IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 28.04.2017

1. CRM-M-3432-2016

N. Krishnan

... Petitioner

Versus

Indiabulls Housing Finance Limited

... Respondent

2. CRM-M-3436-2016

N. Krishnan

... Petitioner

Versus

Indiabulls Housing Finance Limited

... Respondent

3. CRM-M-29968-2016

N. Krishnan

... Petitioner

Versus

Indiabulls Housing Finance Limited

... Respondent

4. CRM-M-29989-2016

N. Krishnan

... Petitioner

Versus

Indiabulls Housing Finance Limited

... Respondent

5. CRM-M-30100-2016

N. Krishnan

... Petitioner

Versus

Indiabulls Housing Finance Limited

... Respondent

6. CRM-M-30104-2016

N. Krishnan

... Petitioner

Versus

Indiabulls Housing Finance Limited

... Respondent

7. CRM-M-30139-2016

N. Krishnan

... Petitioner

Versus

Indiabulls Housing Finance Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Sunil Chadha, Sr. Advocate with
Ms. Swati Verma, Advocate,
for the petitioner in all the petitions.

Ms. Indu Bala Jain, Advocate for
the respondent in all the petitions.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned seven cases as they are connected with each other and the point for determination in all the cases is the same.

By filing these petitions, petitioner-N. Krishnan has sought quashing of Criminal Complaint No.49 of 2015 (Old No.1790 of 2013) dated 02.04.2013 (Annexure P-1), order dated 10.04.2013 (Annexure P-2) and judgment dated 08.11.2013 (Annexure P-3) in CRM-M-3432-2016, Criminal Complaint No.48 of 2015 (Old No.1791 of 2013) dated 02.04.2013 (Annexure P-1), order dated 10.04.2013 (Annexure P-2) and judgment dated 08.11.2013 (Annexure P-3) in CRM-M-3436-2016, Criminal Complaint No.2561 of 2015/21.08.2015 dated 11.03.2013 (Annexure P-1), order dated 25.04.2013 (Annexure P-2) and order dated 11.01.2016 (Annexure P-3) in CRM-M-29968-2016, Criminal Complaint No.2565 of 2015/21.08.2015 dated 11.02.2013 (Annexure P-1), order dated 22.03.2013 (Annexure P-2), judgment dated 08.11.2013 (Annexure P-3) and order dated 11.01.2016 (Annexure P-5) in CRM-M-29989-2016, Criminal Complaint No.2564 of 2015/21.08.2015 dated 11.02.2013 (Annexure P-1), order dated 22.03.2013 (Annexure P-2), judgment dated 08.11.2013 (Annexure P-3) and order dated 11.01.2016 (Annexure P-5) in CRM-M-30100-2016, Criminal Complaint No.2568 of 2015/21.08.2015 dated 14.08.2013 (Annexure P-1) and order dated 14.08.2013 (Annexure P-2) in CRM-M-30104-2016 and Criminal Complaint No.2569 of 2015/21.08.2015 dated 11.03.2013 (Annexure P-1), order dated 25.04.2013 (Annexure P-2) and order dated 11.01.2016 (Annexure P-3) in CRM-M-30139-2016 alongwith all the subsequent proceedings arising therefrom.

The facts are being taken from CRM-M-3432-2016.

As per the record, Indiabulls Housing Finance Limited filed a complaint against M/s Deccan Chronicle Holdings Limited and others under Section 138, 141 and 142 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act') and Section 357 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C'.). It is mentioned in the complaint that accused Nos.2 to 9, are in-charge of and responsible for the conduct of the business of accused No.1-company. Accused No.1 through accused Nos.2 to 9 had approached the former company (now merged with the complainant) and had requested to advance loan facility of ₹50 crores. Accused Nos.2 to 9 represented themselves as chairman/directors of accused No.1-company being overall in-charge and responsible for running its day to day business/affairs. Thereafter, all the accused requested for another loan of ₹50 crores. Believing their representation to be true, the complainant acceded to their request and granted the said two loans of ₹50 crores each. The accused also entered into two loan agreements dated 08.12.2011 and 05.01.2012 with the complainant. Accused Nos.2 to 9 being the Managing Director, Chairman, Vice-Chairman, Directors, Shareholders/ Beneficiary/ Co-borrowers are responsible for day to day functioning of business of accused No.1 jointly and severally under an obligation to repay the loan liability being legal debt in consonance with the terms and conditions of the loan agreement dated 08.12.2011 and 05.01.2012. The accused in discharge of their dues under the said loan facility issued and delivered cheque bearing No.147781 dated 18.02.2013 for ₹42,56,09,615/-. However, the said cheque on presentation for encashment received back unpaid with the remarks of 'payment stopped by drawer'. Thereafter, a legal notice was served upon the accused and when the payment was not made despite the expiry of statutory period, the complaint was filed.

Notice of motion was issued. The respondent put in appearance through its counsel and contested all these petitions.

I have heard learned counsel for the parties and gone through the record.

There is only one point which requires determination by this Court for deciding all these petitions.

Learned counsel for the petitioner stated that the petitioner was the Managing Director of M/s Deccan Chronicle Holdings Limited prior to the issuance of cheques. He had already resigned from the said Company. Learned counsel also argued that in all these cases, cheques have been issued in the year 2013 whereas the petitioner had already resigned prior to the issuance of the chques in question and his resignation was accepted on 20.07.2012 as per Form 32, which is placed on record as Annexure P-7.

There is no rebuttal to these arguments by learned counsel for the respondent. Furthermore, if the loan has been taken by the company in which the present petitioner was the Managing Director, then it does not amount to the commission of offence at the time of taking of loan or committing the default in payment of installment of loan.

The offence under Section 138 of the N.I.Act is committed, when the cheque is issued and stands dishonoured on the grounds of insufficient funds etc. and then legal notice is issued and the amount is not paid within the statutory period. In no way, the offence can be held as committed before the issuance of cheques.

Admittedly, the present petitioner was not the Managing Director of M/s Deccan Chronicle Holdings Limited at the time of commission of the offence and had already resigned from the said company. Section 141 of the N.I.Act provides as under:

> ***"141. Offences by companies.*** *- (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.*
>
> *Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.*
>
> *(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*
>
> *Explanation.— For the purposes of this section,—*

> *(a) "company" means any body corporate and includes a firm or other association of individuals; and*
> *(b) "director", in relation to a firm, means a partner in the firm.*

From the perusal of above provision, it is clear that since neither the present petitioner was having any concern with M/s Deccan Chronicle Holdings Limited at the time of commission of offence, nor he was the Managing Director of the said Company, therefore, he is not liable for the commission of offence. Furthermore, perusal of the complaints shows that the same were filed by Indiabulls Housing Finance Limited under Sections 138, 141 and 142 of the N.I. Act and Section 357 Cr.P.C. Also, in para No.7 of complaints in CRM-M-3432-2016 and CRM-M-3436-2016, it is stated that the complainant-company on 26.12.2012 lodged a criminal complaint against the accused persons for their act of cheating, criminal breach of trust, forgery and criminal conspiracy. In para no.8 of the complaints in CRM-M-3432-2016 and CRM-M-3436-2016, it is mentioned that the accused after lodging of the said criminal complaint approached and met the officials of the complainant-company at Gurgaon and issued and delivered the cheque in question, in favour of the complainant company towards partial discharge of their dues under the said loan facility and assured that the same would be honoured on presentation for encashment. These averments in the complaint show that when the accused approached the complainant-company and issued the cheque, at that time the present petitioner was not the Managing Director of M/s Deccan Chronicle Holdings Limited as he had already resigned in July, 2012. In para No.10 of the complaints in CRM-M-3432-2016 and CRM-M-3436-2016, it is stated that cause of action for filing the present complaint arose when the cheque was dishonoured and returned unpaid vide cheque return memo dated 22.02.2013 issued by the complainant's bank i.e. Yes Bank at Gurgaon. It is also stated in the complaint that cause of action further arose when the legal notice under Section 138 of N.I.Act was sent to the accused and on expiry of period of 15 days from the receipt thereof by the accused and the cause of action is still continuing, which means that even as per the version of complainant, the cause of action arose in the Month of February, 2013, but the present petitioner has already resigned in July, 2012 from the Company. Therefore, in no way, it can be held that the petitioner has committed the offence under Section 138 of the N.I.Act. Thus, filing of complaints against the present petitioner is nothing, but an abuse of process of law.

Therefore, finding merits in all the petitions, the same are allowed and Criminal Complaint No.49 of 2015 (Old No.1790 of 2013) dated 02.04.2013 (Annexure P-1), order dated 10.04.2013 (Annexure P-2) and judgment dated 08.11.2013 (Annexure P-3) in CRM-M-3432-2016, Criminal Complaint No.48 of 2015 (Old No.1791 of 2013) dated 02.04.2013 (Annexure P-1), order dated 10.04.2013 (Annexure P-2) and judgment dated 08.11.2013 (Annexure P-3) in CRM-M-3436-2016, Criminal Complaint No.2561 of 2015/21.08.2015 dated 11.03.2013 (Annexure P-1), order dated 25.04.2013 (Annexure P-2) and order dated 11.01.2016 (Annexure P-3) in CRM-M-29968-2016, Criminal Complaint No.2565 of 2015/21.08.2015 dated 11.02.2013 (Annexure P-1), order dated 22.03.2013 (Annexure P-2), judgment dated 08.11.2013 (Annexure P-3) and order dated 11.01.2016 (Annexure P-5) in CRM-M-29989-2016, Criminal Complaint No.2564 of

2015/21.08.2015 dated 11.02.2013 (Annexure P-1), order dated 22.03.2013 (Annexure P-2), judgment dated 08.11.2013 (Annexure P-3) and order dated 11.01.2016 (Annexure P-5) in CRM-M-30100-2016, Criminal Complaint No.2568 of 2015/21.08.2015 dated 14.08.2013 (Annexure P-1) and order dated 14.08.2013 (Annexure P-2) in CRM-M-30104-2016 and Criminal Complaint No.2569 of 2015/21.08.2015 dated 11.03.2013 (Annexure P-1), order dated 25.04.2013 (Annexure P-2) and order dated 11.01.2016 (Annexure P-3) in CRM-M-30139-2016 alongwith all the subsequent proceedings arising therefrom qua the petitioner are hereby quashed.

28.04.2017 **(INDERJIT SINGH)**
parveen kumar **JUDGE**

Note: Whether speaking/reasoned : Yes
Whether reportable : No