IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22417-2019 (O&M) and other connected cases
Date of decision: 21.11.2019

Anil Gupta

....Petitioner

Versus

Sadhu Ram

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Aashish Chopra, Advocate,
Mr. Gurmohan Singh Bedi, Advocate,
Ms. Niharika Sharma, Advocate,
Mr. Pawandeep Singh, Advocate,
Ms. Rashleen Virk, Advocate
for the petitioner.

Mr. Sandeep Lather, Advocate,
Mr. Munish Kumar Garg, Advocate,
Mr. Gourav Jain, Advocate
for the respondent.

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ARVIND SINGH SANGWAN, J. (Oral)

Vide this common order, 103 petitions praying for quashing of the complaints filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') filed by different complainants, with the allegations that the petitioner, being Director of M/s Amira Pure Foods Pvt. Ltd., had issued the cheques and is responsible for day to day affairs of accused No.1-company, are being disposed of.

The brief description of all the cases along with cheque numbers, amount and date of issuance of cheque(s) is reproduced as under: -

Sr. No.	Case No.	Cheque No.	Amount	Date
1.	CRM-M-22417-2019	360192 360650	Rs.3,17,715/- Rs.6,45.90/-	15.12.2016 08.04.2017
2.	CRM-M-23877-2019	348126 348046	Rs.6300/- Rs.1,39,715.10/-	23.05.2016 23.06.2016
3.	CRM-M-23844-2019	347971	Rs.1,03,240.80/-	17.06.2016
4.	CRM-M-23832-2019	348027	Rs.3,01,210.20/-	16.07.2019
5.	CRM-M-23819-2019	350649	Rs.2,14,070/-	08.12.2016
6.	CRM-M-23838-2019	348081	Rs.1,70,611.20/-	27.06.2016
7.	CRM-M-23779-2019	348362 348294 348295	Rs.59,844.60/- Rs.7,00,000/- Rs.8,00,000/-	22.08.2016 21.07.2016 16.07.2016
8.	CRM-M-23800-2019	348280 348353	Rs.6,49,821/- Rs.34,241.40/-	19.07.2016 22.08.2019
9.	CRM-M-23812-2019	348002	Rs.46,120.50/-	23.05.2016
10.	CRM-M-23772-2019	348949	Rs.1,59,842.70/-	27.06.2016
11.	CRM-M-23833-2019	348998	Rs.1,69,106.40/-	27.06.2016
12.	CRM-M-23794-2019	348018 348167	Rs.70,477.20/- Rs.5,400/-	25.05.2016 24.06.2016
13.	CRM-M-23869-2019	348022	Rs.66,512.70/-	23.05.2016
14.	CRM-M-23841-2019	348008 348238	Rs.84,892.50/- Rs.3,912/-	25.05.2016 26.07.2016
15.	CRM-M-25377-2019	079610	Rs.5,42,243/-	14.09.2016
16.	CRM-M-25369-2019	347961	Rs.47,353.50/-	23.05.2016
17.	CRM-M-23855-2019	348058 348306 348371	Rs.1,17,618.30/- Rs.2,43,561/- Rs.4,804/-	17.06.2016 12.08.2016 24.08.2016
18.	CRM-M-23805-2019	348010	Rs.1,27,957.50/-	20.06.2016
19.	CRM-M-23826-2019	348285 348356	Rs.8,43,292/- Rs.45,685.80/-	17.08.2016 22.08.2016
20.	CRM-M-23911-2019	347953	Rs.1,48,400.10/-	23.06.2016

21.	CRM-M-23902-2019	348006 348180	Rs.89,678.70/- Rs.26,370/-	27.05.2016 24.06.2016
22.	CRM-M-24091-2019	360194	Rs.2,33,764/-	08.12.2016
23.	CRM-M-24111-2019	350634	Rs.1,96,614/-	01.12.2016
24.	CRM-M-24088-2019	347982	Rs.30,783.60/-	18.05.2016
25.	CRM-M-25382-2019	347995	Rs.44,709.30/-	23.05.2016
26.	CRM-M-25436-2019	350196	Rs.2,45,461/-	09.12.2016
27.	CRM-M-23777-2019	348335 348394	Rs.6,56,543/- Rs.12,054.60/-	15.06.2016 20.08.2016
28.	CRM-M-23788-2019	347997	Rs.52,468.20/-	23.05.2016
29.	CRM-M-24142-2019	347950 348182	Rs.1,87,506/- Rs.38,250/-	19.08.2016 19.07.2016
30.	CRM-M-25925-2019	347932 348190	Rs.2,90,199.60/- Rs.21,150/-	16.07.2016 19.07.2016
31.	CRM-M-24641-2019	348065 348135	Rs.57,806.10/- Rs.4,500/-	23.05.2016 23.05.2016
32.	CRM-M-25442-2019	347926 350190	Rs.72,501.46/- Rs.2,10,239/-	09.06.2016 18.11.2016
33.	CRM-M-23845-2019	348007 348144	Rs.82,102.50/- Rs.6,300/-	25.05.2016 26.05.2016
34.	CRM-M-23816-2019	348068	Rs.93,939/-	27.05.2016
35.	CRM-M-25939-2019	347818	Rs.1,89,135.31/-	20.06.2016
36.	CRM-M-25927-2019	347983	Rs.42,624.90/-	18.05.2016
37.	CRM-M-25989-2019	347935 348165	Rs.82,757.50/- Rs.14,310/-	25.05.2016 21.06.2016
38.	CRM-M-25929-2019	348086 348376	Rs.1,16,226/- Rs.1,290/-	17.06.2016 24.08.2016
39.	CRM-M-23913-2019	348103	Rs.55,350/-	16.05.2016
40.	CRM-M-26301-2019	347975	Rs.39,706.20/-	18.05.2016
41.	CRM-M-25289-2019	347957	Rs.1,73,260.80/-	27.06.2016
42.	CRM-M-25924-2019	348398 348339	Rs.3,649/- Rs.1,84,985/-	20.08.2016 22.07.2016
43.	CRM-M-25963-2019	348266 347946 348344	Rs.3,47,992/- Rs.1,52,945.10/- Rs.10,039.50/-	27.05.2016 23.06.2016 18.08.2016

44.	CRM-M-25171-2019	347765	Rs.3,81,315.03/-	26.06.2016
45.	CRM-M-30940-2019	348063 348245	Rs.2,16,538.20/- Rs.14,400/-	23.08.2016 26.07.2016
46.	CRM-M-23852-2019	348319 348188 347963	Rs.8,00,000/- Rs.1,473/- Rs.5,28,356.70/-	29.06.2016 19.07.2016 21.07.2016
47.	CRM-M-23828-2019	34829234 8361 348016	Rs.2,65,901/- Rs.50,110.30/- Rs.2,21,160.60/-	12.08.2016 22.08.2016 23.08.2016
48.	CRM-M-23904-2019	348275 348350	Rs.7,83,683/- Rs.63,607.50/-	11.08.2016 18.08.2016
49.	CRM-M-26300-2019	348285 348356	Rs.8,43,292/- Rs.45,685.80/-	17.08.2016 22.08.2016
50.	CRM-M-27328-2019	347993	Rs.96,823.80/-	27.05.2016
51.	CRM-M-31198-2019	348087 348313 348378	Rs.1,45,340,10/- Rs.7,87,113/- Rs.20,546.10/-	23.06.2016 23.05.2016 24.08.2016
52.	CRM-M-31020-2019	348067	Rs.85,204.80/-	25.05.2016
53.	CRM-M-30959-2019	347981 34835434 8283	Rs.2,10,144.60/- Rs.3,525/- Rs.1,42,817/-	19.08.2016 22.08.2016 22.07.2016
54.	CRM-M-30961-2019	348324 348383	Rs.7,00,000/- Rs.33,103.80/-	21.07.2016 26.08.2016
55.	CRM-M-31230-2019	348197 348077	Rs.9,000/- Rs.3,75,7,10.40/-	22.07.2016 16.07.2016
56.	CRM-M-31182-2019	348076	Rs.8,34,386.40/-	16.08.2016
57.	CRM-M-31228-2019	348033	Rs.1,95,165.90/-	19.08.2016
58.	CRM-M-31073-2019	348272	Rs.9,54,853/-	20.05.2016
59.	CRM-M-31025-2019	347939	Rs.78,538.60/-	25.05.2016
60.	CRM-M-31015-2019	347758	Rs.3,53,486.67/-	24.06.2016
61.	CRM-M-31031-2019	348198 347989	Rs.4,500/- Rs.2,28,964.50/-	22.07.2016 23.08.2016
62.	CRM-M-31043-2019	348336 348395	Rs.2,56,551/- Rs.4,554.90/-	12.08.2016 20.08.2016

63.	CRM-M-31199-2019	348310 348083 348375	Rs.3,21,332/- Rs.2,06,775/- Rs.8,566.20/-	18.08.2016 19.08.2016 24.08.2016
64.	CRM-M-31075-2019	348053	Rs.78,471.90/-	25.0.6.2016
65.	CRM-M-30968-2019	348028	Rs.1,49,949/-	23.06.2016
66.	CRM-M-31029-2019	348380 348317	Rs.55,322.10/- Rs.7,65,496/-	26.08.2016 11.08.2016
67.	CRM-M-30947-2019	350629 360684	Rs.5,79,248/- Rs.13,111.20/-	12.01.2017 08.04.2017
68.	CRM-M-30984-2019	079778	Rs.1,52,333/-	27.07.2016
69.	CRM-M-31005-2019	348281 347978	Rs.10,00,000/- Rs.1,77,700.50/-	21.06.2016 27.06.2016
70.	CRM-M-31008-2019	348015	Rs.87,237.90/-	23.05.2016
71.	CRM-M-31028-2019	347966	Rs.30,601.80/-	18.05.2016
72.	CRM-M-31072-2019	348134 348064	Rs.4,602/- Rs.1,93,527.90/-	23.05.2016 19.08.2016
73.	CRM-M-30966-2019	348303 348039 348196	Rs.1,29,280/- Rs.1,32,060.60/- Rs.5,940/-	18.06.2016 20.06.2016 22.07.2016
74.	CRM-M-31044-2019	347936	Rs.1,26,908.10/-	20.06.2016
75.	CRM-M-31066-2019	739723 079791 079799	Rs.2,86,464/- Rs.2,86,305/- Rs.5,00,000/-	25.07.2016 28.07.2016 30.07.2016
76.	CRM-M-31060-2019	348348 347954	Rs.21,871.80/- Rs.2,10,413.70/-	18.08.2016 19.08.2016
77.	CRM-M-25991-2019	347767	Rs.1,51,523.97/-	16.06.2016
78.	CRM-M-23881-2019	347933	Rs.92,550.60/-	27.05.2016
79.	CRM-M-23866-2019	348049 348200	Rs.65,624/- Rs.4,500/-	23.05.2016 22.07.2016
80.	CRM-M-25326-2019	350206	Rs.5,18,134/-	18.11.2016
81.	CRM-M-25928-2019	348066	Rs.5,70,104.10/-	21.07.2016
82.	CRM-M-25916-2019	348273 348250	Rs.9,00,000/- Rs.1,772/-	28.06.2016 26.07.2016

83.	CRM-M-25973-2019	079825 347795	Rs.7,27,626/- Rs.3,89,690.08/-	31.07.2016 26.06.2016
84.	CRM-M-25920-2019	348004	Rs.4,88,860.20/-	17.08.2016
85.	CRM-M-23769-2019	350632 360639	Rs.6,25,694/- Rs.13,164.30/-	19.01.2017 08.04.2017
86.	CRM-M-25992-2019	348055	Rs.1,45,233/-	23.06.2016
87.	CRM-M-25171-2019	350202	Rs.3,84,015/-	04.11.2016
88.	CRM-M-23782-2019	350623 350645 350241 360664	Rs.8,46,595/- Rs.9,00,000/- Rs.9,00,000/- Rs.71,875.70/-	19.01.2017 16.02.2017 02.03.2017 08.04.2017
89.	CRM-M-25994-2019	343943	Rs.5,17,662/-	21.07.2016
90.	CRM-M-23830-2019	348023 348185	Rs.3,58,202.70/- Rs.4,520/-	16.07.2016 19.07.2016
91.	CRM-M-24155-2019	348059	Rs.57,372.50/-	23.05.2016
92.	CRM-M-23868-2019	348090 348205	Rs.1,50,854.40/- Rs.1,161/-	23.06.2016 22.07.2016
93.	CRM-M-23774-2019	350608 360633	Rs.5,63,157/- Rs.12,747.60/-	15.12.2016 08.04.2017
94.	CRM-M-24141-2019	348274 347955 348349	Rs.9,00,000/- Rs.3,96,136.80/- Rs.67,744.80/-	20.07.2016 17.08.2016 18.08.2016
95.	CRM-M-23801-2019	348184	Rs.12,510/-	19.07.2016
96.	CRM-M-25932-2019	348116 739017	Rs.8,550/- Rs.24,228/-	16.05.2016 20.07.2016
97.	CRM-M-25993-2019	348207 348265 348942	Rs.8,550/- Rs.2,97,663/- Rs.1,90,291.50/-	22.07.2016 18.08.2016 19.08.2016
98.	CRM-M-23915-2019	348031	Rs.1,00,157.40/-	17.06.2016
99.	CRM-M-23861-2019	348320 348381	Rs.3,25,895/- Rs.8,742.60/-	18.08.2016 26.08.2016
100.	CRM-M-24140-2019	350614	Rs.10,77,565/-	09.03.2017
101.	CRM-M-23864-2019	347956	Rs.1,37,887.20/-	20.06.2016

102.	CRM-M-23863-2019	348290 348359 347996	Rs.2,77,624/- Rs.6,113.70/- Rs.1,44,057.60/-	12.08.2016 22.08.2016 23.08.2016
103.	CRM-M-25381-2019	350202	Rs.3,84,015/-	04.11.2016

Since the facts in all the complaints as well as grounds taken by the petitioner in all the petitions are identical, the same are taken from CRM-M-22417-2019.

The complainant filed the impugned complaint under Section 138 of N.I. Act with the following averments: -

"That accused No.2 to 7 are active directors of accused No.1. The accused No.2 to 7 are actively involved in the business of accused No.1. The accused No.2 to 7 are jointly and severally carry out business operations of accused No.1 which includes purchase of raw material i.e. paddy from different grain markets, transport of paddy to their premises, milling of paddy, converting it into rice, selling rice and its by products which includes rice litter, rice bran etc. in India as well as overseas. The accused No.2 to 7 frequently travel abroad for export of their rice. The accused No.2 to 7 attend to their offices and plants for carrying out business of accused No.1. Thus, the accused No.2 to 7 are responsible for day to day conduct and affairs of the business of accused No.1.

That accused used to purchase paddy from complainant on credit from time to time. The accused used to make on account payment in round figure to the complainant. The *complainant has charged interest @18% per annum on the unpaid amount as per market custom and oral agreement between the parties.*

That on 01.04.2014, a sum of Rs.3,44,213/- was due against the accused. During financial year, 2014-2015, the accused paid a sum of Rs.3,44,213/- to the complainant from 29.08.2014 to 20.12.2014. During this financial year, the accused purchased paddy worth Rs.3,17,715 on 14.02.2015 from complainant. A sum of Rs.4944/- was debited on account of interest on unpaid price and a sum of Rs.4,994/- was credited on account of tax deducted at source. In this way, a sum of Rs.3,62,212/- remained due towards accused on 31.03.2015. The interest after 31.03.2015 is also due against the accused. The statements of account of accused in the books of complainant for the year 2014, 2015, 2015-2016 & 2016-2017 are attached herewith."

It is further stated in the complaint that in discharge of his liability, the petitioner issued the cheques, as detailed above, which were, later on, dishonoured and after serving the legal notice, the impugned complaints were filed.

The trial Court, after recording the preliminary evidence, passed the summoning order, which reads as under: -

"Arguments on the summoning point of accused heard. Complainant has filed the instant complaint against the

accused under Section 138 of Negotiable Instruments Act on the ground that the accused in discharge of his existing liability had issued a cheque bearing No.260192 dated 15.12.2016 amounting to Rs.3,17,715/-, cheqeue bearing No.360650 dated 08.04.2017 amounting to Rs.6345.90 in favour of the complainant. On presentation, the said cheques were dishonoured by the bank with the remarks "Funds Insufficient and exceeds Arrangement". Thereafter a legal notice was issued and the same was sent, but the accused had failed to make the payment of the cheque in question. Hence, this complaint.

In preliminary evidence, the complainant has himself appeared as CW-1 and has also tendered his affidavit Ex.CW1/A along with Ex.C1 to Ex.C22.

In view of the evidence and documents as discharged above, a prima facie case for the commission of offence punishable under Section 138 of the Negotiable Instruments Act is made out against the accused. Let the accused be summoned for the commission of offence punishable under Section 138 of the Negotiable Instruments Act for 14.07.2017.

Sd/-
SDJM/Safidon"

The petitioner, thereafter, filed a revision petition before the Court of Sessions, however, on 18.02.2019, the same was withdrawn by the petitioner to approach the trial Court for discharging him on the grounds taken in the revision petition. The revisional Court, after recording statement of counsel for the parties, passed the following order: -

> *"Joint statement of counsel for the parties recorded. Heard. The present revision petition is disposed of in terms of the joint statement made by the counsel for the parties. The parties through their counsel are directed to appear before the trial Court on 01.03.2019. The trial Court would dispose of the application within two months from 01.03.2019. The personal appearance of the revisionist is exempted during the pendency of the application to be filed by the revisionist. Trial Court record alongwith a copy of this order and joint statement be sent back. Revision file be consigned to the record room after due compliance."*

Thereafter, the petitioner moved an application for dropping the proceedings and in para No.3 of this application, it is stated that the petitioner has resigned from directorship of the accused-company namely M/s Amira Pure Foods Pvt. Ltd. w.e.f. 21.01.2016 and in this regard, Form No.DIR-11 was sent to the Registrar of Companies on 30.01.2016 and Form No.DIR-12 was submitted to the Registrar of Companies by Aparna Puri, duly authorized director of the accused-company through Anjum Goyal, Company Secretary. It is also stated in the application that the petitioner is not the active director and therefore, the proceedings qua him are liable to be dropped. The trial Court, upon consideration of arguments of the parties, dismissed the application on 26.04.2019, by passing the following order: -

> *"I have heard learned counsel for both the parties and perused the case file carefully and thoroughly.*
>
> *The present application has been filed by the applicant/accused Anil Gupta for dropping proceedings qua him on the ground that he has been summoned as one of the accused in the present complaint which is with respect to cheques bearing no. 360192 and 360650 dated 15.12.2016 and 08.04.2017 respectively which were dishonoured vide separate return memos each for the want of sufficient funds. The main contention of ld. Counsel for the applicant/accused is that the applicant had already resigned as Director from the accused no.1 company on 21.06.2016 and in that regard DIR Form 11 was duly sent by the applicant to the Registrar of companies on 30.01.2016 and DIR Form 12 was in turn sent by the company to the Registrar of the companies on 22.7.2016. It has been argued that both the DIR Form 11 and 12 mention the date having effect of resignation of the applicant as 21.06.2016, which is much prior of the date of cheques in question, therefore, it has been argued that when the applicant was not part of accused no.1 company at the time of issuance of cheques in question, the applicant cannot be affixed with any liability under section 138 N.I. Act. Further, it has been argued that the applicant was never an active director of accused no.1*

company at any point of time and it has been argued that in a recent order dated 30.10.2018 passed by the Hon'ble Punjab and Haryana High Court in CRM-M-36869-2018, a responsibility has now been fixed on the complainant to file copy of Form No. 32 and the annual Return filed by the company in order to determine the persons, who were Directors on the date of commission of the offence except in cases where the accused-Director is the Chairman or Managing Director or Joint Managing Director or authorized signatory of the cheque. It has further been argued that the applicant never held any shares in accused no.1 company, which further implies that the applicant never played any active role in the business affairs of the accused no.1 company. With these submissions, it has been prayed that the application may kindly be allowed and in support of his contentions, the ld. Counsel for the applicant/accused has placed reliance on cases titled as ***Harshendra Kumar D. Vs. Rebatilata Koley etc., 2011(3) SCC 351, Mrs. Anita Malhotra Vs. Apparel Export Promotion Council and another, 2011(4) R.C.R. (Civil) 930, Sameer Bharati Vs. State of Haryana and another, 2014(10) R.C.R.(Criminal) 2521, Parmod Rani Vs. M/s Arora Iron and Steel Rolling Mills Pvt. Ltd., 2015(8) R.C.R. (Criminal) 622, State of NCT of Delhi Vs. Rajiv Khurana, 2010(5) Law Herald (SC) 3230, S.M.S.***

Pharmaceuticals Ltd. Vs. Neeta Bhalla and another, 2007(2) R.C.R.(Criminal) 126, N.K. Wahi Vs. Shekhar Singh and others, 2007(2) R.C.R.(Civil) 379, Amar Jeet Kalra Vs. Deepak Golcha, 2018(1) R.C.R. (Criminal) 368, Liugong India Pvt. Ltd. Vs. Yograj Infrastructure Ltd and others, 2018(187) AIC 722, Anil Gupta Vs. SKK Agro Pvt Ltd, decided on 11.02.2019 by the Hon'ble High Court of Delhi in Crl. M.C. 4092/2016 and Anil Gupta Vs. M/s Prashanna Mal Nand Lal Pundri, decided on 25.4.2016 by the Ld. ASJ, Kaithal in Crl. Revision no. 176 of 2018.

The ld. Counsel for the complainant on the other hand has opposed the present application on the ground that the present application is frivolous filed by the applicant with malafide intentions. It has been argued that the applicant has prepared an ante dated resignation dated 30.1.2016 whereas DIR Form-12 shows the resignation of the applicant to be digitally signed on 22.7.2016 by Director Aparna Puri of accused no.1 company. It has been argued that the applicant was actively engaged in the conduct and affairs of the company and the plea of resignation as raised by the applicant by way of present application is actually a plea of defence. He has further argued that the applicant/accused has adopted this modus operandi with an intention to defraud his creditors, however it is an established principle of law that the court *must not hesitate to lift the corporate veil to the extent of piercing the same if warranted in order to seek the truth. The ld. Counsel for complainant in support of his contentions has also placed reliance upon cases titled as* ***Mrs. Anuradha alias Renu Sayal Vs. Sat Pal Singh and Others, 2003(1) ISJ (Banking) 59, Bharat Poonam Chand Shah Vs. Dominos Printech India Pvt. Ltd., 2007(19) R.C.R. (Criminal) 440, Ved Prakash Gupta and another Vs. M/s Anchon Chemplast Pvt. Ltd. and others, 2013(5) R.C.R. (Criminal) 225, Standard Chartered Bank Vs. State of Maharashtra, 2016(2) Apex Courts Judgments (SC) 148, M/s Vipul Gupta (HUF) Vs. M/s. Trident Projects Limited and Ors., 2010(8) R.C.R. (Civil) 1237*** *and prayed that the application in hand may kindly be dismissed.*

The present application has been filed by the applicant for dropping proceedings qua him mainly on the ground that he had already resigned as Director from accused no.1 company on 21.1.2016, which is much prior to the date of issuance of cheques in question. It is pertinent to mention that the present complaint is with respect to the cheques alleged to have been issued by the accused persons with respect to paddy being purchased by accused no.1 company from the complainant on 14.02.2015 for an amount of Rs. 3,17,715/- and it is not a disputed fact that during the said period the *applicant/accused was very well on Board of Directors of accused no.1 company. It is a matter of very common practice that purchasers often issue post dated cheques at the time of purchase of articles with assurance of encashment of such cheques at the later stage and since the applicant was director during the period when the transaction of purchase of paddy had taken place, at this stage he cannot be outrightly said to be not responsible for that. Moreover, if the liability of the directors is waived off on the ground of their subsequent resignation i.e. after making purchase but before the issuance of cheque, it would amount to providing an easy tool in the hands of such directors who could easily defraud their debtors by taking a back door exist by making subsequent resignations after enjoying the fruits. As rightly argued by ld. Counsel for the complainant, it has been held by Hon'ble Apex Court in a catena of cases that the concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Thus, where the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.*

Further, directions as given by the Hon'ble Punjab and

Haryana High Court in CRM-M-36869-2018 decided on 30.10.2018 cannot be expected to be complied with by the complainant because the present complaint has been filed much prior to the aforesaid date of order. Moreover, the complainant in para 2 of the complaint has duly mentioned that accused no.2 to 7 are active directors and actively involved in the business of accused no.1 and as already discussed above, applicant/accused is admitted to be Director of accused no.1 company. The contention of ld. Counsel for applicant that the applicant did not hold any shares in accused no.1 company thus was not an active director is not tenable because Form No.MGT-7 as relied upon by applicant to show his zero share holding shows that even the other four directors also have no share holdings and if the role of director depends upon the total share holding then it would mean that none of the five directors had active role in the business of accused company, therefore then who all were responsible? Moreover, since applicant was director, the onus is upon him to prove by leading cogent evidence that he was only a sleeping/passive director not responsible for the act and conduct of accused company. Thus, there are no merits in the arguments as advanced by ld. Counsel for applicant and the case laws as relied upon by him are not disputed, however in view of above said discussion, they are not applicable to the facts of the *present complaint.*

Thus, in view of the discussion made herein above, there being on merits in the application in hand, the same is hereby dismissed."

Present petitions have been filed for quashing of the impugned complaints, the summoning orders and the orders dismissing the applications for dropping the proceedings/for discharging the petitioner.

Since while issuing notice of motion, further proceedings before the trial Court qua the petitioner were stayed, all these matters are taken up in the urgent list.

Learned counsels for the petitioner have argued that the petitioner has resigned from directorship of the accused-company w.e.f. 21.01.2016 and the cheques were issued subsequently and therefore, the petitioner is not liable to be prosecuted. It is further argued that the petitioner has submitted the information to the Registrar of Companies in Form No.DIR-11 and later on, duly authorized director of the accused-company had furnished Form No.DIR-12 as well, intimating that the petitioner has resigned from directorship of the accused-company w.e.f. 21.01.2016. It is also argued that there is no specific averments in the complaint that the petitioner was an active partner and the person responsible for the day to day business of the company, as he was holding no share in the company. It is next argued that the petitioner is not authorized signatory of the cheques and therefore, the petitioner cannot be prosecuted.

Learned counsels for the petitioner have relied upon judgments in **Pooja Ravinder Devidasani Vs. State of Maharashtra and another, 2015 (3) SCC (Civil) 384, Harshendra Kumar D. Vs. Rebatilata Koley etc., 2011 (3) SCC 351, Mrs. Anita Malhotra Vs. Apparel Export Promotion Council and another, 2011 (4) RCR (Civil) 930** and **Anil Khadkiwala Vs. State (Government of NCT of Delhi) and another, 2019 (3) RCR (Crl.) 971** to argue that the Hon'ble Supreme Court has held that a non-executive director of the company or a director, who has resigned prior to issuance of the cheque cannot be prosecuted. It is further held by the Hon'ble Supreme Court that the complainant should specifically spell out how and in what manner, the director was incharge and responsible for the conduct of business of the company and mere bald statement is not sufficient. The Hon'ble Supreme Court has also held that Form 32 issued by the Registrar of Companies shows proof of resignation of the director prior to issuance of the cheque(s).

Learned counsels for the petitioner have further relied upon **Anil Chanana and another Vs. M/s Gyani Ram Ruliya Ram and another, 2019 (1) RCR (Crl.) 388** to submit that with regard to another director of the same accused-company M/s Amira Pure Foods Pvt. Ltd., who had also resigned prior to issuance of the cheques, the complaints were quashed.

Learned counsels for the respondent-complainant have argued that in para No.2 of the complaint, it is specifically stated that the petitioner is one of the active director and the accused-company is purchasing the raw material i.e. paddy from the different grain markets and is transporting the same to its premises and after milling the paddy, is selling the rice as well as its by-products in India as well as overseas. It is also specifically stated that the petitioner and other accused are frequently travelling abroad for export of the rice and are attending their offices for carrying out the business and are responsible for day to day conduct and affairs of the accused-company. It is further stated in para No.3 of the complaint that all the accused used to purchase paddy from the complainant(s) on credit basis from time to time and during the financial year 2014-2015, the accused paid some amount to the complainant(s), as given in all the complaints and further detail is given that during the financial year 2014-2015, the accused have purchased paddy on the given dates from the complainant(s). The statements of account of accused-company for the years 2014-2015, 2015-2016 and 2016-2017 are attached with the complaints.

Learned counsels, on the basis of averments made in paras No.2 to 5 of the complaint, have argued that once the outstanding amount against the accused-company, which was due towards the complainant(s), was duly reflected in their books of account for the relevant financial years starting from 2014-2015 onwards, liability is admitted towards the company. It is further argued that neither in the application(s) for discharge, attached with the present petitions nor in these petitions, the petitioner has denied the fact that when the accused-company was purchasing the paddy, he was a director of the company. It is next argued that in the applications for discharge or in the present petitions, it is not denied that when the purchases were made, the petitioner was not active director and only a passing reference is made that he is not active director, after his resignation.

Learned counsels for the respondent-complainant have further argued that even there is no denial in the applications for discharge or in the grounds taken in the petitions, regarding the books of account of the accused-company that the amount was outstanding towards the company, against which various cheques were issued. Learned counsels for the petitioner have neither relied upon any such document to show that the petitioner is not holding any share, as the Forms relied upon by the petitioner, though show his 0% share and all other directors and therefore, the same needs to be proved by leading the evidence. It is submitted that all the arguments raised on behalf of the petitioner are based on disputed questions of facts and even Form No.DIR-12, relied upon by the petitioner, shows that it was digitally signed by director Aparna Puri on 22.07.2016 and therefore, again it is disputed fact whether the petitioner resigned on 21.01.2016 or not, as in the intervening period, the cheques were issued.

Learned counsels for the respondent have next argued that the petitioner, after purchasing the paddy worth crores of rupees, as director of the company from the commission agents, who have further purchased it from the poor farmers, has failed to own his liability on account of which the complainant(s) are not able to make the payment to the farmers and they are ultimate sufferers. It is further argued that the petitioner has submitted the ante-dated Forms with the Registrar of Companies just to escape his liability, as no evidence is placed on record to rebut the averments made in the complaint that the petitioner, being director, was frequently travelling abroad and for the relevant period, no copy of the passport is placed on record, to show that he never travelled to the countries, where the accused-company M/s Amira Pure Foods Pvt. Ltd. was exporting the rice and the petitioner has deliberately withheld this evidence. It is also argued that the petitioner has not disclosed in the applications for discharge or in the present petitions, as who had issued the cheques, just to mislead the Court. Learned counsels thus pray that all these petitions may be dismissed.

After hearing learned counsel for the parties, I find that there is no dispute with regard to judgments of the Hon'ble Supreme Court, relied upon by learned counsels for the petitioner, that a non-executive director or a director, who has resigned prior to issuance of the cheque(s), cannot be prosecuted and there should be a specific averment in the complaint that the director was incharge and responsible for the conduct of business of the accused-company. It is also not disputed that Form No.32 issued by the Registrar of Companies is a proof of resignation of the director. However, on appreciation of the pleadings and facts of the present cases, I do not find any merit in the present petitions, for the following reasons: -

(a) The petitioner has, intentionally, not attached Form No.32 to show the date, when his resignation was accepted by Registrar of Companies. As per Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014 (for short 'Rules of 2014'), a director of the company, upon resignation, will forward his resignation in Form No.DIR-11 along with fees.

Thereafter, as per Rules 15 & 18 of the Rules of 2014, the company will inform the Registrar of Companies in Form No.DIR-12 and will also post the information on the website. A perusal of Form No.DIR-12, relied upon by the petitioner, shows that the declaration was signed by Aparna Puri, existing Director on 23.05.2016 and it was also digitally signed by the Company Secretary Anjum Goyal. Therefore, it is a disputed fact, as on which date, resignation of the petitioner was accepted and therefore, I find no illegality in the findings recorded by the trial Court that it could be an ante-dated information given by the petitioner to escape his liability.

(b) The petitioner neither in the application(s) for discharge moved before the trial Court nor in the grounds of petitions taken here, has relied upon any certificate from the office of Registrar of Companies, as to when his resignation was accepted and this information is withheld by the petitioner.

(c) The complainant(s) in the impugned complaint(s) have specifically averred that the petitioner was an active director of the accused-company and had purchased the paddy from the grain markets from commission agents/farmers and after milling the same, was selling the by-products in India as well as overseas. There is a specific averment in para No.2 of the complaint that the petitioner was travelling abroad on behalf of accused No.1-company for export of the rice and was attending the offices of accused-company for carrying out its business and thus, he was responsible for day to day conduct and affairs of the company.

(d) The petitioner has not filed any affidavit contrary to the allegations in complaint, either before the trial Court, when the application(s) for discharge were moved or in this Court, that on behalf of the company, he has never travelled abroad for exporting the rice and even has not attached copy of his passport to deny this fact. Even there is no denial to the statement of accounts for the years 2014-2015, 2015-2016 and 2016-2017, relied upon by complainants that petitioner is an active director and responsible person.

(e) The trial Court, while dismissing the application, has also observed that as per the annual returns filed by the company pertaining to the years 2014-2015, 2015-2016 and 2016-2017, the cheques amount is equal to the outstanding amount towards the company and the petitioner, being a director, is responsible for the same.

(f) A perusal of the application(s) for discharge as well as the grounds taken in these petitions shows that though the petitioner has stated that he is not signatory of the cheques but nothing has come on record, who had signed the cheques, as there is no pleading to this effect in the application(s) for discharge or in the present petition giving name of the concerned director.

(g) The arguments of learned counsels for the petitioner, based upon judgment of this Court in **Anil Chanana**'s case (supra) is distinguishable, as in the said case, petitioner Anil Chanana had retired from the company in the year 2006 and the cheques were issued in the year 2017, whereas, in the present cases, Form No.DIR-11 shows that the petitioner was inducted as director in the year 2006 and as per his own statement, he remained as director for a period of 10 years, including the period, when the purchases from the complainant(s) were made, therefore, his case is distinguishable from Anil Chanana's case.

(h) The petitioner neither in the application(s) for discharge nor in the present petitions has denied the fact that as per statements of account of the accused-company pertaining to the relevant period, the liability towards the complainant(s) is not disputed and at that time, the petitioner was a partner, therefore, the argument, that the petitioner was having 0% share, is not acceptable, as even other partners are shown to be having 0% share and for the internal adjustment of directors, no fault can be found with the complaint(s) filed by the respondent(s).

In view of the above, considering the disputed questions of facts, which need to be proved by leading the defence evidence and also in view of the vague pleadings of the petitioner regarding nondenial/explanation of the various facts in the complaint(s) and the discrepancies in Form No.DIR-12, the Court find no ground to quash the criminal complaint(s) and all other proceedings arising therefrom.

Accordingly, all these petitions are dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

21.11.2019
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No