**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-28854 of 2017 (O&M)
Date of Decision: 09.08.2017

Amandeep Singh Dang

....Petitioner

Versus

M/s Shivam Devansh Fab Pvt. Ltd.

....Respondent

CRM-M-28885 of 2017 (O&M)

Amandeep Singh Dang

....Petitioner

Versus

M/s Shivam Devansh Fab Pvt. Ltd.

....Respondent

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: - Mr. Jagdish Manchanda, Advocate, for the petitioner.

**RAMENDRA JAIN, J. (ORAL)**

This order shall dispose of CRM-M-28854 and 28885 of 2017 under Section 482 Cr.P.C. for quashing two complaints bearing Nos.527 and 620 dated 21.09.2011 (Annexure P-1) under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'); summoning order dated 17.10.2011 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Faridabad; order dated 23.05.2015 (Annexure P-3) passed by learned Metropolitan Magistrate, Patiala House Court, Delhi and order dated 08.05.2017 (Annexure P-4) dismissing the revision petition of the petitioner by learned Additional Sessions Judge, Faridabad.



Briefly stated, respondent – M/s Shivam Devansh Fab Pvt. Ltd.

filed five separate complaints under Section 138 of the Act against the petitioner and other partners of M/s Gulati Export House (hereinafter referred to as 'the Export House') claiming the petitioner as one of the partners of the Export House on the ground that the Export House had placed various orders for the purchase of processed fabrics, printing, dyeing and processing on the job work basis to the respondent-complainant with a mutual understanding that the payments would be made to the respondent-complainant within 60 days of raising the invoice. In case the payment is being made beyond 60 days, in that eventuality, interest @ 18% per annum would be paid. In the year 2009, the Export House had purchased fabric from the respondent-complainant for a sum of ₹ 15,82,549/-, but did not make the payment within 60 days and placed further orders for supply of goods and for the job work with an assurance and promise that all the outstanding amount of the respondent-complainant would be cleared very shortly without any delay.

Believing the said assurance of the Export House and its partners, respondent-complainant further supplied goods to the Export House during the period April, 2010 to March, 2011, April, 2011 to June, 2011 against various invoices to the tune of ₹ 4,90,27,637/- in addition to the previous outstanding of ₹ 12,05,403/- totalling to ₹ 5,02,33,040/-. The Export House and its partners, including the petitioner, admitting their aforesaid liability, made payment of ₹ 1,57,02,272/- by way of cheque/RTGS and a sum of ₹ 1,19,40,177/- through Letter of Credit (LC) and, thus, remaining outstanding against the Export House had been of ₹ 2,25,90,591/-. To discharge the aforesaid liability, the Export House issued five cheques through its partners in favour of the respondent-complainant in the sum of ₹

26,25,999/-, which, on presentation, were returned with the remarks "funds insufficient".

According to the respondent-complainant, the petitioner and other partners of the Export House by mis-representing and giving false assurance to the respondent-complainant to make payment of the due amount had issued five cheques of ₹ 26,25,999/- with *mala fide* intention knowing well that the same would not be honoured. In this way, petitioner and other partners of the Export House had deliberately caused unlawfull loss to the respondent-complainant and, thus, they were liable to be punished in accordance with law.

After recording preliminary evidence, petitioner and other partners of the Export House were summoned vide consolidated summoning order dated 17.10.2011 (Annexure P-2) passed in all the five complaints. Thereafter, on sending the above complaints to the Metropolitan Magistrate, Delhi, he also passed a fresh order of summoning dated 23.05.2015 (Annexure P-3) against the petitioner and other partners of the Export House. In the meanwhile, in view of the amendment No.26 dated 29.12.2015 issued by Ministry of Law and Justice in Section 142A of the Act, the said complaints were sent back to the Judicial Magistrate Ist Class, Faridabad, for further proceedings. Thereafter, petitioner and one Amanjot Singh preferred revision petitions challenging the aforesaid order dated 17.10.2011 (Annexure P-2) on the ground that he never remained partner or authorised signatory of the Export House nor had any concern with the same at any point of time and, thus, was wrongly summoned.

The Revisional Court, while rejecting the said contention of the petitioner, has dismissed both the revision petitions vide order dated 08.05.2017 (Annexure P-4).

Learned counsel for the petitioner contends that the petitioner never remained as partner of the Export House nor had ever signed the cheques in question. The petitioner, at any point of time, had no concern with the Export House. The petitioner was even not beneficiary of the alleged transaction between the Export House and the respondent-complainant. The petitioner has wrongly been summoned as if he is son of Man Mohan Singh, though in fact, actual name of his father is Harvinder Singh and, thus, he has wrongly been arrayed and summoned as accused by the trial Court.

I have given anxious consideration to the submissions made by learned counsel for the petitioner and also gone through the case file carefully.

Admittedly, after summoning of the petitioner, he moved an application for deleting his name from the array of accused, which was dismissed vide order dated 23.05.2015 by learned Magistrate. The stand of the petitioner from the very beginning is that he never remained as partner of the Export House and was also not signatory of the cheques in question. However, perusal of the impugned order shows that the said plea of the petitioner has been negated by the trial Court as well as the Revisional Court on various grounds, out of which one is that, after summoning of the petitioner and other partners of the Export House, an application was moved on 02.04.2013 that the matter has been settled in between the parties in a total sum of ₹ 1,49,98,246/- and an amount of ₹ 10 lakh in two instalments of ₹ 5 lakh each has also been paid by the Export House on two dates. Considering the fact of compromise, petitioner was granted bail and thereafter, the case was kept pending for making payment as per the settlement arrived at in between the parties.

Considering this factual aspect of the case, the Revisional Court has rightly observed that entering into compromise/settlement by the Export House with the respondent-complainant amounts to admission of its liability by the Export House towards respondent-complainant and when no further time was given to the Export House or to its partners to make the payment as per settlement, an application for dropping the proceedings or in the alternative deleting his name, was moved by the petitioner taking the plea that he never remained partner of the Export House.

The fact as to whether the petitioner never remained partner of the Export House and further that he was not liable for the action of the Export House, is a mixed question of fact and law, which can only be ascertained and decided after adducing evidence by both the sides and thus, at this preliminary stage, the aforesaid plea of the petitioner cannot be looked into/believed.

In view of the above discussion, I do not find any illegality or perversity in the impugned orders passed by the trial Court and Revisional Court. Consequently, the impugned orders are affirmed and both the petitions are dismissed.

**(RAMENDRA JAIN)**
**JUDGE**

**August 09, 2017**
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No