IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-28143-2016

Amit Kukkar **...Petitioner**

Versus

Baljeet Singh **...Respondent**

---

2. CRM-M-35631-2016

Amit Kukkar **...Petitioner**

Versus

Baljeet Singh **...Respondent**

---

3. CRM-M-35661-2016

Amit Kukkar **...Petitioner**

Versus

Baljeet Singh **...Respondent**

---

4. CRM-M-35744-2016

Amit Kukkar **...Petitioner**

Versus

Baljeet Singh **...Respondent**

Reserved on : 08.07.2019
Pronounced on : 29.07.2019

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Jatinderpal Singh, Advocate
for the petitioner(s) in all the petitions.

None for the respondent(s).

****

ARVIND SINGH SANGWAN, J.

This common order shall dispose of above noted four criminal miscellaneous petitions as they are identical in nature and involve the same parties, however, on account of dishonouring of four cheques, four complaints were filed.

Prayer in these petitions is for quashing of Complaint Nos. 2391/2015, 2394/2015, 2392/2015 and 2393/2015, respectively, all dated 11.09.2015, filed by the respondent/complainant under Section 138 of the Negotiable Instruments Act, 1881 *(for short 'N. I. Act')*; as well as the summoning order dated 21.10.2015, passed by the trial Court in all the cases.

Brief facts of the case are that respondent/complainant filed aforesaid complaints under Section 138 of the N.I. Act against the company Nature Farms & Real Estate Pvt. through its Managing Director Neeraj Thatai. The company and Neeraj Thatai are arrayed as accused Nos. 1 and 2 and petitioner Amit Kukkar is arrayed as accused No. 3, being one of the Directors. Similarly, another Director Gaurav Chhabra is arrayed as accused No. 4, whereas Ms. Menka, who is the authorized signatory of the company, is arrayed as accused No. 5.

As per the common averments made in all the complaints, it is stated that accused No. 1 is a private limited company and accused Nos. 2 to 4 are the Managing Directors, whereas accused No. 5 is the authorized signatory of the company/accused No. 1. It is further stated that respondent/complainant entered into an agreement dated 08.03.2014 to purchase some flats in Pancy Tower, Mohali for a sum of Rs. 5 crore as full and final settlement. As per the terms and conditions of the aforesaid agreement, accused persons had issued 20 cheques in favour of the respondent/complainant and in lieu of part payment, four cheques bearing Nos. 736468 dated 30.05.2018, 736467 dated 23.05.2015, 436466 dated 17.05.2015 and 736465 dated 11.05.2015, for a sum of Rs. 25 Lakh each, drawn on Punjab National Bank, Abohar. However, on presentation of the aforesaid cheques in bank on 30.06.2015, the same were dishonoured with the remarks “account blocked”, vide memo dated 04.07.2015. Thereafter, the respondent/complainant served legal notice and consequently, filed the aforesaid complaints, in which the trial, vide order dated 21.10.2015, summoned the petitioner along with the Managing Directors and authorized signatory as accused.

Learned counsel for the petitioner has argued that the petitioner had resigned from the post of Director much prior to issuance of the cheques in dispute and in the meeting of Board of Directors, held on 25.03.2013, the resignation of the petitioner was accepted with immediate effect, vide company resolution (Annexure P-4).

Learned counsel for the petitioner further argued that thereafter, the company uploaded Form No. DIR-11, showing that the petitioner was appointed as a Director on 13.07.2012 and resigned as such on 25.03.2013. In this form, the designation of the petitioner was Promoter/Director. Learned counsel for the petitioner further submitted that even thereafter, in form No. DIR-12, the same information was uploaded by the company.

Learned counsel for the petitioner further submitted that thereafter, the petitioner appeared before the trial Court and moved an application for discharge giving all the details that he was no more Director of the company at the relevant time. The trial Court, vide impugned order dated 22.07.2016, dismissed the aforesaid application primarily on the ground that once an order has been passed, the trial Court cannot recall the said order as there is no procedure for discharge of an accused in summons trial case. The trial Court relied upon the judgment rendered in ***Everest Advertising Pvt. Ltd. vs. State Government of NCT of Delhi, 2007 (2) RCR (Criminal) 575***, wherein Hon'ble Supreme Court has held that once summons are issued by the Magistrate, he had no jurisdiction to recall the said order.

Learned counsel for the petitioner further argued that the cheques were issued on in May, 2015, i.e. much after the resignation of the petitioner, and were presented before the bank subsequently, therefore, at the time when the cheques were issued; were presented before the bank and dishonoured/returned by the bank, the petitioner was no more a Director of the company.

Learned counsel for the petitioner has relied upon ***2010 (2) RCR (Criminal) 122, National Small Industries Corp. Ltd. vs. Harmeet Singh Paintal and Anr.***, wherein Hon'ble Supreme Court has held that if a person, who was not a Director at the relevant point of time when the cheques were issued or dishonoured and there is no specific allegation in the complaint that such accused person was Incharge of the day to day business of the company, he cannot be prosecuted for the offences punishable under the provisions of the N.I. Act.

Learned counsel for the petitioner has further relied upon ***2007 (2) RCR (Criminal) 126, S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another***, wherein Hon'ble Supreme Court has held that it is necessary to make specific averments in the complaint under Section 141 of the N.I. Act that at the time when the offence was committed, the accused persons was Incharge and responsible for the conduct of the company and without such averments, requirement of Section 141 of the N.I. Act cannot be said to be satisfied.

Learned counsel for the petitioner has also relied upon ***2007 (2) RCR (Criminal) 266 N. K. Vahi vs. Shekhar Singh and others, 2008 (3) RCR (Criminal) 152 DCM Financial Services Ltd. vs. J. N. Sareen and another, 2011 (4) RCR (Criminal) 930 Mrs. Anita Malhotra vs. Apparel Export Promotion Council and another, 2011 (3) SCC 351 Harshendra Kumar D vs. Rebatilata Koley Etc.*** and ***2015 (3) SCC (Civil) 384 Pooja Ravinder Devidasani vs. State of Maharashtra***, wherein the similar view has been taken by Hon'ble Supreme Court.

Learned counsel for the petitioner further argued that merely being the director of a company is not sufficient to make a person liable under Section 141 of the N.I. Act.

Learned counsel for the petitioner has further submitted that in similar other complaints, filed by the same complainant/respondent against the petitioner, the same were withdrawn by complainant/respondent Baljeet Singh on 13.11.2018. One of such order passed in complaint titled as

"Baljeet Singh vs. Nature Farms and Real Estate Pvt.", reads as under:

> "Today the case was fixed for cross-examination of CW-1. However, Jaspal Singh attorney of complainant has come present and suffered a statement to the effect that he does not want to proceed with the present complaint against accused No. 3 Amit Kukkar. He also stated that the evidence already recorded be read under Section 299 of Cr.P.C. against the accused Nos. 2, 4 and 5.
>
> Heard.
>
> Since the complainant does not want to proceed with the present complaint against accused No. 3, as such, complaint qua the accused No. 3 is dismissed as withdrawn. Accused Nos. 2, 4 and 5 have already been declared proclaimed offenders vide order dated 20.09.2017. Attorney of complainant has suffered statement that the evidence of complainant which has already been recorded be read as under Section 299 of Cr.P.C. against accused Nos. 2, 4 and 5. As such, file be consigned to the record room and be taken up only when the accused Nos. 2, 4 and 5 are arrested, appear or surrender before this Court."

Learned counsel for the petitioner has, thus, argued that the complainant/respondent himself has withdrawn the complaints qua the petitioner in similarly situated some other complaints, however, once the application for discharge was dismissed by the trial Court, the complainant has not withdrawn the present complaints.

These petitions are pending since 2016 and the proceedings before the trial Court were stayed. Initially, the complainant/respondent appeared through his counsel and sought time to file reply, however, despite availing number of opportunities, no reply has been filed on behalf of the complainant/respondent. Even a perusal of last orders shows that no one is appearing on behalf of the complainant/respondent to contest these petitions.

After hearing learned counsel for the parties and perusing the record, I find merit in these petitions.

As noticed above, in the complaints, the only allegations against the petitioner is that he is one of the Directors, whereas specific allegations are against accused No. 2 Neeraj Thatai that he is the Managing Director of company/accused No. 1, and accused No. 5 Menka is the authorized signatory of the company who have signed cheques in dispute. Except this allegation, there is no specific allegation against the petitioner that he was managing the day to day affairs of the company or was the person responsible for the affairs of the company. Rather, a perusal of the Form No. DIR-11 shows that the petitioner was only the Promoter/Director of the company having no financial or administrative control over the company.

In view of above, once it is the own case of the complainant/respondent that petitioner is neither a Managing Director nor the authorized signatory of the company and is not managing the affairs of the company or having any financial or administrative control over the company, therefore, in the absence of any specific allegation against the petitioner, I find that the petitioner cannot be held liable for commission of offence punishable under Section 141 of the N.I. Act.

Even further, a perusal of the Form Nos. DIR-11 and DIR-12 shows that the petitioner remained Director of the company w.e.f. 13.07.2012 to 25.03.2013, whereas the cheques in dispute were issued in May, 2015.

Moreover, a perusal of the order dated 13.11.2018, passed by the trial Court in a similar complaint, filed by the complainant/respondent against the petitioner, shows that he had withdrawn the said complaint qua the petitioner, who was accused No. 3 therein, and the case of the petitioner in the present complaints is at par with the said complaint.

Therefore, in view of the above discussion and also in view of ratio of law laid down by Hon'ble Supreme Court in the judgments referred to above, these petitions are allowed and Complaint Nos. 2391/2015, 2394/2015, 2392/2015 and 2393/2015, respectively, all dated 11.09.2015, filed by the respondent/complainant under Section 138 of the N. I. Act; as well as the summoning order dated 21.10.2015, passed by the trial Court in all the cases, are hereby quashed qua the petitioner herein.

A photocopy of this order be placed on the file of other connected case.

July 29, 2019 **(ARVIND SINGH SANGWAN)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*