

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)	CRM-M No.10668 of 2018 (O&M)	
Bikramjit Singh		Petitioner
	<i>Versus</i>	
Shyam Lal Goyal and another		Respondents
(2)	CRM-M No.10739 of 2018 (O&M)	
Bikramjit Singh		Petitioner
	<i>Versus</i>	
Shyam Lal Goyal and another		Respondents
(3)	CRM-M No.10757 of 2018 (O&M)	
Bikramjit Singh		Petitioner
	<i>Versus</i>	
Shyam Lal Goyal and another		Respondents
(4)	CRM-M No.10957 of 2018 (O&M)	
Bikramjit Singh		Petitioner
	<i>Versus</i>	
Shyam Lal Goyal and another		Respondents
(5)	CRM-M No.23801 of 2018 (O&M)	
Bikramjit Singh		Petitioner
	<i>Versus</i>	
Shyam Lal Goyal and another		Respondents

(6) CRM-M No.24154 of 2018 (O&M)

Bikramjit Singh

.....Petitioner

Versus

Shyam Lal Goyal and another

.....Respondents

(7) CRM-M No.24224 of 2018 (O&M)

Bikramjit Singh

.....Petitioner

Versus

Shyam Lal Goyal and another

.....Respondents

Date of Decision: 28.03.2019

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Anupam Singla, Advocate for the petitioner/accused.

Mr. Vikrant Guleria, Advocate for respondent No.1/complainant.

Mr. C.L.Pawar, Senior Deputy Advocate General, Punjab
for respondent No.2/State.

MAHABIR SINGH SINDHU, J. (Oral)

This order shall dispose off the aforementioned seven petitions being identical on facts, involving the common questions of law.

2) The above petitions have been filed under Section 482 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) for quashing of impugned judgment(s) of learned Additional Sessions Judge, Mohali, vide which, the revision petitions of the petitioner(s) have been dismissed and the summoning order(s), passed by learned Sub Divisional Judicial Magistrate, Kharar, in the complaint case(s) under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'Act'*) have been affirmed.

3) With the consent of parties, the facts have been noticed from CRM-M-10668-2018, which, in brief, are as under:-

Respondent No.1/complainant-Shyam Lal Goyal filed a complaint No.NACT/26/2016 dated 07.01.2016 (P-2), under Section 138 of the Act against the petitioner with the allegations that his son-Naman Goyal, Sumit Ravindra Tiwari and Bikramjit Singh (petitioner) constituted a Firm namely, M/s Tejshe Paper Mill by way of Partnership Deed dated 01.10.2014 (P-4). Further alleged that investment qua the share of Naman Goyal was made by respondent No.1/complainant in view of the Partnership Deed itself. The above Partnership Firm was dissolved with the consent of all the partners by way of Dissolution Deed dated 31.05.2015 (P-5) and it was verbally settled with their consent that petitioner will issue the cheque for discharge of his legally enforceable liability in favour of respondent No.1/complainant as the investment qua the share of his son was made by him. Also agreed that Sumit Ravindra Tiwari will pay an amount of ₹ 2,38,000/- in cash. Consequently, petitioner in discharge of his legal liability, issued Cheque No.701272 dated 30.11.2015, drawn at Punjab National Bank, Dhandari Kalan, Ludhiana for an amount of ₹ 1 Lakh in favour of respondent No.1/complainant, but the same was dishonoured on 02.12.2015 after its presentation with the remarks "*Funds Insufficient*". Thereafter, a statutory Legal Notice dated 21.12.2015 was also issued upon the petitioner, but of no avail and ultimately, that led to the filing of complaint. After recording the preliminary evidence, learned trial Court *prima facie* found to summon the petitioner under Section 138 of the Act, vide impugned order dated 07.01.2016 (P-3).

4) Aggrieved against the above order, petitioner preferred a revision

petition, but the same was dismissed by learned Additional Sessions Judge, Mohali. Hence, the present petition(s).

5) It is contended by learned Counsel for the petitioner that cheque in question was issued by the petitioner to the son of respondent No.1/complainant i.e. Naman Goyal, therefore, there is no legally enforceable liability towards respondent No.1 and as such, both the impugned orders are legally unsustainable. Also contended that cheque, issued in favour of Naman Goyal, has been misused by respondent No.1 and for which, he is liable to be prosecuted as he has no concern with the partnership firm.

On the other hand, it is contended on behalf of respondent No.1/complainant that entire investment of ₹ 25 Lakh on behalf of Naman Goyal was made by his father-Shyam Lal Goyal (complainant) and the same has been duly proved by way of bank statements, already produced before learned trial Court as Ex.C-1 to C-3 (R-1 to R-3) and after recording the statement under Section 313 Cr.P.C., now the case(s) is/are fixed for recording of defence evidence, therefore, the present petition(s) is/are liable to be dismissed.

6) Heard both sides and perused the paper-book.

7) Admittedly, the Partnership Firm was constituted by way of Partnership Deed dated 01.10.2014 between Naman Goyal (son of complainant), Bikramjit Singh (petitioner) and Sumit Ravindra Tiwari in the ratio of 45:45:10, respectively. Concededly, the Firm was dissolved on 31.05.2015 *inter alia* for the reasons that it has stopped production w.e.f. 25.04.2015. The second and third party i.e. petitioner and Sumit Ravindra Tiwari agreed to pay the first party-Naman Goyal a sum of ₹ 11 Lakh and ₹ 2,38,000/-, respectively in the following manner:-

- a)** Rs.1,50,000/- (One Lac fifty thousand rupees) vide cheque No.701266 dated 30th June 2015 of Punjab National Bank (Account No.1453000101159972).
- b)** Rs.2,50,000/- (Two Lac fifty thousand rupees) vide cheque No.701274 dated 5th July 2015 of Punjab National Bank (Account No.1453000101159972).
- c)** Rs.1,50,000/- (One Lac fifty thousand rupees) vide cheque No.701275 dated 30th July 2015 of Punjab National Bank (Account No.1453000101159972).
- d)** Rs.1,50,000/- (One Lac fifty thousand rupees) vide cheque No.701269 dated 30th August 2015 of Punjab National Bank (Account No.1453000101159972).
- e)** Rs.1,50,000/- (One Lac fifty thousand rupees) vide cheque No.701276 dated 30th September 2015 of Punjab National Bank (Account No.1453000101159972).
- f)** Rs.1,50,000/- (One Lac fifty thousand rupees) vide cheque No.701271 dated 30th October 2015 of Punjab National Bank (Account No.1453000101159972).
- g)** Rs.1,00,000/- (One Lac rupees) vide cheque No.701272 dated 30th November 2015 of Punjab National Bank (Account No.1453000101159972).
Rs.2,38,000/- (Two Lac Thirty eight thousand rupees) in cash as on 7th June, 2015.

Perusal of bank statements Ex.C-1 to C-3 (R-1 to R-3) clearly reveal that an amount of ₹ 25 Lakh was transferred in the account of the Firm on 03.11.2014 by way of RTGS/ NEFT and details of which are as under:-

₹ 10 Lakh through RTGS by way of cheque No.820125 from A/c No.11084402600 of respondent No.1;
₹ 5 Lakh through RTGS by way of cheque No.820126 from A/c No.11084402600 of respondent No.1;
₹ 10 Lakh through NEFT by way of Cheque No.557456 from A/c No.10964131727 of joint account of respondent No.1 with his wife.

8) It deserves to be recorded that in response to a specific query by this Court as to whether the cheque in question was issued in favour of respondent No.1-Shyam Lal Goyal or not, learned Counsel for the petitioner remained non-committal and merely stated that the same was handed over to the son of respondent No.1/complainant, however, it has been misused as the cheque was left blank at the time of dissolution of the Firm on 31.05.2015. This conceded position shows that petitioner has issued the cheque in question for discharge of his legally enforceable liability in favour of respondent No.1 in view of their mutual understanding that entire investment on behalf of his son-Naman Goyal was made by none else, but respondent No.1 only and that is the precise reason for issuance of the cheque in favour of the respondent No.1/complainant. Moreover, the point raised by learned Counsel for the petitioner is purely disputed question of facts and this Court will not enter into that arena and the proceedings are at the fag end for recording the defence evidence, if any, before learned trial Court.

In view of the facts and circumstances, discussed hereinabove, this Court does not find any justification to interfere with the impugned judgment/order(s), passed by both the Courts below, while exercising the power under Section 482 Cr.P.C. Accordingly, the present petition(s) is/are dismissed.

However, the above observations may not be construed as an expression of opinion on the merits of the case(s) pending before learned trial Court(s).

March 28, 2019

(MAHABIR SINGH SINDHU)
JUDGE

Gagan

Whether speaking/reasoned	Yes
Whether Reportable	Yes