

**CRM-M-43012-2016,  
CRM-M-43174-2016 and  
CRM-M-43180-2016**

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

**Date of Decision: 27.09.2017**

**1. CRM-M-43012-2016**

Ramesh Govind Kelkar

... Petitioner

Versus

Nancy Sangwan

... Respondent

**2. CRM-M-43174-2016**

Pawan Kumar Verma

... Petitioner

Versus

Nancy Sangwan

... Respondent

**AND**

**3. CRM-M-43180-2016**

Rishi Soni

... Petitioner

Versus

Nancy Sangwan

... Respondent

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

Present: Mr. Punit K. Bhalla and Ms. Chetna Bhalla, Advocates,  
for the petitioners in all the petitions.

Mr.Sanjay Vashisth, Advocate,  
for the respondent(s) in all the petitions.

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**INDERJIT SINGH, J.**

All these petitions have arisen out of one complaint and the point for determination in all the cases is the same, therefore, they are taken up together.

This order shall dispose of CRM-M-43012-2016, filed by petitioner-Ramesh Govind Kelkar, CRM-M-43174-2016, filed by petitioner-Pawan Kumar and CRM-M-43180-2016, filed by petitioner-Rishi Soni, under Section 482 Cr.P.C. for quashing of the Criminal Complaint No.43-2/148/2016 (Annexure P-1), titled as 'Nancy Sangwan vs. M/s Value Infrabuild India Private Limited and others' which is pending in the Court of learned Judicial Magistrate Ist Class, Bhiwani and the order dated 27.04.2016 (Anenxure P-2) whereby the petitioners have been summoned under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act').

The brief facts of the case are to the effect that respondent-complainant filed a complaint under Section 138 of the N.I.Act against M/s Value Infrabuild India Pvt. Ltd. (for brevity, 'the company') and its directors with the averments that accused Nos.2 to 12 were the CMD/Directors/authorized signatories of the company. It was alleged against the petitioners, who are accused Nos.8 to 10 in the complaint that they being the directors of the Company, were responsible for all the acts, omission and commissions done under the seal or name of accused No.1-company. It was alleged by the complainant that the company, its officials and directors enticed the complainant to purchase a flat for a total amount of

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₹20 lakhs, which amount was paid by the complainant and an agreement dated 10.09.2014 entered into between them. Thereafter, an offer for the repurchase of the flat was given by accused Nos.3 and 5, Neetu and Reeva Gujral to the complainant at a higher consideration for the amount of ₹26 lakhs and offered to make the payment of ₹3 lakh on 14.03.2015 vide Cheque No.369873, ₹3 lakhs on 14.09.2015 vide cheque No.368927 and ₹20 lakhs on 14.09.2015 vide cheque No.369828. The complainant accepted the offer of the accused. The offer letter of repurchase of flat dated 15.09.2014, duly signed by accused No.5, was issued by the accused and the post dated cheques were signed and issued by accused No.3 and the same were handed over to the complainant on 15.09.2014. The accused assured that the above post dated cheques shall be encashed on their presentation. The aforesaid cheques were signed by accused No.3-Neetu Singh on behalf of accused No.1-Company. When the complainant presented cheque No.368927 dated 14.09.2015 and cheque No.368928 dated 14.09.2015 through its banker, the same were dishonoured with the remarks 'Insufficient Funds'. 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 her counsel and contested all these petitions.

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

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

Learned counsel for the petitioners stated that the petitioners were the nominee directors of the company prior to the issuance of the cheques. They had already resigned from the said company. Learned counsel also argued that in all these cases, cheques have been issued on 14.09.2015 whereas the petitioners had already resigned prior to the issuance of the cheque in question and resignations of petitioners-Ramesh Govind Kelkar and Rishi Soni were accepted on 24.08.2015 and the resignation of petitioner-Pawan Kumar Verma was accepted on 15.09.2014, as per Form DIR 12, which are placed on record as Annexure P-5.

There is no rebuttal to these arguments by learned counsel for the respondent. Furthermore, if the cheques have been issued by the company in which the present petitioners were the directors, then it does not amount to the commission of offence at the time of issuance of cheques.

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 petitioners were not the directors of the Company at the time of commission of the offence and had already resigned from the Company. Section 141 of the N.I.Act provides as under:

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***“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.***

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From the perusal of above provision, it is clear that since neither the present petitioners were having any concern with the Company at the time of commission of offence, nor they were the Directors of the Company, therefore, they are not liable for the commission of offence. Thus, filing of complaints against the present petitioners is nothing, but an abuse of process of law.

Therefore, finding merits in all these petitions, the same are allowed and Criminal Complaint No.43/2/148/2016 (Annexure P-1), titled as 'Nancy Sangwan vs. M/s Value Infrabuild India Private Limited and others' which is pending in the Court of learned Judicial Magistrate Ist Class, Bhiwani and the order dated 27.04.2016 (Anenxure P-2), alongwith all the subsequent proceedings arising therefrom qua the petitioners are hereby quashed.

**27.09.2017**  
parveen kumar

**(INDERJIT SINGH)**  
**JUDGE**

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