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

**1. CRM-M-42161-2019 (O&M)
DECIDED ON: 22.08.2024**

SUNINDER SANDHA

.....PETITIONER

VERSUS

JAGMEET S. SOIN AND ORS.

.....RESPONDENTS

2. CRM-M-42200-2019 (O&M)

SUNINDER SANDHA

.....PETITIONER

VERSUS

JAGMEET S. SOIN AND ORS.

.....RESPONDENTS

3. CRM-M-42260-2019 (O&M)

SUNINDER SANDHA

.....PETITIONER

VERSUS

JAGMEET S. SOIN AND ORS.

.....RESPONDENTS

4. CRM-M-42311-2019 (O&M)

SUNINDER SANDHA

.....PETITIONER

VERSUS

JAGMEET S. SOIN AND ORS.

.....RESPONDENTS

5. CRM-M-45495-2019 (O&M)

SUNINDER SANDHA

.....PETITIONER

VERSUS

ANKITA TYAGI AND ORS.

.....RESPONDENTS

6. CRM-M-42256-2019 (O&M)

SUNINDER SANDHA

.....PETITIONER

VERSUS

JAGMEET S. SOIN AND ORS.

.....RESPONDENTS

7. CRM-M-42288-2019 (O&M)

SUNINDER SANDHA

.....PETITIONER

VERSUS

JAGMEET S. SOIN AND ORS.

.....RESPONDENTS

8. CRM-M-47188-2019 (O&M)

SUNINDER SANDHA

.....PETITIONER

VERSUS

ANKITA TYAGI AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashish Chopra, Sr. Advocate with
Mr. Adhirath Singh, Advocate with
Mr. R.D. Gupta, Advocate and
Mr. Gagandeepo Singh, Advocate
for the petitioner.

Mr. Sparsh Chhiber, Advocate,
Mr. Abhishek Sharma, Advocate and
Mr. Ajay Sharma, Advocate for
respondent No.1.

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SANDEEP MOUDGIL, J

1. By this common order, this Court intends to dispose of all the eight petitions as identical question of law is involved therein. For brevity, the facts are being taken from CRM-M-42161-2019.

2. The jurisdiction of this Court has been invoked under Section 482 Cr.P.C. seeking quashing of impugned order dated 09.08.2019 (Annexure P-3) passed by Judicial Magistrate Ist Class, Gurugram in criminal complaint bearing CC No.4664/2018, filed on 07.03.2018 titled as "Jagmeet S. Soin vs. Concept Horizon Infra Pvt. Ltd. & Ors.", consequently quash the summoning order dated 07.04.2018 (Annexure P-2) and the aforesaid criminal complaint filed under Section 138 of the Negotiable Instruments Act, 1881 qua the petitioner.

3. Brief facts unfolds as under:-

The respondent No.2-Company, incorporated in 2013, is a real estate firm primarily engaged in developing, marketing, and selling properties, including the "Orrizonte" project in Greater Noida. The Complainant, a consumer and allottee, applied for a 2,760 sq. ft. banquet hall in the "Orrizonte" project at a basic sale price of Rs. 5,500 per sq. ft. and paid Rs. 1,04,35,000. On 11.01.2016, respondent No.2-Company, through its then-Director and authorized signatory, entered into a Memorandum of Understanding (MoU) with the Complainant. The MoU stipulated that the respondent No.2-Company would refund the principal amount with premium (Rs. 1,16,00,000), service tax (Rs. 4,35,000), and 1% monthly return to the Complainant. Pursuant to the MoU, the respondent No.2-Company issued post-dated cheques, including one for Rs. 1,00,00,000 dated 11.01.2018. Meanwhile, in late 2015, discussions began regarding the petitioner exit from the respondent No.2-Company. A settlement was eventually reached, transferring control, administration, and management of respondent No.2-Company to respondent No.3, the continuing directors on 15.03.2016. Also form DIR-12 (Annexure P-4) was filed by the petitioner indicating his resignation from the respondent No.2-Company, which was accepted by Board of Directors on the same day. That thereafter a cheque dated 01.12.2017 bearing No.019145 for an amount of Rs.90,000/- was issued by respondent No.2-Company to respondent No.1 was returned having been dishonoured vide return memo dated 17.01.2018 with remarks "Funds Insufficient". Subsequently, petitioner was summoned under Section 138 of the Negotiable Instruments Act being one of the Directors of the Company.

4. Learned counsel for the petitioner contends that the impugned order dated 09.08.2019 (Annexure P-3) passed by the Trial Court, is flawed due to the following reasons:

i. The order was passed without considering the liberty granted by this Court on 13.05.2019, allowing the Petitioner to approach the Trial Court with a discharge application.

ii. The Trial Court erred in passing the Impugned order dated 09.08.2019 (Annexure P-3) despite the petitioner ceasing to be a Director of respondent No. 2-Company on 15.03.2016 (Annexure P-5), over a year before the commissioning of the alleged offence on 19.01.2018.

iii. The Trial Court failed to consider the unimpeachable documents, including the petitioner's FORM DIR-12 (Annexure P-4), resignation letter and Board Resolution, which support the petitioner's stance.

iv. The Trial Court overlooked the fact that the mandatory notice under Section 138 of the Negotiable Instruments Act was not received by the petitioner, as he had ceased to be associated with respondent No.2-Company prior to the alleged offence.

v. The Trial Court failed to consider that the Petitioner had signed the cheque in question on behalf of the company, not in his personal capacity, and therefore cannot be held responsible.

vi. The Trial Court ignored the public records, including the FORM DIR-12 filed with the Registrar of Companies, which show the petitioner's resignation from the Respondent No. 2 Company on 15.03.2016.

vii. The Trial Court erred in summoning the petitioner without considering the relevant ROC documents, which were not placed on record by the Respondent No. 1 despite being part of the public record.

viii. The Trial Court failed to consider that respondent No. 1's complaint omitted to aver that the petitioner was in charge and responsible for the affairs and conduct of the business of the Company at the time of the alleged offence.

ix. The Trial Court overlooked the Memorandum of Understanding dated 16.03.2016 (Annexure P-8), which clearly states that the respondent No. 3 and Mr. Nitant Verma became the Directors of the respondent No. 2 Company, while the Petitioner was discharged of all responsibilities and liabilities.

x. The Trial Court failed to consider Clause 2 of the Memorandum of Understanding, which vested all liabilities of the Company, including assured returns, buybacks, and cancellations, with the continuing Directors.

5. Per contra, learned counsel appearing for the respondent vehemently argues that the petitioner was active partner of the company and

merely the fact that the cheque was not issued in his personal capacity would not divest him from his legal liability towards the company.

6. Having given a thoughtful consideration to the arguments advanced by the counsel on either side at length. The question that arises for determination is that whether the petitioner is liable for prosecution under Section 138 read with Section 141 of Negotiable Instruments Act, 1881 for the alleged offence of dishonour of cheques committed by the default company (respondent No.2) when petitioner stands already resigned from the company.

7. There is no dispute to the fact that the petitioner resigned as Director from respondent No.2 company on 15.03.2016 (Annexure P-5) which is also conspicuously evident from the FORM DIR-12 (Annexure P-4) filed with the Registrar of Companies which forms part of public record. The resignation of the petitioner from the company was also accepted by the Board of Directors on the same date and accordingly a Memorandum of Understanding dated 16.03.2016 (Annexure P-8) was executed between respondents No.2 & 3 including the petitioner, wherein it was specifically mentioned that all the liabilities of respondent No.2-Company whether past, present or future were to vest with the remaining Directors of the respondent No.2-Company. Moreover, even clause 12 of the MoU explicitly stated that all cheques issued by respondent No.2-Company under the signatures of the petitioner individually or jointly shall be called back from the clients and fresh cheques shall be issued by respondent No.2-Company under the signatures of the renominated authorized signatory.

8. Consequently, a cheque dated 01.12.2017 issued by respondent No.2-Company to respondent No.1 was dishonoured with the remarks

"Funds insufficient". The cheque in question was issued in the year 2017 and the petitioner resigned as Director on 15.03.2016. Therefore, there is no dispute to the fact that the petitioner was not the Managing Director at the time alleged offence was committed. Time and again, it has been asserted by the Courts that only those persons who were incharge of and responsible for the conduct of business of the Company at the time of commission of an offence will be liable for the criminal action. A Director who already stands resigned, who was not in-charge of and was not responsible for the conduct of the company at the relevant time will not be liable for the offence under Section 141 of Negotiable Instruments Act.

9. In "***Girdhari Lal Gupta vs. D.H. Mehta and Anr.", (1971) 3 SCC 189***, the Apex Court observed that a person "in-charge of a business" means that a person should be in overall control of the day to day business of the company.

10. In "***State of Karnataka versus Pratap Chand & others", (1981) 2 SCC 335***, the Apex Court observed that a Director of a Company is liable to be convicted for an offence committed by the Company if he/she was in charge of and was responsible to the Company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director, concerned.

11. In other words, the law laid down by the Apex Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Negotiable Instruments Act, there must be specific averments against the Director showing as to how and in what

manner the Director was responsible for the conduct of the business of the Company.

12. In "***Pooja Ravinder Devidasani vs State of Maharashtra and another", 2015(3) SCC (Civil) 384***, the Apex Court observed that *in the entire complaint, neither the role of the petitioner in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained. From the record it appears that the trade finance facility was extended by the Respondent No. 2 to the default Company during the period from 13th April, 2008 to 14th October, 2008, against which the Cheques were issued by the Company which stood dishonored. Much before that on 17th December, 2005 the appellant resigned from the Board of Directors. Hence, we have no hesitation to hold that continuation of the criminal proceedings against the appellant under Section 138 read with Section 141 of the N.I. Act is a pure abuse of process of law and it has to be Interdicted at the threshold.*

13. Further the Supreme Court in "***Rajesh Viren Shah vs. Redington (India) Limited", 2024 INSC 111***, has made it categorically clear that the Directors who have resigned from their posts cannot be held liable for failure in realization of cheques issued by the Company as they cannot be held responsible for the conduct of the business at the relevant time post their resignation.

14. In the facts of the present case, neither the veracity of FORM DIR-12 (Annexure P-4) nor the act of resignation dated 15.03.2016 (Annexure P-5) itself was disputed by the respondent No.2-Company and the cheque in dispute was issued on 01.12.2017 i.e. much later to the resignation of the petitioner. Also the chronological sequence of events, with

resignation taking place before the issuance of cheque underscores the petitioner lack of involvement in the companies affair at the time of the alleged offence.

15. In the light of the law laid down by the Apex Court in ***Rajesh Viren Shah's case*** (supra) and other dictums, this Court is of the view that the petitioner was not involved in day to day affairs of respondent No.2-Company at the time of the alleged occurrence and also the MoU dated 16.03.2016 executed between the petitioner, respondents No.2 and 3 clearly stated that the continuing Directors respondent No.3 and Mr. Nitant Verma would indemnify the petitioner against all the liabilities qua respondent No.2-Company, therefore, the trial Court below without appreciating the facts which are *prima facie* evident have wrongfully summoned the petitioner to face the trial under Section 138 of Negotiable Instruments Act.

16. Hence, the present petitions stands allowed and the present complaint titled as "***Jagmeet S. Soin vs. Concept Horizon Infra Pvt. Ltd and others***" is quashed qua the petitioner namely Suninder Sandha along with summoning order dated 07.04.2018 (Annexure P-2).

(SANDEEP MOUDGIL)
JUDGE

22.08.2024

Poonam Negi

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*