

CRM-M-39632-2015 and connected petitions

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

Date of Decision:15.11.2019

1. CRM-M-39632-2015

Daya Ram

... Petitioner

Versus

M/s Pragati Enterprises

... Respondent

2. CRM-M-39474-2015

Daya Ram

... Petitioner

Versus

M/s Pragati Enterprises

... Respondent

3. CRM-M-24622-2016

Daya Ram

... Petitioner

Versus

M/s Pragati Enterprises

... Respondent

4. CRM-M-24747-2016

Daya Ram

... Petitioner

Versus

M/s Pragati Enterprises

... Respondent

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5. CRM-M-24750-2016

Daya Ram

... Petitioner

Versus

M/s Pragati Enterprises

... Respondent

6. CRM-M-24761-2016

Daya Ram

... Petitioner

Versus

M/s Pragati Enterprises

... Respondent

7. CRM-M-24801-2016

Daya Ram

... Petitioner

Versus

M/s Pragati Enterprises

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Argued by: Mr. Jatinderpal Singh, Advocate,
for the petitioner in all the petitions.

Mr. Bhriugu Dutt Sharma, Advocate,
for the respondent in all the petitions.

HARNARESH SINGH GILL, J.

This order shall dispose of the above-noted petitions as

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The above noted petitions have been filed under Section 482 of the Code of Criminal Procedure for quashing of the complaint cases No.32100 dated 02.03.2013, No.32105 dated 02.03.2013, No.32102 dated 02.03.2013, No.32101 dated 02.03.2013, No.32103 dated 02.03.2013, No.32104 dated 02.03.2013 and No.32106 dated 02.03.2013, respectively, all titled as 'M/s Pragati Enterprises vs. M/s K.K.Tanners & Ors.', under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as 'N.I.Act') read with Section 420 of the Indian Penal Code, pending before the Judicial Magistrate, Ist Class, Jalandhar, alongwith all the consequential proceedings arising therefrom.

However, for the facility of reference, the facts are being taken from CRM-M-39632-2015.

The facts of the case are that complainant-M/s Pragati Enterprises through its proprietor Pardeep Shukla (now respondent) filed a complaint under Section 138 of the N.I.Act, against M/s K.K.Tanners, Girdhari Lal and Daya Ram (petitioner herein) with the averments that the complainant was the supplier of leather chemicals and the petitioner, being partner alongwith others, had made purchases of the same from the complainant and thus, an amount of ₹48,90,717/- was outstanding against the petitioner and others and in order to discharge their legal debt, they had issued nine post dated cheques of different dates in favour of the respondent, all drawn on Union Bank of India, signed by Girdhari Lal (accused No.2 in complaint Annexure P-1 in CRM-M-39632-2015).

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During the pendency of all seven complaints filed by the respondent-company, the petitioner moved applications for discharge on the ground that he was neither a partner nor a signatory to the cheques in question nor an account holder; that the petitioner had no connection with the commission of the offence and that he was falsely implicated just to harass him.

While dismissing the said applications, the trial Court observed that since accused No.3 (petitioner herein) had been summoned, alongwith other accused, on 12.06.2014, therefore, his discharge, at a later stage, would amount to recalling of its own order, which is not permissible.

I have heard learned counsel for the petitioner as well as learned counsel for the respondent and gone through the record.

Learned counsel for the petitioner argued that the petitioner has been falsely implicated in the complaints under Section 138 of the N.I.Act as the petitioner was neither signatory to the cheques in question nor the account holder from which the cheques had been issued. The partnership deed dated 01.10.2009 (Annexure P-7 in CRM-M-39632-2015) shows that the petitioner was not even the partner of firm M/s K.K.Tanners. Learned counsel further submitted that at one point of time, the petitioner was the partner, but subsequently he retired and this fact was in the knowledge of the respondent-firm which is evident from the civil suit (Annexure P-8 in CRM-M-39632-2015) filed by the respondent against M/s K.K.Tanners and others, in which the petitioner had not been arrayed as a defendant. Thus, this fact also shows that the petitioner has no role to play and he has been falsely implicated in the criminal complaints.

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Per contra, learned counsel for the respondent argued that the petitioner is a partner of M/s K.K.Tanners and being the partner, he was fully responsible for the day to day work and conduct of the business of the firm and was fully responsible for the dishonour of the cheques. The partnership deed dated 01.10.2009, relied upon by the petitioner, is a forged and fabricated document and merely the petitioner is not one of the defendants in civil suit, does not absolve him of his liability.

I have gone through the partnership deed dated 01.10.2009 (Annexure P-7 in CRM-M-39632-2015) in which petitioner Daya Ram is not shown as a partner and as per the statement of account (Annexure P-6 in CRM-M-39632-2015) of the Union Bank of India, Jalandhar, name of the said petitioner is not there. It is M/s K.K.Tanners/ Mr. Girdhari Lal, who is the account holder. The petitioner is not the signatory to the cheques in question. Earlier, the partnership deed dated 01.04.2004 (Annexure R-1 in CRM-M-39632-2015) indicates that the petitioner and his son Girdhari Lal are the partners of M/s K.K.Tanners.

Moreover, the suit for recovery (Annexure P-8 in CRM-M-39632-2015) was instituted on 12.04.2014 in which partners, as per the partnership deed dated 01.10.2009 (Annexure P-7 in CRM-M-39632-2015), had been arrayed as defendants. This fact also clinches with the arguments raised by the learned counsel for the petitioner. This document further shows that the petitioner is called as a retired partner.

Further as per Section 141 of the N.I.Act, only those person who, at the time the offence was committed, was incharge of and was responsible to the company for the conduct of business of the company,

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could be deemed to be guilty of the offence.

Section 141 of the N.I.Act is reproduced as under:

“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: ²² [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(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.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

Since the petitioner has retired as per partnership deed (Annexure P-7 in CRM-M-39632-2015) and new partners were added and in the suit for recovery, newly added partners were arrayed as defendants.

Learned counsel for the petitioner has relied upon the judgment rendered by the Hon'ble Supreme Court in **Ashok Mal Bafna vs. M/s**

Upper India Steel Mfg. & Engg. Co. Ltd. 2017 AIR (SC)2854 wherein it

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has been held as under:

“12. Turning to the case on hand, admittedly the cheques dated 28-12-2004 were issued while the appellant was Director of the Company with validity for a period of six months but during that period they were not presented for realization at the bank. The appellant has resigned as Director w.e.f. 2-1-2006 and the fact of his resignation has been furnished by Form 32 to the Registrar of the Companies on 24-3-2006 in conformity with the rules. Thereafter, the appellant had played no role in the activities of the default Company. This fact remains substantiated with the Statement filed by the default Company on 20-2-2006 with the Registrar of Companies that in an advertisement of the Company seeking deposits (Annexure P3), only the names of three Directors of the Company were shown as involved in the working of the Company and the name of appellant was not therein. Indisputably, therefore, the cheques bounced on 24-08-2006 due to insufficient funds were neither issued by the appellant nor the appellant was involved in the day to day affairs of the Company.”

In the said case, when cheque in question was issued, the appellant was the Director of the Company, but the same got dishonoured after his resignation from the Company.

Similarly, in the case of ***Pooja Ravinder Devidasani vs. State of Maharashtra and another 2015 (3) PLR 437***, the Hon'ble Supreme Court has held as under:

“24. In the light of the law laid down by this Court, the present case be examined. It is not in dispute that two persons, namely, Parag Tejani and Hitesh Haria, were inducted as Director-Operations of the Company w.e.f. 17th December, 2005 by virtue of a resolution passed by the Company on the

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same date. It is on the same date the appellant had ceased to be a Director as per the Annual Report which is not disputed by the Respondent No. 2. A perusal of the Complaint shows that Respondent No. 2 has made the newly appointed Directors-Operations Parag Tejani and Hitesh Haria also as accused stating that all the accused approached him with a request for trade finance facility and accordingly the said facility was granted as per their request. It thus gives an impression that Respondent No. 2 is well aware of the change of Directors in the accused Company. In spite of knowing the developments taken place in the Company that the appellant was no longer a Director of the Company and two new Directors were inducted, the Respondent No. 2 has chosen to array all of them as accused in the Complaints. Moreover, Respondent No. 2 had not disputed this fact emphatically in the proceedings before the High Court. We have gone through the reply affidavit filed by Respondent No. 2 before the High Court of Bombay.

25 to 26 XXXX

27. *Unfortunately, the High Court did not deal the issue in a proper perspective and committed error in dismissing the writ petitions by holding that in the Complaints filed by the Respondent No. 2, specific averments were made against the appellant. But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the appellant in the commission of offence. It is settled law that to attract a case under [Section 141](#) of the N.I. Act a specific role must have been played by a Director of the Company for fastening vicarious liability. But in this case, the appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged offence. There is not even a whisper or shred of*

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evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged.

28. and 29. XXXX

30. *Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and Courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under [Section 138/141](#) of the N.I. Act, making a person vicariously liable has to ensure strict compliance of the statutory requirements. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of the Court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law.*

Still further, learned counsel for the respondent has raised the arguments that the orders vide which the petitioner has been summoned by the learned Magistrate to face trial under Section 138 of the N.I. Act, are revisable before the Sessions Court, whereas the present petitions are for quashing of criminal complaints alongwith all the consequential proceedings arising therefrom and the same are not maintainable.

The Hon'ble Apex Court in ***Prabhu Chawla Vs. State of Rajasthan & Anr. 2016(4) R.C.R.(Criminal) 270*** has laid down that a quashing petition is maintainable for quashing of the order of the Magistrate.

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In view of the above, I find that submissions made by the petitioners, remain unrebutted. Therefore, all these petitions are allowed and the complaint cases No.32100 dated 02.03.2013, No.32105 dated 02.03.2013, No.32102 dated 02.03.2013, No.32101 dated 02.03.2013, No.32103 dated 02.03.2013, No.32104 dated 02.03.2013 and No.32106 dated 02.03.2013, alongwith all the consequential proceedings arising therefrom, are hereby quashed qua the petitioner only.

15.11.2019

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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