



CRM-M-46123-2018 and other connected cases

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201 (4 cases)

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

Date of Decision:- 13.09.2024

(1)

CRM-M-46123-2018

Sunita Doda

.... Petitioner

Vs.

Union Territory of Chandigarh and Another

.... Respondents

(2)

CRM-M-53405-2018

Sunita Doda

.... Petitioner

Vs.

Union Territory of Chandigarh and Another

.... Respondents

(3)

CRM-M-6204-2019

Sunita Doda

.... Petitioner

Vs.

Union Territory of Chandigarh and Another

.... Respondents

(4)

CRM-M-11596-2019

Sunita Doda

.... Petitioner

Vs.

Union Territory of Chandigarh and Another

.... Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

**Present:- Mr. Rudresh, Advocate for
Mr. Sukhvinder Singh Chatrath, Advocate
for the petitioner in all cases.**

**Mr. Rajiv Vij, Addl. P.P. U.T. Chandigarh in
CRM-M Nos. 46123-2018, 53405-2018 and
11596-2019.**

**Mr. P.S. Paul, Addl. P.P U.T. Chandigarh in
CRM-M-6204-2019.**



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Mr. A.S. Dhindsa, Advocate
for respondent No. 2 in all cases.

AMARJOT BHATTI, J.

1. All aforementioned petitions, with the consent of learned counsel for petitioner are taken up together as matter in controversy involved in all cases is the same i.e. quashing of complaints under Section 138 of Negotiable Instruments Act, 1881 and summoning orders passed thereunder.

2. Petitioner Sunita Doda has filed four separate petitions under Section 482 Cr.P.C. seeking quashing of complaints i.e.

(i) Complaint No. 4548 dated 20.04.2018 (Annexure P/4) in CRM-M-46123-2018

(ii) Complaint No. 4541 dated 20.04.2018 (Annexure P/4) in CRM-M-53405-2018

(iii) Complaint No. 4540 dated 20.04.2018 (Annexure P/4) in CRM-M-6204-2019

(iv) Complaint No. 4546 dated 21.04.2018 (Annexure P/4) in CRM-M-11596-2019

and quashing of summoning order(s) dated 17.05.2018 (Annexure P/5 in all cases).

3. All the aforementioned complaints relates to dishonour of four cheques, details of which are as follows:-

(1)

CRM-M-46123-2018

(a) Complaint No. 4548 dated 20.04.2018

(b) Cheque No. 995497 dated 06.02.2018, amounting to ₹10,00,000/-

(c) Memo dated 08.02.2018, remarks "Payment stopped by Drawer"



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(2)

CRM-M-53405-2018

- (a) Complaint No. 4541 dated 20.04.2018
- (b) Cheque No. 995495 dated 06.02.2018, amounting to ₹10,00,000/-
- (c) Memo dated 08.02.2018, remarks "Payment stopped by Drawer"

(3)

CRM-M-6204-2019

- (a) Complaint No. 4540 dated 20.04.2018
- (b) Cheque No. 358409 dated 06.02.2018, amounting to ₹10,00,000/-
- (c) Memo dated 08.02.2018, remarks "Funds Insufficient"

(4)

CRM-M-11596-2019

- (a) Complaint No. 4546 dated 21.04.2018
- (b) Cheque No. 929250 dated 06.02.2018, amounting to ₹10,35,854/-
- (c) Memo dated 08.02.2018, remarks "Payment stopped by Drawer"

4. Learned counsel for petitioner in aforesaid petitions raised common arguments that firm of petitioner namely M/s S.D. Wines, Proprietor Sunita Doda had purchased whiskey and other liquor products from Khoday India Limited company dealing with manufacturing of Indian made Foreign liquor for the sale and distribution of whiskey in the State of Punjab while respondent No. 2 company M/s SSS Mercantile Pvt. Ltd. is a promoter of above said Khoday India Limited for the State of Punjab. Similarly, a sister concern of petitioner's firm M/s Gagan Distillers and Beverages Limited is the promoter of above said Khoday India Limited for the State of Haryana. It is argued that Khoday India Limited requested

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petitioner's firm to issue cheques of the amount due towards them in the name of respondent company M/s SSS Mercantile Pvt. Ltd. As petitioner's firms were to pay amount to Khoday India Limited, therefore, they issued said cheques and handed to Khoday India Limited. Later on, Khoday India Limited on the asking of respondent company (complainant), requested petitioner's firm to transfer the amount through RTGS in the account of respondent company and provided account detail of respondent company. Khoday India Limited assured petitioner that cheques issued by her firm would be returned back as and when the amount is transferred to the account of respondent company. Detail of RTGS transfer is Annexure P-1. It is argued that there was no direct business dealings between petitioner's firm and respondent company. Therefore, there is no question of any pending liability of petitioner's firm. In-fact, cheques were issued as per the desire of Khoday India Limited and not towards the payment of any legal liability. On receiving legal notice (Annexure P-2 in all cases) issued by respondent No. 2, reply (Annexure P-3 in all cases) was given mentioning the aforesaid factual position. Respondent company filed complaints under Section 138 of Negotiable Instruments Act (for short 'NI Act') against petitioner without any basis. Summoning order(s) dated 17.05.2018 were passed without proper appreciation of aforesaid facts. It is argued that provisions under Section 141 of NI Act applies to a company and persons responsible for act of company. Vicarious liability envisaged under Section 141 of NI Act is not applicable to a proprietary firm as it is not a legal entity. Therefore, proceedings initiated under Section 138 of NI Act is an abuse of process of law. Basic ingredients of offence are not

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satisfied. As referred above, cheques in question were not issued in discharge of legal enforceable debt towards the respondent No.2/complainant. Respondent No. 2 has misused the cheques, even though money was transferred to respondent company through RTGS. In view of this, complaints filed by respondent company and summoning order(s) passed in aforesaid respective complaints are liable to be quashed by accepting present petitions.

5. Learned counsel representing respondent No. 2 argued that arguments advanced by learned counsel for petitioner are without any basis. Cheques in dispute were issued in discharge of legal liability which were dishonoured with remarks "Payment stopped by Drawer" and in one case cheque was dishonoured with remarks "Funds Insufficient". Thereafter, legal notice was served and complaint was filed well within limitation. Learned Judicial Magistrate considered the evidence and documents on record and accused/petitioner was accordingly summoned by passing detail summoning order(s). Petitions for quashing of complaints and summoning orders have been passed only to delay the proceedings.

6. I have considered the arguments and have gone through the record carefully. Facts of the case regarding filing of complaints under Section 138 of NI Act on dishonour of cheques are not disputed. Admittedly, respondent No. 2/complainant served legal notice which was duly replied by petitioner/accused and thereafter, complaint was filed. During the course of arguments, learned counsel for petitioner has not raised any objection regarding the period of limitation in which respective complaints have been filed by respondent No. 2/complainant. Firstly, it is

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argued that cheques in dispute as referred above were not issued in favour of respondent No. 2/complainant in discharge of legally enforceable debt. In this regard, it is claimed that cheques were issued in favour of respondent No. 2 at the instance of Khoday India Limited. It is further alleged that amount was paid through RTGS, even then cheques in dispute were misused by respondent No. 2/complainant. Secondly, learned counsel for petitioner/accused objected that provisions of Section 141 of NI Act are not applicable to this case, since said provisions are applicable to company and persons responsible for the act of company and it does not apply to proprietary firm.

Perusal of record shows that complaint filed by respondent No. 2 is at initial stage. Till date, even notice has not been served upon petitioner/accused. Objection raised by learned counsel for petitioner regarding applicability of provisions of Section 141 of NI Act can be raised at the time of arguments on service of notice of accusation.

Plea taken by petitioner that cheques in dispute were not issued in discharge of legally enforceable debt or same were issued at the instance of Khoday India Limited is matter of defence. It can be proved on the basis of evidence led at appropriate stage. Again if there was a legally enforceable debt or amount involved in aforesaid cheques were deposited by making payment through RTGS or not, is again matter of trial. Aforesaid contention raised by learned counsel for petitioner/accused cannot be disposed of in this manner, as it requires evidence.

Therefore, I do not find merits in petitions filed by petitioner/accused under Section 482 Cr.P.C. for quashing of aforesaid



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complaints along with summoning order(s) dated 17.05.2018 and same are accordingly, dismissed.

7. My above observations are made only for the disposal of present petition and same will have no bearing on the merits of case.

8. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

13.09.2024

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**(AMARJOT BHATTI)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No