

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

(1) CRM-M-30313-2017

Kirandeep Kaur

...Petitioner

Versus

I. D. Steel Industries, S.A.S. Nagar

...Respondent

(2) CRM-M-30273-2017

Kirandeep Kaur

...Petitioner

Versus

I. D. Steel Industries, S.A.S. Nagar

...Respondent

(3) CRM-M-30411-2017

Kirandeep Kaur

...Petitioner

Versus

I. D. Steel Industries, S.A.S. Nagar

...Respondent

Date of decision: 28.08.2018

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Gourav Goel, Advocate
for the petitioner.

Mr. M. S. Mahal, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above noted three petitions
as they involve same parties and seek quashing of the similar

complaints/orders.

These all three petitions have been filed under Section 482 Cr.P.C. for quashing of the Complaints No. 290, 291 and 292, filed by I. D. Steel Industries-respondent herein against Kirandeep Kaur-petitioner, under Section 138/142 of the Negotiable Instruments Act, pending in the Court of Additional Chief Judicial Magistrate, Mohali; the summoning orders passed in these petitions on 29.04.2016 as well as orders dated 01.06.2017, passed separately in all petitions, vide which the application(s), filed by the petitioner/accused for discharge, was dismissed by the trial Court.

Learned counsel for the petitioner submits that the petitioner filed application(s) for discharge in the aforesaid complaints on the ground that it is mentioned in the complaint(s) that legal notice, issued to the petitioner/accused, was returned with the remarks '*now not living here dated 27.03.2016*' and also that the cheque in dispute was issued for the purpose of clearing the installments of a loan, raised for purchasing a vehicle, by mentioning the registration number of the said vehicle on the cheque. Reply, on behalf of the complainant/respondent, was filed to the said application(s) and, thereafter, the trial Court, vide orders dated 01.06.2017, had dismissed the application(s) for discharge primarily on the ground that the Court has no power to review its own order of summoning the petitioner.

Learned counsel for the petitioner has relied upon a judgment rendered by Hon'ble Supreme Court in ***M/s Meters and Instruments Private Limited & Another vs. Kanchan Mehta, 2017 (4) R.C.R. (Criminal) 476***. The operative part of the judgment reads as under:

“18. From the above discussion following aspects emerge:

- i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.**
- ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.**
- iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.**
- iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than**

one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 I.P.C. and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonour of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.

19. In view of the above, we hold that where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 Cr.P.C. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and

summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under Section 357(3) Cr.P.C. with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.

20. In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the Bank where the accused has an account, such Bank, on being required, should furnish such e-mail ID to the payee of the cheque. In every summons, issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be assessed by the Court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant. If the accused complies with such summons and informs the Court and the complainant by e-mail, the Court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the Court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the Court to explore the possibility of settlement. It will also be open to the Court to consider the provisions of plea

bargaining. Subject to this, the trial can be on day to day basis and endeavour must be to conclude it within six months. The guilty must be punished at the earliest as per law and the one who obeys the law need not be held up in proceedings for long unnecessarily.

21. It will be open to the High Courts to consider and lay down category of cases where proceedings or part thereof can be conducted online by designated courts or otherwise. The High Courts may also consider issuing any further updated directions for dealing with Section 138 cases in the light of judgments of this Court.

The appeals are disposed of.

It will be open to the appellants to move the Trial Court afresh for any further order in the light of this judgment.”

(Emphasis supplied)

Learned counsel for the petitioner further submits that at this stage, he restricts his arguments to the extent that orders dated 01.06.2017 (Annexure P-3 in all petitions), dismissing the application(s) for discharge on a technical ground that the trial Court has no power to review its earlier summoning order, be set aside in view of the judgment passed by Hon'ble Supreme Court in *M/s Meters and Instruments Private Limited & Another* (supra). Learned counsel for the respondent/complainant has no objection to the same.

Accordingly, without commenting anything on merits of the case, these petitions are partly allowed and impugned orders dated 01.06.2017 (Annexure P-3 in all petitions), dismissing the application(s) for discharge on a technical ground that it amounts to reviewing the summoning order, are set aside and the trial Court is directed to pass fresh orders on the

application(s) filed by the petitioner for discharge, preferably within a period of four months from today.

The parties will be at liberty to file their respective documents in support of their version.

In the meantime, personal appearance of the petitioner/accused before the trial Court shall remain exempted subject to the following conditions:

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

August 28, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No