

202(2)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20979-2018 (O&M)

Date of Decision: 10.03.2023

GAURAV CHUGH

..... PETITIONER

VS

MS. NEENA DHIMAN

... RESPONDENT

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vivek. K.Thakur and Ms. Mehak Bedi, Advocate for the
petitioner .

Mr. Jagjot Singh, Advocate for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking setting aside of the order dated 04.01.2018 (Annexure P-7) passed by learned Additional Sessions Judge, Gurugram whereby the revision petition against summoning order dated 12.08.2016 (Annexure P-6) passed by learned Judicial Magistrate Ist Class, in complaint No. 9159 of 2016 dated 02.08.2016 (Annexure P-4) was dismissed. Besides this, a prayer has also been made for quashing of the complaint titled as "*Neena Dhiman Vs. M/s Silver Star Fashions Private Limited and Ors.*" and all others subsequent proceedings arising therefrom.

While inviting the attention of this Court to form No. DIR-12 (Annexure P-3), learned counsel for the petitioner submits that the resignation of the petitioner as Director had been accepted with effect from 01.06.2016, however, the cheque in question was issued much later i.e. on 27.06.2016 and still further was dishonored on 28.06.2016. Therefore, once the resignation of the petitioner had come into effect, he could not be said to be either incharge of or responsible for the day to day affairs of the company. Thus, the petitioner

could not be prosecuted in the above circumstances for an offence under Section 138 of the Negotiable Instruments Act. In support of his submissions, learned counsel has placed reliance upon the judgment rendered in "***Pooja Ravinder Devidasani Vs. State of Maharashtra and another decided on 17.12.2014: 2014(16) SCC 1***"

Learned counsel for the respondent while controverting the submissions made by the counsel opposite has vehemently submitted that the relevant date for considering the liability of the petitioner would be when Form No, DIR-12 (Annexure P-3) was actually uploaded on the internet by the concerned office. He has asserted that it would be only thereafter the public at large could be expected to have knowledge qua the resignation of the petitioner from the company. Learned counsel has still further vehemently argued that the petitioner had not even replied to the statutory demand notice issued by the respondent so as to apprise him about his resignation from the company. Therefore, at this stage, the petitioner could not seek quashing of the complaint in question and instead would have to face trial wherein he would get ample opportunity to lead evidence in support of his defence. In support of his submissions, learned counsel has relied upon the judgment rendered in "***SP Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan: 2022(4) RCR (Criminal) 743***"

I have heard learned counsel for the parties and pursued the relevant material on record.

This Court finds merit in the submissions made by the learned counsel for the petitioner that since the petitioner had resigned as Director of the accused company prior to the issuance as well as the dishonor of the cheque in question, he could not be held vicariously liable under Section 141 of the

The Hon'ble Supreme Court while dealing with a similar controversy in **"Harshendra Kumar D Vs. Rebatilata Koley etc: 2011 AIR (Supreme Court) 1090"** 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. "

It would also be relevant to refer to the observations made by the Hon'ble Supreme Court in **"S.P.Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan."**

"40.The principles discernible from the aforesaid decision of this Court in the case of Ashutosh Ashok Parasrampuriya (supra) is that the High Court should not interfere under **Section 482** of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made out against the particular Director/ partner provided the Director/partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt."

Adverting to the case in hand a perusal of form No. DIR-12 (Annexure P-

w.e.f 01.06.2016. The cheque in question (Annexure P-5) was issued on 27.06.2016 and it was dishonored on 28.06.2016. Therefore it is evident that the resignation of the petitioner had been accepted and duly notified by the Registrar of Companies much prior to the issuance as well as dishonor of the cheque in question.

In the facts and circumstances as enumerated herein above coupled with unimpeachable, incontrovertible evidence placed on record, this Court has no hesitation in observing that continuation of criminal proceedings against the petitioner would be an abuse of the process of law.

Accordingly, the instant petition is allowed and the summoning order (Annexure P-6) as well as the complaint in question (Annexure P-4) are quashed qua the petitioner.

(MANJARI NEHRU KAUL)
JUDGE

10.03.2023
renu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>