

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-30772-2013(O&M)

Date of Order:01.05.2019

Raju Mohandas Mahtaney

...Petitioner

Versus

M/s Chirayu Exports

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S.Sudan, Advocate  
for the petitioner.

Mr. Animesh Sharma, Advocate  
for the respondent.

ANIL KSHETARPAL, J.

Petitioner, who claims to be accused in a complaint under Section 138 read with Section 141 of the Negotiable Instrument Act, has filed this petition under Section 482 of the Code of Criminal Procedure invoking inherent jurisdiction of the Court.

Learned counsel for the petitioner has submitted that the present petition has been filed against the following:-

1. *Primus Brand Pvt. Ltd. No.7 Ist Cross, 3<sup>rd</sup> Main, Ashwini Layout Ejipura, Bangalore 560 047 through its Managing Director/Chairman Authorized signatory Raju Mahtaney.*

*ALTERNATIVE ADDRESS FOR SERVICE:*

*Raju Mahtaney, Chairman/Managing Director, B-1-62/5,Begur Road, Bangalore-560 068.*

2. *M/s Primus Retail Pvt. Ltd. No.7, Ist Cross, 3<sup>rd</sup> Main, Ashwini Layout Ejipura, Bangalore 560 047.*
3. *Balaji Bhat, Director M/s Primus Brand Pvt. Ltd. No.7 Ist Cross, 3<sup>rd</sup> Main, Ashwini Layout Ejipura, Bangalore 560 047.*
4. *Sudhir Rao, Director, M/s Primus Brand Pvt. Ltd. No.7 Ist Cross, 3<sup>rd</sup> Main, Ashwini Layout Ejipura, Bangalore 560 047.*
5. *KEC Raja Kumar, Director, M/s Primus Brand Pvt. Ltd. No.7 Ist Cross, 3<sup>rd</sup> Main, Ashwini Layout Ejipura, Bangalore 560 047.*
6. *Ms. Kanika Vohra, Vice President, Director, M/s Primus Brand Pvt. Ltd. No.7 Ist Cross, 3<sup>rd</sup> Main, Ashwini Layout Ejipura, Bangalore 560 047.*

He submits that petitioner No.1-company ceased to exist as it was merged with accused no.2-company and, therefore, the petition is not maintainable. He submitted that after amalgamation of accused no.1-company with accused no.2-company, accused no.1-company does not exist.

On the other hand, learned counsel for the respondent has pointed out that from the order of merger as attached by the petitioner, Annexure P-8, it is apparent that the petitioner herein i.e. Mr. Raju Mahtaney is one of the promoter of 3 Companies including accused Nos.1 and 2 and these are part of same group of companies. In fact, accused no.1-company along with another company was wholly owned subsidiary of accused no.2-company. He has further pointed out that the present petition is not maintainable in view of bar contained in Section 397(3) of the Code

of Criminal Procedure. He further submitted that the contention which has been raised by the petitioner has never been taken before the revisional court. Hence, petitioner cannot be permitted to raise the contention for the first time.

This Court has heard learned counsels for the parties at length and with their able assistance gone through the paper book.

In the considered view of this court, the present petition is liable to be dismissed for the following reasons:-

- (1) Accused were summoned by the order of Judicial Magistrate. Revision petition filed against the order of summoning has been dismissed vide order dated 21.05.2013. Section 397(3) of the Code of Criminal Procedure bars maintainability of further application by the same person. Section 397 Cr.P.C. is extracted as under:-

**397. Calling for records to exercise powers of revision.**

- (1) *The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*  
*Explanation.- All Magistrates whether Executive*

*or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.*

*(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.*

*(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”*

It is well settled that under the garb of petition under Section 482 Cr.P.C, second revision is not maintainable.

(2) It is undisputed that the petitioner in the revision petition did not draw attention of the revisional court and did not challenge the order of summoning on the grounds which have been urged at the time of arguments. The contention of the petitioner as noticed by the revisional court in paragraph 6 of the judgment are extracted as under:-

6. *The revisionist/accused has challenged the summoning order dated 16.11.2011 as well as order dated 23.08.2012 on the ground that the trial court had misunderstood and misconstrued the legal position. He further claimed that Magistrate has not held the enquiry by following the procedure as enshrined under Section 202 Cr.P.C.. he cited in his support*

*the authority cited as **2010(3)-civil court cases-315 (P&H) Smt. Neeta Sinha Versus P.S.Raj Steels Private Ltd.** Wherein it has held that in cas of dishonour of cheque, accused residing beyond jurisdiction of Court. Summoning order passed relying upon the statement of complainant and documetns tendered in evidence, set aside as procedure envisaged under Section 202 Cr.P.C. was not followed. In a case where accused is residing beyond jurisdiction of Court, Magistrate has to inquire into the case himself or direct an investigation to be made by a Police Officer or by such other persons as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He further claimed that the petitioner/accused was summoned in spite of the fact that there were no averments in the plaint against him. He was not responsible for the conduct of the business of the company and was not incharge of the day to day affair of the company. He cited in his support the authority cited as 2007(1)-Apex Court Judgments-243 (S.C.) in case of **Saroj Kumar Poddar versus State (NCT of Delhi) and another**, wherein it was held that no averment in complaint as to how and in what manner the Director was respomnsible for the conduct of*

*business of Company or otherwise responsible to it in regard to its functioning. It was held that even if allegations in complaint are taken to be correct in its entirety the same do not disclose any offence against the Director. Proceedings against Director quashed. He further claimed that it was accused No.3 Balaji Venugopal Bhatt and CEO and MD of the company, who were incharge and responsible for the management of day to day affairs of the company and they were not liable for dishonour of the cheque of the company and the petitioner/accused.”*

Rather learned revisional court while returning a finding has recorded that admittedly the petitioner-accused is a Director of the company.

In any case, even if the petitioner is permitted to raise this contention for the first time, still this court does not find any substance therein, particularly keeping in view the fact that the petitioner is one of the promoter of both the companies particularly in view of the fact that in the complaint it has been alleged that the amount of Rs.31,81,822/- was due on 31.12.2009 against the accused for supply of goods and accused nos.3 to 6 who were working under the name and style of M/s Primus Retail Private Limited had got the cheques in question issued from their other group-company namely M/s Primus Brand Private Limited. Hence, there is no force in the petition filed.

In view of the aforesaid, the present petition is dismissed.

However, learned trial court would proceed to decide the complaint on merits without being influenced by the findings recorded by this court while finally deciding the complaint.

May 01,2019  
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(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No