

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

CRM-M-59624-2022
Date of Decision: 31.08.2023

Shivam Aggarwal

. . . . Petitioner

Vs.

M/s Mukesh Steels Ltd.

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Siddhant Jain, Advocate and
Mr. Manan Jain, Advocate, for the petitioner.

Ms. Shallu Aggarwal, Advocate,
Mr. Vivek Aggarwal, Advocate, for the respondent.

DEEPAK GUPTA, J.

Power of attorney filed today on behalf of the respondent/
complainant in Court is taken on record.

2. Prayer in this petition filed under Section 482 Cr.P.C. is to
quash Criminal complaint No.1682 dated 20.02.2016 filed under Section
138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act']
titled 'M/s Mukesh Steels Ltd. Vs. Atma Ram Mela Ram Steel Pvt. Ltd.
and others' (Annexure P1), pending in the Court of Id. JMIC, Ludhiana
along with the summoning order dated 15.03.2022 (Annexure P2).

3. Respondent-M/s Mukesh Steels Ltd. filed the complaint in
question under Section 138 of the NI Act against Atma Ram Mela Ram
Steel Pvt. Ltd. and two of its directors namely, Parmod Kumar; and
Shivam Aggarwal (present petitioner) alleging that cheque No.562743
dated 02.11.2015 for an amount of ₹6,78,043/- drawn on State Bank of
India, Ludhiana, issued by the accused/company, in favour of the

complainant, on presentation was dishonored and that despite statutory notice demanding the cheque amount to be paid within 15 days, the same was not paid.

4. After recording preliminary evidence, initially, the summoning order was passed on 23.02.2016, but the same was set aside by a Coordinate Bench of this High Court vide order dated 18.07.2019 in CRM-M-10045-2017, by making following observations: -

“Be that as it may, keeping in view the facts of the case and more particularly apparent error in the order of summoning in noting that the cheque was returned with the remarks “funds insufficient” in place of “other reasons”, the order dated 23.02.2016 summoning the petitioners, is set aside. Learned trial Court would permit the complainant/respondent to produce further evidence and thereafter pass a fresh order in accordance with law.

The petition stands disposed of.”

5. Thereafter, fresh evidence was taken, which revealed that cheque in question had been dishonored ‘for insufficient funds’ and so fresh summoning order dated 15.03.2022 (Annexure P2) was passed.

6. The sole contention of the ld. counsel is that petitioner has been projected to be one of the directors of the accused company i.e., Atma Ram Mela Ram Steel Pvt. Ltd. In fact, he had resigned from the Board of Directors way-back on 01.10.2015, which is evident from Form No.DIR-12 dated 01.10.2015, filed by the company with ROC along with the resignation letter and ever since then, petitioner was not involved in day-to-day affairs of the company and therefore, he cannot be held liable for the cheque issued on 02.11.2015.

7. The form DIR-12 (Annexure P4) fortifies the stand of the petitioner to the effect that he had ceased to be director of the accused-company w.e.f. 01.10.2015, on account of his resignation.

8. Ld. counsel for the respondent-complainant, though opposed the petition, but did not dispute the factual position to the effect that as per form No.DIR-12, petitioner had resigned on 01.10.2015, whereas cheque in question had been issued on 02.11.2015.

8. In view of the aforesaid facts and circumstances, petitioner cannot be held liable for dishonor of the cheque, which had been issued much after the acceptance of his resignation from directorship of the accused-company.

9. Reliance can be placed on a decision rendered by Co-ordinate Bench of this Court in case of “*Anil Chinana and another Vs. Gyani Ram Ruliya Ram and another*” (2019) 1 RCR (Criminal) 388, wherein it has been observed that it would be appropriate for the concerned Magistrates to seek copies of Form No.32 and the latest Annual Return filed by the Company so that only those persons who are Directors on the date of commission of the offence are summoned.

10. In view of the above, the present petition is accepted. Criminal complaint No.1682 dated 20.02.2016 filed under Section 138 of the Negotiable Instruments Act, 1881 [for short ‘the NI Act’] titled M/s Mukesh Steels Ltd. Vs. Atma Ram Mela Ram Steel Pvt. Ltd. and others, pending in the Court of Id. JMIC, Ludhiana and subsequent proceedings including the summoning order dated 15.03.2022 qua the petitioner only, are hereby quashed.

Disposed of.

(DEEPAK GUPTA)
JUDGE

31.08.2023

Vivek

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No