

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8043 of 2018 (O&M)
and other connected cases
Date of Order: 21.08.2019

Anil Chanana

..Petitioner

Versus

Sanjay Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None.

ANIL KSHETARPAL, J.

By this order, CRM-M-8043, 7965, 7969, 7988, 7989, 7079, 7093, 8170 of 2018 and CRM-M-44657, 44666 of 2017 shall stand disposed of as the issues which need determination are common and criminal complaints filed under Section 138 read with Section 141 of Negotiable Instruments Act are similarly worded.

In all these petitions Amira Pure Foods Pvt. Ltd. is accused no.1. Amira Pure Foods Pvt. Ltd. is alleged to have committed offence under Section 138 read with Section 141 of the Negotiable Instruments Act as the negotiable instruments (cheques), on presentation were dishonoured by the bank of the drawer and the payment has not been made inspite of the notice of demand. In all the cases petitioner Anil Chanana has been impleaded as an accused being the Director of Amira Pure Foods Pvt. Ltd..

The details of all the cases along with complaint number, name

of complainant, date of the cheque, amount can be noticed from the following table:-

CRM-M-No.	Complaint No. and Name of complainant	Date of Cheque and amount	Resigned as Director and Chairman. Form-32 (Annex. P-5)
8043-2018	1128 of 2016(Sanjay Kumar)	29.08.2016 (Rs.24,300/-)	10/02/06
7989-2018	1148 of 2016(Abhinav)	18.07.2016 (6,90,869/-) 22.08.2016 (38,700/-)	10/02/06
7988-2018	1001 of 2016(Rajinder Parshad)	20.06.2016 (6,52,067/-) 18.07.2016 (6,00,000/-) 22.08.2016 (54,000/-)	10/02/06
7969-2018	1129 of 2016(Sanjay Kumar)	14.07.2016 (2,18,080/-)	10/02/06
7093-2018	429/147 of 2017(Sudesh Rani)	06.04.2017 (66,600/-)	10/02/06(P-4)
8170-2018	1127 of 2016 (Sanjay Kumar)	25.07.2016 (1,02,522/-)	10/02/06
7965-2018	1002 of 2016(Shyam Lal)	15.07.2016 (8,99,627/-) 25.08.2016 (60,300/-)	10/02/06
7079-2018	430/148 of 2017(Gourav Chhabra)	06.04.2017 (45,900/-)	10/02/06(P-4)
44657-2017	1145 of 2016(Shamsher Singh)	11.08.2016 (4,75,705/-)	10/02/06(P-4)
44666-2017	1143 of 2016(Shamsher Singh)	16.08.2016 (32,400/-)	10/02/06(P-4)

Anil Chanana has sought quashing of the proceedings pending against him on the ground that he had already resigned from the Company with effect from 10.02.2006. Form-32 has been placed on file. Hence, it is contended that the petitioner cannot be made vicariously liable and punished for offence having been committed by the company i.e. Amira Pure Foods Pvt. Ltd.

In the considered opinion of this court, the present petition is liable to be allowed for the following reasons:-

- (1) Similar petition filed by the petitioner with respect to similar assertions involving the same company i.e. Amira Pure Foods Pvt. Ltd. on the ground that he had resigned from the company on 10.02.2006 i.e. 10 years before the issuance of the cheques which were

dishonoured, has been allowed vide order dated 21.12.2017 in CRM-M-47659-2017.

- (2) From the reading of the complaints filed under Section 138 read with Section 141 of the Negotiable Instruments Act, it is apparent that necessary assertions/averments in terms of Section 141 of Negotiable Instruments Act have not been made with respect to the petitioner. Where a cheque issued by a company is dishonoured, it is the requirement of the Act that 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* shall be deemed to be guilty of the offence under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. Such assertions are required to be incorporated in the complaint filed before the trial Court. On careful reading of all the complaints, it is apparent that no averments to that effect have been made. Reference in this regard can be made to a judgment passed by the three Judge Bench of the Supreme Court in the case of **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another, (2005) 8 SCC 89** and various other judgments. It may be noted that petitioner-Anil Chanana had also filed various similar petitions, in fact 132 in number, which were allowed vide a detailed judgment in CRM-M-36869-2018 by a coordinate Bench vide

judgment dated 30.10.2018.

- (3) Petitioner had resigned from the company on 10.02.2006 as per Form-32. There is no rebuttal to the aforesaid assertion. The person who can be in charge of a company and responsible to the company for the conduct of the business of the company has been dealt with in detail by the Hon'ble Supreme Court in the case of *National Small Industries Corp. Ltd. vs. Harmeet Singh Paintal & Anr., 2010(3) SCC 330.* Hence, petitioner does not fall within the scope of Section 141 of the Negotiable Instruments Act, 1881.

In view of the aforesaid, all the petitions are allowed. The summoning order as well as complaints bearing numbers 1128, 1148, 1001, 1129, 1127, 1002, 1145, 1143 of 2016 and 429/147, 430/148 of 2017 and all subsequent proceedings arising therefrom are hereby quashed qua petitioner only.

21st August, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No