



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

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CRM-M-37973-2024

Date of decision: 07.08.2024

Girish Sharma

.....Petitioner

Versus

Anuj Maini

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Anamika Sheoran, Advocate for
Mr. Vikas Singh, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking quashing of order dated 18.07.2023 (Annexure P-6) passed by learned Sessions Judge, Ludhiana in CRR-447-2023 titled as 'Girish Sharma Vs. Anuj Maini, whereby his revision petition against order dated 24.02.2023 of learned JMIC, Ludhiana (Annexure P-5) has been dismissed and order dated 24.02.2023 (Annexure P-5) passed in Criminal Complaint case bearing CIS No.COMA/7368/2021 titled as 'Anuj Maini Vs. M/s Shivom Apparels & others' filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), whereby application for discharge of the petitioner was dismissed and for quashing of the above said complaint case and all subsequent proceedings arising therefrom, including summoning order dated 12.03.2021 (Annexure P-2).

2. Brief facts of the case are as follows: The complainant filed a Complaint Case No.COMA/7368/2021 titled as 'Anuj Maini Vs. M/s Shivom Apparels & others' filed under Section 138 of the NI Act



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against the petitioner, alleging that four cheques, each amounting to Rs.5 lakhs, were issued in favour of the complainant on 21.12.2020. These cheques were dishonoured on 12.02.2021. Both the accused were arrayed in the complaint in question being directors and being responsible for the operation of the firm.

3. Based on the evidence presented and other material on record, the learned Trial Court after examining the complaint found a prima facie case against the petitioner. Consequently, the learned Trial Court, vide order dated 12.03.2021, summoned the petitioner to face trial. The petitioner subsequently appeared before the Magistrate, however, his application was dismissed vide order dated 24.02.2023, being not maintainable in summons' case since allowing such application would effectively tantamounts to review of his own order by the Magistrate. The petitioner then filed a revision petition against the aforesaid dismissal of his application, but it was also dismissed vide order dated 18.07.2023 by the learned Sessions Judge, Ludhiana.

4. Learned counsel for the petitioner argues that the impugned orders dated 12.03.2021, 24.02.2023 and 18.07.2023 passed by the learned Trial Court and the Revisional Court are riddled with patent illegality. Learned counsel contends that summoning order is cryptic, non-speaking and lacks reasoning. Moreover, there is no prima facie ground to proceed against the petitioner, as is evidenced by the absence of cogent and convincing evidence linking the petitioner to the alleged offence. Furthermore, learned counsel for the petitioner argues that his discharge application and subsequent revision petition was



erroneously dismissed as the Courts below failed to consider that it was a clear cut case of his false implication since he had been inducted as sleeping partner in the firm with effect from 01.04.2018, and, as per the partnership deed, was not responsible for the day to day affairs of the firm.

5. It has been further argued by the learned counsel that the firm M/s Shivom Apparels, was dissolved on 05.04.2021, fact that was well within the knowledge of the complainant. Learned counsel alleges that his co-accused S.C. Baluni, acting with malafide intent and in connivance with the complainant, handed over the disputed cheques to the complainant. Learned counsel for the petitioner asserts that he had no liability towards the complainant and played no role in issuing the cheques in question.

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

7. After hearing learned counsel, this Court has no hesitation to hold that the impugned orders are based on a proper assessment of the facts on record, and no grounds exist to interfere with them.

8. A perusal of the file reveals that pre-charge evidence has already been presented, based on which the accused-petitioner was duly summoned by the learned Trial Court on 12.03.2021. The dismissal of the discharge application filed by the petitioner and the revision petition cannot be faulted with, as the case at hand has been filed under Section 138 of the NI Act and is a summons trial, where there is no provision for discharge. Furthermore, specific averments have been

attributed to the petitioner in the complaint. In *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another : (2005) 8 SCC 89* it has been categorically held by Hon'ble the Supreme Court that if specific averments in the complaint indicate that the person was in charge of and responsible for the conduct of the business at the time of the alleged offence, that person can be held liable. The defence of the petitioner, that he was a sleeping partner and not responsible for the day to day affairs of the firm, is a matter that cannot be determined at this stage under Section 528 of the BNSS; it will be addressed during the trial when both the parties lead their respective evidence, which would then be decided on the touchstone of cross examination.

9. As a sequel to the above, the instant petition is hereby dismissed.

10. 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.

07.08.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No