becomes crystal clear that where a person is neither a Director of the Company nor signatory thereof, he cannot be prosecuted or held responsible for any offence allegedly committed by the Company.

12. Adverting to the facts and circumstances of the case in hand, it is abundantly clear that petitioner ceased to be the Director of the Company w.e.f. December 28, 2007 and cheques dated May 28, 2009 and November 10, 2009 were issued under the signatures of some

other Director on behalf of the Company, much after the cessation of petitioner as one of the Directors. As an upshot of the aforesaid discussion, this Court comes to the conclusion that the impugned complaint and summoning order are not sustainable in the eyes of law.

13. The petition is allowed. Complaint No.50434/10 dated January 04, 2010 captioned as 'Raj Kumar vs. M/s D.D. Merchant Bankers Ltd. & others' under Section 138/141 of the Negotiable Instruments Act, 1881 (for short, 'Act') as well as summoning order dated July 16, 2010 (Annexure P-1) and subsequent proceedings arising therefrom are quashed.

(Jaspal Singh)
Judge

September 26, 2016
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Whether Speaking/ Reasoned: Yes/ No

Whether Reportable: Yes/ No