

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

1. CRM-M-40775-2017

Bhuvan Bansal

...Petitioner

Versus

M/s Jaycee Autofab Pvt. Ltd.

...Respondent

2. CRM-M-41164-2017

Bhuvan Bansal

...Petitioner

Versus

M/s Jaycee Autofab Pvt. Ltd.

...Respondent

Reserved on : 03.07.2019
Pronounced on : 26.07.2019

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Akshay Kumar Jindal, Advocate
for the petitioner in both petitions.

None for the respondent(s).

ARVIND SINGH SANGWAN, J.

This common order shall dispose of above noted two petitions
as they are identical in nature and involve the same parties.

Prayer in these petitions is for quashing of Complaint No. 641
and Complaint No. 639, both dated 15.06.2016, filed by the respondent
under Section 138 of the Negotiable Instruments Act, 1881

(for short 'N. I. Act'); as well as the summoning order dated 15.06.2016, passed by the trial Court in both the cases.

Brief facts of the case are that petitioner is a Director of M/s Viking Engineers Pvt. Ltd. along with Sudarshan Khanna, Vikas Aggarwal, Nitin Gupta and Sudesh Kumar Khanna. The respondent/complainant filed the aforesaid complaint under Section 138 of the N.I. Act against the petitioner and others, in which the petitioner is referred to as accused No. 5. The allegations in the complaint are that the complainant is a Private Limited Company and is running its business of manufacturing of JCB Driver Cabin. In para 3 of the complaint, it is stated that accused No. 1 is the manufacturer of telecom shelters and accused Nos. 3 to 6 are the Directors of accused No. 1 and accused No. 2 is the Managing Director and is managing the affairs of the company i.e. accused No. 1 and are also having financial and administrative control of the company.

It is further stated in the complaint that accused No. 1 has purchased Puff Panels for an amount of Rs. 20,36,384/- on credit basis from the respondent/complainant and on that account, four cheques dated 26.02.2016 for Rs. 3,00,000/- each, drawn on Punjab National Bank, Ballabhgarh were issued by accused No. 1, which were duly signed by accused No. 6 i.e. Sudesh Kumar Khanna, however, on presentation of the said cheques before the bank, the same were dishonoured on account of "insufficient funds". The complainant, thereafter, served a legal notice and consequently, filed the present complaints, in which the petitioner along with others were summoned, vide order dated 15.06.2016.

Learned counsel for the petitioner submitted that a bare perusal

of the complaint would show that there is no specific allegation that the petitioner, being the Director/Incharge of company/accused No. 1, was managing its affairs.

Learned counsel for the petitioner further argued that in para 3 of the complaint, it is specifically stated that it is accused No. 2 who is the Managing Director of the company and was managing its affairs and even having the financial and administrative control of the company and the cheques in dispute were issued by accused No. 6, therefore, there is no allegation against the petitioner that he was managing the affairs of the company.

Learned counsel for the petitioner further argued that petitioner is not the signatory of the cheques, which in fact were signed by accused No. 6 Sudesh Kumar Khanna and the liability, if any, is pertaining to the years from 2011 till 2016, therefore, the petitioner cannot be held vicarious liable for the same.

Learned counsel for the petitioner further argued that the petitioner was appointed as a Director of M/s Viking Engineers Pvt. Ltd. on 01.01.2016 and resigned as such on 01.02.2016 within a short span of one month and has relied upon Form No. DIR-11, issued under the provisions of Section 168(1) of the Companies Act, 2013 read with Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014 (Annexure P-5). Learned counsel for the petitioner has also relied upon resignation letter, submitted by the petitioner, which was accepted w.e.f. 01.02.2016 (Annexure P-6 Colly.).

It is, thus, argued on behalf of the petitioner that it is apparent

from aforesaid Form No. DIR-11 that the resignation of the petitioner was accepted on 01.02.2016.

Learned counsel for the petitioner further argued that the cheques were issued on 26.02.2016, i.e. after the resignation of the petitioner, and were presented before the bank subsequently, therefore, at the time when the cheques were issued; were presented before the bank and dishonoured/returned by the bank, the petitioner was no more a Director of the company.

Learned counsel for the petitioner has relied upon **2010 (2) RCR (Criminal) 122, National Small Industries Corp. Ltd. vs. Harmeet Singh Paintal and Anr.**, wherein Hon'ble Supreme Court has held that if a person, who was not a Director at the relevant point of time when the cheques were issued or dishonoured and there is no specific allegation in the complaint that such accused person was Incharge of the day to day business of the company, he cannot be prosecuted for the offences punishable under the provisions of the N.I. Act.

Learned counsel for the petitioner has further relied upon **2007 (2) RCR (Criminal) 126, S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another**, wherein Hon'ble Supreme Court has held that it is necessary to make specific averments in the complaint under Section 141 of the N.I. Act that at the time when the offence was committed, the accused persons was Incharge and responsible for the conduct of the company and without such averments, requirement of Section 141 of the N.I. Act cannot be said to be satisfied.

Learned counsel for the petitioner has also relied upon

2007 (2) RCR (Criminal) 266 N. K. Vahi vs. Shekhar Singh and others, 2008 (3) RCR (Criminal) 152 DCM Financial Services Ltd. vs. J. N. Sareen and another, 2011 (4) RCR (Criminal) 930 Mrs. Anita Malhotra vs. Apparel Export Promotion Council and another, 2011 (3) SCC 351 Harshendra Kumar D vs. Rebatilata Koley Etc. and 2015 (3) SCC (Civil) 384 Pooja Ravinder Devidasani vs. State of Maharashtra, wherein the similar view has been taken by Hon'ble Supreme Court.

Learned counsel for the petitioner further argued that merely being the director of a company is not sufficient to make a person liable under Section 141 of the N.I. Act.

Despite notice, no one has appeared on behalf of the respondent/complainant.

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

As noticed above, in para 3 of the complaint, the allegations are against accused No. 2 Sudarshan Kumar Khanna, who is the Managing Director and the person responsible for the affairs of accused No. 1/company and further, as per para 6 of the complaint, it is stated that the cheques in disputes were under the signatures of accused No. 6 Sudesh Kumar Khanna, who is one of the Directors of the company.

In view of the above, once it is the own case of the complainant that accused No. 2 Sudarshan Kumar Khanna is the Managing Director and is managing the affairs of the company and have financial and administrative control over the company and accused No. 6 Sudesh Kumar Khanna is the signatory of the cheques, therefore, in the absence of any

specific allegations against the petitioner in the complaint, I find that the petitioner cannot be held liable for the offence under Section 141 of the N.I. Act.

Even otherwise, a perusal of the Form No. DIR-11 (Annexure P-5) clearly shows that the petitioner remained Director of the company for a brief period of one month only i.e. w.e.f. 01.01.2016 to 01.02.2016, when his resignation was accepted. Moreover, the cheques were issued on 26.02.2016 and were presented before the bank on 15.03.2016 i.e. after the resignation of the petitioner from the company and, therefore, he cannot be held liable for dishonouring of the cheques.

Therefore, in view of the above discussion and also in view of ratio of law laid down by Hon'ble Supreme Court in the judgments referred to above, these petitions are allowed and Complaint Nos. 641 and 639, both dated 15.06.2016, filed by the respondent, under Section 138 of the N.I. Act; as well as the summoning order dated 15.06.2016, passed by the trial Court in both the cases, are hereby quashed qua the petitioner herein.

A photocopy of this order be placed on the file of other connected case.

July 26, 2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No