

202 (2 cases)

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

(1) **CRM-M-31453-2017(O&M)**

***NEW NEHAL PESTICIDES, VILLAGE BAKSHIWALA,  
TEHSIL AND DISTRICT PATIALA THROUGH ITS  
PROPRIETOR BIKRAM SINGH AND ANOTHER***

***...Petitioners***

***Versus***

***REHAL AGRO CHEMICALS, NABHA ROAD, BHADSON  
DISTRICT PATIALA THROUG ITS PARTNER  
GURPREET SINGH***

***...Respondent***

(2) **CRM-M-31640-2017 (O&M)**  
***DATE OF DECISION: 06.12.2022***

***NEW NEHAL PESTICIDES, VILLAGE BAKSHIWALA,  
TEHSIL AND DISTRICT PATIALA THROUGH ITS  
PROPRIETOR BIKRAM SINGH AND ANOTHER***

***...Petitioners***

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***REHAL AGRO CHEMICALS, NABHA ROAD, BHADSON  
DISTRICT PATIALA THROUG ITS PARTNER  
GURPREET SINGH***

***...Respondent***

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Bikram Choudhary, Advocate  
for Mr. Hardeep Singh, Advocate  
for the petitioner(s) (in both the cases).

Mr. Vikas Mehsempuri, Advocate  
for the respondent.

**HARSH BUNGER, J.**

This order shall dispose of two petitions bearing ***CRM-M-31453-2017*** and ***CRM-M-31640-2017*** as common questions of law and facts arise therein.

Petitioners (in both the cases) have filed the above-said petitions under Section 482 of the Code of Criminal Procedure, seeking setting aside the order dated 18.09.2015 (Annexure P-2 in both petitions), whereby, they were summoned in complaint case No.COMA/2553/15 (in **CRM-M-31453-2017**) and complaint case No.COMA/2552/15 (in **CRM-M-31640-2017**), both dated 15.09.2015, filed under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act') and also the order dated 19.01.2016 (Annexure P-3 in both the petitions) whereby, notice regarding accusation under the N.I. Act was framed against them. The petitioners have further challenged the order dated 06.04.2017 (Annexure P-4 in both the petitions), whereby, the revision petitions filed by them against the above-said orders dated 18.09.2015 (Annexure P-2) and 19.01.2016 (Annexure P-3) in both cases, was dismissed by the Additional Sessions Judge, Patiala.

Brief facts of the case are that the respondent (Rehal Agro Chemicals) filed two separate complaints under Section 138 of the N.I. Act against the present petitioners-accused on the plea that the present petitioners-accused were having business terms with the respondent-complainant and the petitioners-accused had received the pesticides from the respondent-complainant against receipts, which is borne out from the ledger account from 01.04.2014 to 31.03.2015 and 01.04.2015 to 31.03.2016. It was further stated in the complaints that the petitioners-accused had promised to pay the outstanding amount against their *khata* (account) along with interest @12% p.m.; however, they failed to do so. Subsequently, the petitioners-accused, in order to discharge their liability, issued Cheque bearing No.000013 dated 25.06.2015 (in **CRM-M-31453-2017**) of Rs.20,00,000/- and Cheque No.000014 dated 29.06.2015 (in **CRM-M-**

**31640-2017)** of Rs.28,00,000/- of HDFC Bank, Patiala, in favour of the complainant from Account No.50200007206697. However, upon presentation of the said cheques, the same were dishonoured vide Memos dated 17.08.2015 and 19.08.2015, respectively. After receiving the respective Memos, the respondent-complainant issued registered legal notice dated 26.08.2015 and since, the petitioners failed to pay the said amount within the stipulated period; accordingly, the afore-stated complaints under Section 138 of the N.I. Act, were filed against the petitioners.

A perusal of the paper books would reveal that vide order dated 18.09.2015 (Annexure P-2 in both petitions) passed by the Judicial Magistrate Ist Class, Patiala, the petitioners were summoned under Section 138 of the N.I. Act, in both the above-said complaints. One of the orders dated 18.09.2015 passed by the Judicial Magistrate Ist Class, Patiala, (in **CRM-M-31453-2017**) is reproduced here-in-below :-

*“One CW examined and preliminary evidence has been closed by the complainant.*

*Arguments heard. Record perused. In order to discharge a legally enforceable liability, the accused issued cheque dated 25.6.2015 for Rs.20,00,000/- Ex.C1 in favour of complainant which on presentation with the drawee bank was dishonored vide memo dated 17.08.2015 Ex.C2, with remarks “Funds Insufficient”. Thereupon, the complainant served a legal notice dated 26.08.2015 Ex. C3 was served upon the accused through registered post, as is evident from postal receipt Ex.C4. But the accused failed to make payment of amount of the cheque within the period prescribed under law, necessitating the complainant to file the present complaint. These above said documents were proved by CW1 Gurpreet Singh, Partner of Rehal Agro Chemicals vide his affidavit Ex.CW1/A.*

*From this preliminary evidence led by the complainant, it appears that the accused has committed an offence punishable u/s 138 of the Negotiable Instrument Act 1881 and there are sufficient ground to proceed further against the accused for having committed this offence. Let the accused be summoned accordingly for 7.10.2015 on filing copy of complaint, list of witnesses, PF, RC/AD etc. within a week.”*

Thereafter, it appears that after finding a *prima facie* case, notice of accusation under Section 138 of the N.I. Act was framed against the present petitioners, to which they pleaded not guilty and claimed trial; as per order dated 19.01.2016 (Annexure P-3).

The above-said summoning order dated 18.09.2015 (Annexure P-2) as well as notice of accusation under Section 138 of the N.I. Act, issued vide order dated 19.01.2016 (Annexure P-3), in both the above-said complaints came to be challenged by the petitioners by way of two separate revision petitions filed before the Court of Additional Sessions Judge, Patiala. However, the same were dismissed vide order dated 06.04.2017 (Annexure P-4) passed by the Additional Sessions Judge, Patiala (in both the petitions).

This is how the present petitions have been filed by the petitioners before this Court.

Learned counsel for the petitioners has raised common submission in both the cases that the summoning order dated 18.09.2015 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Patiala, as well as order dated 06.04.2017 (Annexure P-4) passed by the Additional Sessions Judge, Patiala, dismissing the revision petitions filed by the petitioners, are incorrect. It is submitted that the summoning order does not speak as to on

which date, the mandatory notice under Section 138 of the N.I. Act was issued and when the same was received by the petitioners; and on which date, the stipulated period was expired and on which date, the offence was committed. Accordingly, the petitioners had prayed that notice of accusation dated 19.01.2016 (Annexure P-3 in both the petitions) is bad in the eyes of law, thus the petitioners be discharged by dismissing the complaints (Annexure P-1, in both petitions) under Section 138 of the N.I. Act.

On the other hand, learned counsel for the respondent has submitted that there is no merit in these petitions and the same have been filed only to delay the proceedings. While referring to order dated 18.09.2015 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Patiala, learned counsel for the respondent submitted that the respondent-complainant had examined one witness (CW1-Gurpreet Singh, partner of Rehal Agro Chemicals) and in its preliminary evidence, the respondent-complainant has placed on record the following documents :-

| <i><b>Sr. No.</b></i> | <i><b>Exhibit</b></i> | <i><b>Document</b></i>                                                                                                                                                                                  |
|-----------------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>1</i>              | <i>C1</i>             | <i>Cheque dated 25.06.2015 for Rs.20,00,000/- (in CRM-M-31453-2017)<br/>Cheque dated 29.06.2015 for Rs.28,00,000/- (in CRM-M-31640-2017)<br/>issued in favour of the complainant in both the cases.</i> |
| <i>2</i>              | <i>C2</i>             | <i>Cheque on presentation with the drawee bank was dishonored with remarks "Funds insufficient" vide memo dated 17.08.2015 (in CRM-M-31453-2017) and memo dated 19.08.2015 (in CRM-M-31640-2017)</i>    |
| <i>3</i>              | <i>C3</i>             | <i>Complainant served a legal notice dated 26.08.2015 upon the accused through registered post (in both the cases)</i>                                                                                  |
| <i>4</i>              | <i>C4</i>             | <i>Postal receipt</i>                                                                                                                                                                                   |

It was submitted that the said documents were proved by CW1-Gurpreet Singh, partner of Rehal Agro Chemicals vide his affidavit

Ex.CW1/A and after being satisfied, the trial Court had summoned the petitioners under Section 138 of the N.I. Act. It is further submitted that after perusing the evidence available on record and after considering all the relevant facts and dates, the trial court summoned the petitioners vide order dated 18.09.2015 and thereafter, the notice of accusation was framed against the petitioner on 19.01.2016. It is next submitted that the learned Revisional Court has already considered the contentions raised before this Court in detail and dismissed the revision petitions; hence, there is no illegality or perversity in the impugned orders. Accordingly, he prayed for dismissal of these petitions.

I have heard learned counsel for the parties and perused the paper books with their able assistance.

The submissions made by learned counsel for the petitioners have been dealt with by the Revisional Court below and has held as under :-

*“9. So far as the challenge to the order dated 18.9.2015 is concerned, this Court is of the view that the order bears due reference of the cheque in question, the date of the memo and the date of legal notice also. Since the order is to be read in the context of the complaint itself, if the learned trial Court was of the opinion that a prima-facie case was made out, no fault can be found with the said order and it cannot be said that the order has any technical defect because of which the summoning order can not be said to be in proper form. The assertions in the petition as regards the financial transactions between the parties and the dealing of the complainant with other persons are matters which would not be vital for the trial Court to consider whether or not any prima-facie case of offence U/s 138 of N.I. Act is made out against the petitioner. Although, all pleas would be possible defences and may be discussed*

*by the Court at the time of passing the final order. However, if all such evidence is required in the summoning order the learned trial Court may also pass a final order which is not the scheme of the legal set up. Accordingly, the order dated 18.9.2015 does not suffer from any illegality or lack of exercise of jurisdiction.*

*10. So far as the order dated 19.1.2016 is concerned, this Court is of the view that the learned trial Court, at the time of serving the notice is only to see as to whether a prima-facie case is made out or not and since the criminal courts do not have a review jurisdiction, the Court could not have gone beyond the order dated 18.9.2015 and could not have held that no prima-facie case was made out. Furthermore, since the complaint is in respect of only one cheque in respect of which there as only one memo for which only one legal notice was issued, merely because the date of memo and the legal notice has not mentioned in the notice of accusation, no prejudice has been caused to the accused/petitioner and even otherwise the learned trial Court has the jurisdiction to amend the notice of accusation so as to avoid injustice to either of the parties. That being so, even the order dated 19.1.2016 does not suffer from any illegality or lack of exercise of jurisdiction and no case is made out that the learned trial Court exceeded its jurisdiction.*

*11. In view of above discussions, this Court finds no merits in the revision petition and the same is hereby dismissed. Record of the learned trial Court be returned along with copy of the judgment and revision file be consigned to the Record Room, Patiala.”*

A perusal of the above extracted order passed by the Revisional Court would manifest that the summoning order dated 18.09.2015 (Annexure P-2) bears due reference to the cheque in question; date of the memo, vide which the cheque was returned; the date on which the legal

notice was sent and moreover, even the postal receipts have been placed on record as Ex.C4. The said documents have been proved by CW1-Gurpreet Singh, partner of Rehal Agro Chemicals vide his affidavit Ex.CW1/A.

It is a well settled legal proposition that at the time of summoning, the Magistrate, *prima facie*, has to form an opinion that there are sufficient grounds for proceeding against the accused and not the evidence to convict the accused. It is also well settled that at the stage of summoning, the Magistrate is not legally required to pass a detailed judgment in that regard.

The Hon'ble Supreme Court in case ***U.P. Pollution Control Board v. M/s Mohan Meakins Ltd. and others, 2000(2) RCR (Criminal) 421***, observed as under :-

*“6. In a recent decision of the Supreme Court it has been pointed out that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a magistrate for passing detailed order while issuing summons vide **Kanti Bhadra Shah v. State of West Bengal, 2000(1) RCR (Criminal) 407 : 2000(1) SCC 722**. The following passage will be apposite in this context: “If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work? The time has reached to adopt all possible measures to expedite the Court procedures and to chalk out measures to avert all (sic) causing avoidable delays. If a Magistrate is to write detailed orders at different stages, the snailpaced progress of proceedings in trial Courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges*

*running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages of the trial.”*

*(Emphasis supplied)*

A perusal of order dated 18.09.2015 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Patiala, would manifest that the Summoning Court has taken into consideration the material available before it. Still further, the learned counsel for the petitioners has failed to point out as to what prejudice has been caused to the petitioners. So far as the order dated 19.01.2016 (Annexure P-3) is concerned, while framing the notice of accusation, the Court is required to see whether a *prima facie* case is made out or not and since the petitioners have summoned vide order dated 18.09.2015 (Annexure P-2) under Section 138 of the N.I. Act, accordingly, the notice of accusation was also drawn by the trial Court vide order dated 19.01.2016 (Annexure P-3) and no fault can be found with the same.

No other point has been urged.

Accordingly, I do not find any merit in both the petitions bearing **CRM-M-31453-2017** and **CRM-M-31640-2017** and the same are hereby dismissed.

Pending application/s, if any, shall also stand closed.

A photocopy of this order be placed on the file of another connected case.

**December 06, 2022**  
gurpreet

**(HARSH BUNGER)**  
**JUDGE**

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