**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-29641-2018
Date of Decision: 24.09.2019

Mr. Mayank Lakhani

...... Petitioner

versus

M/s Lamba Rubber Chemicals

.... Respondent

2. **CRM-M-29980-2018**

Mr. Mayank Lakhani

.... Petitioner

versus

M/s Lamba Rubber Chemicals

... Respondent

3. **CRM-M-29988-2018**

Mr. Mayank Lakhani

... Petitioner

versus

M/s Lamba Rubber Chemicals

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Kunal Dawar, Advocate,
for the petitioner. (in all cases).

Mr. Mukesh Rao, Advocate,
for the respondent.

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<u>AMOL RATTAN SINGH, J. (ORAL)</u>

By these three petitions filed by the same petitioner, he seeks quashing of three criminal complaints as are the subject matter of each petition, i.e. Criminal Complaint No.1396 dated 10.09.2014, Criminal Complaint No.1394 dated 10.09.2014 and Criminal Complaint No.1395 dated 10.09.2014, with all those complaints having been instituted under the provisions of Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881, also alleging therein the commission of an offence punishable under Section 420 of the IPC.

The complainant in all three complaints, i.e. the sole respondent in each of the three petitions, is a firm by the name of M/s Lamba Rubber Chemicals, situated at Faridabad, Haryana. Three cheques as are in question in each of these cases, are stated to have been dishonoured upon presentation by the complainant, the cheques having been issued on account of a debt/liability incurred (as per the complainant), by M/s Lakhani India Ltd. (accused no.1 in Criminal Complaint No.1396 of 2014), by M/s Lakhani Footcare Pvt. Ltd. (accused no.1 in Criminal Complaint No.1394 of 2014) and M/s Lakhani Rubber Ugyog Pvt. Ltd. (accused no.1 in Criminal Complaint No.1395 of 2014).

The other company as has been arraigned as an accused in all three complaints is M/s Lakhani Fashion (India) Pvt. Ltd., with the other accused in each of those cases being Mr. P.D. Lakhani, Mr. Mayank Lakhani (petitioner in these petitions), Ms. Suman Lakhani and Mr. Amar Jeet Kalra, though in one complaint, i.e. No.1396 of 2014, one Pushpender has also been arraigned, as has one Krishan Gopal Sharma (in Complaint No.1395 of 2014).

2. The allegation of the complainant (i.e. the respondent in these petitions) is that the petitioner herein also, i.e. Mayank Lakhani, was either a Director or a "dealing person" in the two companies, including M/s Lakhani

Fashion (India) Pvt. Ltd., at the time that the cheques in question were issued, all the cheques having been issued by M/s Lakhani Fashion (India) Pvt. Ltd., to discharge the liability incurred by either M/s Lakhani India Ltd. or M/s Lakhani Footcare Pvt. Ltd. or M/s Lakhani Rubber Udyog Pvt. Ltd.; that is to say that the cheques in question had been actually issued by the Managing Director/Director/authorised signatory of M/s Lakhani Fashion (India) Pvt. Ltd. (i.e. by P.D. Lakhani), to discharge the liability in each case of one of the aforesaid three companies.

In all three cases, the learned trial court having issued orders summoning the petitioner on different dates, the said orders have also been challenged by the petitioner, as have the orders passed by the learned Additional Sessions Judge, Faridabad, in all three cases, dismissing the revision filed by the petitioner in each case, thereby upholding the summoning orders issued by the trial court.

To depict each of the orders challenged in each of these petitions, the following table is tabulated:-

CRM-M-29641 of 2018	Accused no.1	Criminal Complaint	Date of the impugned order of the trial court	Date of the impugned order of the learned Revisional Court
	M/s Lakhani India Pvt. Ltd.	No.1396/2014	10.09.2014	01.06.2017

CRM-M-29980 of 2018	Accused no.1	Criminal Complaint	Date of the impugned order of the trial court	Date of the impugned order of the learned Revisional Court

	M/s Lamba Rubber Chemicals	No.1394/2014	10.09.2014	01.06.2017

CRM-M-29988 of 2018	Accused no.1	Criminal Complaint	Date of the impugned order of the trial court	Date of the impugned order of the learned Revisional Court
	M/s Lakhani Rubber Udyog Pvt. Ltd.	No.1395/2014	10.09.2014	01.06.2017

In essence, as has been argued before this court, and is seen to have been argued before the revisional court, is that the petitioner, Mayank Lakhani, was neither the Managing Director nor a Director nor any person concerned with the company on behalf of whom its Managing Director (P.D. Lakhani) had issued the cheques in question, i.e. M/s Lakhani Fashion (India) Pvt. Ltd., and therefore, even if the complainant could prove that the petitioner was an authorised signatory of the company for the discharge of whose liability the cheques had been issued, i.e. M/s Lakhani India Ltd., the petitioner cannot held liable, because it is only the Directors/concerned persons of the company under whose stamp the cheque had been issued, and from whose account the cheque was to be drawn by the complainant, as can be held liable in the context of the cheques not having been honoured.

Notice of motion had been issued on July 18, 2018 in all these three cases, upon learned senior counsel appearing for the petitioner having contended before this court that the learned revisional court has mis-interpreted the judgment of the Supreme Court in **K.K. Ahuja v. V.K.Vora & another** 2009 (3) RCR (Criminal) 571, which in fact favours the petitioner, as he never remained either a Director, nor the person in charge of managing the affairs of the said company, i.e. M/s Lakhani Fashion (India) Pvt. Ltd.

Proceedings qua the petitioner had also been ordered to be stayed during the pendency of these petitions at that stage, though it had been specifically directed that trial qua the other accused would continue.

3. Thereafter, upon arguments having been addressed on various dates, specifically on the last two dates prior to today, i.e. on 16.09.2019 and 12.09.2019, the following orders had been passed:-

<u>12.09.2019</u>

> "Mr. Rai, learned Senior Counsel appearing for the petitioner, has drawn attention specifically to Sections 138 and 141 of the Negotiable Instruments Act, 1881, which read as under:-
>
> > "**138. Dishonor of cheque for insufficiency, etc., of funds in the accounts-** Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:
> >
> > **PROVIDED** that nothing contained in this section shall apply unless-
> >
> > (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.
> >
> > (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said

amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

xxx xxx xxx

141. Offences by companies

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

His contention is that it is only the <u>person</u> who draws a cheque from an account maintained by that person, can be held liable on account of that cheque being dishonoured, and even when that person is a company, then it is only the active functionary of that company and the signatory to the cheque, as can be held liable for it being dishonoured.

Thus, even if that cheque is issued to discharge the liability of a different company in which any other person is an authorized signatory, such other person cannot be held guilty, and cannot be in fact even arraigned as an accused, in the complaint.

He relies upon the following judgments:-

1) **K.K. Ahuja v. V.K. Vora & another**, 2009 (3) RCR (Crl.) 571;

2) **Manish Kant Aggarwal v. National Agricultural Cooperative Marketing Federation of India Ltd.**, 2008 (23) RCR (Crl.) 353;

3) **HND Mulla Feroze v. KVD Prasad Rao and another**, (law finder Doc Id # 119206);

4) **B.S. Bhasi v. K.M. Purshotham Dass**, (law finder doc id # 943321).

Mr. Rao, learned counsel for the complainant, seeks time to distinguish the aforesaid judgments.

On his request, adjourned to 16.09.2019.

To be shown in the urgent motion list at No.101.

Copies of the aforesaid judgments would be handed over to Mr. Rao, by Mr. Kunal Dawar, Advocate.

A copy of this order be placed on the file of the other connected matter too."

16.09.2019

"Though this Court was inclined to not entertain the petition further, on the ground that the liability in the discharge of which the cheque in question had been issued from the bank account of M/s Lakhani Fashion Private Limited, was a liability of M/s Lakhani India Limited with the petitioner being an authorised signatory of that company at the time when the cheque was issued, and therefore even if he was not any Director/authority in M/s Lakhani Fashion Private Limited, he would yet be liable for the dishonouring of the cheque, however, a judgment of the Supreme Court in P.J.Agro Tech Limited and others vs. Water Base Limited, (Law Finder DocId # 213078), as regards the statutory provisions contained in Section 138 of the Negotiable Instruments Act, 1881, has been brought to the notice of this Court, in which it has been held as follows:-

> "From a reading of the said Section, it is very clear that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability. It is only such a cheque which is dishonoured which would attract the provisions of Section 138 of the above Act against the drawer of the cheque. 9. In the instant case, the cheque which had been dishonoured may have been issued by the Respondent No.11 for discharging the dues of the Appellant No.1 Company and its Directors to the Respondent No.1 Company and the Respondent Company may have a good case against the Appellant No.1 Company for recovery of its dues before other fora, but it would not be sufficient to attract the provisions of Section 138 of the 1881 Act. The Appellant Company and its Directors cannot be made liable under Section 138 of the 1881 Act for a default committed by the Respondent No.11. An action in respect of a criminal or a quasi-criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence."

Today, Mr.Rai, learned Senior Counsel appearing for the petitioner, further relies upon another judgment of the Supreme Court in Mainuddin Abdul Sattar Shaikh vs. Vijay D.Salvi, (Law Finder DocId # 689531), to submit that the ratio contained in the earlier judgment has been reiterated later also.

Mr.Rao, learned counsel for the respondent-complainant, however, other than seeking time to distinguish the aforesaid judgments, further submits that the petitioner was, at the relevant time, an authorised signatory of even M/s Lakhani Fashion Private Limited, and that in paragraph 4 of his complaint, he has stated that he was 'a dealing person', responsible for the affairs of the said company.

As the factum of the petitioner being an authorised signatory of the latter company has not been pointed out from the complaint, it has therefore been objected to by Mr.Rai; however, Mr.Rao further submits in Court today that the petitioner had also entered into a compromise with the complainant in respect of the dishnoured cheque and consequently, he cannot be absolved of his liability as an accused in the complaint.

The complainant would file an affidavit to that effect, with the petitioner to also file an affidavit as to whether or not at the relevant time he was an authorised signatory/Director/any active functionary in the company, i.e. M/s Lakhani Fashion Private Limited.

It is however to be observed at this stage that even if he was a signatory to any compromise deed entered into between the parties, whether he still be liable in a complaint instituted under the provisions of Section 138 and Section 141 of the Negotiable Instruments Act, 1881, would need to be seen on the anvil of the ratio of the judgments of the Supreme Court cited herein above.

Adjourned to 24.9.2019

To be taken up at 2.00 p.m.

A photocopy of this order be also placed on the files of the other connected matters."

On the last date of hearing, i.e. 16.09.2019, it had been observed by this Court (prima facie) that in terms of the judgment of the Supreme Court in **P.J. Agro Tech Limited and others** v. **Water Base Limited**, (Law Finder

Doc ID# 213078), as also the judgment cited by Mr. Rai, learned Senior Counsel appearing for the petitioner, (in **Mainuddin Abdul Sattar Shaikh** v. **Vijay D. Salvi** Law Finder DocID# 689531), that though M/s Lakhani India Limited was the company the liability of which was sought to be discharged by the issuance of a cheque by the Managing Director of M/s Lakhani Fashion (India) Private Limited (the said person also being the Managing Director of M/s Lakhani India Pvt. Ltd.), however, an accused could only be the person issuing the cheque, i.e. from whose account the cheque was to be made good, and not the company/person the liability of which/whom was sought to be discharged by issuance of that cheque.

Mr. Rao, learned counsel for the respondent (complainant), had however submitted that even if the ratio of those judgments is applied, the petitioner, Mayank Lakhani, also being the authorized signatory of M/s Lakhani Fashion (India) Pvt. Ltd., i.e. the company on behalf of which the cheque had been issued by its Managing Director, and from whose account the cheques was to be debited, he would be liable as an accused in any case.

Upon the aforesaid arguments having been addressed on the last date of hearing, this Court had directed that the complainant would file an affidavit to that effect, i.e. as to whether or not the petitioner was actually an authorized signatory of M/s Lakhani Fashion India Private Limited, on the date that the cheques in question had been issued, with it also directed that the petitioner would also file an affidavit as to whether he was such authorized signatory or not.

Though today learned counsel for the complainant has filed in Court affidavits (in all these three petitions) of the complainant, stating to the effect that the petitioner at the relevant time was an authorized signatory of even M/s Lakhani Fashion (India) Private Limited, no such affidavit has been filed by the petitioner, with Mr. Dawar, learned counsel for the petitioner, having filed three applications, all seeking modification/clarification/correction of the order passed by this Court on 16.09.2019, the prayer in the said applications being that seeking such an affidavit from the petitioner would go against the spirit of Article 20(3) of the Constitution of India, which provides that no person accused of any offence shall be compelled to be a witness against himself.

Mr. Dawar further submits that the allegation that the petitioner was an authorized signatory of M/s Lakhani Fashion (India) Private Limited is not even stated anywhere in the complaint, though of course (as already noticed in the previous order), he has been referred to (along with his co-accused) as a Director or a dealing and responsible person of the company, with Mr. Dawar however pointing out that immediately above the said contention (in paragraph 04 of the complaint), it had been stated that it is the father of the petitioner who is the authorized signatory.

Mr. Dawar next submits that even evidence of the complainant himself has already been led, with however other witnesses still to be examined.

Though I absolutely agree with learned counsel for the petitioner to the extent that no person can be asked to implicate himself and he may also be correct in stating that in the complaints in question the petitioner has not been specifically named as an authorized signatory, (with him also not having signed the cheques in question), yet in the aforesaid circumstances, the question would be whether or not this Court would like to dwell deeper on the matter, in petitions filed under Section 482 of the Cr.P.C., seeking the quashing of complaints, with it to be proved or disproved before the trial Court as to whether the petitioner was actually a person who was concerned with the affairs of the company that was the drawer of the cheques, i.e. M/s Lakhani Fashion (India) Private Limited, or not.

Consequently, that being a matter to be proved or disproved before the trial Court, with no further comment made by this Court, I see no reason to entertain these petitions further.

This is being held despite the fact that this Court has already noticed in the last order, the contentions of learned counsel for the petitioner, to the effect that the petitioner is not liable even on the touchstone of the judgments of the Supreme Court cited (as have already been referred hereinabove, i.e. **P.J. Agro Tech Limited and others** v. **Water Base Limited** and **Mainuddin Abdul Sattar Shaikh** v. **Vijay D. Salvi** (both supra)), that he was not a Director/ concerned person in M/s Lakhani Fashion (India) Pvt. Ltd.

Mr. Dawar, however, still insists that this Court is bound to at least consider the merits of the case of the petitioner, in view of all that has been argued, over the past two years in this petition (before different benches, including myself).

Whereas that would have otherwise been obviously correct, however, with a specific stand having been taken in the complaint itself, that the petitioner is a concerned dealing person in M/s Lakhani Fashion India Private Limited, that question, to again repeat, needs to be proved or disproved before the trial Court.

Naturally, nothing observed hereinabove, or in previous orders passed, shall be treated by the trial court to be an observation on the merits of the case for or against the petitioner, with that court to therefore proceed further wholly on the basis of the evidence led before it.

Consequently, these petitions are dismissed, with any interim orders passed, thereby vacated.

Even though the petitions have been disposed of, the applications filed in each case on behalf of the petitioner today, shall be numbered by the Registry before consigning the case files to record, with the affidavits filed on behalf of the complainant in Court today, to be taken on record as Annexure R-11 with each of the accompanying petitions.

September 24, 2019 **(AMOL RATTAN SINGH)**
vcgarg/nitin **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No.