

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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|-----|-------------------------------------|
| (1) | Crl. Misc. No. M-1777 of 2017 (O&M) |
| (2) | Crl. Misc. No. M-1773 of 2017 (O&M) |
| (3) | Crl. Misc. No. M-1966 of 2017 (O&M) |
| (4) | Crl. Misc. No. M-1936 of 2017 (O&M) |
| (5) | Crl. Misc. No. M-1939 of 2017 (O&M) |

Date of decision: October 31, 2019

Vinod Kumar Sharma

..... PETITIONER(s)

Versus

Naresh Kumar

....RESPONDENT(s)

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate
for the petitioner.

Mr. Rajinder Goyal, Advocate with
Mr. R.K. Bansal, Advocate
for the respondent.

SURINDER GUPTA, J(Oral)

This order will dispose of all the petitions captioned above filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of complaints No.1795/16, 1797/16, 1796/16 dated 11.07.2016; 1477/2016 dated 04.06.2016; 2237/2016 dated 23.08.2016 titled “*Naresh Kumar Vs. M/s Monika Freshway Foods Pvt Ltd. and others*” and summoning orders dated 08.11.2016; 12.08.2016; 04.06.2016 and 09.09.2016 passed by Judicial Magistrate 1st Class, Karnal along with all consequential proceedings arising therefrom.

Heard.

5 separate complaints were filed by Naresh Kumar, respondent against M/s Monika Freshway Foods Pvt. Ltd. through its Managing Directors Ramesh Chand Sharma, Vinod Kumar Sharma (petitioner) and Naresh Kumar Sharma, for the offence punishable under Section 138 of Negotiable Instruments Act for dishonour of various cheques issued on behalf of M/s Monika Freshway Foods Pvt. Ltd.

Admittedly, petitioner is not a signatory to the cheques. The question, which arises for consideration is as to whether the prosecution of the petitioner can be allowed on the mere averment of the complainant that he is Managing Director of M/s Monika Freshway Foods Pvt. Ltd. despite there being no documentary evidence in this regard?

This question was put to learned counsel for the respondent, who submits that the complainant do not have any documents to show and to rebut the documents produced by the petitioner that he is not the director of M/s Monika Freshway Foods Pvt. Ltd. He has placed reliance on the written statement (Annexure R4) in the civil suit titled "*M/s Paul Trading Company Vs. M/s Monika Freshway Foods etc.*", which was signed by the petitioner as Director of M/s Monika Freshway Foods Pvt. Ltd. and order of learned trial Court dismissing the application under Order 7 Rule 11 CPC, wherein petitioner has sought dismissal of the suit against him on the plea that he is not Director of M/s Monika Freshway Foods Pvt. Ltd. He has also relied on reply (Annexure R-6) to the application under Order 39 Rules 1 and 2 CPC filed by the defendants, wherein petitioner has signed as Director of M/s Monika Freshway Foods Pvt. Ltd. and another application under Order 9

In the written statement (Annexure R-4) filed on behalf of defendants in civil suit titled “*M/s Paul Trading Company Vs. M/s Monika Freshway Foods etc.*” , a specific plea was taken that petitioner is neither Director nor has any concern with company M/s Monika Freshway Foods Pvt. Ltd. Though the written statement was signed by him, where the defendants including the petitioner have been described as Directors of M/s Monika Freshway Foods Pvt. Ltd. but this, in no manner, confer him the title of Director/Managing Director of the company. In reply (Annexure R-6) to the application under Order 39 Rules 1 and 2 CPC, again plea was taken that defendants No.2 and 4 are the Directors and defendant No.3 has no concern with the company. While filing the complaint, the complainant has to come up with some specific evidence to show the status of the person arrayed as accused and to prima facie make out the commission of offence by him. The petitioner has come up with Memorandum of Association, Article of Association of the company and AOC Form-4, which clearly shows that he is not the Director of the company M/s Monika Freshway Foods Pvt. Ltd. and the respondent is not coming up with any document to rebut the contention of the petitioner based on documents.

As stated by learned counsel for the respondent that the respondent, at this stage, has no document to show that petitioner is Director/Managing Director of M/s Monika Freshway Foods Pvt. Ltd., except the reference to this effect in the written statement, applications etc., I find that the continuation of proceeding in complaints under Section 138 Negotiable Instruments Act against the petitioner as sheer misuse of the process of Court.

Consequently, all the petitions captioned above are allowed and

the complaints and summoning orders referred in the opening para of this judgment are quashed against the petitioner.

October 31, 2019
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No