

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

CRM-M No.6907 of 2022 (O&M)

Date of Decision.22.02.2022

2. CRM-M Nos.7485, 7486, 7489, 7494, 7496, 7499, 7501, 7502, 7504,
7506 & 7508 of 2022

Anandita Rai @ Anita Rai

...Petitioner

Vs

Ram Dhari Mal

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajiv Dhawan, Advocate
for the petitioner.

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JAISHREE THAKUR J. (ORAL)

1. By this common order, this Court proposes to dispose of the aforesaid 12 CrI. Misc. Petitions filed seeking quashing of the complaint cases filed against the petitioner under Section 138 of the Negotiable Instruments Act, which are pending before JMIC, Jind as well as to quash order dated 29.10.2021 passed by JMIC, Jind where bail of the petitioner has been cancelled and her bail/surety bonds have been forfeited.

2. Mr. Rajiv Dhawan, learned counsel appearing for the petitioner herein would *inter alia* contend that these 12 complaint cases were filed against a company namely M/s Bush Foods Overseas Pvt. Ltd. on account of dishonour of cheques issued on account of purchase of paddy. He would further contend that the criminal complaint cases filed against the petitioner, who has been reflected as General Manager, would not be sustainable as she has been summoned as an accused on account of vicarious liability sought to be fastened upon her. It is further submitted that respondent No.1-Company is not functional at the moment and the Managing Director, who was responsible, has left the shores of India. These complaint cases have been filed as far back

as 2016 and as on date, the trial is not proceeding. He would also rely upon the judgment rendered by the Hon'ble Supreme Court of India in ***National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and others*** passed in Criminal Appeal No.320-336 of 2010 decided on 15.02.2010 to argue that vicarious liability cannot be fastened upon the petitioner herein.

3. I have heard learned counsel for the petitioner and have perused the paper book. This Court is not inclined to quash the complaints filed, keeping in view the fact that there is a specific averment in the complaints itself regarding role of the petitioner. It would be a matter of evidence and trial whether the petitioner herein was actually responsible for the affairs of the company as stated therein.

4. Faced with this, counsel appearing for the petitioner does not press for quashing of the complaint but prays for setting aside the impugned order dated 29.10.2021 by which the bail bonds stand cancelled and makes a prayer for exemption from personal appearance of the petitioner. It is submitted that the petitioner is now residing in Kolkata and suffering from various medical issues and is unable to put in appearance on each and every date of hearing. It was on this account that she was unable to put in an appearance on the date fixed and the application for exemption from personal appearance was dismissed by the impugned order. It is also argued that service as on date has not been effected upon accused/respondents No.1 and 2 and therefore, it is a matter of great harassment to the petitioner to put in appearance on each and every date.

5. As far as request of the counsel for the petitioner for exemption from personal appearance is concerned, there is merit in the same. The complaints have been filed as far back as 2016, and as on date the complainant has not been able to secure the presence of accused No.1 and 2. The petitioner

has been served and was appearing, however, her application for exemption from personal appearance was rejected on 29.10.2021 on account of non filing of affidavit with the application or any medical record in support of thereof. There is a medical report attached with this petition, that reflects that the petitioner is suffering from Severe Menorrhagia and has been advised Hysterectomy. Considering the fact that the petitioner has medical issues and has been advised surgery, apart from the fact that the presence of other co accused has not been secured, it would be harassment in case the petitioner is directed to be present on each date from Kolkatta.

6. Consequently, the impugned order is set aside and the petitioner herein is permitted to put in appearance through her counsel with an undertaking that she will be present on such dates as mandated by the trial court. With the aforesaid observations, all these petitions are disposed of *in limine*. However, any observations made herein above are only for the purpose of allowing the petitioner to put in appearance through her counsel and ought not to be construed as an opinion on merits of the case. It would be a matter of trial as to whether the petitioner was in charge of the affairs of the company.

(JAISHREE THAKUR)
JUDGE

February 22, 2022
Pankaj*

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