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

Reserved on:- **April 17, 2023**

Date of Pronouncement:- **April 28, 2023**

1. CRM-M-48762-2021 (O&M)

Amit Jain ...Petitioner

vs.

Hare Ram Sharma and others ...Respondents

2. CRM-M-52110-2021

Amit Jain …Petitioner

Vs

Sparsh Jain & Ors. …Respondents

3. CRM-M-52321-2021

Amit Jain …Petitioner

Vs

Shubham Goel & Ors …Respondents

4. CRM-M52715-2021

Amit Jain …Petitioner

Vs

Praveen Thakur & Ors. …Respondents

5. CRM-M-53874-2021

Amit Jain …Petitioner

Vs

Seema Kaushik & Ors. …Respondents

6. CRM-M-53878-2021

Amit Jain …Petitioner

Vs

Padma Kaur & Ors. …Respondents

7. CRM-M-53879-2021

Amit Jain …Petitioner

Vs

Prateek Bhartia & Ors. …Respondents

8. CRM-M-53920-2021

Amit Jain ...Petitioner

Vs.

Narender Singh & Ors. …Respondents

9. CRM-M-53922-2021

Amit Jain ...Petitioner

Vs.

Rupesh Barman & Ors. …Respondents

10. CRM-M-53944-2021

Amit Jain ...Petitioner

Vs.

Jitendra Singh Rathor & Ors. …Respondents

11. CRM-M-53949-2021

Amit Jain ...Petitioner

Vs.

Devender Chandela & Ors. …Respondents

12. CRM-M-53952-2021

Amit Jain ...Petitioner

Vs.

Ved Kaushik & Ors. …Respondents

13. CRM-M-53953-2021

Amit Jain ...Petitioner

Vs.

Bhawna & Ors. …Respondents

14. CRM-M-53980-2021

Amit Jain ...Petitioner

Vs.

Ravinder Singh & Ors. …Respondents

15. CRM-M-53985-2021

Amit Jain …Petitioner

Vs.

Kanchan Dohrey & Ors. …Respondents

16. CRM-M-7736-2022

Amit Jain …Petitioner

Vs.

Dharmender Kaushik & Ors. …Respondents

17. CRM-M-7752-2022

Amit Jain …Petitioner

Vs.

Sandeep Kumar Sethi & Ors. …Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Johan Kumar, Advocate for the petitioner in all cases.

None for respondents No.1 to 3

Mr. Rajesh Lamba, Advocate for respondent No. 4.
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HARKESH MANUJA, J.

1. This order of mine shall dispose of 17 petitions filed under Section 482 of Cr.P.C. for quashing of complaints, summoning order as well as all consequential proceedings arising therefrom. In four of these petitions (CRM-M-48762-2021, CRM-M-52110-2021, CRM-M-52321-2021 & CRM-M-52715-2021), additional prayer has also been made to quash orders vide which petitioner was declared as proclaimed person. A table showing brief summary of these cases and date of summoning orders is tabulated below:-

Sr. No.	Case No.	Complaint No. & Date	Summoning Order Date	Date of Appointment as Director
1.	CRM-M-48762-2021	NACT 1891 of 2018 09.03.2018	24.04.2018	07.01.2017
2.	CRM-M-52110-2021	NACT 1890 of 2018 09.03.2018	09.03.2018	07.01.2017
3.	CRM-M-52321-2021	NACT 1894 of 2018 09.03.2018	09.03.2018	07.01.2017
4.	CRM-M-52715-2021	NACT 1893 of 2018 09.03.2018	09.03.2018	07.01.2017
5.	**CRM-M 53874 of 2021**	**NACT 3001 of 2018 26.04.2018**	**26.04.2018**	**29.09.2016**
6.	**CRM-M 53878 of 2021**	**NACT 476 of 2018 18.01.2018**	**18.01.2018**	**29.09.2016**
7.	**CRM-M 53879 of 2021**	**NACT 3003 of 2018 26.04.2018**	**26.04.2018**	**29.09.2016**

8.	**CRM-M 53920 of 2021**	**NACT 2578 of 2018 05.04.2018**	**05.04.2018**	**29.09.2016**
9.	CRM-M 53922 of 2021	NACT 2299 of 2018 27.03.2018	27.04.2018	07.01.2017
10.	CRM-M 53944 of 2021	NACT 3036 of 2018 27.04.2018	31.10.2018	07.01.2017
11.	CRM-M 53949 of 2021	NACT 2670 of 2018 11.04.2018	11.05.2018	07.01.2017
12.	**CRM-M 53952 of 2021**	**NACT 3000 of 2018 26.04.2018**	**26.04.2018**	**29.09.2016**
13.	CRM-M 53953 of 2021	NACT 2029 of 2018 15.03.2018	15.03.2018	07.01.2017
14.	**CRM-M 53980 of 2021**	**NACT 2621 of 2018 09.04.2018**	**22.05.2018**	**29.09.2016**
15.	CRM-M 53985 of 2021	NACT 2026 of 2018 15.03.2018	15.03.2018	07.01.2017
16.	**CRM-M-7736-2022**	**NACT 2313 of 2018 27.03.2018**	**27.03.2018**	**29.09.2016**
17.	CRM-M-7752-2022	NACT 2021 of 2018 15.03.2018	15.03.2018	07.01.2017

It may be noted here that cases mentioned at Sr. No.5, 6, 7, 8, 12, 14 and 16 which are in bold (i.e. cases bearing nos. CRM-M 53874 of 2021, CRM-M 53878 of 2021, CRM-M 53879 of 2021, CRM-M 53920 of 2021, CRM-M 53952 of 2021, CRM-M 53980 of 2021 & CRM-M-7736 of 2022) relates to company Try Web Private Limited while others relate to Try Fashion Private Limited. Further, in all the cases, the petitioner applied for resignation on 05.07.2017 and the same was accepted on 31.07.2017. As factual matrix and application of law in all these cases is similar, they are being discussed together.

For the sake of convenience facts are being taken from CRM-M-48762-2021 titled as **"Amit Jain vs Hare Ram Sharma and others"**.

2. Brief facts of this case as stated in the petition are that petitioner was erstwhile Director of M/s Try Fashion Pvt. Ltd./ respondent No 2 from 07.01.2017 to 31.07.2017. A complaint U/s 138 of the Negotiable Instrument Act (hereinafter referred as NI Act) came to be filed against him besides above said company and other Directors. It was alleged in the complaint that the company is running an online promotion scheme for which the alleged accused have taken Rs. 1,19,600/- from the complainant on 02.06.2017, but the above said scheme floated by accused failed. Out of above said amount of Rs. 1,19,600/-, an amount of Rs. 26,894/- was paid back and for the balance amount accused gave PDC cheque bearing no. 000225 dated 08.11.2017 of Rs. 92,706/- drawn on HDFC Bank Sector-16, Faridabad, which on its presentation to the complainant's Bank was dishonored due to "INSUFFICIENT FUNDS" on 30.12.2017. Thereafter, on the basis of allegations made in the complaint and evidence given by way of affidavit of complainant and documents attached therewith, petitioner alongwith other accused was summoned by the Ld. Trial Court vide order dated 24.04.2018. As summons could not be served upon the petitioner, he was declared as proclaimed person vide order dated 22.01.2020.

3. By way of present petition, prayer has been made for quashing of complaint dated 08.03.2018, summoning order dated 24.04.2018 as well as the consequential proceedings arising therefrom including order dated 22.01.2020 vide which petitioner was declared proclaimed offender. Similar prayers are also made in CRM-M-52110-2021, CRM-M-52321-2021 & CRM-M-52715-2021, for quashing of orders declaring petitioner as proclaimed person, while in rest other cases prayers are made only for quashing of complaint, summoning order as well as consequential proceedings arising therefrom.

4. Learned counsel for the petitioner submits that petitioner remained as Director of the company from 07.01.2017 to 31.07.2017 and the cheque in question (bearing no. 000225 dated 08.11.2017 Rs.92706/-) was a post dated cheque and when the cheque was presented and dishonored, by that time, the petitioner ceased to be a Director. He further submits that even there is no averment in the complaint which would suggest that how the petitioner was incharge of and responsible for the conduct of business of the company to attract the liability u/s 138 read with Section 141 N.I. Act and in that situation, petitioner, who resigned as a Director before presentation and dishonour of cheque, cannot be prosecuted for the post dated cheque issued by the company. In support of his submissions, he places reliance upon:-

i. **DCM Financial Services Ltd. v. J.N. Sareen**, (SC) reported as 2008(3) R.C.R. (Criminal) 152; and

ii. **Mrs. Anita Malhotra v. Apparel Export Promotion Council** (SC) : reported as 2011(4) R.C.R. (Criminal) 835

With respect to P.O. proceedings, he submits that summons/bailable warrants/ non-bailable warrants or even proclamation under Section 82 Cr.P.C. were never served upon the petitioner as the address given in the complaint was of the respondent company whereas the petitioner had already resigned from the post of Director and he was not informed by the company regarding these proceedings.

5. On the other hand, no one has chosen to appear on behalf of respondents No.1- complainant despite service; whereas no opposition has been made on behalf of learned counsel representing respondent No.4.

6. I have heard learned counsel for the petitioner and gone through the paper book of the case as well as law cited at the bar. I find substance in the arguments raised by the learned Counsel for the petitioner. A perusal of Annexure P-4, which is a document from the website of Registrar of Companies reveals that petitioner was appointed as Director of respondent No.2 company on 07.01.2017 and after his resignation on 05.07.2017, he ceased to be a Director w.e.f.

31.07.2017 i.e. the date his resignation was duly accepted by Registrar of the Companies. Cheque in question bearing no. 000225 dated 08.11.2017 was presented and dishonored on 30.12.2017, when petitioner was no more acting in the capacity of Director. In that circumstance, case of the petitioner is squarely covered by the judgment of Hon'ble Apex Court in **DCM's** case (supra), wherein it has been held that in case of a post-dated cheque issued by a company, the Director who resigned before presentation and dishonour of cheque cannot be prosecuted. Relevant para of the same is reproduced as under:

> *"20. The cheque in question was admittedly a post dated one. It was signed on 3rd April, 1995. It was presented only sometimes in June, 1998. In the meantime he had resigned from the directorship of the Company. The complaint petition was filed on or about 20th August, 1998. Intimation about his resignation was given to the complainant in writing by the 1st respondent on several occasions. Appellant was, therefore, aware thereof. Despite having the knowledge, the 1st respondent was impleaded one of the accused in the complaint as a Director Incharge of the affairs of the Company on the date of commission of the offence, which he was not. If he was proceeded against as a signatory to the cheques, it should have been disclosed before the learned Judge as also the High Court so as to enable him to apply his mind in that behalf. It was not done. Although, therefore, it may be*

> *that as an authorised signatory he will be deemed to be person incharge, in the facts and circumstances of the case, we are of the opinion that the said contention should not be permitted to be raised for the first time before us. A person who had resigned with the knowledge of the complainant in 1996 could not be a person incharge of the Company in 1998 when the cheque was dishonoured.* ***He had no say in the matter of seeing that the cheque is honoured. He could not ask the Company to pay the amount. He as a Director or otherwise could not have been made responsible for payment of the cheque on behalf of the Company or otherwise."(emphasis supplied)"***

Judgment in **DCM's case** (supra) was subsequently followed by Hon'ble Apex Court in **Anil's case** (supra) as well.

7. Further there is also no averment in the complaint that petitioner was incharge and responsible for conducting day-to-day business of the respondent company at relevant period and on that account as well petitioner cannot be charged with any criminal liability. Reliance in this regard can be placed on **"Pawan Kumar Goel v. State of U.P."** reported as 2023(1) R.C.R. (Criminal) 486, relevant para of which is reproduced as under:

> *"19. This Court has been firm with the stand that if the complainant fails to make specific averments against the company in the complaint for the commission of an offence under section 138 of NI Act, the same cannot be rectified by*

taking recourse to general principles of criminal jurisprudence. Needless to say, the provisions of Section 141 impose vicarious liability by deeming fiction which pre-supposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-Section (1) and (2) would not be liable to be convicted on the basis of the principles of vicarious liability."

8. In a similarly situated case titled as "**Ashoke Mal Bafna v. M/s. Upper India Steel Mfg. & Engg. Co. Ltd.**" reported as 2017 AIR (Supreme Court) 2854 as well, the Hon'ble Apex Court observed that High Court ought to have allowed the criminal miscellaneous application of the appellant because of the absence of clear particulars about role of the appellant at the relevant time in the day to day affairs of the Company. Relevant paras are reproduced as below:

"10. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action [See : Pooja Ravinder Devidasani v. State of Maharashtra & Ors. AIR 2015 Supreme Court 675].

11. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

12. Turning to the case on hand, admittedly the cheques dated 28-12-2004 were issued while the appellant was Director of the Company with validity for a period of six months but during that period they were not presented for realization at the bank. The appellant has resigned as Director w.e.f. 2-1-2006 and the fact of his resignation has been furnished by Form 32 to the Registrar of Companies on 24-03-2006 in conformity with the rules. Thereafter, the appellant had played no role in the activities of the default Company. This fact remains substantiated with the Statement filed by the default Company on 20-02-2006 with the Registrar of Companies that in an advertisement of the Company seeking deposits (Annexure P3), only the names of three Directors of the Company were shown as involved in the working of the Company and the name of appellant was not therein. Indisputably, therefore, the cheques bounced on 24-08-2006 due to insufficient funds were neither issued by the appellant nor the appellant was involved in the day to day affairs of the Company.

13. Before summoning an accused under Section 138 of the Act, the Magistrate is expected to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and then to proceed further with proper application of mind to the legal principles on the issue. Impliedly, it is necessary for Courts to ensure strict compliance of the statutory requirements as well as settled principles of law before making a person vicariously liable.

> *14. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of Court. Looking at the facts of the present case in the light of settled principles of law, we are of the view that this is a fit case for quashing the complaint. The High Court ought to have allowed the criminal miscellaneous application of the appellant because of the absence of clear particulars about role of the appellant at the relevant time in the day to day affairs of the Company."*

In view of these authorities, it is apparent that petitioner cannot be prosecuted for the post-dated cheques issued by the Company during the period he was its Director, particularly in the eventuality that he has resigned from the post of Director much prior to the presentation and dishonour of the cheques.

9. With respect to proceedings regarding proclaimed person as well, learned counsel for the petitioner draws attention of the court at zimni order dated 03.10.2018 (at page 44 of the paper-book), relevant part of which is reproduced as below:-

> *"Notice issued to the accused received back unserved with the report of incorret address. Now, fresh notice to the accused be issued on filing of correct address for 11.01.2019"*

10. However, neither any new address was brought on record nor any fresh notice was issued to the petitioner on the next date of hearing, rather it was observed that he was intentionally avoiding his

appearance before the court and bailable warrants were issued against him. Relevant part of zimni order dated 11.01.2019 is reproduced as below:-

> *"Notice issued to accused Deepak Singla received back served through his father. Notice issued to the accused Amit Jain received back unserved. It appears that accused is intentionally avoiding his appearance before the court. His presence could not be procured in an ordinary manner. Hence, BW of both accused in the sum of Rs. 5,000/- with one surety in like amount be issued for 19.04.2019."*

11. It shows that proceedings declaring the petitioner as proclaimed person was initiated against him without serving him on his correct address, which is in violation of mandate of Section 82 of Cr.P.C., without there being any application of mind in a mechanical manner. Therefore, proceedings against him under Section 82 of Cr.P.C. are also liable to be quashed.

12. In view of the discussion made herein above, this petition is allowed and complaint dated 08.03.2018, summoning order dated 24.04.2018 as well as the consequential proceedings arising therefrom including order dated 22.01.2020 vide which petitioner was declared as proclaimed person are quashed qua the petitioner. Similarly, in other cases as well, petitioner has resigned from the post of Director much prior to the presentation and dishonour of the cheques, therefore, the

other petitions are also allowed. Complaints, summoning orders as well as the consequential proceedings arising therefrom in all other cases are also quashed qua the petitioner. In addition to that in CRM-M-52110-2021, CRM-M-52321-2021 & CRM-M-52715-2021, orders vide which petitioner was declared as proclaimed person are also quashed.

13. It is mentioned by the learned counsel for the petitioner that in CRM-M-52321-2021 and CRM-M-7752-2022, complaint proceedings before the Trial Court have already been dismissed for want of prosecution, therefore in these cases, if application is made before the Trial Court for their restoration, the same shall not be entertained qua the petitioner in view of this order.

14. In CRM-M-53920-2021, complaint proceedings before the Trial Court have been dismissed as withdrawn on the basis of compromise, therefore it is disposed off as infructuous.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)

April 28, 2023 **JUDGE**

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