IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205-5 cases

(1) **CRM-M-12296-2018 (O & M)**
Date of Decision:25.07.2019

Vikas Jain ...Petitioner

Versus

M/s Master Trust Limited ...Respondent

(2) **CRM-M-13493-2018 (O & M)**
Date of Decision:25.07.2019

Dharam Dev Goyal ...Petitioner

Versus

M/s Master Trust Limited ...Respondent

(3) **CRM-M-12768-2018 (O & M)**
Date of Decision:25.07.2019

Vikas Jain ...Petitioner

Versus

M/s Master Trust Limited ...Respondent

(4) **CRM-M-13563-2018 (O & M)**
Date of Decision:25.07.2019

Vikas Jain ...Petitioner

Versus

M/s Master Trust Limited ...Respondent

(5) **CRM-M-13638-2018 (O & M)**
Date of Decision:25.07.2019

Dharam Dev Goyal ...Petitioner

Versus

M/s Master Trust Limited ...Respondent

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CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. D.S. Malwai, Advocate
for the petitioner(s).

Mr. Aayush Gupta, Advocate
for the respondent(s).

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MANOJ BAJAJ, J.

Petitioner(s) (co-accused) have brought these five petitions separately under Section 482 Cr.P.C. for quashing of three Complaint(s) No.11503/2016 dated 02.02.2016, 11120/2016 dated 24.10.2016 and 11158/2016 dated 25.10.2016 under Section 138 Negotiable Instruments Act, 1881 ('Act' – for short) (Annexure P-1), the respective summoning order(s) dated 03.11.2016 and 25.10.2016 (Annexure P-2 respectively) in each case and also for setting aside the revisional court order(s) dated 17.01.2018 (Annexure P-3), whereby the summoning of accused was upheld.

The above complaints pertain to different cheques issued by the accused in favour of the complainant and the grounds raised on behalf of petitioners for quashing are common, therefore, these petitions are being decided by this common judgment.

The details of the cheques involved in these petitions are as under:-

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S. No.	Petition No.	Name of petitioners	Complaint Nos.	Cheque No.	Date	Amount
1.	CRM-M-12296-2018	Vikas Jain	11503/2016	105305 105306	27.08.2016 01.09.2016	Rs.1.50 crores Rs.30 lacs
2.	CRM-M-13493-2018	Dharam Dev Goyal	11120/2016	105303	16.08.2016	Rs.2.00 crores
3.	CRM-M-12768-2018	Vikas Jain	11120/2016	105303	16.08.2016	Rs.2.00 crores
4.	CRM-M-13563-2018	Vikas Jain	11158/2016	105304	19.08.2016	Rs.2.00 crores
5.	CRM-M-13638-2018	Dharam Dev Goyal	11158/2016	105304	19.08.2016	Rs.2.00 crores

The facts in brief are being extracted from CRM-M-12296-2018.

The complainant (respondent) namely M/s Master Trust Limited filed a criminal complaint through Sh. Kashmir Singh (Authorized Representative), who was authorized vide resolution dated 17.10.2016 against M/S Future Colonizers and Constructions Private Limited (accused No.1) and its Directors (accused Nos.2 to 6) wherein it was alleged that an amount of ₹ 2 crores was advanced as a loan for their business purpose and the accused persons had executed various loan papers in that regard. The loan was disbursed through RTGS on 08.01.2013 in their Bank Account No.01591300064064 maintained with Punjab and Sind Bank, Sunet, Opposite Milk Plant, Ferozepur Road, Ludhiana. The accused had agreed to pay interest on the said loan amount, who were irregular in making the payment and the last payment towards interest was made on 13.01.2016. According to the complainant, a sum of ₹2,23,55,000/- became due as on 30.09.2016 along with interest against the accused persons. Despite,

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consistent demand, the accused kept on putting off the payment on one pretext or the other. It was pleaded that two cheques bearing Nos.105305 dated 27.08.2016 and 105306 dated 01.09.2016 amounting to ₹1.5 crores and ₹30 lacs respectively were issued by accused No.1 in favour of the complainant from their account maintained at Punjab and Sind Bank, Ludhiana. The above cheques upon presentation were returned by Drawee Bank (HDFC Bank Limited) as unpaid on the ground "exceeds arrangement" through return Memo dated 30.08.2016 and 03.09.2016 respectively. Thereafter, the complainant got served legal notices dated 23.09.2016 and 28.09.2016 respectively through counsel upon all the accused persons. In response to the same, accused No.5 namely Vikas Jain and accused No.4 namely Dharam Dev Goyal (petitioners) sent their replies through their counsel dated 23.09.2016 and 10.10.2016 respectively. The complainant described the response as false and frivolous. Finally, as the demand raised by the complainant was not adhered to, therefore, it compelled the complainant to institute a complaint seeking prosecution of the accused.

In support of the complaint, the complainant examined Kashmir Singh as CW-1, who tendered his duly sworn affidavit (Ex.CA), and also he tendered into evidence and proved the requisite documents. The trial Court after examining the pre-summoning evidence proceeded to summon all the accused persons through a brief order dated 03.11.2016.

Aggrieved against the said order, petitioners preferred revision against the summoning order on the ground that the trial Court has proceeded to pass the summoning order in a mechanical manner. It was

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pleaded that the petitioners - Dharam Dev Goyal and Vikas Jain were not the Directors of the Firm at the relevant time as they had left the Company by resigning on 11.09.2013 and 13.03.2014 respectively. It was also mentioned in the revision petition that the demand notice served by the complainant was duly responded by way of a reply (Annexure P-6) wherein it was clearly stated that the petitioners had resigned from the Company on 11.09.2013 and 13.03.2014 and had no concern with the Company. The Revisional Court after hearing the parties, vide its order proceeded to dismiss the revision petition.

Pursuant to the notice of motion, the respondent had appeared through its counsel and reply was filed, wherein the facts of the complaint were pleaded. In response to the stand of the petitioner(s) that he was not Director of accused No.1 Company at the relevant point of time, it was replied that the same being a debatable issue which would be decided at the time of trial. According to the complainant, the issue raised in this petition would require evidence and at the stage of the summoning of the accused, only a prima facie case was required to be seen by the trial Court. In the end, it was pleaded that the order passed by the Courts below are well reasoned and do not warrant any interference and the petition deserves to be dismissed.

Learned counsel for the petitioner(s) contends that prior to issuance of cheques, they had resigned from the said Company therefore, they could not be prosecuted in respect of the alleged offences. He submits that even the petitioners were not signatory to the cheques and there was no material on record to indicate their involvement in the alleged crime. He

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further contends that the reply to the legal notice through Advocate was also sent by the petitioners wherein it was specifically mentioned that they had submitted resignation which was duly accepted by the Board of Directors. Attention of the Court is also invited to the reply dated 23.09.2016 (Annexure P-6) to the legal notice as well as the acceptance of the resignation on behalf of Vikas Jain on 13.03.2014 and on behalf of Dharam Dev Goyal on 11.09.2013 by Board of Directors (Annexure P-4)**.** Learned counsel submits that the trial Court did not at all satisfy itself regarding prima facie involvement of the petitioner in the alleged crime and proceeded to pass the summoning order mechanically without even noticing the facts. Learned counsel further contends that the serious error of law committed by the trial Court was not rectified by the Revisional Court as it refused to exercise the jurisdiction vested in it.

On the other hand, learned counsel appearing on behalf of the complainant does not dispute this fact that the reply to the legal notice was sent by the petitioner-accused. However, according to him, it would be matter of evidence as to whether the petitioner was the Director of the Company on the relevant date when the cheque was signed and dishonored. According to him, the issue raised in this petition was raised before the Revisional Court and the same has been declined with the observations that the trial Court has passed a well reasoned order after recording its satisfaction that a prima facie case is made out to proceed against the accused persons including the petitioner. Learned counsel has invited the attention of the Court to the said observations made by the Revisional Court in Para 8 of the impugned judgment. Lastly, it is contended that the present

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petition is nothing but a second revision in the garb of Section 482 Cr.P.C., therefore, the same is not maintainable in view of the provisions of Section 397(2) Cr.P.C.

At this stage, it will be necessary to note the pleadings in the impugned complaint relating to the legal notice served by the complainant and the reply sent by the accused. The relevant pleadings of the complaint as contained in para 9 read as under-

> *"That as per law the complainant got served the legal notice dated 23.09.2016 and 28.09.2016 through counsel on the correct address of all the accused and the same was duly received by all accused. But the accused neither reciprocated the said legal notice in any manner nor made the payment against dishonoured cheque. Accused No.5 namely Vikas Jain and accused No.4 namely Dharam Dev Goyal have sent the reply dated 23.09.2016 and reply dated 10.10.2016 respectively to the legal notice through their counsel Sh. Ajay Shakti Goel, Advocate, Jagadhari and Sh. Manish Mittal, Advocate, Ludhiana respectively by making false and frivolous averments."*

A perusal of the reply dated 23.09.2016 (Annexure P-6) clearly revealed that the petitioner had no concern with M/S Master Trust Limited and a request was made to the complainant to withdraw the notice under reply qua the said accused namely Vikas Jain. Relevant extract of the reply dated 23.09.2016 (Annexure P-6) is reproduced below:-

> *"1. That from the contents of your legal notice, it seems that your client has not appraised your goodself true and correct facts and has got served this notice based upon false, frivolous and vexatious contents because my client has no*

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concern/relationship with your client M/s Master Trust Limited what to talk about the cheque in question. My above named client has applied for the resignation from the post of Directorship vide letter dated 31.08.2013 and resignation has been duly accepted by the Board of Directors in a meeting held on 11.09.2013. Under the said resolution passed in the meeting it was held that all the powers, rights and responsibilities of my client attached to the post of Director are ceased with the immediate effect and he will be no longer to act as Director of the company.

From the facts narrated above, it is amply clear that at the time of alleged date of issuance of the said cheque, my client was neither director of the said company nor he had any charge, responsibility to the conduct of the business of the addressee no.1. Further, he had no role in respect of the transaction leading to the issuance of cheque.

As such by serving the false, frivolous and pseudo legal notice under reply which is based on fabrication, concoction and manipulation your client has made sinister attempt to delude my client.

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4-6. That the contents of para no.4 to 6 of your legal notice are absolutely wrong, false and hence denied. As it has already been stated in the above paras, my client has resigned from the directorship in the year 2013, so my client can never issue any cheque in question. As such the facts appraised by your client in regard to issuance of the cheque, presentation of the cheque

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> *and dishonour of the cheque in these paras of legal notice are all concocted and has been stated just to give a legal colour to this notice. "*

After hearing learned counsel for the parties, this Court finds merit in the contention raised by the learned counsel for the petitioner. It is settled principle of law that in a complaint case brought by complainant, it is mandatory for him to make out a prima facie case by way of adducing sufficient pre-summoning evidence before the Court. A perusal of the complaint itself reveals that the complainant had acknowledged the fact that reply to the legal notice sent by the petitioner(s) was received. The copy of the reply sent by the petitioner was also produced before the Court, however, the trial Court proceeded to pass the summoning order without even touching the response of the petitioner. A perusal of the impugned summoning order shows that the trial Court even failed to notice the facts of the case, muchless the consideration of the necessary material to satisfy itself regarding prima facie commission of an offence as alleged by the complainant. The trial Court simply mentioned that the complaint is within limitation and on the basis of the allegations contained in the complaint, affidavit and documents proceeded to hold that prima facie case is made out against the accused persons for commission of offence punishable under Section 138 Negotiable Instruments Act. The trial Court has not at all even noticed the reply sent by the petitioner, which was on record itself.

Further, it is settled law that it is for the complainant to establish a prima facie case against the accused and in the light of the reply of the accused that he was not the Director of the Company in the year 2016, when the cheques in question were issued, there was no material to

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establish prima facie case against the petitioners. It is the clear stand of both the petitioners that they had resigned from the Company in the year 2013 (Annexure P-4) and had no concern with the Company at all. Therefore, it was incumbent upon the complainant to meet with the said reply and rebut the same by some material in order to make out a prima facie case for issuance of process, as required under Section 204 Cr.P.C.

According to the learned counsel for the respondent, it is for the accused to prove this fact that he was not the Director of the Company when the alleged cheque was issued. However, this argument is not worth acceptance, because it would amount to reversing the cardinal principle of criminal jurisprudence that the onus lies upon the prosecution to establish the case against the accused. Thus, the argument if accepted would mean that the accused is to prove his innocence. In the facts and circumstances of the case, the Revisional Court apparently committed serious error of law in refusing to exercise the jurisdiction vested in it, as it proceeded to dismiss the revision petition on this ground that the issue raised by the accused is debatable and can be adjudicated during trial alone.

Time and again, this Court as well as the Hon'ble Supreme Court of India have reminded the Courts that the Magistrate should pass the summoning order carefully and judiciously after examining the material on record and not in a mechanical manner. It will be useful to refer the judgment passed by the Hon'ble Supreme Court in **"S.W.Palanitkar Vs. State of Bihar", reported in 2001 (4) R.C.R. (Criminal) 572.** The relevant observations are extracted below:-

> *"15. In case of a complaint under Section 200 Cr.P.C. or IPC a Magistrate can take*

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cognizance of the offence made out and then has to examine the complain-ant and his witnesses; if any, to ascertain whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. Such examination is provided in order to find out whether there is or not sufficient ground for proceeding. The words 'sufficient ground', used under Section 203 have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction.

*16.This Court in **Nirmaljit Singh Hoon v. The State of West Bengal & Anr., [1973] 3 SCC 753,** in para 22, referring to scheme of Sections 200- 203 of Cr. P.C. has explained that "The section does not say that a regular trial of adjudging truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Section 203 consists of two parts. The first part lays down the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint. In **Chandra Deo Singh v. Prakash Chandra Base, [1964] 1 SCR 639,** where dismissal of a complaint by the Magistrate at the stage of Section 202 inquiry was set aside, this Court laid down that the test was whether*

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there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed (p. 653) that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case.

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23. Many a time, complaints are filed under Section 200 Criminal Procedure Code, 1973 by the parties with an oblique motive or for collateral purposes to harass, to wreck vengeance, to pressurize the accused to bring them to their own terms or to enforce the obligations arising out of breach of contract touching commercial transactions instead of approaching civil courts with a view to realize money at the earliest. It is also to be kept in mind that when parties commit a wrongful act constituting a criminal offence satisfying necessary ingredients of an offence, they cannot be allowed to walk away with an impression that no action could be taken against them on criminal side. A wrongful or illegal act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on criminal side when it is clear from the complaint and sworn statements that necessary ingredients of

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> *constituting an offence are made out. May be parties are entitled to proceed on civil side only in a given situation in the absence of an act constituting an offence but not to proceed against the accused in a criminal prosecution. Hence before issuing a process a Magistrate has to essentially keep in mind the scheme contained in the provisions of Section 200-203 of Criminal Procedure Code keeping in mind the position of law stated above and pass an order judiciously and not mechanically or in routine manner(emphasis supplied).*

It is clear that the trial Court has proceeded to issue the process without properly appreciating the facts, evidence and law on the subject and therefore, this Court finds valid reasons to interfere with the orders passed by the Courts below. The argument of learned counsel for the respondents that the petition is nothing but a second revision is without any merit as the inherent powers of this Court under Section 482 Cr.P.C are meant to prevent the abuse of the process of law.

In view of the above, this Court has no hesitation in holding that the complainant has failed to prove prima facie case against the petitioner in respect of the commission of the alleged offence under Section 138 Negotiable Instrument Act, 1881 and consequently the summoning order is also not sustainable.

Resultantly, the petitions are allowed and the Revisional Court order(s) dated 17.01.2018 along with the summoning orders are set aside. The impugned complaints No.11503/2016 dated 02.02.2016, 11120/2016 dated 24.10.2016 and 11158/2016 dated 25.10.2016 under Section 138 of

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the Negotiable Instruments Act qua accused No.4 and 5 (petitioners) are dismissed.

25.07.2019 **(MANOJ BAJAJ)**
sheetal **JUDGE**

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No

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