



208

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

CRM-M-2580-2023 (O&M)

Date of decision: 13.01.2025

Harjeet Singh

... Petitioner

Vs.

Om Metals

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

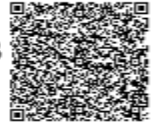
Present: Mr. Manmohan Saroop, Advocate and
Ms. Meenakshi Saroop, Advocate
for the petitioner.

Mr. Rajinder Kumar Singla, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of the order dated 18.09.2018 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Panchkula, in Criminal Complaint No.NACT/852/2018 dated 24.07.2018 under Sections 1368 & 141 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), titled as '*Om Metals Vs. CH Waterwell Engineers*

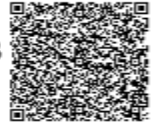
2025:PHHC:003443



and Consultants and others’, vide which the petitioner has been summoned to face the trial and for quashing of the complaint (*supra*) along with all the subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner, *inter alia*, contends that perusal of the complaint (*supra*) (Annexure P-1) indicates that the petitioner has been implicated as accused No.3. Admittedly, as per case set up by the respondent, liability to discharge the legally enforceable debt was upon CH Waterwell Engineers & Consultants and the petitioner has no concern with the said proprietorship firm. The petitioner is neither employed nor partner of CH Waterwell Engineers & Consultants. Learned counsel refers to Udyog Aadhaar Registration Certificate issued by Ministry of Micro, Small and Medium Enterprises, Govt. of India (Annexure P-5) and Certificate of Provisional Registration under GSTIN (Annexure P-6) and perusal of the same clearly indicates that proprietorship concern is registered in the name of one Manpreet Singh and the petitioner has been falsely implicated only for the reason that he is brother of aforesaid Manpreet Singh and he has no outstanding liability towards the complainant-respondent. The petitioner has been made an accused without any basis. As such, necessary ingredients to breach the threshold of Section 138 of NI Act are not available and only the drawer of the cheque is liable for action as per provisions of NI Act. The complainant-respondent failed to produce any document or partnership deed etc. before learned trial

2025:PHHC:003443



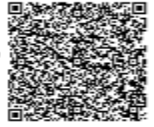
Court to prove any connection of the petitioner with the proprietorship concern.

3. *Per contra*, learned counsel for the respondent-complainant opposes the prayer made by the petitioner on the ground that the petitioner is real brother of Manpreet Singh and he is managing the day to day affairs of CH Waterwell Engineers & Consultants. However, he could not controvert the fact that the cheque in question was issued in the name of proprietorship concern and signed by Manpreet Singh.

4. Having heard learned counsel for the parties at length and after going through the material available on record and also considering the averments and allegations made in the complaint (*supra*), it emerges that the dishonoured cheque was issued by Manpreet Singh and it was drawn from the bank account of proprietorship concern. The dishonoured cheque was signed by co-accused Manpreet Singh. The petitioner herein is neither signatory to the cheque in question nor it was drawn from his bank account. The account in question relates to proprietorship concern and Manpreet Singh, as per Certificate of Provisional Registration under GSTIN (Annexure P-6), is the sole proprietor and as such, only Manpreet Singh can be prosecuted for the offence punishable under Section 138 read with Section 141 of NI Act.

5. On fair reading of Section 138 of NI Act, before a person can be prosecuted, following conditions are required to be satisfied: -

2025:PHHC:003443

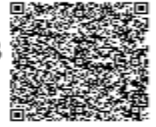


- (i) The cheque is drawn by a person and on an account maintained by him with a banker.
- (ii) The cheque in question pertains to any account with regard to discharge of any debt or other liability, in whole or part;
- (iii) The cheque in question is returned by the bank unpaid with the endorsement that the amount of money standing to credit of that account is insufficient to honour the cheque or it exceeds the amount arranged to be paid from the said account.

6. In view of the aforementioned ingredients, it can be safely concluded that the provisions of NI Act does not speak any joint liability. The accused in the present case is a proprietorship concern, whose whole proprietor is co-accused Manpreet Singh and he has drawn the cheque from the account maintained by the sole proprietorship concern and signed the cheque in question, as such, the petitioner alone cannot be prosecuted under Section 138 read with Section 141 of NI Act. Reliance in this regard is placed upon a judgment of the Hon'ble Apex Court in ***Dilip Hariramani Vs. Bank of Baroda, 2022 SCC OnLine SC 579***, wherein, speaking through Sanjiv Khanna, J., it has been held as under: -

“9. Sub-section (1) to Section 141 of the NI Act states that where a company commits an offence, every person who at the time the offence was committed was in charge of and was responsible to

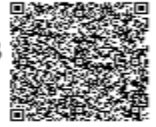
2025:PHHC:003443



*the company for the conduct of the business, as well as the company itself, shall be deemed to be guilty of the offence. The expression 'every person' is wide and comprehensive enough to include a director, partner or other officers or persons. At the same time, it follows that a person who does not bear out the requirements of 'in charge of and responsible to the company for the conduct of its business' is not vicariously liable under Section 141 of the NI Act. **The burden is on the prosecution to show that the person prosecuted was in charge of and responsible to the company for conduct of its business.** The proviso, which is in the nature of an exception, states that a person liable under subsection (1) shall not be punished if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. **The onus to satisfy the requirements and take benefit of the proviso is on the accused. Still, it does not displace or extricate the initial onus and burden on the prosecution to first establish the requirements of sub-section (1) to Section 141 of the NI Act.** The proviso gives immunity to a person who is otherwise vicariously liable under sub-section (1) to Section 141 of the NI Act."*

7. In view of the reasons recorded above, present petition is allowed

2025:PHHC:003443



and the impugned Criminal Complaint No.NACT/852/2018 dated 24.07.2018 under Sections 1368 & 141 of NI Act, titled as '*Om Metals Vs. CH Waterwell Engineers and Consultants and others*' (Annexure P-1) and the impugned order dated 18.09.2018 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Panchkula, are hereby set aside qua the petitioner.

8. However, anything observed hereinabove shall not be construed as expression of opinion of this Court on merits of the case.

[HARPREET SINGH BRAR]
JUDGE

13.01.2025

vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No