209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

**CRM-M-40192-2022 (O&M)**
Date of Decision: 03.10.2024

Dimcy Chopra ..... Petitioner

Versus

Anuradha Khanna and another .......Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present: Mr. Jatinder Nagpal, Advocate and
Mr. Adarsh Nagpal, Advocate, for the petitioner.

Mr. Pawan Kumar Mutneja, Sr. Advocate with
Ms.Suverna Mutneja, Advocate, for respondent No.1.

Mr. Tanuj Sharma, AAG, Haryana.

**Rajesh Bhardwaj, J. (ORAL)**

1. Prayer in the present petition is for quashing of the impugned summoning order dated 06.07.2021 (Annexure P-1) as well as the complaint dated 15.07.2019 (amended complaint dated 18.09.2020) under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') in case CIS No.NI/31837 of 2019 titled as Ms. Anuradha Khanna vs. M/s Inam Commercial Enterprises Pvt. Ltd. and others as well as entire proceedings qua the petitioner.

2. Precisely the facts of the case are that respondent No.1 filed the impugned complaint under Section 138 of the Act for the prosecution of the petitioner and other Directors of the Company. It was alleged that M/s Inam Commercial Enterprises Pvt. Ltd. is the company and the petitioner, Amit Harendra Jhaveri and Sanjay Kumar Yadav, were the Directors of the same and were responsible for the day to day working and running of the company. The Managing Director of the company came in contact with

respondent No.1 and induced her to invest her hard earned money in the company. Pursuant to the same, a joint investment agreement was entered into between the accused persons and respondent No.1 on 08.09.2017. As per the terms of the agreement, respondent No.1 paid a sum of Rs.1,20,00,000/- as an investment amount. Towards partial discharge of the said liability/return of invested amount, accused persons issued cheque bearing No.391984 dated 31.03.2019 amounting to Rs.1,20,00,000/- drawn on Induslnd Bank Ltd. in favour of respondent No.1-complainant. Accused persons had assured respondent No.1 that the said cheque shall be duly honoured by the Bank. However, on presentation of the same by respondent No.1, the same was returned unpaid by the Bank with remarks "funds insufficient" vide returning memo dated 16.05.2019. Ultimately the complaint was filed by respondent No.1. After hearing respondent No.1, learned trial Court found a *prima facie* case against the petitioner and other accused and thus, summoned them vide summoning order dated 06.07.2021. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. Precise submission made by counsel for the petitioner is that the petitioner was the Director of the drawer company from 20.04.2018 to 11.12.2018, but the impugned cheque which is subject matter of the complaint, is dated 31.03.2019. He has submitted that the petitioner resigned from the Directorship of the company way back on 11.12.2018. He thus submits that at the time of issuance of cheque neither the petitioner signed the impugned cheque nor she was the Director of the company. He has submitted that in view of the provisions of Section 141 of the Act, the

petitioner was not in-charge and responsible to the company for the conduct and its business and hence, she was not liable to be prosecuted under Section 138 of the Act. It is thus submitted that the impugned complaint and summoning order being against the law settled, deserve to be quashed.

4. On the other hand, learned Senior Counsel has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that respondent No.1 has specifically pleaded that on their inducement, she invested her hard earned money by entering into agreement with the accused company and the petitioner was also responsible for its day to day affairs. He submits that the petitioner resigned from the company on 11.12.2018, however, agreement was entered with respondent No.1 on 08.09.2017 i.e. prior to the alleged resignation. He has submitted that arbitration proceedings were initiated by respondent No.1 and the Arbitral Tribunal passed an award dated 15.11.2021 in favour of respondent No.1, wherein, the petitioner alongwith other directors were held jointly and severally liable to pay the claimant i.e. respondent No.1 an amount of Rs.1,20,00,000/- within a period of one month from the date of the award alongwith interest @ 10% per annum from 10.11.2018. He thus submits that the contention raised by the petitioner are totally against the facts of the case. He submits that learned trial Court finding a *prima facie* case against the petitioner has rightly summoned her alongwith other accused in the complaint filed by respondent No.1.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is deciphered that respondent No.1 filed the complaint against the

company and its directors. An agreement was entered into between the company through its directors and complainant-respondent No.1 on 08.09.2017. Arbitration proceedings were also initiated by respondent No.1 and award dated 15.11.2021 was passed, wherein, all the directors including the petitioner were held liable to pay the amount of cheque to the claimant i.e. respondent No.1. The main contention of learned counsel for the petitioner before this Court is that the petitioner tendered her resignation much prior to the issuance of cheque and did not sign the same, whereas, the contention raised by learned counsel for respondent No.1 is that on the date of inducement as well as entering into agreement of investment, the petitioner was very much Director of the company. The contentions raised by both the sides are totally disputed question of facts, which will be decided by the trial Court on the basis of evidence proved before it by the parties. Learned trial Court has summoned the petitioner finding a *prima facie* case against her. However, the documents relied upon by both the sides are a matter of evidence, whether the petitioner at the time of issuance of cheque was the director responsible for day to day affairs of the company or not.

7. In view of the above discussion, the present petition is disposed of and the matter is referred to the trial Court with liberty to both the sides to raise their respective arguments and produce necessary material to prove the same before the trial Court. Learned trial Court after hearing both the sides would decide the issue at the first instance whether the petitioner was the director responsible in view of Section 141 of the Act at the relevant time and then would proceed further with the trial. This issue regarding the

maintainability of the complaint filed qua the petitioner would be decided expeditiously preferably within a period of three months. The parties would be at liberty to pursue their further remedies in accordance with law.

8. Nothing said herein would be deemed to be any comment on the merits of the case.

**(RAJESH BHARDWAJ)**
**JUDGE**

**03.10.2024**
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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/Nos