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

(Sr. No. 108) **CRM-M No. 48069 of 2022**

Date of decision : 26.04.2023

Vinay Yadav

.....Petitioner

Versus

Firm M/s Shree Ganpati Traders and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present **:** Mr. J. P. Sharma, Advocate for the petitioner.

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DEEPAK SIBAL, J. (*Oral*)

(1) Through the present petition filed under Section 482 Cr.P.C. the petitioner seeks quashing of order dated 04.05.2022 passed by the Judicial Magistrate First Class, Kanina (for short – the trial court) through which an application filed by the petitioner seeking therein dismissal of the complaint filed against him under Section 138 of the Negotiable Instruments Act, 1881 (for short – the NI Act) was rejected. Also under challenge is the order dated 21.07.2022 passed by the Additional Sessions Judge, Narnaul (for short – the revisional court) through which the revision petition filed by the petitioner against the aforesaid order of the trial court was dismissed.

(2) Respondent No.1-complainant filed a complaint against M/s

Parbhati Lal & sons (for short – the firm) and the petitioner, seeking therein to prosecute them under Section 138 of the NI Act and Section 420 IPC as according to the complainant the firm had made purchases from the complainant and in lieu thereof had issued a cheque for Rs.8,24,383/- which, on presentation, had been dishonoured for want of sufficient funds. Thereafter, a legal notice was got served by the complainant upon the aforesaid two accused requiring them to make good the payment due to the complainant but to no avail.

(3) After recording preliminary evidence, the trial court summoned the accused to face trial and on the happening of such an event, the petitioner filed an application seeking therein his discharge which was rejected by the trial court on 08.02.2019. The petitioner did not challenge such order.

(4) During the course of the trial Bhagwani Devi, who was the proprietor of the firm, expired on 25.08.2021 and thereafter, based on such event, the petitioner filed an application seeking therein dismissal of the complaint as according to him the cheque in question had been issued on behalf of the firm which was a sole proprietorship and once its proprietor was dead the complaint itself did not survive as the petitioner had no concern with the firm and that he had signed the cheque in question only in the capacity of being grandson of its sole proprietor/Bhagwani Devi. The trial court rejected the petitioner’s application and the petitioner's revision petition filed against such rejection also met the same fate. It is in these circumstances the petitioner has approached this Court through the present petition for the afore reliefs.

(5) Learned counsel for the petitioner contends that after the death of Bhagwani Devi, who was the sole proprietor of the accused-firm, the complaint has no legs to stand primarily on the ground that the cheque in question was in lieu of dues of the firm of whose proprietor was now dead and that the petitioner has or had no concern with the firm.

(6) Learned counsel for the petitioner has been heard and with his able assistance the record of the case has also been perused.

(7) In the impugned complaint the petitioner was arrayed as accused No.2 and after recording of preliminary evidence the trial court summoned him to face trial. On the happening of such event, the petitioner had filed an application for discharge which was dismissed by the trial court on 08.02.2019. Such order has neither been placed on the record nor was challenged by the petitioner. Thus, the same attained finality.

(8) The petitioner is the signatory of the cheque in question which was given to the complainant in lieu of the material supplied by it to the firm. Further, it is not disputed that the petitioner was the authorized signatory in the records of the bank where the firm's account was being maintained. The cheque in question was dishonoured only for want of sufficient funds and not for the reason that it had not been signed by the authorized signatory. Therefore, at this stage the petitioner cannot be allowed to urge that he had no concern with the firm. It is for the petitioner to prove during the course of his trial that he had no concern with the firm. The same cannot be gone into at this stage especially when the complaint in question was filed in the year 2018 in which much of the prosecution evidence has already been led.

(9) Dismissed.

(10) No costs.

26.04.2023 **(DEEPAK SIBAL)**
sunil yadav **JUDGE**

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