IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

234

CRM-M-51503-2018
Date of decision: 29.05.2023

Manish Goyal .....Petitioner

Versus

Sanjeev Gupta .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Aditya Jain, Advocate and
Mr. Rahul Vohra, Advocate
for the petitioner.

Mr. Parveen Gaur, Advocate
for the respondent.

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MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking quashing of order dated 17.01.2018 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Faridabad vide which he was summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') in Complaint No.6367/2017 dated 13.12.2017 titled as “Sanjeev Gupta Vs. M/s Piyush Colonisers Ltd. Etc. (Annexure P-2).

2. While inviting the attention of this Court to Form No.DIR-11 (Annexure P-5), learned counsel for the petitioner submits that the resignation of the petitioner as Director of M/s Piyush Colonisers Limited (hereinafter referred to as 'the company') had been accepted with effect from 15.06.2017 and it was a matter of record that the cheque in question was issued much later i.e. on 10.10.2017 and still further the said cheque was dishonoured on 23.10.2017. Hence, learned counsel has argued that once the resignation of the petitioner had come

into effect much prior to the issuance of the cheque in question coupled with the fact that it was dishonoured by the bank, after his resignation, the petitioner could not be made liable for an offence under Section 138 of the NI Act. In support of his submissions, he has drawn the attention of this Court to Annexure P-4 i.e. the list of Directors wherein also it stands reflected that the petitioner had ceased to be a Director of the company on 15.06.2017. He submits that in the above circumstances, it was evident that the petitioner was neither incharge nor responsible for the day to day affairs of the company, hence, he could not be held liable for an offence under Section 138 of the NI Act. Learned counsel has still further submitted that even otherwise a perusal of the complaint in question reveals that no specific averment qua the petitioner being incharge of the day to day affairs of the company has been made against him. In support of his submissions, learned counsel has placed reliance upon ***Pooja Ravinder Devidasani Vs. State of Maharashtra and another : (2014) 16 Supreme Court Cases 1*** wherein it was held that there must be specific averments against the Director showing as to how and in what manner he/she was responsible for the conduct of the business of the company.

3. Per contra, learned counsel for the respondent while opposing the prayer of the counsel opposite contends that though no specific averments have been made against the petitioner, however, it would be a matter of trial as to whether or not the petitioner had ceased to be a Director of the company on the date when the cheque in question was issued, and it being a disputed question could not be looked into at this stage.

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

5. This Court finds merit in the submissions made by learned counsel for the petitioner that since the petitioner had already resigned as Director of the accused company much prior to the issuance as well as the dishonour of the cheque in question, he could not be held vicariously liable under Section 141 of the NI Act. The Hon'ble Supreme Court in ***Harshendra Kumar D. Vs. Rebatilata Koley etc. : AIR 2011 Supreme Court 1090*** has 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."*

6. Adverting to the case in hand, a perusal of the Form No.DIR-11 (Annexure P-5) clearly reveals that the resignation of the

petitioner from the post of Director of the company was accepted with effect from 15.06.2017. It is a matter of record that the cheque in question (Annexure P-1) was issued on 10.10.2017 which then came to be dishonoured on 23.10.2017. Therefore, once the resignation of the petitioner had been accepted and in turn duly notified by the Registrar of the Companies, much prior to the issuance as well as dishonour of the cheque in question, the petitioner could not be held vicariously liable under Section 141 of the NI Act.

7. This Court while dealing with a similar controversy in ***CRM-M-20979-2018 titled as 'Gaurav Chugh Vs. Ms. Neena Dhiman' decided on 10.03.2023***, while quashing the complaint and summoning order held that a Director who had resigned prior to the issuance of a cheque could not be held vicariously liable under Section 141 of the NI Act.

7A. It would also be relevant to refer to the observations made by Hon'ble Supreme Court in ***Gunmala Sales Pvt. Ltd. Vs. Anu Mehta and others : 2015 (1) SCC 103*** wherein it was held that the High Court may quash the complaint despite the basic averment if it comes across some unimpeachable evidence or acceptable circumstances which may in its opinion lead to a conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time and therefore making him stand the trial would be abuse of the process of court as no offence is made out against him.

8. Still further, a perusal of the complaint in question also reveals that no specific averments much less averments to the effect

that the petitioner was in charge of the day to day affairs of the company or was responsible for the affairs of the company have been made in complaint in question.

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

10. Accordingly, the instant petition is allowed and the summoning order dated 17.01.2018 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Faridabad whereby he was summoned to face trial under Section 138 of the NI Act as well as the complaint in question (Annexure P-2) are quashed qua the petitioner only.

29.05.2023 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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