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

**CRM-31440-2022 in/and
CRM-M-36091-2018
Date of decision : 29.08.2022**

Shivani Garg **...... Petitioner**

versus

Rajesh Oil Company **...... Respondent**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Kriti Sharma, Advocate for
for the petitioner.

Mr. Pratham Sethi, Advocate
for the respondent.

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PANKAJ JAIN, J.

CRM-31440-2022

This is an application under Section 482 Cr.P.C. for recalling of the order dated 24.08.2022 and for reinstatement of interim order dated 15.12.2018 which was vacated vide order dated 24.08.2022.

On 24.08.2022, the following order was passed:-

> "None has entered appearance even on second call.
> In the interest of justice, adjourned to 22.09.2022.
> Interim order dated 15.12.2018 stands vacated."

Today, this application has been moved claiming that at the time the matter was called, counsel for the petitioner was busy before Coordinate Bench. Absence on behalf of the counsel was neither intentional nor deliberate.

Mr. Sethi, counsel for the respondent submits that the respondent has already moved an application seeking vacation of stay i.e. CRM-2002-2019 and the notice thereof was issued to the petitioner/non-applicant on 10.07.2019. However, thereafter the matter was being repeatedly adjourned on the request made by the petitioner and thus there is no sufficient ground to recall the order dated 24.08.2022.

At this stage, counsel for the petitioner submits that she is ready to argue the main petition. Mr. Pratham Sethi has also shown his readiness and willingness to proceed with the arguments. On joint request made by counsel for the parties, the main petition is preponed from 22.09.2022 and is taken on board today itself.

Application stands disposed of.

CRM-M-36091-2018

Present petition has been filed invoking Section 482 Cr.P.C. seeking quashing of complaint No.11120 of 2017 dated 14.09.2017 titled as Rajesh Oil Company vs. M/s Sudhir Forgings Private Limited and others and summoning order dated 14.09.2017 passed by trial Court wherein the petitioner has been summoned to face trial for offence punishable under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act').

2. Counsel for the petitioner submits that the complaint was filed arraigning the petitioner as one of the accused. As per the memo of parties appended to the complaint, the petitioner has been shown to be Director of Company i.e. accused No.1. She submits that accused No.1 is a Private Limited Company. The petitioner was at a point of time

Director thereof. However, on account of unavoidable circumstances at her home, she resigned. She has relied upon Annexure P-2, the resignation submitted on 30.04.2016. The said resignation was accepted by the Company in its board meeting held on 02.05.2016 and the relevant extract of the resolution passed on 02.05.2016 reads as under:-

> "**RESOLVED THAT** resignation letter of Smt. Shivani Garg from the directorship of the company be and is hereby accepted with effect from 01.05.2016."

3. She has further drawn attention of this Court to the form No.DIR-12 which has been taken from the records maintained by Registrar of Companies. The document has been placed on record as Annexure P-5. As per the same, it has been confirmed that Shivani Garg, daughter of Suresh Kumar Singla is not associated with the company w.e.f. 01.05.2016 on account of her resignation under Section 168 of the Companies Act.

4. Counsel for the petitioner thus submits that there cannot be any doubt that the petitioner ceased to be Director w.e.f. 01.05.2016. The cheque in question as per averments of the complaint is dated 17.07.2017, which was presented on 18.07.2017. She thus submits that the petitioner cannot be held to be liable under Section 141 of the N.I. Act for the offence committed by the Company. She claims that on 01.05.2016 (i.e. the date w.e.f. the resignation was accepted by the Company), the relationship between the petitioner and the company stood snapped and thus she cannot be deemed to be guilty of the offence committed thereafter. She further submits that once unimpeachable, incontrovertible evidence which is beyond suspicion of doubt has been brought to the

notice of this Court, this will be a fit case to exercise jurisdiction under Section 482 Cr.P.C. to quash the complaint qua the petitioner.

5. Reliance is being placed upon law laid down in **'National Small Industries Corp. Ltd. vs. Harmeet Singh Paintal and another'** reported as **(2010) 3 SCC 330.**

6. Per contra Mr. Sethi submits that the question as to whether the petitioner had resigned from the Directorship before the cheque was issued involves factual dispute. Relying upon **Criminal Appeal No.1265 of 2008**, decided on 13.08.2008, titled as '**Malwa Cotton and Spinning Mills Limited vs. Virsa Singh Sidhu and others,** he contends that it will not be fit case to exercise jurisdiction under Section 482 Cr.P.C. He submits that the defence as projected by the petitioner before this Court is subject matter of the trial and cannot be pre-determined that too in proceedings under Section 482 Cr.P.C.

7. I have heard counsel for the parties and have gone through the records of the case.

8. Section 141 deals with offences by Companies under the N.I. Act. The same reads as under:-

> "141 Offences by companies. —
>
> (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to

punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: [22] [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.— For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

9. The issue w.r.t. the vicarious liability of the Directors has repeatedly cropped up before the Courts. There is no dispute that the person who ceased to be Director even prior to issuance of cheque cannot be held liable under the N.I. Act invoking 'doctrine of indoor management'. However, the question is as to whether such plea can be

accepted while exercising jurisdiction under Section 482 Cr.P.C.

10. Apex Court in the case of **'Harshendra Kumar D vs Rebatilata Koley and others reported as (2011) 3 SCC 351'** held as under:-

> "22. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company. As noticed above, the appellant resigned from the post of Director on March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the appellant had resigned from the post of Director of the Company. The acceptance of appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if

> the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court."

(emphasis supplied)

11. In view of the law laid by Apex Court in Harshendra Kumar D (supra) and keeping in view the fact that dishonour cheque was issued by the Company on 17.07.2017, much after the petitioner resigned from the post of Director from Company on 01.05.2016, it cannot be held that the petitioner had any connection with the affairs of the Company as Director on the date the cheque was issued. The acceptance of the petitioner's resignation is duly reflected in the resolution dated 02.05.2016 and the record maintained by the Registrar of Companies. Admittedly, the cheque was not signed by the petitioner.

12. In view of these facts that has come on record, the criminal complaint cannot be allowed to proceed against the petitioner as the same shall amount to abuse of process of law.

13. Consequently, the present petition is allowed. The impugned complaint No.11120 of 2017 dated 14.09.2017 titled as 'Rajesh Oil Company vs. M/s Sudhir Forgings Private Limited' and others Proceedings subsequent thereto stand quashed qua the petitioner.

(PANKAJ JAIN)
JUDGE

29.08.2022
Dinesh

Whether speaking/reasoned Yes

Whether Reportable : Yes