

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

**CRM-M-18925-2018
Date of decision: 16.10.2018**

Abhishek Sharma

...Petitioner

Versus

M/s Nihal Chand Shiv Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. S. S. Mor, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the complaint bearing No. COMA/714/2016, dated 22.02.2017 titled as **M/s Nihal Chand Shiv Kumar Vs. M/s Gee Ess Industries & others**, registered under Section 138 of the Negotiable Instruments Act as well as order dated 22.02.2017, vide which the petitioner has been declared a proclaimed offender, along with all consequential proceedings arising therefrom.

On 04.05.2018, the following order was passed:

“Counsel for the petitioner has submitted that 25 complaints have been filed against the petitioner and on that account, the petitioner could not appear before the trial Court in pursuance to the summoning order and he was declared as proclaimed person vide order dated 22.02.2017 (Annexure P6). It is further submitted that in a petition filed by the petitioner i.e. CRM-M No.31053 of 2017 against one M/s. J.S. Trading Company, notice of motion has been issued for 10.10.2017 and the same is now pending for 29.08.2018. Counsel for the petitioner has further submitted that there are 02 partnership firms with the name of M/s. Gee Ess Industries, one firm is registered at New Delhi and the other firm is registered at Rajpura. It is also submitted that the petitioner, who is arrayed as accused No.3 in the

impugned complaint is not a partner with the firm M/s. Gee Ess Industries, village Daoukalan, District Patiala and he is, in fact, a partner with the firm M/s. Gee Ess Industries at New Delhi. Counsel for the petitioner has relied upon the partnership deed (Annexure P2) dated 01.04.2008 wherein 03 persons namely Hardeep Singh, Gurmukh Singh and Malkiat Singh are shown as partners in the firm at Rajpura. It is, thus, submitted that the petitioner, who is arrayed as accused No.3 in the impugned complaint has no concern with the respondent – accused firm registered at Rajpura and, therefore, the complaint against the petitioner is not maintainable and there are no specific allegation in the complaint that either the petitioner is a signatory of the cheque with regard to the firm at Rajpura. Counsel for the petitioner has also submitted that the petitioner is ready to surrender before the trial Court and apply for fresh bail. Notice of motion for 29.08.2018. In the meantime, the petitioner is directed to appear before the trial Court and the trial Court will release the petitioner on interim bail on his furnishing bail/surety bonds. The trial Court is also directed to adjourn the case beyond the date fixed before this Court.”

Learned counsel for the petitioner, at the very outset, submits that he may be permitted to withdraw the present petition with liberty to the petitioner to move an application for discharge along with all the supporting documents and submits that personal appearance of the petitioner before the trial Court may be exempted permanently during pendency of the trial in view of the judgment of the Hon’ble Supreme Court in *M/s Meters and Instruments Private Limited and anr. Vs. Kanchan Mehta, 2017 (4) RCR (Crl.) 476*.

After hearing learned counsel for the petitioner, this petition is disposed of, by granting exemption from personal appearance to the petitioner before the trial Court, subject to the following conditions: -

- (i) *he will appear before the trial Court and the trial Court will release his on bail, in case they have not appeared so far;*

- (ii) he will be represented by a counsel;*
- (iii) he will not delay/stall the proceedings of the trial Court;*
- (iv) he will not dispute his identity as accused;*
- (v) he will have no objection if the prosecution evidence is recorded in his absence but in presence of his counsel;*
- (vi) he will appear before the trial Court as and when required by the trial Court and any other condition which the trial Court may impose.*

In case the petitioner files an application for discharge within a period of 15 days from today, the trial Court will decide the same expeditiously in accordance with law, preferably within a period of three months from the date of receipt of certified copy of this order.

Liberty is granted to file a fresh petition, if so required.

Disposed of, accordingly.

October 16, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No