IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16491-2015
Date of Decision : February 28, 2019

Vipin Mittal .... Petitioner

Versus

Punjab State Power Corporation
Ltd and others .... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Sumeet Mahajan, Senior Advocate,
with Ms. Ramneeq Kaur, Advocate,
for the petitioner.

Mr. Roshan Lal Sharma, Advocate,
for respondents No.1 and 2.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure for quashing of Criminal Complaint No. 109 of 9.2.2015 titled **Punjab State Power Corporation Ltd. Vs. M/s Jindal Cotex Limited and others** [Annexure P/1] under Section 138 of the Negotiable Instruments Act, 1881 [for short, "**the Act**"] mainly on the ground that the present petitioner was summoned to face trial on the basis of summoning order dated 1.4.2015 [Annexure P/11] passed by Judicial Magistrate Ist Class, Ludhiana and subsequent proceedings therefrom.

2. Learned senior counsel for the petitioner mainly contended that complaint, Annexure P/1 was filed on the ground that three cheques bearing Nos.002397, 002398 and 002399 dated 21.10.2014 for Rs.90,00,000/- each drawn on Axis Bank Limited, Sahnewal Branch,

Ludhiana were issued and the petitioner was the Director of M/s Jindal Cotex Limited **(for short, "the Company")**. He further contended that petitioner, Vipan Mittal was not Director of the Company at the relevant time. On this point, reliance was placed upon document, Annexure P/8, issued by Ministry of Corporate Affairs establishing that the present petitioner ceased to be the Director of the Company on 14.08.2012 i.e. much prior to the date of issuance of cheques in question.

3. Learned senior counsel for the petitioner further contended that the petitioner had no knowledge about issuance of cheques and to that effect plea was taken in the reply to the legal notice, dated 13.1.2015 (Annexure P/10) itself, but the Court below did not consider the same while passing the impugned summoning order, Annexure P/11.

4. While arguing on this point, learned counsel representing respondents No.1 and 2 contended that the plea taken by the petitioner is at the best a plea of defence which can be taken by him after putting in appearance before learned trial Judge during trial. At any rate, this is not a ground for quashing the complaint or the summoning order while exercising powers under Section 482 Cr.P.C. On this point, reliance was placed on the judgment from Hon`ble Apex Court in **Malwa Cotton & Spinning Mills Ltd. Vs. Virsa Singh Sidhu and Ors, 2008 (4) R.C.R. (Criminal) 25.**

5. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, this Court is of the considered view that the petitioner has come with the plea that he had resigned from the post of Director of the Company on 14.08.2012 whereas cheques in question were issued after about two years i.e., 21.10.2014 and the petitioner is not signatory to the cheques in question, as such, the

petitioner was not liable in any way. At this stage, on the basis of Annexure P/8, this Court has no reason to doubt that the petitioner had resigned from the Company on 14.08.2012 and copy of Form No. 32 is available on the file. More so, this plea was taken in the reply to legal notice dated 13.01.2015 (Annexure P/10). If that be so and criminal proceedings are allowed to continue, the same shall be miscarriage of justice.

6. Such a view was taken by Hon`ble Apex Court **Ashoke Mal Bafna Vs. M/s Upper India Steel Mfg. & Engg. Co. Ltd., 2017 AIR (SC) 2854**, wherein Hon`ble Apex Court observed as under:-

> "12. Turning to the case on hand, admittedly the cheques dated 28-12-2004 were issued while the Appellant was Director of the Company with validity for a period of six months but during that period they were not presented for realization at the bank. The Appellant has resigned as Director w.e.f. 2-1-2006 and the fact of his resignation has been furnished by Form 32 to the Registrar of Companies on 24-03-2006 in conformity with the rules. Thereafter, the Appellant had played no role in the activities of the default Company. This fact remains substantiated with the Statement filed by the default Company on 20-02-2006 with the Registrar of Companies that in an advertisement of the Company seeking deposits (Annexure P3), only the names of three Directors of the Company were shown as involved in the working of the Company and the name of Appellant was not therein. Indisputably, therefore, the cheques bounced on 24-08-2006 due to insufficient funds were neither issued by the Appellant nor the Appellant was involved in the day to day affairs of the Company.
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> 13. Before summoning an accused Under Section 138 of the Act, the Magistrate is expected to examine the nature of

> allegations made in the complaint and the evidence both oral and documentary in support thereof and then to proceed further with proper application of mind to the legal principles on the issue. Impliedly, it is necessary for Courts to ensure strict compliance of the statutory requirements as well as settled principles of law before making a person vicariously liable.
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> 14. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of Court. Looking at the facts of the present case in the light of settled principles of law, we are of the view that this is a fit case for quashing the complaint. The High Court ought to have allowed the criminal miscellaneous application of the Appellant because of the absence of clear particulars about role of the Appellant at the relevant time in the day to day affairs of the Company.
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> 15. For all the foregoing reasons, we allow this appeal by setting aside the impugned judgment passed by the High Court and quash the criminal proceedings pending against the Appellant before the Trial Court. Ordered accordingly."

7. Similar view was taken by Hon'ble Apex Court in **Harshendra Kumar D. Vs. Rebatilata Koley etc., 2011(3) SCC 351** and **National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and another, 2010(2) JT 161.**

8. Applying the same principle of law to the present set of facts, as the petitioner had already resigned from the post of Director much prior to the issuance and dishonour of cheques in question and he was not signatory to the said cheques, he is not liable for criminal prosecution and if such proceedings are allowed to continue, the same shall be miscarriage of justice.

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9. In view of the above, the present petition is allowed and Criminal Complaint No. 109 of 9.2.2015 titled **Punjab State Power Corporation Ltd. Vs. M/s Jindal Cotex Limited and others** [Annexure P/1] and the summoning order dated 1.4.2015 [Annexure P/11] passed by Judicial Magistrate Ist Class, Ludhiana and all subsequent proceedings arising therefrom are quashed **qua present petitioner – Vipan Mittal only.**

(SHEKHER DHAWAN)
JUDGE

February 28, 2019
som/komal

Whether speaking/reasoned? : Yes
Whether reportable? : Yes