

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

CRM-M-36282-2016 (O&M)

Date of decision: 19.10.2019

Ram Kaur

...Petitioner

Versus

M/s Ajay Steels Rolling Mills and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sandeep Jain, Advocate
for the petitioner.

None for respondent No. 1/complainant.

Mr. Piyush Khanna, Advocate
for respondent No. 2- Registrar of Companies, Chandigarh.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of Complaint No. 144 dated 11.06.2013 (Annexure P-1) titled as ***M/s Ajay Steel Rolling Mills vs. M/s Shivalik Vihar Sites Pvt. Ltd.***, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N.I. Act'*) as well as summoning order dated 10.07.2015 (Annexure P-2), passed by the trial Court, vide which, petitioner Ram Kaur (accused No. 3) along with other accused was summoned to face trial in the aforesaid complaint.

Brief facts of the case are that respondent No. 1/complainant filed the aforesaid complaint under Section 138 of the N.I. Act with the allegations that the complainant is a partnership firm and accused No. 1 is a private limited company, whereas accused No. 2 to 8 are the Directors and Incharge of accused No. 1/company. It is further stated in the complaint that accused Nos. 2 to 8, on behalf of accused No. 1/company, have taken an

advance from the complainant firm for a total sum of Rs. 52,00,000/- and in discharge of the outstanding legal debt/liability, accused No. 4 Harbhajan Singh has issued four account payee cheques for a total of Rs. 45,00,000/-, however, the said cheques, on presentation before the bank, were dishonoured with the remarks “insufficient funds”. Thereafter, the complainant issued a legal notice to the accused and filed the present complaint against the company and its Directors.

Learned counsel for the petitioner, who is arrayed as accused No. 3, has argued that the petitioner had resigned from the company on 14.08.2006 and, therefore, when the cheques were issued in 2013, she was not the Director of the company.

Learned counsel for the petitioner has referred to order dated 08.11.2016, passed by this Court, whereby the Registrar of Companies, Chandigarh was directed to file an affidavit regarding the correct position about the aforesaid fact.

The affidavit of the Registrar of Companies, Chandigarh is on record and as per the same, the petitioner had resigned from the post Director of the company-M/s Shivalik Vihar Sites Pvt. Ltd. on 14.08.2006 and an endorsement was sent to the Registrar of the Companies on the same day along with Form No. 32, which was signed by the Director of the company on behalf of the Board of Directors.

Learned counsel for the petitioner has further argued that in an identical complaint, filed by respondent/complainant, the petitioner filed a petition bearing **CRM-M-2161-2011** before this Court and vide judgment dated 10.01.2013, passed in the said case, the complaint and the summoning

order qua petitioner Ram Kaur were quashed by passing the following order:

“Counsel for the petitioners contended that the petitioners had resigned on 14.08.2006 (vide Annexures P-3 to P-5) from accused no. 1 – Company, on whose behalf the cheque in question dated 11.09.2007 was issued by Gulab Singh – accused no. 6 in the complaint, as reflected in Form no. 32 (Annexures P-6 to P-8) and consequently, the petitioners being not Directors of the Company in question on the date of the cheque, are not liable to be prosecuted in the impugned criminal complaint. Counsel for the petitioners also referred to unreported judgment dated 17.05.2012 passed in ***Crl. Misc. No. M-10685 of 2011*** titled ***Harbhajan Singh vs. Janak Raj Gupta***, wherein three complaints filed by Janak Raj Gupta and others were quashed qua petitioner no. 2 Harbhajan Singh on the same ground.

I have carefully considered the aforesaid contentions.

The factual position averred by the petitioners in their petition supported by affidavit and documents (Annexures P-3 to P-8), mentioned herein before, remains unrebutted. It is thus apparent that petitioners were not Directors of the Company in question on the date of cheque and had no concern with the day to day business of the said Company. Consequently, in view of Section 141 of the Act, the petitioners are not liable to be prosecuted in the impugned criminal complaint. This view finds further support from judgment of this Court in the case of ***Harbhajan Singh (supra)***.

Accordingly, the instant petition is allowed. Impugned complaint (Annexure P-1) and summoning order (Annexure P-2), along with all consequential

proceedings, are quashed qua petitioners only.”

Learned counsel for the petitioner has relied upon another order dated 26.10.2017 passed in **CRM-M-37142-2016**, in which, with regard to another complaint filed by the respondent-M/s Ajay Steel Rolling Mills, the proceedings qua petitioner Ram Kaur were quashed by holding that she was not the Director on the date of issuance of cheques as she has resigned on 14.08.2006.

There is no representation on behalf of respondent No.1/complainant.

After hearing learned counsel for the petitioner, I find merit in the present petition.

The statement made by the petitioner that she had resigned from the company on 14.08.2006 is verified by the Registrar of Companies, Chandigarh, vide affidavit dated 15.12.2016. Therefore, on the date when the cheques in dispute were issued on 28.03.2013, the petitioner was not the Director of the company as she had resigned much prior to the said date.

Moreover, it has already been held in the aforesaid orders dated 10.01.2013 and 26.10.2017, quashing the similar complaints qua petitioner Ram Kaur, filed by the same complainant, that the petitioner was not the Director on the date of issuance of cheques in dispute and, therefore, she is not concerned with the day to day business of the said company and as such she cannot be held liable for prosecution in view of Section 141 of the N.I. Act.

Accordingly, the present petition is allowed and Complaint No. 144 dated 11.06.2013 titled as **M/s Ajay Steel Rolling Mills vs. M/s**

Shivalik Vihar Sites Pvt. Ltd., filed under Section 138 of the N. I. Act (Annexure P-1) well as summoning order dated 10.07.2015 (Annexure P-2) along with all the subsequent proceedings are hereby quashed qua petitioner.

19.10.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No