

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

CRM-M-28919-2019 (O & M)
Date of Decision: 26.03.2021

Rajinder Gupta

.....Petitioner

Versus

M/s Jagmohan Motors Limited

....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Presentg: Mr. Naveen S. Bhardwaj, Advocate,
for the petitioner.

Mr. Ashwani Chopra, Sr. Advocate with
Mr. Aashutosh Jerath, Advocate,
for the respondent.

HARNARESH SINGH GILL, J.

Through this petition, the petitioner seeks quashing of criminal complaint No.RBT-168/10.11.15/11.5.18, titled as 'M/s Jagmohan Motors Ltd. Vs. M/s Apra Auto (India) Private Limited', under Sections 138 and 142 of the Negotiable Instruments Act, 1881, (for brevity, 'NI Act') read with Section 420 IPC and all the consequential proceedings arising therefrom, including the order dated 12.01.2016, whereby the petitioner stands summoned to face the trial in the said complaint.

The brief facts, out of which the present petition has arisen, are that M/s Apra Auto (India) Private Limited (hereinafter referred to as 'the Company') and its Directors, including the petitioner, with the averments that accused No.1-

M/s Apra Auto, who deals in Maruti Cars and Spares, had entered into an agreement to sell dated 27.03.2015 through accused No.2-Anumodh Sharma with the complainant-company, for selling the land measuring 15 kanals 16 marlas, situated within the revenue estate of village Rewari, Tehsil and District Rewari, for a sale consideration of Rs.7,75,00,000/-. Accordingly, an amount of Rs.7,50,00,000/- had been handed over to accused, vide two cheques bearing No.204723 dated 27.03.2015, amounting to Rs.5,25,00,000/- and cheque bearing No.204849 dated 27.03.2015, amounting to Rs.2,25,00,000/- towards earnest money/advance sale consideration. The time limit for registration of the sale deed had mutually been agreed as on or before 20.04.2015. Thereafter, the accused had demanded another amount of Rs.40,00,000/- towards balance sale consideration and other miscellaneous expenses and on the pretext that the amount was required for clearing the bank loan for the release of the property from the bank so that the agreement to sell could be fulfilled as per the fixed time schedule. Accordingly, the amount of Rs.40,00,000/- had been handed over to the accused vide cheque No.000071 dated 03.04.2015, drawn on HDFC Bank Limited, Sonapat. In this manner, a total amount of Rs.7,90,00,000/- had been handed over to the accused by the complainant. Since the property agreed to be sold by the accused to the complainant, was mortgaged with the bank, it was agreed by the parties that the accused would give the peaceful vacant possession of the land to the complainant at the time of registration of the sale deed.

However prior to the date fixed for the registration of the sale deed, the accused informed the complainant that they (accused) were not in a position to get the land redeemed from the concerned bank and had expressed their inability in execution of the sale deed. Since the accused failed to perform their part of the agreement, it was mutually decided that the accused would return back the amount of Rs.7,90,00,000/- to the complainant. Accordingly, the accused had handed over three cheques for an amount of Rs.7,85,00,000/- to the complainant to discharge their legal liability with the assurance that as and when these cheques are presented for encashment, the same would be get honoured immediately by their banker. The details of the said cheques are as under:-

Sr. No.	Cheque No. with date	Account No.1 of Account No.	Name of Bank	Amount of the cheque
1.	019303 Dated 15.6.15	051100000000-0202	The Nainital Bank Ltd.	Rs.35,00,000/-
2.	019305 Dated 15.6.15	051100000000-0202	The Nainital Bank Ltd.	Rs.2,25,00,000/- -
3.	019304 Dated 15.6.15	051100000000-0202	The Nainital Bank Ltd.	Rs.5,25,00,000/- -

The further averments of the complainant are that accused Nos.2 to 5 are the persons in-charge of and responsible to accused No.1-complany in the conduct of its day to day affairs, management and business etc. The accused also assured that they would maintain sufficient balance in their account so that whenever the cheques were presented for encashment, the

same would get honoured. Out of the three above-mentioned cheques, two cheques mentioned at Sr. Nos.1 and 2 were initially presented for encashment by the complainant with his banker i.e. Oriental Bank of Commerce, Branch Railway Road, Bahadurgarh, District Jhajjar, but the same were dishonoured with the remarks 'Insufficient Credit' and 'Insufficient Funds', respectively. The said fact was brought to the notice of the accused whereupon they had requested the complainant to wait for a few days and further requested to present for encashment all the cheques in the second week of September, 2015. On the assurance of the accused, the complainant again presented all the three cheques for encashment with his banker. However, the cheques mentioned at Sr. Nos.1 and 2 were again dishonoured and returned vide bank memo dated 10.09.2015, with the remarks 'Insufficient Balance' and 'Insufficient Funds', respectively and the cheque mentioned at Sr. No.3 was also dishonoured and returned vide bank memo dated 14.09.2015, for the reason 'Insufficient Funds'. Thereupon, the complainant got a legal notice issued to the accused calling upon them to make the payment, but to no avail.

On the basis of preliminary evidence led by the complainant, the accused were summoned under Section 138 of the N.I.Act.

Learned counsel for the petitioner has contended that the petitioner is an Ex-Director of the Company. At the time of issuance of the cheques i.e. 15.06.2015, he was one of the Directors of the accused-Company. However, he resigned w.e.f.

17.07.2015 and his resignation had duly been accepted by the competent authority and information had duly been sent to the ROC concerned in terms of Section 168 of the Companies Act, 2013. Learned counsel has further contended that the petitioner was neither the signatory to the cheques in question nor was the Managing Director of the Company. He had resigned prior to the presentation and dishonour of the cheques in August-September, 2015. It was further contended that the petitioner being Ex-Director, had no control in the administrative matters of the Company, after his resignation, and he cannot be held liable for the affairs of the Company managed by some other persons, which had led to the dishonor of the cheques. It was also contended that an offence under Section 138 of the NI Act is deemed to have been committed upon the return of the cheques as unpaid by the bank. It was, thus, contended that at the time of the alleged offence, the petitioner was no longer the Director of the Company and hence, he cannot be held liable.

In support of his contentions, the learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court in Saroj Kumar Poddar Vs. State (NCT of Delhi), (2007)1 RCR (Criminal) SC 741 and Ashoke Mal Bafna Vs. M/s Upper India Steel Mfg. & Engg. Co. Ltd., (2018) 14 SCC 202. He has also placed reliance upon another judgment of the Hon'ble Apex Court in National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal & Another, (2010)3 SCC 330 and the judgment of this Court, in Daya Ram Vs. M/s Pragati Enterprises, Law Finder Doc ID # 1624420.

It was further contended that there was no mention in the complaint as to how and in which manner, the petitioner had been responsible for the day to day business of the Company and hence, the prosecution of the petitioner is legally unsustainable as has been held in Mrs. Anita Malhotra Vs. Apparel Export Promotion Council, 2011 (4) RCR (Civil) SC 930. It is, thus, submitted that the process initiated against the petitioner is nothing, but an abuse of process of law and in contravention of the law laid down in the aforesaid judgments.

On the other hand, learned senior counsel for the respondent has contended that in pursuance of the resolution dated 26.03.2015 passed by the Board of Directors, the petitioner was aware of the agreement to sell dated 27.03.2015 executed by the Company; payment of earnest money of Rs.7.5 crore followed by another amount of Rs.40 lakh, by the complainant to the Company, and other events, including the issuance of three cheques. The petitioner has sought quashing of the complaint and the summoning order, after facing the trial for about four years, on the basis of purported resignation letter dated 17.07.2015. However, he had never disclosed or pleaded the same before the trial Court after being summoned vide order dated 12.01.2016.

It is further argued that a person after issuance of cheque, may resign with the connivance of other Directors, before its presentation and might take a plea that he ceased to be Director, when the cheque had been presented or was dishonoured and that if such course of action or modus

operandi is allowed to hold the ground, the very object of Sections 138 and 141 N.I. Act, would get defeated. Section 141 of the N.I. Act is an exception to the normal rule in the cases involving criminal liability with regard to the vicarious liability. In support of his contentions, learned Senior counsel for the respondent places reliance upon the judgment of the Hon'ble Apex Court in N. Rangachari vs. Bharat Sanchar Nigam Limited, (2007)5 SCC 108.

While relying upon another judgment of the Hon'ble Apex Court in Malwa Cotton and Spinning Mills Ltd. Vs. Virsa Singh Sidhu and others, (2009)5 SCC (Civil) 836, it is contended that the factum of the petitioner's having resigned from the Directorship before the presentation of the cheques is a matter of trial and such process cannot be scuttled by midway quashing the prosecution of the petitioner.

It is further submitted that under the normal rule, the presumption is of innocence, whereas Section 141 is an exception where the presumption is of the guilt on account of deeming provisions contained therein. The proviso to sub-section (1) makes it clear that it is for the accused to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

The learned Senior counsel has further argued that though there is no debate as regards the law laid down in the aforesaid judgments, yet the fact remains that the case of the petitioner is not covered by the said judgments. In this regard, a

specific reference was made to the factual matrix of the case, wherein, it is submitted that a designed endeavour had been made by the petitioner by exiting the Company, so as to evade from the liability under Section 138 of the N.I., Act. It is submitted that the very chain of events in lieu of which the cheques in question had been issued, happened under the nose of the petitioner, being one of the Directors of the Company, and the complainant having been assured that upon presentation of the cheques, there would be sufficient balance in the account of the Company, but said false assurances and promises had been made intentionally and with the sole motive to defeat the lawful rights of the complainant.

It is further submitted that except for the fact that the petitioner did not sign the cheque and that he had resigned before its presentation for encashment, the petitioner did not deny him being responsible for the day to day affairs of the Company and hence, it cannot be said that the petitioner is not liable.

I have heard the learned counsel for the parties and have also gone through the case file.

In the present case, pursuant to the execution of the agreement to sell dated 27.03.2015, the complainant had paid to the Company an amount of Rs.7.5 crore on 27.03.2015 as earnest money and again paid an amount of Rs.40 lacs on 3.4.2015. Thus, in total, the complainant had paid to the Company an amount of Rs.7.90 crore. The land subject matter of the agreement to sell, having not been got released by the

Company (including the petitioner), the deal could not mature and accordingly, the Company had given three cheques for the amount of Rs.7.85 crores. The said cheques were presented for encashment by the complainant in August/September, 2015 and all the cheques got dishonoured. The petitioner avers that he had resigned on 17.07.2015.

In my opinion, the resignation of the petitioner on 17.07.2015 would not save him from his liability as one of the Directors of the Company from 27.03.2015 till the purported date of his resignation. The aforesaid facts would clearly show that the deal regarding the sale of the land could not mature between the parties. The complainant had admittedly paid to the Company an amount of Rs.7.90 crore in lieu of the earnest money and clearance of the bank loan. It was only thereafter that the cheques in question had been issued by the Company to the complainant and thus, it cannot be said that the petitioner was not liable or responsible for the said act done by the Company, of which the petitioner was the very much Director.

The matter can be looked from another angle. Learned counsel for the petitioner though has vehemently laid emphasis on the fact that at the time of commission of offence, the petitioner was no longer Director of the Company and hence he cannot be said to have committed an offence. However, the said submission loses its significance, when, prima-facie, it is established that the cheques had been issued with the assurance of sufficient balance in the account of the Company.

However, there being no sufficient balance, the intention on the part of the Company and its Directors (including the petitioner) was writ large that they had the knowledge of the same and hence, the preparation stage of the offence committed, had started at that very moment and the offence got completed with the presentation and return of the cheque as dishonoured. Thus, in view of the said peculiar factual situation, the petitioner cannot be allowed to take the benefit of him having resigned before the presentation of the cheque and argument if any, in this regard, is only technical in nature.

The judgments relied upon by the learned counsel for the petitioner are of no help to him as in those cases, it was clearly established that the cheques therein had either been presented by the complainant after the validity period of six months or the petitioners (being Directors) were not involved in day to day affairs of the Company.

Still further, in the petition filed by the petitioner, he has averred that efforts for settlement were made before the trial Court, but they could not mature. This fact, clearly shows that even the Directors of the Company, including the petitioner do not dispute the liability. Hence, even considering the said aspect of the matter, mere resignation of the petitioner of the petitioner on 17.7.2015 just after one month of the issuance of the cheques and nearly two months prior to the presentation of the cheques, creates a dent and prima-facie, establishes a liability on the part of the petitioner as well.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

26.03.2021
praveen kumar/ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No