IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 115

1.

Criminal Miscellaneous Nos.M-41797 of 2015 (O & M)
Date of Decision: *November 29, 2016*

Manish Kumar Agrawal & another

..... PETITIONERS

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

2.

Criminal Miscellaneous Nos.M-41799 of 2015 (O & M)

Manish Kumar Agrawal & another

..... PETITIONERS

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

3.

Criminal Miscellaneous Nos.M-42022 of 2015 (O & M)

Manish Kumar Agrawal & another

..... PETITIONERS

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

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

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PRESENT: - Mr. S.B. Kaushik, Advocate, for the petitioners.

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Jaspal Singh, J

1. This judgment shall dispose of aforesaid mentioned three petitions as they involve similar questions of facts and law.

2. By virtue of the instant petitions preferred under Section 482 Cr.P.C., the petitioners have sought complaint Nos.404, 405 and 403 dated December 10, 2014, captioned as ‘S.B.J. Impex & another vs. M/s Saket Steels Ltd. G.T. Road, Mandi Gobindgarh, Tehsil Amloh, District Fatehgarh Sahib & others’, pending in the court of Sub Divisional Judicial Magistrate, Amloh.

3. The facts giving rise to the instant petitions are that respondent Nos.2 and 3/ complainants preferred a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, ‘Act’) read with Section 420 IPC claiming that respondent No.4 – M/s Saket Steels Ltd. (for short ‘Company’) issued three cheques bearing Nos.464371 dated August 01, 2014; 464400 dated September 15, 2014; and 464395 dated August 01, 2014, amounting to ₹ 2.5 lac each, for encashment through ICICI Bank Ltd., Branch Mandi Gobindgarh, Tehsil Amloh (re: Cheque No.464400) and drawn on Oriental Bank of Commerce, Motia Khan, Mandi Gobindgarh, to discharge its liability but the said cheques were dishonoured on their presentation by the concerned bank. Legal notice as required under Section 138 of the Act was served upon the accused, within the statutory period, but

it fetched no reply. Payment was also not made within the stipulated period. Ultimately, the complainants were constrained to file the complaints.

4. On the basis of preliminary evidence led by the complainants – respondent Nos.2 and 3, the petitioners as well as respondent Nos.5 to 7 were summoned to face trial under Section 138 of the Act. Aggrieved by the aforesaid orders dated January 19, 2015 and October 14, 2015 passed by the Sub Divisional Judicial Magistrate, Amloh.

5. Aggrieved against the aforesaid order, petitioners have sought the quashing of complaints as well as summoning orders.

6. While assailing the impugned complaints as well as summoning orders, it has been ebulliently argued by learned counsel for the petitioners that they have been dragged in the instant criminal complaints. No specific role has been attributed to either of the petitioners in the running of the business. Only vague and unfounded allegations have been levelled qua them that they were also running the business and take part in day to day business of the Company. It is well settled that in case of a Director, complainant should specifically spell out as to how and what amount, the Director was incharge or responsible to the accused Company for the conduct of its business. Bald averments or statement that the Director was incharge of and was responsible to the Company for its conduct or business is not sufficient.

7. Learned counsel for the petitioners has placed reliance on **National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal & another, (2010) 3 SCC 330**, wherein the Hon'ble Apex Court has held that "not every person connected with the Company but only those incharge of and responsible for conduct of business of the company at the time of commission of offence can be held vicariously liable". Similar view was

taken by the Hon'ble Supreme Court in case **Central Bank of India vs. Asian Global Ltd. & others, (2010) 11 SCC 203**. Same view has been reiterated in case **A.K. Singhania vs. Gujrat State Fertilizers Company Ltd. & another, (2013) 16 SCC 630**.

8. While concluding his arguments, learned counsel for the petitioners has submitted that since, neither the petitioners were incharge nor responsible for conduct or business of the Company and have no role whatsoever to play in day to day business of the Company, they cannot be fastened with any liability and also cannot be made liable for the commission of an offence under Section 138 of the Act.

9. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioners but find the same to be of no legal and factual weight.

10. Undisputebly, the petitioners are Directors of respondent No.4 – Company besides some other Directors. It has been specifically pleaded in Para No.2 of the complaint that accused Nos.2 & 3 i.e. petitioners and respondent Nos.5 to 7 are Directors, Incharge and responsible persons of accused No.1 – Company and they are running the business in the name of the Company; and were/are also taking part in day to day business. They are also managing the business affairs of respondent No.4 – Company and also responsible for its day to day business affairs. It also stands *prima facie* proved on record that during the business dealings between the complainants and petitioners as well as respondent Nos.5 to 7, three cheques as mentioned in para No.3 of this judgment, were issued for a sum of ₹ 2.5 lac each on the assurance of the petitioners and other Directors of the Company – respondent No.4. The cheques were presented for their encashment in the bank but they were returned unpaid and stood dishonoured vide Memos

dated October 28, 2014. There are specific averments that the petitioners as well as respondent Nos.5 to 7 are/were Directors, Incharge and responsible persons for respondent No.4 – Company and are also taking part in its day to day business and are managing its business affairs. The authorities in the cases of **Harmeet Singh Paintal (supra), Asian Global Ltd. (supra)** and **A.K. Singhania (supra)** relied upon by learned counsel for the petitioners are not applicable in the facts and circumstances of the case in hand. It is also *prima facie* established that the cheques in question were issued in discharge of legal liability by the Company, though under signatures of respondent No.5 – Manoj Kumar Aggarwal, Managing Director. Since there are specific averments in the complaints that petitioners are also Incharge, Directors and responsible persons of respondent No.4 – Company, it cannot be said that the complaints are not maintainable. Rather, this Court is of the considered view that the impugned complaints as well as orders dated January 19, 2015 and October 14, 2015 passed by the Sub Divisional Judicial Magistrate, Amloh, are absolutely in consonance with the evidence available on file as well as legal proposition.

11. In the light of what has been discussed above, this Court does not find any merit in the instant petitions and the same are accordingly dismissed.

(Jaspal Singh)
Judge

November 29, 2016
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No