

**CRM-M-45672-2016 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-45672-2016 (O&M)
Date of Decision: 17.05.2024****NAVEEN KUMAR****... Petitioner****Versus****M/S HV WAREHOUSE LLP & OTHERS****...Respondents****CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Present: Mr. Jai Singh Yadav, Advocate
for the petitioner.****Mr. Avtar Singh Bhatti, Amicus Curiae
for the respondents.************JASJIT SINGH BEDI, J.**

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the Complaint No.58-RBT dated 27.11.2014 under Section 138 read with Section 142 of the NI Act, 1881 (Annexure P-3), the summoning order dated 27.11.2014 (Annexure P-8) passed by the JMIC, 1st Class, Rewari under Section 138 of the NI Act and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that Criminal Complaint No.60-RBT dated 22.08.2012/01.07.2013 (Annexure P-2) under Section 138 of the NI Act was filed by the respondents/complainants against M/s Poonam Super Multi Speciality Hospital Pvt. Ltd., Rajesh Sharma (Director), Santosh Kumar Sharma (Director) and Naveen Kumar (petitioner/Director). The said complaint pertained to the dishonouring of a cheque No.622140 dated

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03.05.2012 for an amount of Rs.30 lakhs. On conclusion of the Trial in the said case, while the other accused were convicted, the petitioner was acquitted on the grounds that he had ceased to be a Director at the time of the transaction between the complainant-firm and the accused. The relevant extract of the judgment is as under:-

“42. Now the point of adjudication in this case is that whether accused No.4 is liable or not for commission of offence under section 138 of Negotiable Instrument Act. Accused No.4 has relied upon resignation letter Ex.DW2/D which was written by Naveen Kumar to Director of Poonam Super Multi Specialty Hospital Private Limited for his resignation and same had been received by Rajesh Sharma. He has further relied upon acceptance letter dated 29.03.2011 and from perusing of same, it is evident that resignation letter from the directorship of the company dated 29.03.2011 has been accepted by the Chairman of Poonam Super Multi Specialty Hospital Private Limited.

43. MOU Ex.D1 was prepared on 19.01.2012 and first addendum Ex.D3/A was prepared on 01.05.2012. Both documents had been prepared after resignation by the accused No.4 Naveen Sharma. From perusing of these documents, it is evident that MOU and addendum was prepared after resignation of accused No.4 from the company accused No.1. Accused No.4 was not director at the time of transaction with accused company.

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47. In light of the above discussion, this court is of the considered view that accused No.1 to 3 issued cheque No.622146 of Rs.30,00,000/- for discharge his legal liability

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but same was dishonored due to insufficient fund in the account of accused. Accused No.3 has passed away during this trial. Accused No.2 is held guilty for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and is convicted thereunder. Accused No.4 Naveen Kumar is acquitted as he was not Director at the time of transaction between the complainant firm and accused. Let accused No.2 be heard on the quantum of sentence on 30.01.2016.”

The copy of the judgment of acquittal dated 29.01.2016 is attached as Annexure P-2 to the present petition.

3. The instant complaint dated 27.11.2014 (Annexure P-3) was filed with respect to the dishonouring of a cheque No.622141 dated 24.03.2012 for an amount of Rs.2 crores.

4. Based on the preliminary evidence, the accused came to be summoned by the Court of JMIC, Rewari vide order dated 27.11.2014 (Annexure P-8).

5. The complaint dated 27.11.2014 (Annexure P-3) and the summoning order dated 27.11.2014 (Annexure P-8) are under challenge in the present petition.

6. The learned counsel for the petitioner contends that the Complaint No.60-RBT dated 22.08.2012/01.07.2013 (Annexure P-2) had been filed with respect to Cheque No.622140 and the petitioner had been acquitted on the grounds that he had ceased to be a Director when the transaction had taken place. The said judgment had attained finality meaning

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thereby that the issue regarding the retirement of the petitioner stood settled. Once the petitioner was acquitted on the grounds that he had resigned from the company, the present complaint and summoning order were liable to be quashed qua the petitioner as the position of the petitioner of having resigned was the same and the parties to the *lis* in each case were also the same.

7. Despite service none has put in appearance on behalf of the respondents.

8. I have heard the learned counsel for the petitioner.

9. When this matter had come up for hearing, on 21.12.2016, the following order was passed:-

“It is seen from the judgment dated 29.01.2016 (Annexure P-2) that the petitioner was acquitted of an identical offence by the Court of Ld. Chief Judicial Magistrate First Class, Rewari in complaint No.60-RBT dated 22.08.2012/01.07.2013, after finding that he was no longer associated with the accused company since his resignation as Director which had been accepted way back in the year 2011. The same complainant, who is respondent No.1 now, thereafter filed a second complaint for a similar offence under Section 138 of the Negotiable Instrument Act (Annexure P-3) on 27.11.2014 with an identical Cause Title as in the first complaint.

It is the submission of Ld. counsel at the bar that the judgment dated 29.01.2016 has already attained finality as the complainant did not file any proceedings by way of an appeal or revision challenging the said judgment.

Accordingly, issue notice of motion for 16.03.2017.



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In the meantime, proceedings in the trial Court shall remain stayed qua the petitioner only. “

10. Admittedly, the petitioner was acquitted in the first Trial with respect to the dishonouring of Cheque No.622140 dated 03.05.2012. The instant complaint and summoning order have been passed with respect to Cheque No.622141 dated 24.03.2012 and in each case, the complainant and the accused are the same. It is not in dispute any more that the petitioner had already resigned from the company when the transactions had taken place. Therefore, the petitioner cannot be affixed with any liability with respect to the dishonouring of Cheque No.622141 dated 24.03.2012 which is a subject matter of the instant complaint and summoning order.

11. In view of the aforementioned discussion, I find considerable merit in the present petition. Therefore, the Complaint No.58-RBT dated 27.11.2014 registered under Section 138 read with Section 142 of the NI Act, 1881 (Annexure P-3), the summoning order dated 27.11.2014 passed by the JMIC, 1st Class, Rewari under Section 138 of the NI Act (Annexure P-8) and all subsequent proceedings arising therefrom stands quashed qua the petitioner only.

(JASJIT SINGH BEDI)
JUDGE

17.05.2024

JITESH

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