IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **CRM-M-36490-2016**
Date of decision:-5.4.2018

Sarita Mantri and others
...Petitioners

Versus

Yash Pal Chadha and another
...Respondents

(2) **CRM-M-36491-2016**

Sarita Mantri and others
...Petitioners

Versus

Primal Chadha and another
...Respondents

(3) **CRM-M-36591-2016**

Sarita Mantri and others
...Petitioners

Versus

Yash Pal Chadha and another
...Respondents

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

Present : Mr.Sunil Chadha, Senior Advocate with
Ms.Swati Verma, Advocate
for the petitioners.

Mr.Vijay Lath, Advocate
for the respondent No.1.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

****

H.S. MADAAN, J.

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

CRM-M-36490-2016, CRM-M-36491-2016 and **CRM-M-36591-2016** filed by petitioners – Sarita Mantri and others, seeking quashing of Criminal Complaint No.2469 of 2015 and summoning order dated 26.2.2016 in **CRM-M-36490-2016,** Criminal Complaint No.3380 of 2015 and summoning order dated 26.2.2016 in **CRM-M-36491-2016** and Criminal Complaint No.2169 of 2015 and summoning order dated 13.8.2015 in **CRM-M-36591-2016**, under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act), which are pending before Judicial Magistrate Ist Class, Jalandhar as well as subsequent proceedings taken in pursuance thereof qua the petitioners.

According to the petitioners, these complaints have been filed alleging that two companies, namely, M/s Sunil Mantri Realty Ltd. and M/s Mantri Realty Ltd., arrayed as respondents No.1 and 2 are being run and managed by accused Nos.3 to 12 jointly being Managing Director, Directors and authorized signatories and all of them are fully responsible and liable for day to day working and running affairs and liabilities of the two companies; that vide orders dated 26.2.2016 and 13.8.2015, Judicial Magistrate Ist Class, Jalandhar had summoned accused Nos.1 to 9 out of 12 persons including the petitioners to face trial under Section 138 of the Act; that feeling aggrieved by the summoning order, the petitioner No.1 had filed a revision petition before Sessions Judge, Jalandhar, presently pending before Additional Sessions Judge, Jalandhar, however, that petition is to be withdrawn in view of latest judgment by the Apex Court in case "Prabhu Chawla Versus State of Rajasthan". According to the petitioners, their status vis-a-vis the company M/s Mantri Realty Ltd. from the account of which the cheques in question have been issued is as under:

(1) Petitioner No.1 resigned as Director of M/s Mantri Realty Limited w.e.f. 1.1.2011.

(2) Petitioner No.2 resigned as Director of M/s Mantri Realty Limited w.e.f. 27.5.2015. He never remained a Managing Director of M/s Mantri Realty Limited, as alleged in the impugned complaint (Annexure P-1).

(3) Petitioner No.3 resigned as Director of M/s Mantri Realty Limited on 15.9.2013.

(4) Petitioner No.4 resigned as Director of M/s Mantri Realty Limited on 15.11.2011.

(5) Petitioner No.5 resigned as Director of M/s Mantri Realty Limited on 6.12.2011.

(6) Petitioner No.6 was merely an employee of M/s Mantri Realty Limited and he had left the said company in the year 2014 itself.

The cheques in question, which were subject matter of the impugned complaint had been issued from the account of M/s Mantri Realty Limited, a company duly registered under the Indian Companies Act and it has been signed by Sh.Mahesh Shah as authorized signatory; that M/s Mantri Realty Limited arrayed as accused No.2 in the impugned complaint formerly known as M/s Sunil Mantri Realty Limited (accused No.1 in the impugned complaint) is under liquidation and in terms of notice dated 12.1.2015, the official Liquidator attached to High Court of Bombay has taken the possession of the registered office as well as moveable assets of accused No.2 – company.

The petitioners are seeking quashing for the reason that petitioner No.1 had filed a petition before this Court earlier wherein she had sought quashing of an identical complaint filed against her by one Ashok Thaper as well as summoning order. The said petition was allowed by this Court vide order dated 7.5.2014 on the ground that she had resigned from the company M/s Sunil Mantri Realty Ltd. on 1.1.2011 i.e. much earlier to issuance of cheque dated 1.9.2013. On coming to know about the present proceedings the trial Court has started process of declaring the summoned accused as proclaimed offenders, though an application was filed for recalling of those orders, however, the said application filed at the instance of petitioners has been dismissed by Judicial Magistrate Ist Class vide order dated 17.9.2016 on the ground that in view of judgment of Hon'ble Supreme Court in case of ***Everest Advertising Pvt. Ltd.Versus State Government of NCT of Delhi, 2007(2) R.C.R.(Criminal) 575***, a Magistrate does not have the power to recall his own order, therefore directed the petitioners to appear before the said Court on 15.10.2016.

The petitioners pray that the petitions be allowed.

Whereas these petitions are being resisted by respondent No.1. In the written reply filed by him, he has made preliminary submissions to the effect that the petitioners are involved in day-to-day business of the company and they are fully responsible and liable for day-to-day working and running affairs and liability of the companies. On merits, it is contended that the trial Court after considering the complaint, evidence on record had summoned accused No.1 to 9 though there were 12 accused impleaded in the complaint. It is submitted that the allegations with regard to resignation of company by petitioners No.1 to 5 or the petitioner No.6 being an employee are not admitted but are required to be considered during the trial; the genuineness of Form 32 is also disputed. It is contended that the complaints filed on true facts and order passed by the trial Magistrate is legal and valid. In the end such respondent 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 referred to authorities in support of his contention that the petitions deserve to be allowed by quashing the criminal complaints, summoning orders and all the ancillary proceedings with regard to present petitioners, which are as under:

1. **National Small Industries Cor. Ltd. Versus Harmeet Singh Paintal & Anr., 2010(3) SCC 330,** wherein it was observed that when it came in evidence that petitioner was not the Director when the cheques were signed and there was no specific averment in the complaint as to the role of Director, proceedings qua that Direction were quashed.
2. **Naveen Kumar Aggarwal Versus M/s Dove Creation Pvt. Ltd., 2015(3) R.C.R.(Criminal)736** by a Co-ordinate bench of this Court, wherein it was observed that the Director who had resigned and whose resignation was accepted prior to issue of cheque is not liable.

3. **Harshendra Kumar D. Versus Rebatilata Koley etc., 2011(3) SCC 351** by the Hon'ble Apex Court while dealing with a case where cheques issued by the company had been dishonoured and prosecution was launched against managing Director and two Directors, it was observed that the Director, who had resigned and his resignation was duly accepted prior to the issuance of cheque cannot be held liable.

On the other hand, learned counsel representing the complainant has contended that allegations with regard to tendering of resignation and one of the petitioners being merely an employee are such, which need to be probed during the trial and cannot be taken at their face value more particularly when the genuineness of the supporting documents attached has been denied by the respondent – complainant. It will have to be established as to when the resignations were tendered, when those were accepted by Board of Directors and as to when communication was sent to the Registrar of the companies and therefore, unless it is conclusively established on record that petitioners No.1 to 5 had submitted resignations as Directors of the company, which had been accepted and conveyed to Board of Directors before issuance of cheques in question on behalf of the company, the petitioners cannot escape liability.

Learned counsel for the complainant has referred to 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:

> 8.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.
>
> 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.
>
> 10. The three categories of persons covered by Section 141 are as follows:
>
> (1) The company which committed the offence.
>
> (7) Everyone who was in charge of and was responsible for the business of the company.
>
> (8) 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 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. 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.

Another authority referred to by learned counsel for the complainant happened to be ***Tamil Nadu News Print & Papers Ltd. Versus D.Karunakar and others, 2015(4) Recent Apex Judgments (R.A.J.) 425***, wherein the Apex Court had observed that when it was averred in the complaint that Directors were involved in day-to-day business of the company, the complaint under Section 138 of the Act cannot be quashed in light of that averment. He has further referred to authority ***Shri Krishan Garg Versus Subhash Chander, 2014(37) R.C.R.(Criminal) 812*** by a Co-ordinate bench of this Court in that regard.

While raising the argument that petition under Section 482

Cr.P.C. is not maintainable when the petitioners have declared proclaimed offenders, learned counsel for the complainant has referred to authority ***Mehnga Singh Versus State of Punjab, 2002(2) R.C.R.(Criminal) 501***, in which the very maintainability of such petition under Section 482 Cr.P.C. at the instance of an absconder is doubtful. The other authorities pressed into service by learned counsel for the complainant happened to be ***Satish Menon Versus State of Gujarat and another, 2017 CLJ 2076*** and ***Counter Point Advt. P. Ltd. Versus Harita Finance Limited etc.2006(3) R.C.R.(Criminal) 609.***

Therefore, I do not find any ground to quash the impugned criminal complaints, summoning orders and subsequent proceedings exercising powers 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 petitioners No.1 to 5 were Directors of the Company at the time when the cheques were issued or they had ceased to be so having submitted their resignation earlier, which had been accepted before issuance of the cheques in question, since otherwise the petitioners No.1 to 5 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. Further where one of the petitioners i.e. petitioner No.6 is just an employee of the company shall also be determined during trial only.

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

5.4.2018 **(H.S.MADAAN)**
Brij **JUDGE**
Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No