

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

**CRM-M-46936-2017
Date of decision: 16.10.2018**

Rubina Ghuman

...Petitioner

Versus

M. L. Trading Company

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Prateek Gupta, Advocate for
Mr. Alankar Narula, Advocate
for the petitioner.

Mr. Himanshu Arora, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of complaint case No. 115 of 2016 dated 04.08.2017, titled as ***M. L. Trading Company vs. JRS-G General Order Suppliers Pvt. Ltd.*** through its Proprietor, filed under Sections 138 and 142 of the Negotiable Instruments Act (Annexure P-6), pending in the Court of SDJM, Jalalabad; the summoning order dated 19.04.2017 (Annexure P-7) and the order dated 08.11.2017 (Annexure P-8), vide which, the proclamation has been issued against the petitioner, as well as all the subsequent proceedings arising therefrom.

On 08.12.2017, the following order was passed:

“Counsel for the petitioner has submitted that the petitioner has resigned as a Director of JRSG, General Order Suppliers Private Limited (in short 'the Company') on 24.08.2015 and on the same day, another Director namely Rajeshwar Sabherwal was appointed in place of the petitioner. Counsel for the petitioner has referred to Form No.DIR-11 to submit that on the website of Ministry of Corporate Affairs, it is uploaded that the petitioner is no more a Director

of the said Company. It is further submitted that the disputed cheque (Annexure P5) dated 29.10.2015 is signed by another Director of the Company namely Gurdeep Singh who is arrayed as accused No.2 in the complaint and the petitioner is not the signatory of the said Company. It is further submitted that much prior to issuance of the cheque (Annexure P5), the petitioner has resigned from the post of Director of the said Company and, therefore, she was not the In-charge of day-to-day affairs of accused No.1 – Company. Counsel for the petitioner has further submitted that a perusal of the complaint (Annexure P6) show that there is no allegations against the petitioner who is arrayed as accused No.3 that she was either a Director or In-charge of the day-to-day management of accused No.1 – Company. Counsel for the petitioner has relied upon the judgment “Harshendra Kumar D. vs Rebatilata Koley and others”, 2011(3) SCC 351 where it is held as under:-

“....17. In this view of the matter, in our opinion, it must be held that a Director, whose resignation has been accepted by the company and that has been duly notified to the Registrar of Companies, cannot be made accountable and fastened with liability for anything done by the company after the acceptance of his resignation. The words “every person who, at the time the offence was committed”, occurring in Section 141(1) of the NI Act are not without significance and these words indicate that criminal liability of a Director must be determined on the date the offence is alleged to have been committed.”

18 to 26. xxxx xxxx xxxx xxxx.

27. As noticed above, the appellant resigned from the post of Director on 02.03.2004. The dishonoured cheques were issued by the Company on 30.04.2004 i.e. much after the appellant had resigned from the post of Director of the Company. The acceptance of the appellant's resignation is duly reflected in the Resolution dated 02.03.2004. Then in the prescribed form (Form 32), the Company informed to the Registrar of Companies on 04.03.2004 about the appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs

of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the Court.”

In view of the judgment of the Hon'ble Supreme Court, counsel for the petitioner has submitted that the disputed dishonoured cheque was issued by accused No.1 – Company on the date, when the petitioner was not the Director and, therefore, she cannot be held liable as per the provisions of Section 141(1) of the Negotiable Instruments Act. Counsel for the petitioner has further argued that the petitioner was not aware of the pendency of the proceedings before the trial Court as she was not residing on the address given in the complaint (Annexure P6) and, therefore, the proclamation issued under Section 82 Cr.P.C. was not at a place which was the ordinary place of residence of the petitioner. It is further argued that she is ready to appear before the trial Court and face the proceedings, in accordance with law. Notice of motion for 22.01.2018. Liberty is granted to the petitioner to serve the respondent through counsel representing it before the trial Court. In the meantime, the petitioner is directed to appear before the trial Court within a period of 15 days and the trial Court will release the petitioner on interim bail subject to her furnishing bail/surety bonds.”

Reply, filed on behalf of the respondent in Court today, is taken on record.

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) *she will appear before the trial Court and the trial Court will release her on bail, in case they have not appeared so far;*
- (ii) *she will be represented by a counsel;*
- (iii) *she will not delay/stall the proceedings of the trial Court;*
- (iv) *she will not dispute her identity as accused;*
- (v) *she will have no objection if the prosecution evidence is recorded in her absence but in presence of her counsel;*
- (vi) *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.*

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