

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-39654-2019 (O&M)

Date of Decision: 14.03.2022

Jagminder Saini

....Petitioner(s)

Versus

M/s Schenker India Pvt. Ltd.

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.K. Rattan, Advocate, for the petitioner.

Mr. Inderpal Singh Parmar, Advocate, for the respondent.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of complaint No.13268 dated 22.12.2017, under Section 138, 141 of the Negotiable Instruments Act, 1881, titled as M/s Schenker India Pvt. Ltd. Versus M/s Kavish Impex and others' with all consequential proceedings qua the petitioner.

The learned counsel for the petitioner has submitted that it is a case where a complaint was filed under Section 138 of the Negotiable Instruments Act, 1881 against five accused vide Annexure P-1. Accused No.1 is M/s Kavish Impex through its partner, accused No.2 is Shalini Saini shown to be partner of the aforesaid firm, accused No.3 is Raj Kumar Saini also shown to be partner of M/s Kavish Impex, accused No.4 is Vishal Saini also shown to be partner of M/s Kavish Impex and accused No.5 is Jagminder Saini also

shown to the partner of M/s Kavish Impex. The petitioner is accused No.5 namely Jagminder Saini. The subject matter of the complaint pertains to a issuance of cheque of an amount of Rs. 1,81,160/- which was signed by one Vishal Saini accused No.4. The learned counsel for the petitioner has submitted that vide Annexure P-3 partnership deed there are two partners of the firm i.e. Vishal Saini and Shalini Saini. Accused No.3 i.e. Raj Kumar Saini is the father of Shalini Saini and the petitioner is the father of Vishal Saini and both these persons i.e. Raj Kumar Saini and Jagminder Saini are neither the partners of the firm nor they had to do anything with the firm and they have been arrayed as an accused merely on the basis of the fact that they are the respective fathers of the partners of the firm. So far as Raj Kumar Saini is concerned, he has already died about 15 years ago and still he has been arrayed as an accused and so far as accused No.5 i.e. the petitioner is concerned, he is father of Vishal Saini who is the partner of the firm and has nothing to do with the firm. He is neither the partner nor an authorized signatory or managing the affairs of the partnership firm and, therefore, by arraying the petitioner as an accused in the complaint in which summoning order has now been issued amounts to abuse of the process of law qua petitioner and the petitioner is entitled not to face the prosecution when on the face of it, it is clear that the petitioner is neither partner nor a signatory of the firm nor he has anything to do with the firm.

The learned counsel for the petitioner further submitted that in pursuance of the notice of motion issued by this Court the respondent /complainant has filed reply before this Court. While referring to the reply filed by the respondent, it has been submitted by the learned counsel for the petitioner that a bare perusal of the reply shows that there is not even an iota of any substance or a denial by the respondent to show that the petitioner is involved in the present firm in any mode whatsoever. He further submitted that

only ground taken in the reply filed by the respondent-complainant is that the petitioner has not attached the summoning order and that whether the petitioner is a partner or not is a matter of evidence. However, it has been specifically stated in para No.4 and 5 of the present petition by the petitioner that he is not a partner and nor a signatory and has nothing to do with the partnership firm but the contents of para No.4 and 5 have not been denied by the respondent. During the course of arguments, the learned counsel for the petitioner has further submitted that the petitioner is 67 years old person and is also suffering from throat cancer and is not even able to speak and the present prosecution against the petitioner cannot be permitted to be continued only by virtue of the fact that he is father of one of the partners of the firm and that the contention raised by the petitioner in the petition has not been denied by the respondent in the reply and, therefore, continuation of prosecution against the petitioner would be an abuse of the process of law because the same cannot be continued on the face of it and, therefore, the prayer of the petitioner is covered by the law laid down by the Hon'ble Supreme Court in ***State of Haryana and other Versus Ch.Bhajan Lal and others [1992 (Supl) SCC 335]***.

On the other hand, Mr. Inderpal Singh Parmar, learned counsel for the respondent has submitted that the petitioner has not attached the summoning order and, therefore, the present petition cannot be maintained. He further submitted that it is a matter of trial as to whether the petitioner had to do anything with the affairs of the company or not and, therefore, the present petition is liable to be dismissed.

I have heard the learned counsel for the parties.

After the notice of motion was issued by this Court the proceedings against the petitioner were stayed on 15.10.2019 but the proceedings against the remaining accused were directed to be continued. The

present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the complaint itself as according to the learned counsel for the petitioner is without jurisdiction so far as the present petitioner is concerned. The partnership deed has also been attached as Annexure P-3 wherein two persons have been shown to be partners i.e. Vishal Saini and Shalini Saini. A perusal of the complaint which has been attached as Annexure P-1 would also show that the only vague reference to the petitioner is that he was involved in the management of the affairs of the partnership firm. The present petition is also supported by an affidavit filed by the petitioner and it has been specifically pleaded in para No.4 and 5 of the petition that the petitioner is neither signatory of the cheque nor he is a partner of M/s Kavish Impex and, therefore, he cannot be held liable for issuance of cheque by his son i.e. Vishal Saini who is the partner. These specific averments made by the petitioner in para No.4 and 5 have not been specifically denied by the respondent in the reply and rather a vague and evasive reply has been filed by the respondent in this regard. The petitioner is also stated to be a 67 years of age and is suffering from throat cancer.

Therefore, considering the facts and circumstances of the present case, this Court is of the view that continuation of the proceedings against the petitioner will be an abuse of the process of law and the complaint was not maintainable against the petitioner on the face of it.

Therefore, the present petition is allowed. Complaint qua the petitioner is hereby quashed and set aside.

14.03.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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