

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.

CRM-M-23815 of 2018

Date of Decision: 14.11.2019
- Rajeev Behl

...Petitioner
- VERSUS
- Harbans Singh Joson and others

...Respondents
2.

CRM-M-23830 of 2018
- Rajeev Behl

...Petitioner
- VERSUS
- Ramjit Kaur and others

...Respondents
3.

CRM-M-23839 of 2018
- Rajeev Behl

...Petitioner
- VERSUS
- Ashwanjit Singh Joson and others

...Respondents
4.

CRM-M-23857 of 2018
- Rajeev Behl

...Petitioner
- VERSUS
- Kanwaljit Singh Joson and others

...Respondents
5.

CRM-M-24798 of 2018
- Rajeev Behl

...Petitioner
- VERSUS
- Ramjit Kaur and others

...Respondents
6.

CRM-M-24817 of 2018
- Rajeev Behl

...Petitioner
- VERSUS
- Harbans Singh Joson and others

...Respondents

7. CRM-M-24820 of 2018

Rajeev Behl

...Petitioner

VERSUS

Kanwaljit Singh Joson and others

...Respondents

8. CRM-M-24973 of 2018

Rajeev Behl

...Petitioner

VERSUS

Ashwanjit Singh Joson and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Hemant Saini, Advocate
for the petitioner in all the petitions.

Mr. Sajal Koser, Advocate
for respondent no. 1.

Mr. Pranjal P. Chaudhary, Advocate
for respondent no. 4 in all the petitions.

SURINDER GUPTA, J.

In the above-captioned petitions, the petitioner has sought quashing of complaints filed against him for offence punishable under Section 138 of the Negotiable Instruments Act by different complainants in his capacity as director of M/s Realtech Constructions Pvt. Ltd. on the ground that he was not director of aforesaid company on the date of issuance of cheques and had resigned as director, way back on 02.01.2013.

2. For the sake of convenience learned counsel for parties have addressed arguments and made reference to documents in ***CRM-M-24973 of 2018 (Rajeev Behl vs. Ashwanjit Singh Joson and others)***.

3. Learned counsel for petitioner has argued that petitioner was director of M/s Realtech Construction Pvt. Ltd. till 02.01.2013, when he

resigned but his resignation was not uploaded on the website of Registrar of Companies and the required formalities were not completed by other directors as a result of which his name continued in the list of directors. However, this fact is admitted by the other directors of the company during arbitration proceedings between petitioner and other directors, namely, Yogesh Gupta and Pankaj Dayal. The arbitrator (Hon'ble Mr. Justice S.B. Sinha) in his award has referred to a settlement between petitioner and Pankaj Dayal, director, which was annexed with the award and as per that settlement, copy of which has been placed on file as Anneuxre P-3 (colly), resignation of petitioner from the company w.e.f. 02.01.2013 was acknowledged and it was assured that necessary steps to file relevant form (Form No. 32 etc.) before ROC and uploading the information on the portal of Ministry of Corporate Affairs shall be taken.

4. He has referred to clauses 3(D)(J) and 3(E) of that settlement, which are reproduced as follows:-

3(D)(J) PD acknowledges the resignation of RB from Realtech Constructions Private Limited (RCPL) on 02.01.2013 and assures that he shall take necessary steps to file relevant forms (Form 32 etc.) before the ROC and shall get the information uploaded on the portal of the Ministry of Corporate Affairs.

3(D)(iii) PD also agrees to keep RB indemnified and absolved from all kinds of investor related complaints and liabilities arising out of the project Veritas Business Suites for all times to come. PD undertakes to execute the indemnity bond in favour of RB to allay any fears of

execution against him. RB also agrees to execute indemnity in favour of PD for the said purpose.

- 3 (E) (i) RB acknowledges that all rights, title and interest in the City Emporium Mall, Chandigarh went to PD in terms of the MOU dated 02.06.2011 and PD has agreed that he has been handling the project City Emporium Mall, Chandigarh since the execution of above MOU.
- (ii) RB agrees to PD having authority to deal with City Emporium Mall, Chandigarh with all rights towards the project. RB undertakes to sign and present himself for any documents, which may be required by PD for effective transfer and enjoyment of his property.
- (iii) Further, RB undertakes to sign and present himself for any documents, which may be required by PD for effective transfer and enjoyment of his portion/share in the said Company.
- (iv) PD agrees to execute agreements and related transfer documents and resolution of the investors in the project brought in by RB without any discrimination subject to the payment to be received by them and would keep RB informed about the same. The list of those investors are annexed herewith as Schedule-I.
- (v) PD agrees to execute an Indemnity Bond and keep RB indemnified and absolved from all kinds of investor related complaints and liabilities arising out of the project City Emporium Mall for all times to come.

Behl and 'PD' for Pankaj Dayal).

5. Learned counsel for the petitioner has also referred to letter written by petitioner to Registrar of Companies, copy of which has been placed on file as Annexure P-1 (colly) that his resignation intimated to other directors of the company, namely, Yogesh Gupta and Pankaj Dayal has not been conveyed to Registrar of Companies. Letters to this effect written to Registrar of Companies are dated 06.05.2014, 07.08.2014, 04.03.2015 and 27.04.2016. Assistant Registrar of Companies wrote a letter to M/s Realtech Construction Pvt. Ltd. on 03.07.2015 about the complaint made by the petitioner. He has argued that the aforesaid documents show that petitioner had resigned from the directorship of the company in the year 2013 and the lapse was on the part of company/its other directors, who did not fulfill the formalities of forwarding the resignation to Registrar of Companies and uploading it on the portal of Ministry of Corporate Affairs. The factum of resignation of petitioner from directorship of the company was admitted by other director, namely, Pankaj Dayal in the settlement, produced before the arbitrator, as such, complaint(s) filed against the petitioner under Section 138 of the Negotiable Instruments Act by different complainants for dishonour of cheque issued in the year 2015 by authorized representative of company is misuse of process of court. In support of his contention he has referred to observations of the Apex Court in case of **Rajiv Thapar and others vs. Madan Lal Kapoor, 2013 (3) SCC (Criminal) 158**, which are reproduced as follows:-

“23. xx xx xx xx

*The discretion vested in a High Court under Section 482
of the Cr.P.C. can be exercised suo-moto to prevent the*

*abuse of process of a court, and/or to secure the ends of justice. This Court had an occasion to examine the matter in **State of Orissa vs. Debendra Nath Padhi¹**, (**supra**) (incidentally the said judgment was heavily relied upon by the learned counsel for the respondent-complainant), wherein it was held thus:-*

“29. Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal's case².”

“23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

- (i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?*

- (ii) *Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.*
- (iii) *Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?*
- (iv) *Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

6. Learned counsel for respondents has argued that petitions filed by the petitioner deserved to be dismissed on the sole ground that the petitioner has not disclosed his conviction in four such complaints filed by other complainants, where his plea that he was not a director of the company was discussed in detail and discarded. This fact is not disputed that the petitioner continued to be director in the record of Registrar of Companies till the year 2018, when it is alleged that information of his resignation was conveyed to ROC after the award of arbitrator dated 28.01.2018 and necessary information was also uploaded on the website of Ministry of Corporate Affairs. All the cheques issued in this case were prior to that date, as such, the settlement *inter se* two directors regarding the resignation of petitioner are not binding on the complainants. For the general public the best source of information is website of Registrar of Companies or the portal of Ministry of Corporate Affairs to have information as to who is director of a company at a particular point of time. The petitioner had taken this plea in other complaints and produced evidence in support of his contention but the official of Registrar of Companies while appearing as witness has stated that the petitioner continued to be director of the company in their record.

7. Learned counsel for the petitioner has argued that it is not a case of concealment of facts regarding other complaints in which petitioner has been convicted. Appeal against his conviction are pending before the Appellate Court and the other complaints of which he has sought quashing, the right of petitioner is independent and separate.

8. On giving a careful thought to submission of learned counsel for parties, I find that the entire dispute revolves around the fact as to

whether petitioner was director at the time of filing of different complaints against him under challenge in these petitions.

9. This is not disputed that in the record of Registrar of Companies petitioner continued to be director of the company. The reference has been made to letter written by the petitioner to Registrar of Companies {Annexure P-1 (colly)} and the letter written by Registrar of Companies (Annexure P-2) to the company on 03.07.2015. All these letters are subject matter of evidence and proof, which the petitioner can produce before the trial Court in his defence. It is not denied that in the other complaints, in which petitioner has been convicted in his capacity as director, he had raised the plea about his resignation as director w.e.f. 02.01.2013 and his plea was discussed in detail and discarded. However, the same is not relevant to be discussed for the disposal of these petitions as the appeal(s) against judgment of the trial Court in those complaints is pending before the Appellate Court.

10. The law referred by learned counsel for the petitioner about discretionary power vested in this court under Section 482 Cr.P.C. is not disputed. The question, which arises for consideration, is as to whether on the basis of documents (Annexures P-1 and P-2) and *inter se* settlement between two directors, which is not binding on complainant, it can be observed that complaint under Section 138 of the Negotiable Instruments Act against the petitioner in his capacity as director is misuse of process of the court and would vitiate ends of justice. The answer to this is in negative. I agree with submissions of learned counsel for respondent that to know the status of a person as director of a company, general public has to rely on the record of Registrar of Companies and the information available

on the portal of Ministry of Corporate Affairs. If at any stage the resignation of one of the directors is agreed to be accepted from back date by one of the directors of the company, it will not have binding effect on the parties having transaction with that company. Complainants have committed no error while filing complaints against the petitioner alleging him to be director of the company as by that time there was nothing in the record of Registrar of Companies that petitioner had either resigned or his resignation was accepted. The dispute and compromise at later stage *inter se* directors has no binding effect on complainants or the parties having transaction with the company.

11. As a sequel of my above discussion, I find no merit in these petitions filed by the petitioner and the same are dismissed. It is, however, made clear that submissions and documents referred by learned counsel for the petitioner have been discussed only for the purpose of disposal of these petitions and trial Court shall not be swayed by any observation made in this order while deciding complaints on merit or scrutinizing the documents produced by the petitioner in evidence.

November 14, 2019

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No