

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

(i) CRM No.M-35183 of 2016 (O&M)

Kamal Bhushan

...Petitioner

VERSUS

Punjab State Co-operative Supply and Marketing Federation Ltd.

...Respondent

(ii) CRM No.M-35194 of 2016 (O&M)

Kamal Bhushan

...Petitioner

VERSUS

Punjab State Co-operative Supply and Marketing Federation Ltd.

...Respondent

(iii) CRM No.M-35204 of 2016 (O&M)

Kamal Bhushan

...Petitioner

VERSUS

Punjab State Co-operative Supply and Marketing Federation Ltd.

...Respondent

Date of Decision: January 15, 2019

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.P.S.Deol, Senior Advocate with
Mr.H.S.Deol, Advocate
for the petitioner.

Mr.Nitin Kaushal, Advocate
for the respondent.

INDERJIT SINGH, J.

for determination in these cases is the same.

Petitioner has filed these petitions under Section 482 Cr.P.C. for quashing of complaints No.43, 42 and 44 dated 24.09.2012 under Sections 138, 141 and 142 of the Negotiable Instruments Act and Section 420 IPC, summoning orders dated 20.10.2012 as well as all subsequent orders including order dated 13.09.2016 passed by learned Chief Judicial Magistrate, Mansa.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petitions.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that in the present case, summoning orders have been passed on 20.10.2012 and the present petitions have been filed in September 2016. The complaints were filed on 24.09.2012. The petitioner had not filed the petitions for quashing at the earliest but petitions for quashing the complaint have been filed after a long delay and there is no explanation as to why these petitions have not been filed at the earliest for quashing the complaints. Similarly, no revisions have been filed against the summoning orders.

Learned counsel for the petitioner contended that main dispute is regarding order passed on 13.09.2016 by learned CJM, Mansa. At the time of arguments, learned counsel for the petitioner argued that complains in question are not maintainable on the ground that there is no legal enforceable debt against present petitioner Kamal Bhushan. He argued that debt was against M/s JRD Rice Mills, Mansa and legal notice was also

issued to the Mill. Father of the petitioner was partner etc. of M/s JRD Rice

Mill and accused-petitioner acting on behalf of his father, issued the cheques.

Cheques have been issued by the accused for the liability of his father. It is the finding of fact to be given by the trial court on the basis of evidence, whether the son, who is paying the debt of his father, can be held liable for dishonour of the cheques or not. As it is a finding of fact, it is to be given by the trial Court on the basis of evidence to be produced before it and in the quashing petition, these findings, without any evidence cannot be given.

Learned counsel for the petitioner further argued that father of the petitioner has already paid the amount in the Court but even then, the complaints have not been withdrawn. I have gone through the order dated 13.09.2016 passed by learned CJM, Mansa. There is no statement of the accused that money was deposited in view of any compromise or with some conditions. Raghunath Rai, Manager of the Markfed, has stated that he is receiving total principal amount pertaining to the cheques and have decided to withdraw the complaints with regard to the same and has recommended for permission to withdraw, which means that Manager, Markfed himself cannot withdraw the complains and he can only sought the permission. It was for the competent authority to give or not to give the permission to withdraw the complaints.

The impugned order dated 13.09.2016 shows that till that time, the permission has not been received. Therefore, Manager, Markfed, could not withdrew the complaints, even as per his statement. Learned counsel for the petitioner also argued that now, as per law, the offence can be

complainant. On this argument, I find that the amount has not been deposited by filing application asking the Court to compound the offence and to pass the order regarding interest on the principal amount plus reasonable cost/compensation. There is no such application nor any order of the Court regarding compounding of the offence. All the complaint cases, as per the orders dated 13.09.2016, have been fixed for defence evidence, which means that trials of the complaints are complete. All these points can be argued before the trial Court.

At this stage, no ground is made out for quashing the complaints as well as the subsequent proceedings and orders dated 13.09.2016 passed by learned CJM, Mansa, are also passed as per law.

Therefore, finding no merit in all the petitions, the same are dismissed.

However, nothing stated above, shall constitute my opinion on merits of the case.

January 15, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No