

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

CRM-M-30030-2016 (O&M)

Date of decision: August 10, 2017.

Om Parkash

... **Petitioner**

v.

State of Punjab

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Vinay Pandey, Advocate for the petitioner(s).

Shri Ramandeep Singh Sandhu, Sr. Dy. AG, Punjab.

Shri Chetan Mittal, Sr. Advocate, Assistant SGI, with
Shri Alok Kumar Jain, Advocate, Sr. P.C. - UOI for
ROC and Ministry of Corporate Affairs.

Mrs. Ashima Mor, Advocate, APP for UT Chandigarh.

A.B. Chaudhari, J. (Oral):

Learned Counsel for the State makes a statement on instructions from the Investigating Officer that in the present matter, compromise has been arrived at between the parties and the police has prepared a cancellation report which will be filed shortly. In that view of the matter, the petition is rendered infructuous. It is disposed of as such.

This Court had made an order on February 13, 2017, which reads thus:-

“This Court had made an order dated 29.08.2016 asking Registrar of Companies at Chandigarh to file an affidavit as to the records in form No.DIR-11 regarding of resignation of Directors and particularly to show when the said office received the date of

resignation.

Learned counsel for the petitioner is directed to serve a copy to the learned counsel for the U.T., Chandigarh who has already made aware of the aspect of the matter regarding resignation of Directors shown in the format of the office of Registrar of Companies in order to evade the liability under Section 138 of the Negotiable Instruments Act, 1881. Enough time has gone but there is no answer from the office of Registrar of Companies, Chandigarh.

The proceedings are now adjourned for 17.02.2017 at 2:00 PM. If no affidavit is filed by the next date, Registrar of Companies, Chandigarh shall have to remain present in this Court on 17.02.2017 itself and this Court may also order investigation by the police into the said office.

Office is directed to inform the concerned counsel appearing for Registrar of Companies, Chandigarh.”

Thereafter, another order was passed on February 22, 2017.

The crux of these orders is that by projecting Form 32 for showing resignation etc. from the company, petitions are filed for getting discharge from the FIR case or the complaint case under Section 138 of the Negotiable Instruments Act and so on and so forth, claiming that the petitioner having resigned, had no connection with the company and therefore neither the complaint case nor the FIR case could continue against him. In the prima facie opinion of this Court, merely by projecting form 32 and the purported resignation or as the case may be, such petitioner cannot be discharged from the FIR case or criminal case or criminal complaint case. It is in this background, Shri Chetan Mittal, learned Senior

Counsel representing the Union of India, assisted by Shri Alok Kumar Jain, Sr. Panel Counsel for UOI, has assisted this Court. This Court appreciates the assistance given by them and find that the guidelines given by the Bombay High Court in para 33 in the case of Suhas Bhand v/s State of Maharashtra and another, 2009 SCC (Bombay) 1245 would aptly apply. I quote para 33, which reads thus:-

“33.A reading of these judgments makes for the following legal propositions with regard to the resignation of a Director of a registered Company:-

(i) If the accused in a criminal prosecution under Section 138 of the Negotiable Instruments Act produces a certified copy of Form No.32 certified by the ROC and there is no dispute of the factum of his resignation, the accused is entitled to be discharged from the prosecution.

(ii) If his resignation is not accepted or admitted by the complainant upon production of the certified copy of Form No.32, the accused would have to prove the truth of the contents of the said certified copy i.e. the factum of his resignation. Such accused cannot be discharged simplicitor upon production of a certified copy of Form No.32.

(iii) If the complainant produces any evidence showing the continuance of the accused as Director of the Company after the date of the resignation claimed by him as per the certified copy of Form No.32 produced by him, such accused cannot be discharged simplicitor upon production of such certified copy of Form No.32. He would have to lead evidence to prove the factum of his resignation. Similarly the complainant would be entitled to prove the factum of his continuing as Director. The trial under Section 138 read with Section 141 of the Negotiable Instruments Act

would, therefore, proceed.”

In my opinion, the aforesaid guideline or legal propositions culled out by the Bombay High Court deserve to be considered while dealing with such issues. Accordingly, the present petition is disposed of. ROC as well as the UOI, both are discharged.

August 10, 2017.
kadyan

[A.B. Chaudhari]
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No