IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

217 **CWP-20898-2017 (O&M)**
Date of Decision: 21.08.2023

REGISTRAR OF COMPANIES

... Petitioner

VERSUS

KANWARDEEP SINGH & OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Arun Gosain, Senior Panel Counsel
for the petitioner.

None for respondents.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the impugned order dated 02.08.2017 (Annexure P-1) whereby the petitioner has been asked to appear in person and to produce the record of a company in a complaint No.5369 of 2015 titled as Kanwardeep Singh Versus Satkar Singh under Section 138 of the Negotiable Instruments Act, 1881 pending before Judicial Magistrate Ist Class, Chandigarh.

Learned counsel for the petitioner contends that the respondent No.1 had been pursuing the abovesaid complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Judicial Magistrate Ist Class, Chandigarh. The office of the petitioner i.e. Registrar of Companies was cited as a witness, whereupon DW-2 was deputed by the petitioner to appear as a witness in the above titled case on the strength of the summons received on 28.07.2017. An application for discharge was also submitted by the Registrar of

Companies on the ground that the parties may obtained certified copies of the annual returns for the period from 2006 to 2011 alongwith the registration details and that the certified copies of the said documents being "public documents" are *per se* admissible. The same would thus not necessitate the deposition on the part of the Registrar of Companies in person.

Written statement on behalf of the respondents No.2 and 3 has been filed. No reply has been filed on behalf of respondent No.1 despite numerous opportunities.

In the abovesaid written statement, the respondents have alleged that the petitioner has refused to produce the summoned record in a criminal trial, which was necessary for proving the defence in the on-going criminal proceedings. It was further averred that the summoned record cannot be termed as "public documents" as the same pertain to the details of registration and directors of M/s Transway Estates and Infrastructure Private Limited alongwith annual returns that were filed by the private parties and do not relate to the Authorities.

Counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court in the matter of *"**Mrs Anita Malhotra, Vs. Apparel Export Promotion Council and another**"* reported as ***AIR 2012 SC 31*** wherein it has been specifically held that the annual returns and/or other documents furnished under Section 399(3) of the Companies Act, 1956 become public documents and certified copies of such public documents can be validly tendered in evidence. The relevant extract of the same is reproduced hereinafter below:

> *"11. A reading of the above provisions make it clear that there is a statutory requirement under Section 159 of the Companies Act*

that every Company having a share capital shall have to file with the Registrar of Companies an annual return which include details of the existing Directors. The provisions of the Companies Act require annual return to be made available by a company for inspection (S. 163) as well as Section 610 which entitles any person to inspect documents kept by the Registrar of Companies. The High Court committed an error in ignoring Section 74 of the Indian Evidence Act, 1872. Sub-section (1) of Section 74 refers to public documents and sub-section (2) provides that public documents include "public records kept in any State of private documents". A conjoint reading of Sections 159, 163 and 610(3) of the Companies Act, 1956 read with sub-section (2) of Section 74 of the Indian Evidence Act, 1872 make it clear that a certified copy of annual return is a public document and the contrary conclusion arrived at by the High Court cannot be sustained. Annual Return dated 30.09.1999 which provides the details about the existing Directors clearly show that the appellant was not a Director at the relevant time. Had the High Court considered the contents of the certified copy of the annual return dated 30.09.1999 filed by the Company which clearly shows that the appellant herein (A3) has not been shown as Director of the Company, it could have quashed the criminal proceedings insofar as A3 is concerned.

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14. Inasmuch as the certified copy of the annual return dated 30.09.1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with Section 74(2) of the Indian Evidence Act, 1872, we hold that the appellant has validly resigned from the Directorship of the Company even in the year 1998 and she cannot be held responsible for the dishonour of the cheques issued in the year 2004."

In view of the aforesaid position of law laid down by the Hon'ble Supreme Court and taking into consideration that the proceedings before the trial Court have not proceeded, I do not see any justification for delaying the matter any further.

The present petition is accordingly disposed of by setting aside the impugned order dated 02.08.2017 passed by the Judicial Magistrate Ist Class, Chandigarh in pending complaint No.5369 of 2015 titled as Kanwardeep Singh Versus Satkar Singh, under section 138 of the Negotiable Instruments Act, 1881. The complainant/respondents may, if so advised, seek certified copies of the said documents from the office of Registrar of Companies and tender the same in evidence to prove their case.

Disposed of accordingly.

Any other misc. application(s) also stand(s) disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

AUGUST 21, 2023
rajender

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