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

201

CRM-M-34710-2019
Date of decision: May 03, 2024

ANIL GUPTA

...Petitioner

Versus

PAWAN KUMAR

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Aashish Chopra, Senior Advocate
with Mr. Gagandeep Singh, Advocate
for the petitioner.

Mr. Akhil Dadwal, Advocate
as *Amicus Curiae* for the respondent.

MANJARI NEHRU KAUL, J.

1. The instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 for quashing of the impugned complaint bearing NACT No.587/2016 dated 28.11.2016 titled as "*Pawan Kumar Vs. Amira Pure Foods Pvt. Ltd. And ors*" (Annexure P-1) under Section 138 of the Negotiable Instruments Act, 1881, pending before the learned SDJM, Safidon, including all proceedings emanating therefrom, including the summoning order dated 28.11.2016 (Annexure P-2) and also order dated 30.04.2019 (Annexure P-5), whereby the application for dropping of proceedings against the petitioner has been dismissed.

2. Brief facts of the case may be noticed as thus: -

The respondent-complainant (hereinafter referred to as 'the complainant') was engaged in business of commission agency; the accused-company on the other hand was engaged in the purchase, transportation and sale and purchase of paddy grains. The accused-company through its Directors purchased paddy on credit for a total sum of Rs.28,63,141/- and after several *inter se* transactions between the parties, a sum to the tune of Rs.27,43,302/- was due towards the complainant by the accused-company, as per account books maintained by the complainant. In order to discharge its legal liability towards the due amount, the accused-company issued cheque bearing No.347964 dated 16.07.2016 and cheque bearing No.348277 dated 25.07.2016 in the sum of Rs.2,93,875.20/- and Rs.8,00,000/- respectively drawn on Punjab National Bank, Minto Road, Delhi in favour of the complainant as part payment of dues. On presentation of the cheques, they were returned as dishonoured vide memos dated 29.09.2016 with the remarks "*Funds insufficient*" by the Banker of the accused to the Banker of the complainant. After serving the requisite legal notice dated 21.08.2016, within the prescribed period to the accused, the complaint in question was instituted on 28.11.2016. The learned Sub Judicial Magistrate Ist Class, Safidon, on the basis of the preliminary evidence, summoned the accused-company and its Directors including the present petitioner vide order dated 28.11.2016. The petitioner, on being summoned, filed an application for dropping proceedings against him, however, the said application was dismissed vide impugned order dated 30.04.2019.

3. Learned Senior counsel appearing for the petitioner is impugning the summoning order dated 28.11.2016 as well as the consequential proceedings arising therefrom on the following grounds: -

i) While placing on record a certified copy of Form No.DIR-11 and 12 (Annexure P-6), it has been submitted that a perusal of the same clearly reveals that the petitioner had resigned as Director of M/s Amira Foods India

Limited (hereinafter referred to as 'company') and his resignation had been accepted w.e.f. 21.01.2016. The cheques in question on the other hand had been issued much later i.e. on 16.07.2016 and 25.07.2016. Not only this, the aforesaid two cheques were dishonoured on 29.09.2016. Thus, learned Senior counsel has asserted that since the petitioner had already resigned as a Director of the company much prior to the commission of the offences in question, he had severed all ties with the company and could not be held vicariously liable for the actions of the company, thereafter, much less liable for an offence under Section 138 of the Negotiable Instruments Act, 1881. Moreover, at the time when the cheques in question were issued and subsequently dishonoured, the petitioner was neither in-charge nor responsible for the day-to-day affairs of the company.

ii) Even otherwise, a perusal of the complaint in question reveals that no specific averment has been made therein *qua* the petitioner being in-charge of the day-to-day affairs of the company. In support, learned Senior counsel has placed reliance upon ***Pooja Ravinder Devidasani v. State of Maharashtra, 2014 (16) SCC 1***, wherein it was held that there must be specific averments made in a complaint against the Director showing as to how and in what manner, he or she was responsible for the conduct of the business of the company. Learned Senior counsel has vehemently asserted that in the absence of any such specific averments, coupled with procedural irregularities such as improper service of legal notice, continuation of the complaint would be a travesty of law.

iii) It has further been submitted that the Hon'ble Supreme Court in ***M/s Pepsi Foods Ltd. and anr v. Special Judicial Magistrate and ors, 1998 (5)***

SCC 749 held that summoning an accused in a criminal case is a serious matter and hence, an accused should be summoned only upon a careful scrutiny of the allegations levelled and the evidence presented.

4. A prayer has, therefore, been made by learned Senior counsel for acceptance of the instant petition and for setting aside of the summoning order dated 28.11.2016 and quashing of complaint bearing NACT No.587/2016 dated 28.11.2016.

5. *Per contra*, learned *Amicus Curiae* appearing on behalf of the respondent has reiterated the allegations levelled in the complaint in question, which has been annexed as Annexure P-1, and prayed for dismissal of the instant petition. He has asserted that all the accused were running the business together and had failed to make payment for the paddy, which they had purchased from the complainant on credit and thus, it had resulted in outstanding debts. Despite several attempts made by the complainant to collect the due payment from the accused, it proved to be in vain, rather the cheques issued by the complainant were dishonoured on account of insufficient funds. It has been asserted by the learned *Amicus Curiae* that as far resignation of the petitioner from the company is concerned, it would be a matter of trial and cannot be delved into at this stage and hence, the present petition deserves to be dismissed.

6. I have heard learned counsel for the parties and perused the relevant material placed on record.

7. A perusal of the certified copy of Form No.DIR-11 and 12 (Annexure P-6) reveals that the petitioner had indeed resigned as Director and Chairman of the company on 21.01.2016. Consequently, at the time when the

cheques in question were issued and subsequently dishonoured, the petitioner had evidently severed all ties with the company. The argument put forth by the learned *Amicus Curiae* to question the validity and authenticity of the petitioner's resignation from the company and its acceptance lacks merit. Documents like Form No.DIR-11 and 12 are public documents, free from suspicion and can be relied upon even at the *prima facie* stage.

8. Given the aforementioned facts and circumstances, and in the light of the settled law, criminal proceedings initiated under Section 138 of the NI Act in the instant case deserve to be quashed along with all subsequent proceedings arising therefrom *qua* the petitioner only and the instant petition as such stands allowed.

9. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

May 03, 2024 **(MANJARI NEHRU KAUL)**
Jaspreet Kaur **JUDGE**

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