

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

(i)

CRM No.M-294 of 2017 (O&M)

M. Sukumar Reddy and others

...Petitioners

VERSUS

State of Haryana and another

...Respondents

(ii)

CRM No.M-401 of 2017 (O&M)

M. Sukumar Reddy and others

...Petitioners

VERSUS

State of Haryana and another

...Respondents

Date of Decision: December 21, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vinod S. Bhardwaj, Advocate
for the petitioners.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

Mr.R.S.Rai, Senior Advocate with
Mr.V.K.Sachdeva, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together as the
point for determination in both the case is the same.

Petitioners have filed these petitions under Section 482 Cr.P.C.

for quashing criminal complaint No.3308 dated 02.09.2015 in CRM No.M-294 of 2017 (hereinafter referred to as '1st complaint') and complaint No.3307 dated 02.09.2015 in CRM No.M-401 of 2017 (hereinafter referred to as '2nd complaint') titled as 'India Bulls Housing Finance Ltd. vs. M/s Deccan Chronicle Holding Limited and others' pending in the Court of learned Judicial Magistrate Ist Class, Gurgaon under Sections 138,141 and 142 IPC of the Negotiable Instruments Act as well as summoning orders dated 10.04.2013 along with consequential proceedings arising therefrom.

From the record, I find that India Bulls Housing Finance Ltd. filed complaints against accused including the present petitioners under Sections 138, 141 and 142 of the Negotiable Instruments Act and Section 357 of Cr.P.C. It is mainly alleged in the complaints that the accused company has the liability to pay and cheque No.147781 dated 18.02.2013 for ₹42,56,09,615/- was issued in 1st complaint and cheque No.147783 dated 08.02.2013 for ₹50 crores was issued in 2nd complaint in favour of the complainant, which on presentation for encashment, were dishonoured and returned vide memo dated 22.02.2013 (in 1st complaint) and 09.02.2013 (in 2nd complaint). It is further stated in the complaints that the cause of action arose for filing the complaints when the cheques were dishonoured and returned unpaid i.e. on 22.02.2013 (in 1st complaint) and on 09.02.2013 (in 2nd complaint).

Vide impugned orders dated 10.04.2013, learned JMJC, Gurgaon, summoned the accused.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

At the time of arguments, learned counsel for the petitioners

argued that when the offence was committed and cause of action arose, present petitioners had already resigned, which is proved on the record as per Form No.32. As per Form No.32, which is annexed as Annexure P-5, petitioners M. Sukumar Reddy, Kumar and V. Suresh have resigned on 08.12.2012 as Directors of the accused-company.

Learned counsel for respondent No.2 objected that name of petitioner No.2 G.Kumar s/o Shri V.Krishna Swamy Gurumurthy has been written as Kumar and father's name has been written only as Gurmurthy, therefore, this Form No.32 does not relate to petitioner No.2.

The perusal of the record shows that firstly, there is no document on the record nor it was argued that there was any other Director with the same name of Kumar s/o Gurumurthy. Secondly, the address given in the memo of parties and in Form No.32 is the same. It looks that name and father's name has been written as a short-cut in Form No.32. It is clear from Form No.32, copy of which is at Annexure P-5, that all the petitioners have already resigned on 08.12.2012 as Directors whereas the cheques were issued on 18.02.2013 (in 1st complaint) and 08.02.2013 (in 2nd complaint) and dishonoured on 22.02.2013 and 09.02.2013 respectively. Even in the complaints, it is written that cause of action for filing the complaint arose when the cheques were dishonoured. On 22.02.2013 and 09.02.2013 when the offence was committed i.e. on dishonouring of the cheques and cause of action arose, then the present petitioners were not the Directors of the accused-company and they have already resigned. Therefore, on the face of it, present petitioners have not committed any offence under Section 138 of the Negotiable Instruments Act.

in question against the present petitioners, who have not committed any offence, is nothing but abuse of process of law.

Therefore, finding merit in both the petitions, the same are allowed. The criminal complaint No.3308 dated 02.09.2015 in CRM No.M-294 of 2017 and criminal complaint No.3307 dated 02.09.2015 in CRM No.M-401 of 2017 along with all the subsequent proceedings arising therefrom, are hereby quashed qua present petitioners only.

December 21, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No