

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

CRM-M No.5917 of 2014 (O&M)

Decided on: 26.10.2018

Kavita Goyal

....Petitioner

Versus

M/s. Aditya Pipes and Strips Private Limited and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Manish Jain, Advocate
with Mr. Mayur Kanwar, Advocate
for the petitioner.

Mr. Purshottam Lal Singla, Advocate
for respondent No.1.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of criminal complaint No.146 dated 31.08.2012 filed under Sections 138 of the Negotiable Instruments Act (in short 'the N.I. Act') read with Section 420 of the Indian Penal Code (in short 'IPC') (Annexure P2) as well as for setting-aside the order dated 19.12.2012 (Annexure P1) passed by the Sub-Divisional Judicial Magistrate, Amloh vide which the petitioner has been summoned under Section 138 of the N.I. Act.

Before referring to the facts of the case, it is worth noticing that this petition is pending since 2014 and on 18.02.2014, it was directed that the petitioner may file an application seeking exemption from personal appearance, which shall be decided by the trial Court on its merits. Thereafter, the case remain pending for arguments and it is not in dispute between the parties that the evidence of the petitioner has

been closed and on 06.02.2017, even the statement of the accused under Section 313 Cr.P.C. stands recorded. A perusal of the photocopy of the interim orders passed by the trial Court from 06.02.2017 onwards show that the case remain pending for defence evidence till 07.08.2018 and in the intervening period, the case was adjourned for more than 10 dates but no defence evidence led.

Counsel for the petitioner has placed on record the interim orders passed subsequently by moving CRM No.36074 of 2018 and a perusal of the same show that the complainant had moved an application for leading some additional evidence as 02 pages of a document Ex.CW2/C were misplaced from the Court file by the Ahlmad and thereafter, for the last 05 dates of hearing, the case is pending for tracing out the aforesaid 02 pages of the document Ex.CW2/C.

Counsel for the parties are ad idem that the said document was produced by an official of the bank qua which the complainant has moved the application for re-examination in order to re-construct the same.

Counsel for the petitioner has submitted that the respondent has filed a complaint under Section 138 of the N.I. Act and the same is pending in which the petitioner is arrayed as accused No.6. It is further submitted that in the complaint, the only allegations against the petitioner is that she along with accused Nos.2 to 5 is the Director/In-charge of the company and also responsible person of the business affairs of accused No.1 – company and except that there is no

specific allegations against the petitioner.

Counsel for the petitioner has further submitted that the petitioner is, in fact, the Company Secretary of accused No.1 – company and in no way, she was responsible for the cheques in question. It is further stated that the petitioner was employed by accused No.1 – company since March, 2011 and resigned vide her resignation letter dated 01.03.2012 (Annexure P5) and the same was accepted by the Board on 02.07.2012.

Counsel for the petitioner has also argued that the cheques were issued on 20.06.2012, 22.06.2012 and 24.06.2012 and therefore, prior to that, she had already resigned. Counsel for the petitioner has relied upon **Gunmala Sales Pvt. Ltd. versus Anu Mehta and others, 2015(1) SCC 103**, to submit that to establish a case under Section 138 read with Section 141 of the N.I. Act, there should be unimpeachable, un-controvertable evidence, which is beyond suspicion or doubt and in the absence of any such complaint or circumstance, the complaint cannot be quashed.

In reply, counsel for respondent No.1 has submitted that as per own case of the petitioner, her resignation was accepted on 02.07.2012 and prior to that the cheques were dishonoured. It is further submitted that since the evidence has been concluded and even the statement of accused under Section 313 Cr.P.C. has already been recorded, the petitioner has already placed on record all the material evidence/documents before the trial Court and, therefore, at this stage, while deciding a petition under Section 482 Cr.P.C., this Court is not

required to look into the evidence led by the parties as it is in domain of the trial Court to pass a final order and the trial is at the fag end and is delayed on account of re-construction of 02 pages of a document Ex.CW2/C.

After hearing counsel for the parties, I find that there is no dispute with the ratio of law laid down by the Hon'ble Supreme Court that there should be specific averments in the complaint regarding the role of an accused person/each director of the company, however, considering the fact that this case is at the fag end and the complainant has concluded the evidence and even the statement of accused under Section 313 Cr.P.C. has been recorded and the petitioner is now leading the defence evidence, therefore, finding no ground to interfere in the present petition at such belated stage, the same is dismissed.

Since this petition is pending since 2014 and the complaint is pending since 2012, it is directed that the trial Court will dispose of the complaint preferably within a period of 08 weeks from the date of receipt of certified copy of this order, after re-constructing the document Ex.CW2/C, in accordance with law.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

26.10.2018

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Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No