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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-8989-2015

Date of Decision : November 30,2017

Amar Jeet Kalra

.... Petitioner

Versus

Deepak Golcha

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. Gopal Sharma, Advocate,
for the petitioner.

Mr. Mukesh Rao, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure for quashing of Criminal Complaint No.1526 of 28.10.2014 titled **Deepak Golcha Vs. M/s Lakhani India Limited and others** [Annexure P/10] under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 [for short, "the Act"] has been filed by Amar Jeet Kalra, petitioner herein, mainly on the ground that the present petitioner was summoned to face trial on the basis of summoning order dated 28.10.2014 [Annexure P/11] passed by Judicial Magistrate Ist Class, Faridabad and subsequent proceedings therefrom.

2. Facts relevant for the purpose of decision of the present petition;

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that Deepak Golcha, complainant - respondent herein, had filed a complaint under Sections 138, 141 and 132 of Negotiable Instruments Act, 1881 (for short, "**the Act**") that two cheques bearing Nos.464399 dated 20.08.2014 and No. 464398 dated 26.08.2014 were issued and the same were returned with the remarks "Funds Insufficient" and "Account Blocked" respectively. Despite issuance of notice, payment was not made and as such, the complaint, Annexure P/10 was filed on 28.10.2014.

3. Learned Magistrate on the basis of material before him, passed the summoning order, dated 28.10.2014 (Annexure P/11).

4. Learned counsel for the petitioner contended that the petitioner is neither signatory to the cheques nor he was Director of M/s Lakhani India Limited (for short, "the Company") at the relevant time. Rather, he had resigned from the said company long back on 7.10.2013 and copy of the resignation letter was available on the file as Anneuxre P/1. The said resignation was accepted by Ministry of Corporate Affairs vide Annexure P/3. Relieving report (Annexure P/4) was also issued on 5.12.2013 i.e. Much before the date of issuance of cheques in question. Even in the reply to the legal notice, the present petitioner had made his position clear that he had resigned from the position of the Director and that fact was duly published in the news-paper - "The Hindu" dated 24.10.2013. Still the present complaint has been filed and the summoning order has been passed in routine manner. As such the complaint (Annexure P/10) against the present petitioner is not maintainable and the summoning order dated 28.10.2014 (Annexure P/11) is liable to be set-aside qua the petitioner.

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5. Learned counsel for the petitioner also raised contention that in such like cases, if the process of law is issued on the basis of any proceedings under Section 138 of the Act, when the petitioner is not liable in any capacity including on the principle of vicarious liability, the continuation of such criminal proceedings shall be miscarriage of justice and the Court has got the power to quash the said proceedings. On this point, reliance was placed upon the judgments from Hon`ble Supreme Court in **Pooja Ravinder Devidasani Vs. State of Maharashtra and another**, 2015(1) R.C.R. (Criminal) 271; **Mrs. Anita Malhotra Vs. Apparel Export Promotion Council and another**, 2011 (4) R.C.R. (Civil) 930 and **N.K.Wahi Vs. Shekhar Singh and others**, 2007(2) R.C.R. (Criminal) 266.

6. While arguing on this point, learned counsel for the respondent contended that the summoning order has been passed by learned Magistrate and the remedy by way of revision before the Court is Sessions is available to the present petitioner and as such, the present petition under Section 482 Cr.P.C. is not maintainable. On this point, reliance was placed upon the judgment of Hon`ble Supreme Court in **Gunmala Sales Private Limited Vs. Anu Mehta and others**, 2014(4) R.C.R. (Civil) 788.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that most of the facts are not disputed that the petitioner is not signatory to the cheques in question. He was not Director of the Company on the relevant date i.e., 20-08-2014/26-08-2014 when the cheques were issued, rather he had resigned from his position long-back on 7.10.2013 and his

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resignation was accepted vide Annexure P/5. Notice was also issued in the news paper on 24.10.2013 i.e., prior to the issuance of cheques in question.

8. As per provisions of Sections 138 and 141 of the Act, a Director can be held liable on the principle of 'vicarious liability', but there must be specific averments against the said Director showing as to how and in what manner, he was responsible for the conduct of the business of the Company, but in the case in hand, the facts are totally otherwise because the petitioner was not the Director of the Company on the date of issuance of cheques in question, rather he had resigned long back, which was duly accepted. More so, the petitioner is not signatory to the cheques. The continuation of proceedings against such a person is certainly a miscarriage of justice and the Court is to exercise the power in such like cases. Such a view was taken by Hon'ble Supreme Court in case **Harshendra Kumar D. Vs. Rebatilata Koley etc., 2011(3) SCC 351** and in **National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and another, 2010(2) JT 161**, wherein Hon'ble Supreme Court of India was of the view that if a cheque issued by a company and plea taken that one of the Directors had resigned before the date of issuance of cheque and his resignation was duly accepted and notified, such person cannot be made accountable and the liability cannot be fastened upon him.

9. **In view of the above, the present petition is allowed and the Criminal Complaint No.Criminal Complaint No.1526 dated 28.10.2014 titled Deepak Golcha Vs. M/s Lakhani India Limited and others [Annexure P/10] is quashed and summoning order dated 28.10.2014**

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(Annexure P/11) and all subsequent proceedings arising therefrom
are set-aside qua the present petitioner only.

(SHEKHER DHAWAN)
JUDGE

November 30, 2017
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Speaking/Reasoned	Yes
Reportable	Yes