

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

CRR-3141-2017

Date of decision: 28.10.2024

Prem Singh

...Petitioner

Versus

The Manager, Era Infra Eng. Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Gaurav Gaur, Advocate for the petitioner.

None on behalf of respondents.

KARAMJIT SINGH, J. (ORAL)

1. The present revision petition has been filed by the petitioner seeking quashing of order dated 08.06.2017 passed by the Court of Additional Chief Judicial Magistrate, Bhiwani whereby the criminal complaint filed by the petitioner titled Prem Singh Vs. The Manager, Era Infra Engineering Limited and another, under Section 138 NI Act, was dismissed at the summoning stage.

2. Notice of motion was issued vide order dated 15.11.2017. In response to the same, no one appeared on behalf of respondents No.1 and 2 despite their due service.

3. The counsel appearing on behalf of the petitioner *inter alia* submits that the complaint filed by the petitioner under Section 138 NI Act is maintainable. The cheque in question issued by respondents in discharge of the liability of the company was dishonored and this resulted into filing of the criminal complaint under Section 138 NI Act. In support of his



contention, counsel for the petitioner has relied upon the decision of Bombay High Court in ***Maan Agro Centre Vs. EID Parry (India) Limited and another 2005 (2) CivCC 254*** which is a case relating to amendment of the complaint by way of correction in the name of the accused. The counsel for the petitioner has also placed reliance on decision of Delhi High Court in ***Vijay Mallaya Vs. Delhi International Airport Private Limited 2016 (232) DLT 423*** wherein it was held that mere non mentioning of name of petitioner in complaint cannot absolve him of the responsibility of the company which issued cheque in question and there was no need to issue notice by the complainant in the name of the petitioner (accused).

4. I have considered the submissions made by counsel for the petitioner.

5. The operative part of the impugned order dated 08.06.2017 is as follows:-

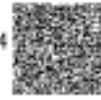
“The cheque in question is Ex.C-1. The said cheque has been returned dishonored vide return memo’s Ex.C-2 with the remarks ‘funds insufficient’ on 17.05.2014. The legal notice issued by the complainant to the accused is Ex.C-3 which notice was sent vide postal receipt Ex.C-4 and Ex.C-5, on 23.05.2014. There is presumption of truth in favour of the dishonor of memo Ex.C-2. But the complaint does not name any of the accused persons. It merely mentions their designations. Summoning of persons by their designations, for criminal liability which is personal in nature, is not possible legally as it will not be known whom to serve/summon. Hence, the complaint is dismissed. File be consigned to records after due compliance.

Sd/-

Date of order:08.06.2017

Additional Chief Judicial Magistrate,
Bhiwani”

6. In para no.3 of the complaint, it was averred that in the month of July, 2014 respondents gave a cheque no.005319 dated 15.05.2014 worth Rs.60,216/- in discharge of their liability. It is also pleaded in the complaint that the said cheque was dishonored on its presentation.



7. Delhi High Court in ***Sarabjit Singh Vs. State of NCT Delhi and others (2018) SCC Online Del 12257*** has held that even though if the company is not made party, however, the allegations are made in the complaint. The company can be summoned by the trial Court by curing the defect if there are sufficient allegations against the company.

8. The Hon'ble Supreme Court in ***K.K. Ahuja Vs. V.K. Vora (2009) 10 SCC 48*** has held that in the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averments that he was in charge of and was responsible to the company for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence.

9. In case of dishonor of a cheque, the criminal liability primarily lies on the drawer of the cheque as has been held by the Hon'ble Supreme Court in ***Mrs. Aparna A. Shah Vs. M/s Sheth Developers Private Limited and another 2013 (3) RCR (Criminal) 686***. Thus, it is clear that the drawer of cheque can be made an accused in any proceedings under Section 138 of NI Act.

10. In the light of the aforesaid settled position of law, the Court of Additional Chief Judicial Magistrate, Bhiwani should have made further inquiry into the criminal complaint filed by the complainant, before passing the impugned order dated 08.06.2017 whereby the criminal complaint was dismissed at the stage of summoning. This Court has got enough power under Section 398 Cr.P.C to give direction to the aforesaid Court concerned to make further inquiry into the complaint in question.

11. In light of the above, the impugned order is hereby set aside

and the matter is remanded back to the Court concerned to make further inquiry into the criminal complaint in question to *prima facie* assess the criminal liability of drawer of the cheque or the officer of Era Infra Engineering Limited who signed the cheque in question. If need be petitioner is also liberty to summon the concerned bank official to ascertain as to who signed the cheque in question on behalf of Era Infra Engineering Limited. The Court concerned is directed to pass afresh order in accordance with law.

12. Petitioner is directed to appear before the Court concerned on 18.11.2024.

28.10.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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