

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Decided on: 20.12.2021

1. CRM-M No.12545 of 2021 (O&M)

Sunil Kumar Joshi and another
.....Petitioners
Versus
State of Haryana and another
.....Respondents

2. CRM-M No.31343 of 2019 (O&M)

Sunil Kumar Joshi and another
.....Petitioners
Versus
M/s. Gurbachan Singh Pardeep Singh
.....Respondent

3. CRM-M No.31739 of 2019 (O&M)

Sunil Kumar Joshi and another
.....Petitioners
Versus
M/s. Gurbachan Singh Pardeep Singh
.....Respondent

4. CRM-M No.31740 of 2019 (O&M)

Sunil Kumar Joshi and another
.....Petitioners
Versus
M/s. Gurbachan Singh Pardeep Singh
.....Respondent

5. CRM-M No.21137 of 2019 (O&M)

Vikram Joshi
.....Petitioner
Versus
M/s. Gurbachan Singh Pardeep Singh
.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Bipan Ghai, Sr. Advocate
with Mr. Bhupinder Ghai, Advocate
and Mr. Rishabh Singla, Advocate
for the petitioner (in all the cases)

Mr. R.N. Lohan, Advocate
for the respondent(s)/complainant(s).

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN J.

1. CRM-M No.12545 of 2021 (O&M)

Prayer in this petition is for quashing of FIR No.427 dated 13.12.2017 registered under Sections 34, 406, 420, 506 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Gohana Sadar, District Sonapat as well as the report report under Section 173 Cr.P.C. on the ground that on the joint request of the petitioners as well as the victims, the matter was sent to the Mediation and Conciliation Centre of this Court and as per the award of the Mediator, Rs.1.65 crore has been disbursed to 34 claimants, though the complainant Pardeep Singh has refused to accept his part of share and rather has moved an application for cancellation of anticipatory bail granted to the petitioners.

Learned senior counsel for the petitioners has prayed for quashing of the FIR on the ground that in fact, from the very inception of registration of the FIR, the intention of the complainant/respondent No.2 i.e. M/s. Gurbachan Singh Pardeep Singh, through its Proprietor Pardeep Singh, is *mala fide* as there was *inter se* dispute between the

complainant as well as 36 other claimants who were asking for making the payment directly to them whereas the complainant – Pardeep Singh wanted that the entire amount be paid to him so that he may distribute the same to the other victims as per his own sweet will. It is further submitted that in the absence of any intention to cheat, the offence under Sections 420 and 406 IPC is not made out. It is further submitted that the provisions of Section 420 IPC are mutually destructive to the provisions of Section 406 IPC, in as much as the provisions of Section 420 IPC entails fraudulent intention at the instance of the accused whereas Section 406 IPC calls for misappropriation of he entrusted property.

Learned senior counsel for the petitioners further argued that as per the allegations in the FIR, lodged on the basis of a complaint dated 30.12.2017, it is alleged that during the year 2013-14, the complainant received a call from the co-accused Anil Mahajan, Director of M/s. Chintpurni Foods Private Limited, asking him to meet the complainant at his office regarding purchase of Paddy from Jind Mandi. When Pardeep Singh, went to the rice mill at village Jolly, he met Anil Mahajan, Oshank Mahajan, Ankit Gupta and Parveen Sharma, all co-accused of the petitioners. Thereafter, Anil Mahajan (co-accused) issued an authority letter on behalf of M/s. Chintpurni Foods Private Limited for purchasing the Paddy from Jind Mandi through Parveen Sharma (who was exonerated during the investigation) and started purchasing the Paddy in 2013-14 and the outstanding amount was Rs.8,15,454/-. Later on, in the subsequent year 2014-15, the

outstanding amount of the Paddy purchased, was about Rs.11.00 crores and whenever, the complainant asked Anil Mahajan (co-accused) about the payment, he used to ensure that the same will be made through RTGS. Thereafter, when the complainant visited Anil Mahajan at his office and calculated the balance amount, the same was found to be approximately Rs.6.00 crores and for that 12-13 post-dated cheques were issued in the name of different firms of Mandi, which was dishonoured and thereafter, the FIR was registered and later on, the investigation was partly conducted and the report under Section 173 Cr.P.C., has been submitted against co-accused Anil Mahajan and Oshank Mahajan.

Learned senior counsel for the petitioners has further submitted that from the bare perusal of the FIR, no entrustment of Paddy is made to the petitioners and therefore, no offence is made out. It is further submitted that there are 02 sets of allegations, one against co-accused Anil Mahajan and Oshank Mahajan, who were arrested and during their custodial investigation, they have alleged that the petitioners are also indulged in the offence whereas no direct allegations are there in the FIR. Learned senior counsel for the petitioners has argued that still to show their *bona fide*, the petitioners have repaid the amount of Rs.1.65 crores (approx.) to the victims though they had no such liability to pay and therefore, the FIR is nothing but abuse and misuse of process of law as during the pendency of their anticipatory bail application, the petitioners have shown their *bona fide* and from time to time have deposited the amount with the

Registrar General of this Court and ultimately, the entire dispute is settled with all the 34 victims and even the share of the complainant Pardeep Singh stands deposited in this Court and therefore, the FIR may be quashed. It is further submitted that the only evidence against the petitioners is the statements suffered under Section 27 of the Evidence Act, by co-accused Anil Mahajan and Oshank Mahajan and the same is not admissible against the petitioners in the present scenario as the petitioners have already repaid the entire amount to the victims. It is also submitted that even 02 of the co-accused namely Ankit Gupta and Parveen Sharma, who were also named in the FIR were found innocent by the police and no challan was presented *qua* them.

It is worth noticing that in terms of the mediation settlement award, the Registrar General of this Court vide its payment order dated 22.07.2019, informed the Court that the following payment has been made to the victims:-

“Vide order dated 05.07.2019, Ld. Registrar General has been pleased to accord sanction to the payment of Rs.1,57,42,071/- (Rupees One Crore Fifty Seven Lacs Forty Two Thousand and Seventy One Only) to claimants mentioned below through digital mode as per their respective bank details mentioned below in the table, in view of order dated 28.03.2019 and subsequent order dated 28.05.2019 passed by this Court in the abovesaid cases i.e. CRM-M-11095 of 2018 and CRM-M-11132 of 2018.

CRM-M-12545-2021 (O&M) AND OTHER CONNECTED PETITIONS

<i>Sr. No.</i>	<i>Name</i>	<i>Bank Name & Address</i>	<i>Account No.</i>	<i>IFSC Code</i>	<i>Amount</i>
<i>1</i>	<i>ROHTASH SINGH ASHISH KUMAR</i>	<i>CENTRAL BANK OF INDIA, MAHARAJA AGARSEN GIRLS SCHOOL, JIND, HARYANA-126102</i>	<i>3300411475</i>	<i>CBIN0283475</i>	<i>Rs.6,19,994/-</i>
<i>2</i>	<i>KAPOOR SINGH PUNEET</i>	<i>HDFC BANK, S.C.O. NO.202, 203, HUDA MARKET, OPP. SP. RESIDENCE, JIND-126102</i>	<i>50200002853390</i>	<i>HDFC0000680</i>	<i>Rs.1,87,680/-</i>
<i>3</i>	<i>KHARB TRADING CO.</i>	<i>S.B.I SHOP NO.54, NEW GRAIN MARKET, ROHTAK ROAD, JIND</i>	<i>65220320108</i>	<i>SBIN0051450</i>	<i>Rs.6,82,419/-</i>
<i>4</i>	<i>PILLANIA TRADING CO.</i>	<i>YES BANK LTD. GROUND FLOOR, SCO NO.7, HUDA DISTRICT SHOPPING CENTRE JIND</i>	<i>6784600000816</i>	<i>YESB0000167</i>	<i>Rs.3,35,624/-</i>
<i>5</i>	<i>SHAIB RAM TEK RAM</i>	<i>CENTRAL BANK OF INDIA, SHARMA NAGAR, JIND HARYANA-126102</i>	<i>3307061330</i>	<i>CBIN0280411</i>	<i>Rs.14,15,872/-</i>
<i>6</i>	<i>DEEPAK ENTERPRISES</i>	<i>STATE BANK OF INDIA, SHOP NO.54, NEW GRAIN MARKET, JIND</i>	<i>65213736570</i>	<i>SBIN0051450</i>	<i>Rs.8,56,064/-</i>
<i>7</i>	<i>CHAUDHARY COMMISSION AGENT</i>	<i>S.B.I. NEW GRAIN MARKET, ROHTAK ROAD, JIND</i>	<i>65282500790</i>	<i>SBIN0051450</i>	<i>Rs.1,97,306/-</i>
<i>8</i>	<i>CHAUDHARY TRADING COMPANY</i>	<i>S.B.I. NEW GRAIN MARKET, ROHTAK ROAD, JIND</i>	<i>65224063496</i>	<i>SBIN0051450</i>	<i>Rs.3,87,299/-</i>

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9	TIRUPATI BALA JI TRADERS	S.B.I. NEW GRAIN MARKET, ROHTAK ROAD, JIND	3702438689 0	SBIN0051450	Rs.4,54,312,-
10	TIRUPATI BALA JI COMMISS ION AGENTS	S.B.I. NEW GRAIN MARKET, ROHTAK ROAD, JIND	6520282566 7	SBIN0051450	Rs.1,65,930/-
11	M/S SHREE GHANPATI COMMISS ION AGENT	YES BANK LTD. GROUND FLOOR, SCO NO.7, HUDA DISTRICT SHOPPING CENTRE, JIND	1678460000 0406	YESB0000167	Rs.3,32,401/-
12	SURESH KUMAR & SONS	CENTRAL BANK OF INDIA, SHARMA NAGAR, JIND HARYANA- 126102	3149407685	CBIN0280411	Rs.4,86,650/-
13	MANGE RAM SATBIR KUMAR	HDFC BANK, SCO-2020, 203, HUDA MARKET, OPP, SP RESIDENCE JIND-126102	5020000296 2821	HDFC000068 0	Rs.4,19,036/-
14	M/S LAKHI RAM ARUN KUMAR	ORIENTAL BANK OF COMMERCE, NEAR RANI TALAB, JIND	4485011000 090	ORBC010044 8	Rs.2,20,433/-
15	M/S SINDHU TRADING CO.	CENTRAL BANK OF INDIA, SHARMA NAGAR, JIND HARYANA- 126102	3012666089	CBIN0880411	Rs.5,35,926/-
16	M/S PANNA LAL PARDEEP KUMAR	STATE BANK OF INDIA, SHOP NO.54, NEW GRAIN MARKET, JIND	6526513148 3	SBIN0051450	Rs.3,34,775/-

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17	M/S YADAV ENTERPRISES	CENTRAL BANK OF INDIA, SHARMA NAGAR, JIND HARYANA-126102	3218516347	CBIN0280411	Rs.5,43,132/-
18	M/S RATI RAM OM PARKASH	HDFC BANK, VILLAGE KISHANPURA, P.O. BISHANPURA, DISTRICT JIND	50200007624731	HDFC0003899	Rs.2,28,135/-
19	M/S D.K. ENTERPRISES	CENTRAL BANK OF INDIA, SHARMA NAGAR, JIND, HARYANA-126102	3087890852	CBIN0280411	Rs.3,73,706/-
20	M/S SURAJ BHAN SADB RAM	ALLAHABAD BANK, OPPOSITE RANI TALAB, DISTT. JIND	20644136598	ALLA0211971	Rs.3,14,551/-
21	M/S RAM KARAN DASS VIJAY KUMAR	HDFC BANK, SCO, 202, 203, HUDA MARKET, OPP. SP RESIDENCE, JIND-126102	50200000572948	HDFC000680	Rs.5,64,084/-
22	M/S CHANDGI RAM RAJESH KUMAR	SBI, SHOP NO.54, NEW GRAIN MARKET, ROHTAK ROAD, JIND	65213652907	SBIN0051450	Rs.4,11,467/-
23	M/S ATUL TRADING COMPANY	SBI, SHOP NO.54, NEW GRAIN MARKET, ROHTAK ROAD, JIND	65212637184	SBIN0051450	Rs.4,19,517/-
24	M/S SHREE PAWAN PUTRA ENTERPRISES	SBI, SHOP NO.54, NEW GRAIN MARKET, ROHTAK ROAD, JIND	65228417558	SBIN0051450	Rs.3,12,124/-

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25	M/S JAGLAN TRADING COMPANY	SBI, SHOP NO.54, NEW GRAIN MARKET, ROHTAK ROAD, JIND	37597490692	SBIN0051450	Rs.4,48,746/-
26	M/S JAMIDAR ENTERPRISES	YES BANK LTD., GROUND FLOOR, SCO NO.7, HUDA DISTRICT SHOPPING CENTRE JIND	16784600000181	YESB0000167	Rs.5,33,141/-
27	M/S BANSAL TRADING COMPANY	BANK OF INDIA, JIND BRANCH, HARYANA 126102	674030110000189	BKID0006740	Rs.7,93,304/-
28	M/S VIKAS ENTERPRISES	ANDHRA BANK, SCO 23, DISTT SHOPPING CENTRE JIND	178231100000265	ANDB0001782	Rs.6,73,984/-
29	M/S DHANPAT RAI BALKISHAN	HDFC BANK, VILLAGE KISHANPURA, P.O. BISHANPURA, DISTRICT JIND	50200002140316	HDFC0003899	Rs.3,03,483/-
30	M/S SAHIL TRADING CO.	BANK OF INDIA, JIND BRANCH, HARYANA-126102	674030110000085	BKID0006740	Rs.2,35,765/-
31	M/S MANGAL SAIN GITARAM	SBI, SHOP NO.54, NEW GRAIN MARKET, ROHTAK ROAD, JIND	65222934037	SBIN0051450	Rs.5,06,755/-
32	M/S RAM AVTAR TRADING CO.	CENTRAL BANK OF INDIA, SHARMA NAGAR, JIND HARYANA-126102	1462175036	CBIN0280411	Rs.4,39,757/-
33	M/S C.R. ENTERPRISES	ORIENTAL BANK OF COMMERCE, NEAR RANI TALAB, JIND	4485015007307	ORBC0100448	Rs.7,78,040/-

34	M/S CHHOTU RAM RADHE SHYAM	ALLAHABAD BANK, OPPOSITE RANI TALAB, DISTT. JIND	5017202807 4	ALLA0211971	Rs.2,30,659/-
TOTAL					Rs.1,57,42,071/- (rounded off)

The above said amount was deposited in Personal Ledger Account vide Deposit Receipt Nos.63 dated 06.04.2019, 483 dated 01.06.2019, 484 dated 01.06.2019 and 667 dated 12.07.2019 with the Registry of this Hon'ble High Court.

The payment involved shall be chargeable to Personal Ledger Account.

*Sd/-
Assistant Registrar
for Registrar General”*

The list was prepared as per the information supplied by the Investigating Officer as well as the list attached with the settlement award passed by the Mediation and Conciliation Centre.

On 05.09.2019, an office note was put up that the complainant namely Pardeep Singh at Serial No.11 of the settlement award, *qua* whom the petitioners have deposited Rs.7,62,958/- as per the award of the Mediator has not withdrawn the same and therefore, it was directed that the same be kept in an FDR.

Now the present application has been filed by the complainant Pardeep Singh that the order dated 28.03.2019 granting bail to the petitioners be recalled as he is the complainant in the main FIR and instead of disbursing the entire amount to him, the same has been disbursed to the other victims.

A reliance is placed on the compromise deed as noticed above, entered into between the petitioners and the complainant –

Pardeep Singh, to submit that the complainant has not signed the award before the Mediator and a huge amount is outstanding towards the petitioners.

The contents of Mark A i.e. the original compromise deed dated 04.04.2018, which is signed by the complainant – Pardeep Singh and both the petitioners – Sunil Kumar Joshi and Vikram Joshi, are reproduced as under:-

“COMPROMISE DEED”

This compromise has been arrived at on this 4th day of April, 2018

BETWEEN

'Pardeep Singh' son of Gurbachan Singh Shop
No.157, New Anaj Mandi Jind, Jind City, Haryana.
(Hereinafter called as the First Party),

AND

1. ***'Sh. Sunil Kumar Joshi'*** son of Sh. Dharampal Joshi, resident of Village Bungal, Dalhousie Road, Pathankot, Punjab.

2. ***'Vikram Joshi'*** son of Sh. Sunil Kumar Joshi, resident of House No.14, Arya Nagar, Dehradun, Utrakhand.

(Hereinafter called as the Second Party)

1. *Whereas first party had filed a complaint with the police and FIR No.427 dated 13.12.2017 under section 406, 420, 506, 34 of IPC was registered at P.S. Gohana Sadar, District Sonapat against second party & others.*

2. *That the matter has been amicably resolved between the parties with the intervention of respectables and friends and it has been decided that Second Party shall pay a total sum of Rs. One Crores Niney Lakhs being*

their liability to the First Party.

3. That the Second Party has given cheque No.798056 dated 04.04.2018 amounting to Rs.50 Lacs, cheque No.798057 dated 04.06.2018 amounting to Rs.35 Lacs, cheque No.798058 dated 05.06.2018 amounting to Rs.35 Lacs, cheque No.798059 dated 04.08.2018 amounting to Rs.35 Lacs, cheque No.798060 dated 05.08.2018 amounting to Rs.35 Lacs of Punjab National Bank, Mamoon Cantt. Pathankot bearing account No.3485000102003354 to the first party and the first party will have no objection to withdraw the above said amount of Rs.50 lacs deposited before this Hon'ble Court and also have no objection if the anticipatory Bail Petition's bearing CRM-M 11095 and 11132 of 2018 be allowed to the second party.

4. That it has also been agreed that the first party will withdraw the cases filed by him under the provisions of section 138 of the N.I. Act pending in the judicial courts at Jind against the second party i.e. Sh. Sunil Kumar Joshi and Sh. Vikram Joshi only. It has also been agreed that if any other complaint is pending before any authority filed by either of the parties against each other and he same is not in the knowledge of the parties, the same shall also be withdrawn and both the parties will not file any complaint/litigation against each other or their family members regarding this dispute subject to the condition that in case the above said cheque No.798056 dated 04.04.2018 amounting to Rs.50 Lacs, cheque No.798057 dated 04.06.2018 amounting to Rs.35 Lacs, cheque No.798058 dated 05.06.2018 amounting to Rs.35 Lacs, cheque No.798059 dated 04.08.2018 amounting to Rs.35 Lacs, cheque No.798060 dated 05.08.2018 amounting to Rs.35 Lacs of Punjab National Bank, Mamoon Cantt. Pathankot bearing

account No.3485000102003354 given by the second party to the first party are not encashed, the first party will be at liberty to file the complaint under section 138 of the N.I. Act and will also be at liberty to get all the cases revived against the second party.

5. That the first party will also not object for quashing of the FIR against the second party only i.e. Sh. Sunil Kumar Joshi and Sh. Vikram Joshi in the event of the encashment of the above said cheques i.e. after receiving the entire payment i.e. 1,90,00,000/- (One Crores Ninety Lacs only).

The present compromise has been effected without any pressure, threat or coercion. Both the parties have read over the same and have understood the contents of the same and have signed the same to be true and correct.

In witness whereas all the parties put their signatures in the present of following witnesses.

Witness No.1 (Sd/-)

First Party (Sd/-)

Witness No.2 (Sd/-)

Second Party (Sd/-)

Learned senior counsel for the petitioners has argued that in terms of the said award, certain cheques were issued by the petitioners, which were not encashed and the complaint under Section 139 of the Negotiable Instruments Act, 1881, has been filed by the complainant – Pardeep Singh.

Learned senior counsel for the petitioners has referred to the award, which is executed before the Mediation and Conciliation Centre of this Court on 24.08.2018, under the signatures of both the petitioners and the private respondents/victims.

For a ready reference, the same is also reproduced as under:-

“This agreement is executed today between Mr. Sunil Kumar Joshi s/o Sh. Dharampal Joshi and Vikram Joshi s/o Sh. Sunil Kumar Joshi represented through their Power of Attorney Holder Sh. Jatender Pal Singh Sawhney s/o Kuldeep Singh r/o G-32, 2nd Floor, Shiv Nagar, New Delhi-110058 a copy of Authorization Letter through e-mail has been received and attached with this agreement as Annexure C-1 and members of Aartia Association Jind Anaj Mandi, Haryana who are present today before the Mediation Centre as per orders passed by the Hon'ble Court in CRM-M-11095 of 2018 and CRM-M-11132 of 2018 on the following terms:-

a) There is a list of members of Jind Mandi pertaining to year 201-15 containing 36 members with a total outstanding amount of Rs.1,79,25,440.01 given by Mr. Sunil Kumar Joshi and Mr. Vikram Kumar Joshi through their Power of Attorney Holder Sh. Jatender Pal Singh Sawhney s/o Kuldeep Singh r/o G-32, 2nd Floor, Shiv Nagar, New Delhi-110058 to the Mediators and the list has been checked by all the members present before the Mediation Centre and they have put their signatures consenting to the corresponding amount, except Sr. No.15 Karan Commissions Agent whose payment has been earlier cleared in a separate matter. The members who are present today, their payment and other members of the Jind Mandi whose named are mentioned in the list attached with this agreement as 'Annexure C-2', there payment shall be made by the above said Mr. Sunil Kumar Joshi and Vikram Kumar Joshi within a period of 4 months from today i.e. 24.08.2018.

b) Apart from above, if any other member of

Jind Mandi bring all the necessary documents which includes total sale as per D2 and I Forums qua M/s. Chintpurni Foods Pvt. Ltd. which includes file other members apart from Annexure C-2 have given their names as claimants through their counsel, their names are mentioned below:-

- i) M/s Mann Enterprises,*
- ii) M/s Rahul Trading Co.,*
- iii) M/s Raghbir Singh Balwan Singh,*
- iv) M/s Dhanda Commission Agent,*
- v) M/s Dhanda Trading Co., their payment shall*

also be made after verification in the same manner.

c) That both the parties present today has put their signatures on the separate sheet who are not present shall also put signatures confirming their participation in the present agreement for which the matter shall be again put up before the Mediation Centre on 30.08.2018.

d) That both the parties have agreed that complainant in the above stated CRMs namely Mr. Pardeep has also entered into an agreement earlier with Sunil Kumar Joshi and Vikram Joshi for the payment of dues mentioned in Annexure C-2 which is part of the present case but now the payment is agreed to be paid directly to the claimants of Annexure C-2 and other holders of valid documents of Jind Anaj Mandi Association with the petitioners now both the parties do not acknowledge pendency of any other payments or agreements. After the payments as stated in the present agreement are made and Mr. Pardeep shall not make any claim for the payments of the Jind Anaj Mandi Members except himself or his firms only, Mr. Pardeep can also present his documents in the manner the members of the Anaj Mandi are presenting before the Mediation Centre to

claim his amount pending if any. Neither the Jind Anaj Mandi Members shall pursue any other litigation after receiving their pending payments from the petitioners Mr. Sunil Kumar Joshi and Mr. Vikram Joshi.

*Jatender Pal Singh Sawhney on behalf of
Mr. Sunil Kumar Joshi and Mr. Vikram Joshi (Sd/-)*

*Mr. Bhupinder Ghai, Advocate for the petitioners (Sd/-)
Mr. Anshuman Dalal, Advocate
for respondent No.2 to 7 (Sd/-)*

*Mr. Ishwar Singh Redu (Sd/-)
Mr. Mahaveer, Mr. Krishan Kumar (Sd/-)
Mr. Baghirath Raj (Sd/-)
Mr. Sunder Lal (Sd/-)
Mr. Bal Kishan (Sd/-)
Mr. Dhan Raj (Sd/-)
Mr. Raj Kumar Mittal (Sd/-)
Mr. Shatya Wan (Sd/-)
Mr. Satbir Kumar, Mr. Sanjay, Mr. Ram Bhaj (Sd/-)
Mr. Vikas (Sd/-)
Mr. Jai Narain Mittal (Sd/-)
Mr. Shashi Bhushan (Sd/-)
Mr. Anil Kumar (Sd/-)
Mr. Shish Pal (Sd/-)
Mr. Pardeep Kumar (Sd/-)
Mr. Ram Karan Dass (Sd/-)*

*24.08.2018 (Gourave Bhayyia Gilhotra) (Ajay Kaushik)
Mediator Mediator”*

Learned senior counsel for the petitioners has further
submitted that since the complainant Pardeep Singh is also a party to

the said award and the dispute was with regard to making the payment in lieu of the procurement of rice from various commission agents/farmers, it was agreed that the petitioners will make the payment directly to the victims.

Learned senior counsel for the petitioners has also argued that the even the Investigating Officer has submitted a list before the Mediator where he was directed to appear along with the parties and after verifying the same, the consent award was made and the payment has already been made.

It is worth noticing that on 30.08.2018, the matter was again taken up before the 02 Mediators and 15 more persons appeared and acknowledge the award as well as the claim of the persons, who have set up the award but the complainant Pardeep Singh did not appear and the case was thereafter, again put up before the Bench and noticing the fact that the complainant Pardeep Singh has not come forward to take the money back and the amount qua his share was deposited in the FDR as noticed above.

It is also worth noticing that the record of this case show that as and when the petitioners have deposited the total amount of Rs.1.65 crores (approx.) on different dates, the original receipts were issued by this Court and the copies of the FDR's were placed on record from time to time.

Learned senior counsel for the petitioners has, thus, submitted that the only grievance of the complainant – Pardeep Singh is that while registering the FIR, he has alleged that the payment on behalf

of various commission agents through the complainant is not released by the petitioners whereas the petitioners before the Mediation and Conciliation Centre of this Court, in the presence of all the victims have made the entire payment which was duly verified by the Investigating Officer as well the 02 Mediators and share of the complainant – Pardeep Singh, is lying deposited with the Registrar General of this Court in the FDR and it is open for the complainant to withdraw the said amount.

Learned senior counsel for the petitioners has also argued that in view of the fact that the petitioners have already repaid Rs.1.65 crores (approx.) to all the victims just because they are non-functional directors and it is apparent that the petitioners had no intention to cheat any of the person as it was purely a money dispute for which the payment was delayed for some time and finally, it was settled before the Mediation and Conciliation Centre of this Court. It is also submitted that there is no allegation in the entire FIR that the petitioners ever approached the complainant for purchasing Paddy and rather the allegations are that Anil Mahajan has approached them for purchasing Paddy. Learned senior counsel for the petitioners has referred to the award of the Mediation and Conciliation Centre, which is reproduced hereinbefore as well as the payment order, issued by the Registrar General of this Court.

Counsel for the State has not disputed the fact that all the victims have been paid their due amount.

Reply by way of affidavit of the Assistant Superintendent

of Police, Badli, Jhajjar, is already on record and in the reply, it is acknowledged that earlier there was a compromise between the petitioners and the complainant on 04.04.2018 and in view of the same, certain cheques were given and the details of the other dealings of the commission agents with M/s. Chintpurni Foods Private Limited is also given.

In Para 9 of the affidavit, it is stated that the owner and proprietor of the firm when pressurized the complainant to pay the amount, he has executed a sale deed in the year 2016, however, there is nowhere stated that the amount was given to the victims.

In Para 11 of the affidavit, it is stated that the dispute between the petitioners and the victims is of civil nature and the investigation is still going on.

Counsel for the respondents/complainant has argued that in fact the other victims have taken more amount over and above the amount due to them and therefore, the complainant, who has also paid some amount to the other victims by executing sale deed of his property is entitled to receive back the amount.

It is also stated that in view of the cheques issued by the accused persons, which were dishonoured, the complaints under Section 138 of the Negotiable Instruments Act, 1881, are also pending.

Counsel for the respondents/complainant has further submitted that the complainant Pardeep Singh as not signed on the mediation award and therefore, he has not withdrawn the amount of his share as per the award, though, the Investigating Officer in his list has

stated that the complainant is entitled to receive the said amount.

2. CRM-M No.31343 of 2019 (O&M)

Prayer in this petition is for quashing of complaint CNR No.HRJN03008744 of 2018 dated 17.08.2018 filed by the respondent – Pardeep Singh under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') (Annexure P-1) and all other subsequent proceedings arising therefrom, pending in the Court of Judicial Magistrate Ist Class, Jind and for setting-aside the summoning order dated 28.02.2019 (Annexure P-2).

It is submitted on behalf of the petitioners that as per the allegations in the complaint filed by Pardeep Singh, he had a dealing with the Company M/s. Chintpurni Foods Private Limited in the year 2013-14 and the Company had made payment to him from time to time, however, the cheques bearing No.798056 dated 04.04.2018 for a sum of Rs.50.00 lacs, No.798057 dated 04.06.2018 for a sum of Rs.35.00 lacs, No.798058 dated 05.06.2018 for a sum of Rs.35.00 lacs, No.798059 dated 04.08.2018 for a sum of Rs.35.00 lacs and No.798060 dated 05.04.2018 for a sum of Rs.35.00 lacs, which were issued by Anil Mahajan, were dishonoured by the Bank and thereafter, the complaint was filed.

3. CRM-M No.31739 of 2019 (O&M)

Prayer in this petition is for quashing of complaint No.504 of 2018 dated 28.11.2018 filed by the respondent – Pardeep Singh under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') (Annexure P-1) and all other subsequent proceedings arising

therefrom, pending in the Court of Judicial Magistrate Ist Class, Hansi and for setting-aside the summoning order dated 18.03.2019 (Annexure P-2).

It is submitted on behalf of the petitioners that as per the allegations in the complaint filed by Pardeep Singh, he had a dealing with the Company M/s. Chintpurni Foods Private Limited in the year 2013-14 and the Company had made payment to him from time to time, however, the cheques bearing No.798056 dated 04.04.2018 for a sum of Rs.50.00 lacs, No.798057 dated 04.06.2018 for a sum of Rs.35.00 lacs, No.798058 dated 05.06.2018 for a sum of Rs.35.00 lacs, No.798059 dated 04.08.2018 for a sum of Rs.35.00 lacs and No.798060 dated 05.04.2018 for a sum of Rs.35.00 lacs, which were issued by Anil Mahajan, were dishonoured by the Bank and thereafter, the complaint was filed.

4. CRM-M No.31740 of 2019 (O&M)

Prayer in this petition is for quashing of complaint No.464 of 2018 dated 03.11.2018 filed by the respondent – Pardeep Singh under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') (Annexure P-1) and all other subsequent proceedings arising therefrom, pending in the Court of Judicial Magistrate Ist Class, Hansi and for setting-aside the summoning order dated 09.01.2019 (Annexure P-2).

It is submitted on behalf of the petitioners that as per the allegations in the complaint filed by Pardeep Singh, he had a dealing with the Company M/s. Chintpurni Foods Private Limited in the year

2013-14 and the Company had made payment to him from time to time, however, the cheques bearing No.798056 dated 04.04.2018 for a sum of Rs.50.00 lacs, No.798057 dated 04.06.2018 for a sum of Rs.35.00 lacs, No.798058 dated 05.06.2018 for a sum of Rs.35.00 lacs, No.798059 dated 04.08.2018 for a sum of Rs.35.00 lacs and No.798060 dated 05.04.2018 for a sum of Rs.35.00 lacs, which were issued by Anil Mahajan, were dishonoured by the Bank and thereafter, the complaint was filed.

5. CRM-M No.21137 of 2019 (O&M)

Prayer in this petition is for quashing of complaint No.770 of 2017 dated 10.11.2017 filed by the respondent – Pardeep Singh under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') (Annexure P-1) and all other subsequent proceedings arising therefrom, pending in the Court of Judicial Magistrate Ist Class, Jind and for setting-aside the summoning order dated 05.07.2018 (Annexure P-2).

It is submitted on behalf of the petitioner that as per the allegations in the complaint filed by Pardeep Singh, he had a dealing with the Company M/s. Chintpurni Foods Private Limited and the Company had made payment to him from time to time. It is also alleged in the complaint that the Company had issued cheque bearing No.213404 dated 30.05.2017 for Rs.5.15 lacs, which was dishonoured by the Bank on 29.08.2017 and thereafter, a legal notice was sent on 04.09.2017 which was never served upon the Company and thereafter, the complaint was filed.

**COMMON ARGUMENTS IN: CRM-M Nos.31343, 21137, 31739,
31740 of 2019 and No.12545 of 2021**

Learned senior counsel for the petitioners has argued that the dispute is purely of civil nature as it is apparent from the first settlement/compromise between the petitioners and the complainant Pardeep Singh (FIR case) that the 05 cheques bearing No.798056 for Rs.50.00 lacs, No.798057 for Rs.35.00 lacs, No.798058 for Rs.35.00 lacs, No.798059 for Rs.35.00 lacs and No.798060 for Rs.35.00 lacs, were given as a settlement and it was agreed that the first party i.e. the petitioners will have no objection if the amount deposited before this Court in CRM-M No.11095 of 2018 and CRM-M No.11132 of 2018, is given to the second party i.e. Pardeep Singh. It was also agreed that the complaints filed under Section 138 of the N.I. Act, will be withdrawn and the complainant side will have no objection if the FIR is quashed.

Learned senior counsel for the petitioners has further submitted that later on, when during the pendency of the anticipatory bail applications, respondents No.4 to 34 were added by moving different applications stating themselves to be the victims and all these persons stated that the amount which was due to be paid to them directly as Pardeep Singh was only a Commission Agent through whom they have sold the Paddy crop.

This Court from time to time has allowed the applications and all the parties including 36 victims as identified by the

Investigating Officer were referred to the Mediation and Conciliation Centre of this Court wherein a settlement was arrived at between the parties and the petitioners have paid an amount of Rs.1.57 crores (approx.). The share of Pardeep Singh has also been deposited with the Registrar of this Court and is lying in FDR as per the order of this Court and the petitioners have no objection if he wants to withdraw the said amount.

Learned senior counsel for the petitioners have further submitted that there is no ground for cancellation of anticipatory bail and rather the petition praying for quashing of FIR be allowed as the entire amount has been paid directly to the victims with the efforts of the Mediators as well as the Investigating Officer and the Court. It is also argued that the aforesaid 05 cheques which are forming basis of the filing of the complaints, *qua* which the aforesaid petitions have been filed, are nothing but abuse and misuse of process of law as the cheques were issued at initial stage and after the same were dishonoured by way of a settlement arrived before the Mediation and Conciliation Centre of this Court, the entire amount has been paid to the victims and therefore, the prosecution of the petitioners in proceedings under Section 138 of the N.I. Act is nothing but abuse and misuse of process of law as no enforceable debt or liability exists for which the petitioners have to face the prosecution.

Learned senior counsel for the petitioners has further relied upon the judgment of the Hon'ble Supreme Court in ***“Gunmala Sales Private Limited, etc. vs Navkar Promoters Private Limited and***

others”, 2014(4) RCR (Civil) 788, wherein in Para 26, it is observed as under:-

“.....We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the conclusions drawn in the above-mentioned cases that it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company. This is a basic requirement. There is no deemed liability of such Directors.”

Reliance has also been placed upon the judgment in **“S.M.S. Pharmaceuticals Limited vs Neeta Bhalla and another”, 2005(4) RCR (Criminal) 141**, in which the Hon'ble Supreme Court has held that there should be specific averments of vicarious liabilities for making the Director of the Company liable for criminal prosecution initiated against the Company and the complainant must aver that the accused persons were Incharge and responsible for conduct of the Company to meet mandatory requirement of Section 141 of the N.I. Act. It is also submitted that in the absence of any such averments, the prosecution of the petitioner is liable to be quashed as no criminal liability can be fastened on the petitioners, who are not Incharge of the firm or responsible for conduct of the business when the cheques were issued.

Learned senior counsel for the petitioners has further

submitted that since the cheques, in question were never issued under the signatures of the petitioners and they are not the persons, who are responsible for conducting day-to-day business of the firm, the petition may be allowed.

Learned counsel for the petitioners 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 petitioners 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 petitioners 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.

Learned senior counsel for the petitioners has further argued that the petitioners to show their bona fide have already settled the dispute and the intention of the complainant to continue with the prosecution is nothing but an act of mala fide and greed and therefore, the petition be allowed and the complaints be quashed.

In reply, learned counsel appearing for the complainant, Pardeep Singh and others, has argued that he has not accepted the award of the mediation and has not withdrawn the amount deposited by the petitioners as the entire amount was to be paid to him and it was for the complainant – Pardeep Singh and others to further distribute the same to the victims and therefore, the petitioners are neither entitled to grant of anticipatory bail nor FIR or the complains filed by the complainant side, for dishonouring of the aforesaid cheques can be allowed.

Counsel for the complainant has further argued that it is only the complainants who have filed a complaint under Section 138 of the N.I. Act on the basis of 05 cheques bearing No.798056, 798057, 798058, 798059 and 798060, are entitled to receive the payment and the settlement award before the Mediation and Conciliation Centre of this Court or the list given by the Investigating Officer identifying the victims are not binding on him.

CRM-M Nos.31343, 31739, 31740, 21137 of 2019 and No.12545 of 2021

After hearing the learned counsel for the parties, I find merit in the present petitions praying for quashing of the criminal

complaint/FIR for the following reasons:-

(a) It is admitted case of the parties that earlier a settlement agreement was arrived at between the petitioners and the complainant in pursuance to which, the cheques in dispute which are forming basis of filing of the present complaints (under challenge in these petitions) were issued and it was also agreed that all the complaints filed under Section 138 of the N.I. Act pending in judicial Court at Jind, against Sunil Kumar Joshi and Vikram Joshi (only) will be withdrawn. Further it was also agreed that the complainant will not object to quashing of the FIR against the aforesaid 02 accused persons on making the entire payment.

(b) As a matter of record, in the meantime, the number of victims who have sold their crop through the complainant Pardeep Kumar in FIR case as well as the complainants in the complaint case under Section 138 of the N.I. Act, filed applications for being impleaded as a party, during the pendency of the aforesaid anticipatory bail application and as many as 34 victims were permitted to be added as respondents/complainants.

(c) Considering the fact that they are the farmers, who had sold the crop through the complainants, on their request, the entire case was sent to the Mediation and Conciliation Centre of this Court,

as noticed above and as per the settlement agreement, a total amount of Rs.1.57 crores (approx.) was paid to them by the petitioners on various dates with the efforts of the Court as well as the 02 Mediators.

(d) The share of the complainant Pardeep Kumar is lying deposited with the Registrar of this Court, however, he has not withdrawn the same, so far.

(e) In the settlement arrived at before the Mediator, it was also agreed that since the payment has been made to the claimants/victims, the complainant side will not pursue any litigation on receiving the payment and therefore, once the petitioners have cleared their entire liability towards the farmers, who had sold the crop through the commission agent i.e. the complainant Pardeep Kumar and similar firm, as per the settlement arrived at before the Mediation and Conciliation Centre of this Court, after the payment is released to the said persons/victims, the continuation of the proceedings in the complaints filed under Section 138 of the N.I. Act and in FIR No.427 dated 13.12.2017, registered under Sections 34, 406, 420, 506 IPC at Police Station Gohana Sadar, District Sonapat, are nothing but abuse and misuse of the process of law.

Accordingly, the present petitions i.e. CRM-M Nos.31343, 31739, 31740, 21137 of 2019 and No.12545 of 2021, are allowed and

FIR No.427 dated 13.12.2017, registered under Sections 34, 406, 420, 506 IPC at Police Station Gohana Sadar, District Sonapat (in CRM-M No.12545 of 2021), complaint No.CNR No.HRJN03008744 of 2018 dated 17.08.2018 as well as the summoning order dated 28.02.2019 (in CRM-M No.31343 of 2019), complaint No.504 of 2018 dated 28.11.2018 as well as the summoning order dated 18.03.2019 (in CRM-M No.31739 of 2019), complaint No.464 of 2018 dated 03.11.2018 as well as the summoning order dated 09.01.2019 (in CRM-M No.31740 of 2019) and complaint No.770 of 2017 dated 10.11.2017 as well as the summoning order dated 05.07.2018 (in CRM-M No.21137 of 2019), are ordered to be quashed.

It will be open for the complainant – Pardeep Singh to move an appropriate application before the Registrar General of this Court to withdraw the amount of Rs.7,62,958/- (i.e. matured value), lying deposited in FDRs.

Needless to say that the civil right for recovery of the amount will always remain open between the parties subject to law of limitation.

(ARVIND SINGH SANGWAN)
JUDGE

20.12.2021
yakub

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