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

(1) **CRM-M-21509 of 2015**
Date of decision:-15.3.2018

Mrs.Parmod Rani
...Petitioner

Versus

M/s Ranbir Steel Industry and others
...Respondents

(2) **CRM-M-21645-2015**

Mrs.Parmod Rani
...Petitioner

Versus

M/s Ranbir Steel Industry and others
...Respondents

(3) **CRM-M-29959-2015**

Mrs.Parmod Rani
...Petitioner

Versus

M/s Bhawani Industries Limited
...Respondent

(4) **CRM-M-29978-2015**

Mrs.Parmod Rani
...Petitioner

Versus

M/s Bhushan Power & Steel Ltd.
...Respondent

(5) **CRM-M-30155-2015**

Mrs.Parmod Rani
...Petitioner

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Versus

M/s Bhushan Power & Steel Ltd.
...Respondent

(6) **CRM-M-42428-2015**

Mrs.Parmod Rani
...Petitioner

Versus

M/s Sharu Steels (P) Ltd.
...Respondent

(7) **CRM-M-28662-2015**

Parmod Rani Garg and another
...Petitioners

Versus

M/s Arora Iron and Steel Rolling Mills (P) Ltd.

...Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Manish Jain, Advocate
for the petitioner(s).

Mr.Chandan Deep Singh, Advocate
for the respondent No.1 in CRM-M-21509-2015 and CRM-M-21645-2015.

Mr.Pardeep Bajaj, Advocate
for the respondents in CRM-M-28662-2015.

Mr.R. Kartikeya, Advocate
for the respondent in CRM-M-42428-2015.

Mr.Pardhuman Garg, Advocate
for the respondent in CRM-M-29959-2015.

Mr.Neeraj Poswal, AAG, Haryana.

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H.S. MADAAN, J.

Vide this order, I propose to dispose of seven petitions i.e.

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CRM-M-21509 of 2015, CRM-M-21645-2015, CRM-M-29959-2015, CRM-M-29978-2015, CRM-M-30155-2015, CRM-M-42428-2015 filed by petitioner – Mrs.Parmod Rani and **CRM-M-28662-2015** filed by petitioners – Mrs.Parmod Rani and Bal Krishan Garg, seeking quashing of the summoning order dated 11.07.2014 (Annexure P-4) and order dated 03.06.2015 (Annexure P-1) vide which the application of the petitioner for discharge was dismissed in **CRM-M-21509 of 2015**; summoning order dated 11.07.2014 (Annexure P-4) and order dated 03.06.2015 (Annexure P-1), vide which the application of the petitioner for discharge was dismissed in **CRM-M-21645 of 2015**; summoning order dated 16.7.2013 (Annexure P-2) in **CRM-M-29959 of 2015**; summoning order dated 18.11.2014 (Annexure P-3) and order dated 29.7.2015 (Annexure P-1) vide which the application of the petitioner for discharge was dismissed in **CRM-M-29978 of 2015**; summoning order dated 12.12.2014 (Annexure P-3) and order dated 29.7.2015 (Annexure P-1) vide which the application of the petitioner for discharge was dismissed in **CRM-M-30155 of 2015**; summoning order dated 5.12.2013 (Annexure P-3) and order dated 17.9.2015 (Annexure P-1) vide which the application of the petitioner for discharge was dismissed in **CRM-M-42428 of 2015**; order dated 8.10.2013 (Annexure P-1), vide which non-bailable warrants have been issued against the petitioner in **CRM-M-28662 of 2015**, passed by learned Judicial Magistrate First Class, Ludhiana. The petitioner has also sought quashing of criminal complaints under Section 138 of Negotiable Instruments Act, 1881 in all the petitions.

Inter alia, she has contended that she has been impleaded as

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one of the accused in the complaint in question for the reason of her being Director in company M/s Swati Cast & Forge Pvt. Ltd.; that she has been summoned to face trial along with the other co-accused, which has been done erroneously since petitioner had resigned from the Directorship of M/s Swati Cast & Forge Pvt. Ltd. even before issuance of cheques in question; that she had not signed the cheques; that the matter of petitioner having resigned as Director of M/s Swati Cast & Forge Pvt. Ltd. was duly conveyed to Registrar of Companies and it is duly reflected in Form No.32 extracted from the official website of Registrar of company showing that the petitioner has resigned as Director w.e.f. 1.4.2013; that the Chartered Accountant had also furnished an affidavit in that regard; that applications were moved in the trial Court seeking discharge on this ground but the same were dismissed, as such, the petitioner has approached this Court by way of filing present petitions.

Notice of the petitions was given to respondents, who put in appearance and vehemently opposed the petition. In the written reply filed, it is contended that petitioner has not approached the Court with clean hands and has concealed the material facts; that as a matter of fact, the petitioner is still recorded as Director of the company in Punjab & Sind Bank, Branch SCFB, Ludhiana; that the petitioner in connivance with her husband Bal Krishan Garg had prepared false and forged record just to escape from criminal liability preparing false resignation and Form No.32; that the alleged resignation dated 1.4.2013 *prima facie* shows that it was submitted by the petitioner to the Registrar of Companies, Chandigarh and not to M/s Swati Cast & Forge Pvt. Ltd.;

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that as per the Company Act, first of all the resignation is to be submitted to the company and after its acceptance by the company, it is submitted to Registrar of Companies along with Form No.32; that in the alleged Form No.32 relied upon by the petitioner, there is no date, month and year regarding submitting the same before Registrar of Companies; that as per the official Website of Registrar of Companies, the alleged resignation was submitted in the year 2014 on 27.1.2014; that the trial in the complaint cases are at advance stage; that the accused is deliberately avoiding appearance there and is stretching proceedings. In the end, the respondents pray for dismissal of the petitions.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioners has contended that the petitioner had tendered her resignation as Director of the company on 1.4.2013, which was accepted by Board of Directors on that very day and intimation was given to Registrar of Companies in that regard, which is clear from the perusal of Form No.32 issued by Registrar of Companies. The cheques in question were issued much after the date, the petitioner ceased to be a Director of M/s Swati Cast & Forge Pvt. Ltd. Therefore, she could not be said to be having any connection with the management of affairs of the company or its control. The cheques do not bear her signatures, as such she is not liable for offence under Section 138 of Negotiable Instruments Act but she has been impleaded as an accused just as a pressure tactic and wrongly summoned by the trial Magistrate and that wrong was further compounded when application for discharge so filed by the petitioner was dismissed by the

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trial Court. Learned counsel for the petitioner has submitted that under similar circumstances, the Coordinate benches of this Court have accepted similar petitions under Section 482 Cr.P.C.. In that regard he has referred to orders passed by Co-ordinate benches in **CRM-M-32754 of 2015** on September, 24th , 2015 and **CRM-M-13697 of 2015 (O&M)** on 3.3.2017.

On the other hand, learned counsel representing complainants – respondents submitted that all these assertions are without merit. Admittedly, the petitioner happened to be Director of M/s Swati Cast & Forge Pvt. Ltd. and it is specifically pleaded in the complaint that accused No.1 - M/s Swati Cast & Forge Pvt. Ltd., D-100-101, Phase-V, Focal Point Ludhiana is a private limited company and accused Nos.2 and 3 are its directors, as such fully responsible for the day to day business, acts, affairs of accused No.1. Furthermore, Section 141 of the Negotiable Instruments Act deals with Offences by companies. It provides that 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. As per provision 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.

Learned counsel for the complainants has referred to

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authority ***Malwa Cotton and Spinning Mills Ltd. Versus Virsa Singh Sidhu and others (2008) 17 Supreme Court Cases 147***. The important paragraphs of this this judgment are 8 to 11 and the same are reproduced as under:

> We find that the prayers before the courts below essentially were to drop the proceedings on the ground that the allegations would not constitute a foundation for action in terms of Section 141 of the Act. These questions have to be adjudicated at the trial. Whether a person is in charge of or is responsible to the company for conduct of business is to be adjudicated on the basis of materials to be placed by the parties. Sub-section (2) of Section 141 is a deeming provision which as noted supra operates in certain specified circumstances. Whether the requirements for the application of the deeming provision exist or not is again a matter for adjudication during trial. Similarly, whether the allegations contained are sufficient to attract culpability is a matter for adjudication at the trial.
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> 9. Under Scheme of the Act, if the person committing an offence under Section 138 of the Act is a company, by application of Section 141 it is deemed that every person who is in charge of and responsible to the company for conduct of the business of the company as well as the company are guilty of the offence. A person who proves that the offence was committed without his knowledge or that he had exercised all due diligence is exempted from becoming liable by operation of the proviso to sub-section (1). The burden in this regard has to be discharged by the accused.
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> 10. The three categories of persons covered by Section 141 are as follows:
>
> (1) The company which committed the offence.
>
> (2) Everyone who was in charge of and was responsible for the business of the company.

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(3) Any other person who is a Director or a manager or a secretary or officer of the company with whose connivance or due to whose neglect the company has committed the offence.

11. Whether or not the evidence to be led would establish the accusations is a matter for trial. It needs no reiteration that proviso to sub-section (1) of Section 141 enables the accused to prove his innocence by discharging the burden which lies on him."

11. "In N. Rangachari v. Bharat Sanchar Nigam Ltd. (2007 (5) SCC 108)", it was observed as follows:

"19. Therefore, a person in the commercial world having a transaction with a company is entitled to presume that the Directors of the company are in charge of the affairs of the company. If any restrictions on their powers are placed by the memorandum or articles of the company, it is for the Directors to establish it at the trial. It is in that context that Section 141 of the Negotiable Instruments Act provides that when the offender is a company, every person, who at the time when the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty of the offence along with the company. It appears to us that an allegation in the complaint that the named accused are Directors of the company itself would usher in the element of their acting for and on behalf of the company and of their being in charge of the company. In Gower and Davies' Principles of Modern Company Law (17th Edn.), the theory behind the idea of identification is traced as follows:

"It is possible to find in the cases varying formulations of the underlying principle, and the most recent definitions suggest that the courts are prepared today to give the rule of attribution based on identification a somewhat broader scope. In the original formulation in Lennard's Carrying Company case (1915 AC 705 (HL) Lord Haldane based identification on a person `who is really

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> the directing mind and will of the corporation, the very ego and centre of the personality of the corporation'. Recently, however, such an approach has been castigated by the Privy Council through Lord Hoffmann in Meridian Global case (1995 (2) AC 500 (PC) as a misleading `general metaphysic of companies'. The true question in each case was who as a matter of construction of the statute in question, or presumably other rule of law, is to be regarded as the controller of the company for the purpose of the identification rule."

In the end, the Apex Court while allowing the appeal observed that the High Court was not justified in quashing the proceedings so far as respondent No.1 in the first case is concerned.

I find this authority to be fully applicable to the present case. More-so when there is delay in conveying the acceptance of resignation by the Board of Directors to Registrar of Companies. Furthermore, as has been contended by learned counsel for the complainants and corroborated by the record, the petitioner is still reflected to be one of the Directors in the company in the bank record. At several other places, no such plea has been taken that she ceased to be a Director of the company M/s Swati Cast & Forge Pvt. Ltd. w.e.f. 1.4.2013. As regards the orders passed by the Co-ordinate benches, those were passed when version of the complainant was not there before the Court and authority **Malwa Cotton and Spinning Mills Ltd.** (supra) was not brought to their notice.

Therefore, I do not find any illegality or infirmity with the impugned orders passed by the Courts below as well as the complaint under Section 138 of Negotiable Instruments Act. There is no ground to

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quash the same exercising power under Section 482 Cr.P.C. It is only during trial when the parties are given opportunities to lead evidence then it can be determined as to whether the petitioner was Director of the Company at the time when the cheques were issued or she had ceased to be so having submitted her resignation earlier, which had been accepted before issuance of the cheques in question, since otherwise the petitioner being one of the Directors is to be taken as incharge and responsible to the company for conduct of its business, therefore liable to be prosecuted.

Finding no merits in the petitions, the same stand dismissed.

15.3.2018 **(H.S.MADAAN)**
Brij **JUDGE**

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

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