

CRM-M-4615 of 2023

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

CRM-M-4615 of 2023  
Date of decision: 13.02.2023

Anuj Arora

.....Petitioner

Versus

M/s Super Floorings Private Limited and others

.....Respondents

CRM-M-4616 of 2023

Anuj Arora

.....Petitioner

Versus

M/s Super Floorings Private Limited and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: - Mr. Himanshu Sharma, Advocate,  
for the petitioner(s).

**NAMIT KUMAR, J. (ORAL)**

This order shall dispose of abovesaid petitions as common  
question of law and facts are involved in both the petitions.

For the sake of brevity, facts are being taken from CRM-  
M-4615 of 2023.

Instant petition has been filed by the petitioner under  
Section 482 Cr.P.C. impugning the order dated 17.01.2018 (Annexure  
P-1) passed by the Court of learned Judicial Magistrate Ist Class,  
Yamuna Nagar, whereby petitioner has been summoned along with

CRM-M-4615 of 2023

other accused in complaint bearing No.NI Act/170 of 2018 titled 'M/s Super Flooring Pvt. Ltd. v. M/s Fortune Graphics Ltd. and others' filed by respondent No.1 under Section 138/141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') read with Section 420 IPC and order dated 03.01.2023 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Yamuna Nagar, whereby application filed by the petitioner-accused No.4 has been dismissed and also order dated 17.09.2022 (Annexure P-4) vide which revision petition against summoning order dated 17.01.2018 has been dismissed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri.

Brief facts of the case are that respondent No.1-complainant, through its authorized signatory, filed a criminal complaint against M/s Fortune Graphics Ltd. through its directors/authorized signatories alleging that the cheque issued by the accused, in discharge of its liability, on presentation for encashment was bounced/dishonoured with the remarks 'funds insufficient' and after recording the preliminary evidence adduced by the complainant in support of its claim, the learned trial court vide order dated 17.1.2018 found prima facie case for issuance of process against petitioner and others, and accordingly, they were ordered to be summoned to face trial for the commission of offence under section 138 of the Act.

Admittedly, complaint dated 16.01.2018 was preferred by respondent No.1 against the petitioner and other co-accused and the Court of learned Judicial Magistrate Ist Class, Yamuna Nagar, vide order dated 17.01.2018 summoned the petitioner and other co-accused

CRM-M-4615 of 2023

by passing a detailed order. The petitioner preferred a revision petition before the Court of learned Additional Sessions Judge, Yamuna Nagar at Jagadhri on 20.08.2021 challenging the summoning order dated 17.01.2018 along with application for condonation of delay of 1220 days. The explanation given by the petitioner was that earlier the matter remained pending for mediation and conciliation and thereafter it was adjourned due to Covid-19 Pandemic. The said explanation was not accepted as contradictory stand was taken by the petitioner in the application filed under Section 5 of the Limitation Act wherein he averred that the petitioner came to know about the pendency of the complaint in the month of December, 2019. The Court came to the conclusion that even if the matter was referred to the Mediation Centre, the petitioner was not prevented from preferring revision petition. Consequently, the revision petition was dismissed by the said Court by passing the following order: -

*“14. In the present case, there is admittedly, a delay of 1220 days in filing of the revision petition and the explanation rendered on behalf of the petitioner is that earlier the matter remained pending for mediation and conciliation and thereafter, the matter was being adjourned due to Covid-19 pandemic. However, the explanation rendered by the petitioner does not seem to sub-serve the cause of the petitioner, inasmuch the petitioner in his application under section 5 of the Limitation Act has himself averred that the petitioner came to know about the pendency of the complaint in the month of December, 2019 and even if the matter was referred to mediation centre, what prevented the petitioner to prefer the present revision petition is beyond*

CRM-M-4615 of 2023

*comprehension. The impugned order was passed way back on 17.1.2018 and thereafter, obviously, summonses/notices were issued to the accused and as per own averments of the petitioner, he surrendered before the trial court on 16.12.2019 and was admitted to bail on that very day, however, present revision petition came to be instituted on 20.8.2021, without furnishing sufficient cause for preferring the revision petition so belatedly. The Hon'ble Supreme Court of India in case Amalendu Kumar Bera Vs. State of West Bengal, (2013) 4 S.C.C. 52, has held that delay in filing appeal or revision shall not be mechanically considered and that in absence of 'sufficient cause' delay shall not be condoned. Further, reliance can also be placed upon case Tribhuvanshankar Vs. Amrutlal, (2014) 2 S.C.C. 788, wherein, the Hon'ble Supreme Court has held that there is a fundamental policy behind Limitation Act and that if a person does not pursue remedy within specified time then his right to sue gets extinguished. Petitioner has approached the revisional court after more than three and half years of passing the impugned order, so, in the present case when the petitioner has failed to explain colossal delay in filing of the revision petition, therefore, this Court is of the considered view that long delay of 1220 days in filing of the present revision petition does not deserve to be condoned, as explanation offered appears to be fanciful and does not furnish 'sufficient cause'.*

*15. Consequent to above discussion, application for condonation of delay is hereby dismissed and consequent thereto, the instant revision filed by the revisionist/petitioner is also hereby dismissed being barred by limitation.*

*16. During the course of hearing, it transpired that discharge application of the petitioner is pending*

CRM-M-4615 of 2023

*adjudication before the trial court and accordingly, petitioner can well pursue the said application before the learned trial court and nothing expressed here-in-above shall, however, be construed to an expression of opinion on the merits of the case.*

*17. Trial Court record along with copy of this order be remitted. The parties are directed to appear before the learned trial court on 06.10.2022 i.e. the date already fixed before the trial court, for further proceedings, in accordance with law. After due compliance, revision file be consigned to records.*

*Announced:*

*(Jagdeep Singh)*

*Dated: 17.9.2022.*

*(UID: HR/0125)*

*Additional Sessions Judge,  
Yamuna Nagar at Jagadhri.”*

It appears that when the revision petition was pending before the Court of learned Additional Sessions Judge at Jagadhri, petitioner filed an application for discharge and the same was also dismissed by learned Judicial Magistrate Ist Class, Jagadhri, vide order dated 03.01.2023, which reads as under: -

*“5. Perusal of the file shows that in the present complaint four accused have been arrayed as per title of the complaint and one of the accused arrayed as Anuj Arora applicant/accused No.4 as director/authorized signatory of M/s Fortune Graphics. Perusal of the file would show that vide order dated 17.01.2018 passed by my learned Predecessor applicant/accused has also been summoned to face the trial. By way of present application applicant/accused desires that he be discharged having no connection with the alleged transaction as he was neither in-charge and was also not responsible for day to day affairs of the Company and applicant/accused is also not additional director or director as he resigned from the*

CRM-M-4615 of 2023

*post of additional director on 10.03.2017 even otherwise also applicant was not regularized as director. Learned counsel for applicant/accused relied on pronouncements titled **Anil Jindal Versus Vishwa Jeet Sangwan (supra)** and **Anil Chanana Versus M/s Gyani Ram Ruliya Ram (supra)**. Indeed, law is well settled in the said pronouncements and there is no dispute on the settled question of law as held in said pronouncements. It is an application for discharge of applicant/accused when he has already been summoned to face the trial and at the stage when notice of accusation is to be served upon accused.*

*6. Seemingly, by way of this application, applicant is seeking review of order dated 17.01.2018 which is out of the preview of this Court. Reliance is also placed on pronouncement titled **Suo Motu Writ Petition (CRL.) No.2 Of 2020, In Re: Expeditious Trial Of Cases Under Section 138 Of N.I. Act 1881**, wherein it was observed that;*

*“The observation in the case of K. M. Mathew (supra) that no specific provision of law is required for recalling an erroneous order of issue of process was held to be contrary to the scheme of the Code in Adalat Prasad v. Rooplal Jindal and Others. It was observed therein that the order taking cognizance can only be subject matter of a proceeding under Section 482 of the Code as subordinate criminal courts have no inherent power. There is also no power of review conferred on the Trial Courts by the Code. As there is no specific provision for recalling an erroneous order by the Trial Court, the judgment in the case of K. M. Mathew (supra) was held to be not laying down correct law. The question whether a person can seek discharge in a*

CRM-M-4615 of 2023

*summons case was considered by this Court in Subramaniam Sethuraman v. State of Maharashtra & Anr. The law laid down in Adalat Prasad (supra) was reiterated.”*

*7. Applicant is seeking the relief of review by camouflaging the prayer and what cannot be done directly cannot be allowed to be done indirectly.*

*8. Thus, in view of discussion made above, without commenting upon the merits of the case, application is dismissed.*

*Pronounced (Udhay Partap)  
Judicial Magistrate First Class,  
Yamuna Nagar at Jagadhri  
UID No.HR0444, 03.01.2023”*

Learned counsel for the petitioner contends that the present petitioner ceased to be the director of the company w.e.f. 10.03.2017 and has attached legal opinion dated 05.12.2020 from Kajal Goel and Associates, Company Secretaries along with the documents, which are stated to be available on the website of the Ministry of Corporate Affairs as well as from the annual returns. Learned counsel for the petitioner has cited the judgment of the Hon’ble Supreme Court in ***Union of India v. Prafulla Kumar Samal and another, 1979 AIR (Supreme Court) 366.***

I have heard learned counsel for the petitioner and perused the record.

The documents relied upon by the petitioner, as referred to above, can only be taken into consideration by this Court once the same have been proved before the trial Court. Further, the petitioner has challenged the summoning order dated 17.01.2018 by filing a revision

CRM-M-4615 of 2023

petition after delay of 1220 days and the Court of learned Additional Sessions Judge at Jagadhri vide detailed judgment dated 17.08.2022 did not find the explanation offered by the petitioner to be worth-acceptance and came to the conclusion that the same does not furnish 'sufficient cause' in terms of Section 5 of the Limitation Act and rejected the application for condonation of delay of 1220 days and in consequence thereto dismissed the revision petition being barred by limitation.

Another aspect which is necessary to be mentioned here is that while the revision petition preferred by the petitioner was pending before the Sessions Court, Yamuna Nagar at Jagadhri, the petitioner filed application for discharge before the trial Court, which too came to be dismissed vide order dated 03.01.2023 by recording a finding that as a matter of fact the petitioner is seeking review of order dated 17.01.2018 by camouflaging the prayer of discharge. From a perusal of the facts mentioned hereinabove, it is clear that initially the petitioner evaded the service of summons and was declared proclaimed person. He was summoned to face the trial in complaint case on 17.01.2018 and thoroughly evaded service and finally, it is his own case that he surrendered before the trial Court on 16.12.2019. The petitioner has also failed to attach copy of the legal notice served by respondent No.1 upon him and it is not the case of the petitioner that any reply was given to the said legal notice, mentioning therein that petitioner was no more director of the company w.e.f. 10.03.2017.

CRM-M-4615 of 2023

The Hon'ble Supreme Court in ***S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan, 2022(4) R.C.R.(Criminal) 743*** while considering a similar question after considering law on the subject, has held as under: -

*“44. We may also examine this appeal from a different angle. It is not in dispute, as noted above, that no reply was given by the respondent to the statutory notice served upon her by the appellant. In the proceedings of the present type, it is essential for the person to whom statutory notice is issued under section 138 of the NI Act to give an appropriate reply. The person concerned is expected to clarify his or her stance. If the person concerned has some unimpeachable and incontrovertible material to establish that he or she has no role to play in the affairs of the company/firm, then such material should be highlighted in the reply to the notice as a foundation. If any such foundation is laid, the picture would be more clear before the eyes of the complainant. The complainant would come to know as to why the person to whom he has issued notice says that he is not responsible for the dishonour of the cheque. Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under section 138 of the NI Act is concerned.*

CRM-M-4615 of 2023

45. *Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the noticee. In such circumstances what more is expected of the complainant to say in the complaint.*

46. *When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or Partner.*

47. *Our final conclusions may be summarised as under:-*

*a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to*

CRM-M-4615 of 2023

*make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.*

*b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is*

CRM-M-4615 of 2023

*something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.*

*c.) Needless to say, the final judgement and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners qua the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.*

*d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.”*

Considering the facts of the present case in the light of law laid down by the Hon’ble Supreme Court in **S.P. Mani and Mohan’s** case (supra), it is clear that no reply to the legal notice was given by the

CRM-M-4615 of 2023

company w.e.f. 10.03.2017. The trial is already in progress w.e.f. 16.01.2018 and a period of more than five years has already elapsed, therefore, it cannot be said that trial in the present case is an abuse of process of the Court as there is no incontrovertible material or acceptable circumstances shown before this Court to substantiate the contention of the petitioner. Therefore, the complaint at this stage cannot be quashed while exercising powers under Section 482 Cr.P.C.

So far as judgment cited by learned counsel for the petitioner in ***Prafulla Kumar's*** case (supra) is concerned, in para 10 thereof it has been held as under: -

*“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

*(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;*

*(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*

*(3) The test of determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the*

CRM-M-4615 of 2023

*accused, he will be fully within his right to discharge the accused.*

*(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

A perusal of the above judgment would show that same is distinguishable and is not applicable to the facts and circumstances of the present case as in the said judgment, the point for determination was with regard to the scope and ambit of order of discharge to be passed by the Special Judge under Section 227 Cr.P.C.

In view of the peculiar facts and circumstances of the case and law laid down by the Hon’ble Supreme Court in ***S.P. Mani’s*** case (supra), this Court is not inclined to interfere with the impugned orders. Hence, present petition being devoid of any merit, is hereby dismissed.

(NAMIT KUMAR)  
JUDGE

13.02.2023  
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No