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

Date of decision : 17.05.2024

(1) CRM-M-6636-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(2) CRM-M-6639-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(3) CRM-M-6641-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(4) CRM-M-6644-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

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(5) CRM-M-6645-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(6) CRM-M-6647-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(7) CRM-M-6650-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(8) CRM-M-6656-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(9) CRM-M-6660-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

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(10) CRM-M-6661-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(11) CRM-M-6663-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(12) CRM-M-6665-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

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State of Haryana and another ...Respondent(s)

(13) CRM-M-6667-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(14) CRM-M-6668-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

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(15) CRM-M-6669-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(16) CRM-M-6671-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(17) CRM-M-6674-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(18) CRM-M-6677-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(19) CRM-M-6680-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

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(20) CRM-M-6682-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(21) CRM-M-6686-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(22) CRM-M-6693-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(23) CRM-M-6698-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(24) CRM-M-6703-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

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(25) CRM-M-6707-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(26) CRM-M-6712-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(27) CRM-M-6725-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(28) CRM-M-6728-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(29) CRM-M-6731-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

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(30) CRM-M-6733-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(31) CRM-M-6736-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(32) CRM-M-6739-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(33) CRM-M-6740-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(34) CRM-M-6742-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and others	...Respondent(s)

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(35) CRM-M-6744-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(36) CRM-M-6746-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and others	...Respondent(s)

(37) CRM-M-6747-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(38) CRM-M-6748-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

(39) CRM-M-6749-2023 (O&M)

Namita Bhatnagar	...Petitioner(s)
Versus	
State of Haryana and another	...Respondent(s)

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(40) CRM-M-6750-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(41) CRM-M-6753-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

(42) CRM-M-8104-2023 (O&M)

Namita Bhatnagar ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. L.S. Sidhu, Advocate,
for the petitioner(s) in all petitions.

Mr. Kiran Pal Singh, AAG, Haryana.

None for the complainant-respondent No.2.

MAHABIR SINGH SINDHU, J.

Controversy involved in the above cases is of similar nature; therefore, all 42 petitions are being disposed off by this common order.

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2. On 15.02.2023, the Coordinate Bench, while issuing notice of motion as well as granting interim stay, passed the following order:-

“CRM-M-6636-2023; CRM-M-6639-2023; CRM-M-6641-2023;
CRM-M-6644-2023; CRM-M-6645-2023; CRM-M-6647-2023;
CRM-M-6650-2023; CRM-M-6656-2023; CRM-M-6660-2023;
CRM-M-6661-2023; CRM-M-6663-2023; CRM-M-6665-2023;
CRM-M-6667-2023; CRM-M-6668-2023; CRM-M-6669-2023;
CRM-M-6671-2023; CRM-M-6674-2023; CRM-M-6677-2023;
CRM-M-6680-2023; CRM-M-6682-2023; CRM-M-6686-2023;
CRM-M-6693-2023; CRM-M-6698-2023; CRM-M-6703-2023;
CRM-M-6707-2023; CRM-M-6712-2023; CRM-M-6725-2023;
CRM-M-6728-2023; CRM-M-6731-2023; CRM-M-6733-2023;
CRM-M-6736-2023; CRM-M-6739-2023; CRM-M-6740-2023;
CRM-M-6742-2023; CRM-M-6744-2023; CRM-M-6746-2023;
CRM-M-6747-2023; CRM-M-6748-2023; CRM-M-6749-2023;
CRM-M-6750-2023; CRM-M-6753-2023

NAMITA BHATNAGAR V/S STATE OF HARYANA AND ANR.

*Present: Mr. Randeep Singh Rai, Sr. Advocate
with Rubina Virmani, Advocate
for the petitioner(s).*

This petition has been filed under Section 482 Cr.P.C. for quashing of criminal complaint, titled as ‘M/s Deswal Sales Corporation, through its Proprietor Sh. Roshan Lal S/o Lachman’ Complaint No.11, CIS No. NACT/41/2017 dated 13.02.2017 (Annexure P-2), summoning order dated 24.04.2017 (Annexure P-3), order dated 09.12.2022 (Annexure P-4) whereby bailable warrants have been issued against the petitioner; thereafter orders dated 20.12.2022 and 02.01.2023 (Annexure P-5) (Colly) passed by JMIC, Safidon, District Jind, whereby non-bailable warrants and vide order dated 10.01.2023 (Annexure P-6) passed by JMIC, Safidon, District Jind whereby proclamation was issued under Sections 82/83 Cr.P.C. against the petitioner, along with co-accused and all other consequential proceedings.

Learned Senior counsel contends that as per records of ROC-Form 32, petitioner ceased to be the Secretary of the company with effect from 30.11.2012 and was not employed at the time of commission of offence as all those complaints are of the year 2015 or after 2016, which were filed after the resignation of the petitioner i.e. 30.11.2012. Learned Senior counsel further contends that petitioner did not receive a single notice/summon/warrant or order of proclamation at her residence where she had been living and in the memo of parties of the complaint, petitioner discovered that the address of the petitioner was the same as the factory address of the company. Hence petitioner was unaware of any proceedings and was not able to take appropriate action earlier in those cases as she was never served. It is also argued that the mandatory provisions

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*i.e. Section 141 of N.I. Act has not been complied with and Section 142 (1) of N.I. Act subsequently applies to the present case of the petitioner. To support his contentions, he relied upon the judgment rendered in **CRM-M-36869- 2018** titled as “**Anil Chanana Vs. M/s Gyani Ram Ruliya Ram**”.*

Notice of motion.

Dasti as well.

Mr. Bhupinder Singh, DAG Haryana, accepts notice on behalf of respondent No. 1.

Adjourned to 18.04.2023.

All further proceedings, including the proclamation proceedings shall remain stayed, qua the petitioner only.

A photocopy of this order be placed on the file(s) of other connected cases.”

3. Later on, vide order dated 07.02.2024, this Court modified the interim order in the following manner:-

“CRM-M No.6636 of 2023
along with other connected cases

NAMITA BHATNAGAR
Versus
STATE OF HARYANA AND ANR.

Present:- Mr. L.S.Sidhu, Advocate for the petitioner(s).

Mr. Kiran Pal Singh, AAG, Haryana for respondent No.1.

Mr. Sandeep Lather, Advocate for respondent No.2

in CRM-M-6636-2023; CRM-M-6644-2023;

CRM-M-6650-2023; CRM-M-6671-2023;

CRM-M-6677-2023; CRM-M-6680-2023;

CRM-M-6682-2023; CRM-M-6686-2023;

CRM-M-6693-2023; CRM-M-6728-2023;

CRM-M-6731-2023; CRM-M-6736-2023;

CRM-M-6742-2023; CRM-M-6746-2023;

CRM-M-6748-2023; CRM-M-6749-2023;

CRM-M-6707-2023; CRM-M-6636-2023;

CRM-M-6644-2023; CRM-M-6650-2023;

CRM-M-6671-2023; CRM-M-6677-2023;

CRM-M-6680-2023; CRM-M-6682-2023;

CRM-M-6686-2023; CRM-M-6693-2023;

CRM-M-6728-2023; CRM-M-6731-2023;

CRM-M-6736-2023; CRM-M-6742-2023;

CRM-M-6746-2023; CRM-M-6748-2023;

CRM-M-6749-2023; CRM-M-6707-2023.

Learned Counsel for respondent No.2 seeks time to have instructions in the matter(s) and to go through the zimni orders, passed by learned trial Court.

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Posted for 29.02.2024.

However, the order dated 15.02.2023, passed by the Coordinate Bench, is modified to the extent that further proceedings against the remaining accused shall continue.

Photocopy of this order be placed on the connected case(s)."

4. Today, all these cases have been taken up for hearing twice, but no one has turned up on behalf of respondent(s) No-2-complainant(s) for the reasons best known to them.

5. For brevity, the facts are being noticed from CRM-M-6636-2023 (Namita Bhatnagar Vs. State of Haryana and another).

6. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for quashing of criminal complaint No.11 [CIS No.NACT/41/2017] dated 13.02.2017 (P-2), titled as 'M/s Deswal Sales Corporation Vs. Amira Pure Foods Private Limited and others', under Section 138 read with Sections 141 & 142 of the Negotiable Instruments Act, 1881 (for short, 'NI Act') and all consequential proceedings arising therefrom qua the petitioner, including summoning order dated 24.04.2017 (P-3); order dated 09.12.2022 (P-4), whereby, bailable warrants as well as orders dated 20.12.2022 & 02.01.2023 (P-5 colly.), for non-bailable warrants were issued against her; and order dated 10.01.2023 (P-6), vide which, proclamation under Sections 82/83 Cr.P.C. was issued against the petitioner as well as other co-accused.

7. Learned counsel contends that petitioner joined as Senior Manager (Legal)-cum-Company Secretary with M/s Amira Foods (India) Ltd.-accused No.1 on 14.02.2011 (P-8), but after a short duration, she resigned from the post on 30.11.2012 (P-11). Further

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contends that cheque in question was issued on 11.11.2016 i.e. after a period of 04 years from the date of her resignation; thus petitioner is having no concern or role regarding the alleged cheque; nor she has any legal liability in this regard.

8. Learned State counsel, while opposing the prayer, submits that despite service, none of the accused joined the proceedings before learned trial Court; therefore, on 28.02.2023, an intimation was sent by learned Judicial Magistrate 1st Class, Safidon (for short, 'JMIC') to the SHO for lodging of FIR under Section 174-A of the Indian Penal Code, 1860 (for short, 'IPC') against all of them.

9. Heard learned counsel for the petitioner(s) as well as State counsel and perused the paper-book.

10. It transpires that complaint under Section 138 of NI Act was filed on 29.11.2016 (P-2) and paragraphs No.4, 5, 6 & 13 of the same reads as under:-

"4. That the accused No. 2 to 4 had issued cheque on behalf of accused No.1 to the Complainant for a sum of Rs. 6,34,638/-(Six Lakhs, Thirty Four Thousands, Six Hundreds Thirty Eight) being the amount towards part payment. That the accused no. 2 to 4 on behalf of Accused No.1 gave the cheque bearing no. 350214 Dated 11.11.2016 for a sum of Rs. 6,34,638/-(Six Lakhs, Thirty Four Thousands, Six Hundreds Thirty Eight) drawn on Punjab National Bank, Minto Road New Delhi-110001, in favour of the complainant to discharge liability.

5. That the Prop. of the complainant firm deposited the said cheques no. 350214 Dated 11.11.2016 for encashment with his banker Punjab National Bank Pillukhera Branch, Pillukhera Mandi, District Jind, Haryana but same all cheque was returned with the remarks, "ACCOUNT FROZEN BY BASE BRANCH" vide return memos dated 23.12.2016. The original copy of the cheque bearing

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no. 350214 Dated 11.11.2016 and the original copy of the return memo dated 23.12.2016 are annexed as ANNEXURE- 1 &2.

6. That it seems that accused no. 2 to 4 had issued the above said cheque with malafide intention against the complainant knowingly well that the same would not be honoured on presentation. The intention of the accused no. 2 to 4 was to cheat complainant deliberately therefore accused no. 2 to 4 issued cheque on behalf of accused no. 1. Hence, all the accused render themselves for the offence committed under section 138 of N.I.Act and as well as under section 420 of I.P.C.

13. The cheque was issued by the accused in favour of the Complainant towards discharge of the liability of a Company Amira Pure Foods Pvt. Ltd. and since the Accused No.2 & 4 are the authorized signatory of the cheque in question and is responsible for the day to day affairs of the business of Accused No.1 and hence is responsible for the said part payment due to the Complainant. The cheque was issued by Accused No. 2 to 4 on behalf of accused no. 1 namely Amira Pure Foods Pvt. Ltd. from the account maintained by the Accused No.1 with its banker for the payment of the amount to the Complainant in part discharge of the liability of Amira Pure Foods Pvt. Ltd. and since the cheque was dishonoured for the reasons stated hereinabove Negotiable Instruments Act, 1881, as amended. The Accused Nos. 1 to 4 are thus liable to be prosecuted for the offence under section 138 read with section 141 of the Negotiable Instruments Act, 1881, as amended.”

11. A perusal of above extract reveal that alleged cheque No.350214 dated 11.11.2016, for an amount of Rs.6,34,638/-, drawn on Punjab National Bank, Minto Road New Delhi-110001, was issued by accused Nos.2 to 4 on behalf of accused No.1-M/s Amira Foods (India) Ltd. Also discernible that cheque was presented for encashment on 11.11.2016 with Punjab National Bank Pillukhera Branch, Pillukhera Mandi, District Jind, Haryana, but the same was returned vide Memo

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dated 23.12.2016 with the remarks “*ACCOUNT FROZEN BY BASE BRANCH*”.

12. At this stage, it would be appropriate to refer the relevant provisions of Section 141 of the NI Act and which read as under:-

“141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:”

The legal provisions noticed herein above clearly indicate that if the person committing an offence under Section 138 is a company, any person who is made an accused along with the company would not be liable to punishment, if he/she proves that the offence was committed without his/her knowledge.

13. In the present case, from bare perusal of Form 32 (P-11) maintained with the Registrar of Companies, it is apparently clear that petitioner had resigned from the post of Company Secretary of M/s Amira Pure Foods Pvt. Ltd. wayback on 30.11.2012; whereas cheque in question was issued on 14.11.2016; therefore, by no stretch of imagination, it would be acceptable that alleged commission of offence was within her knowledge.

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Also noteworthy that there is no denial about the factum of Form 32 (P-11) by the complainant-respondent No.2 or by the State of Haryana; nor any other material has been produced on record by the complainant(s) regarding the complicity of petitioner.

14. In view of the above, it is quite evident that petitioner was having no knowledge about the issuance of alleged cheque dated 11.11.2016; nor she had signed or authorized any person to issue the said cheque.

Still further, reference can be made to the judgment of Hon'ble the Supreme Court in ***Rajesh Viren Shah Vs. Redington (India) Limited, 2024 INSC 111*** and para Nos.8 to 10 of the same read as under:-

“8. We find the High Court, in the impugned order to have elaborately discussed the principles of law in regard to the quashing of such proceedings but, however, not dealt with the factual matrix. Ex facie, we find that the complainant has not placed any materials on record indicating complicity of the present appellant(s) in the alleged crime. Particularly, when the appellant(s) had no role in the issuance of the instrument, which is evident from Form 32 (Exh.P.59) issued much prior to the date on which the cheque was drawn and presented for realisation.

9. The veracity of Form-32 has neither been disputed by the Respondent nor has the act of resignation simpliciter been questioned. As such, the basis on which liability is sought to be fastened upon the instant appellant(s) is rendered questionable.

10. The record reveals the resignations to have taken place on 9th December 2013 and 12th March 2014. Equally, we find the cheques regarding which the dispute has travelled up the courts to have been issued on 22nd March 2014. The latter is clearly, after the appellant(s) have severed their ties with the Respondent-Company and, therefore, can in no way be responsible for the conduct of business at the relevant time. Therefore, we have no hesitation in

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holding that they ought to be then entitled to be discharged from prosecution.”

The legal preposition extracted herein-above in case of *Rajesh Viren Shah (supra)* is fully applicable to the matter in controversy.

15. In view of the above, there is no hesitation to hold that petitioner was having no knowledge about the issuance of cheque in question in favour of respondent No.2; thus, continuation of proceedings against her under Section 138/142 of the NI Act would amount to misuse of the process of Court.

16. As a result of the above, there is no option, except to allow the present petition(s).

17. Consequently, all the 42 petitions are allowed; Complaint No.11, CIS No.NACT/41/2017 dated 13.02.2017 (P-2); summoning order dated 24.04.2017 (P-3); order dated 09.12.2022 (P-4); orders dated 20.12.2022 & 02.01.2023 (P-5) (Colly.); and order dated 10.01.2023 (P-6); along with all subsequent proceedings arising therefrom qua the petitioner, is/are quashed and set aside. Likewise complaint(s), summoning order(s) and other impugned order(s) in rest of 41 cases alongwith all subsequent proceedings arising therefrom qua the petitioner are also quashed and set aside.

18. It is made clear that observations made above be not construed as an expression of opinion on merits of the complaint(s) pending before learned JMIC, against the remaining accused.

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19. However, it is clarified that any complainant(s) feeling aggrieved on account of “due service” in either of quashing petition(s), may move appropriate application(s) for recalling of this order and same shall be considered in accordance with law.

20. Pending application(s), if any, shall also stand disposed off.

21. Photocopy of this order be placed on the files of connected cases.

17.05.2024

atulsethi/v

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/ reasoned : Yes / No

Whether reportable : Yes / No