



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

CRM-M No.3206 of 2025

Date of decision: 21st January, 2025

Ashish Malhotra

... Petitioner

Versus

Sanjeev Gupta

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Pratula Sethi, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

1. The instant petition has been filed under Section 528 of the BNSS seeking quashing of Complaint bearing No.COMA/70/2023 titled as 'Sanjeev Gupta vs. M/s Sunstone International etc.' (Annexure P-1) instituted on 04.01.2023 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act') pending in the Court of learned Judicial Magistrate 1st Class, Ludhiana along with all subsequent proceedings including the summoning order dated 25.05.2023 (Annexure P-2).

2. Learned counsel for the petitioner has impugned the complaint dated 04.01.2023 (Annexure P-1) and the summoning order dated 25.05.2023 (Annexure P-2) primarily on the following grounds:

- (i) The petitioner is a dormant partner in M/s Sunstone International and does not draw any salary or interest on

capital from the firm, thereby having no active role in its operations.

- (ii) The petitioner is not a signatory to the cheques in question and, therefore, cannot be held liable for their dishonour.
- (iii) Under Section 141 of the Act, it is a pre-requisite that a partner must be responsible for the day-to-day activities of the firm to attract liability. However, in the complaint in question, there is absence of specific allegations qua the involvement of the petitioner in any such day-to-day activities. The petitioner is, in fact, a Director and Shareholder in Oswal Colortex (Pvt.) Limited, where he manages daily operations and therefore has no responsibility in the functioning of M/s Sunstone International.
- (iv) In the absence of any material evidence to show the involvement of the petitioner in the day-to-day affairs of the firm or that the petitioner signed the cheques in question, no liability can be fastened under the law upon him.

3. As per allegations levelled in the complaint, the respondent/complainant, a Hindu Undivided Family (HUF), acting through its Karta, filed the present complaint (Annexure P-1). The accused/petitioner is a partner and authorized signatory of M/s Sunstone

International, along with a co-accused partner. Both accused sought a loan of ₹22.00 lacs for business purposes, citing financial difficulties, and assured repayment with interest. In discharge of their liability, the accused/petitioner allegedly issued multiple cheques totaling ₹17.65 lacs. Upon presentation, all the seven cheques were dishonoured on 15.11.2022 and 17.11.2022 by the banker of the accused/petitioner, citing reasons of “*funds insufficient*” and “*exceeds arrangement*”. After issuing the statutory legal notice dated 29.11.2022 within the prescribed period, the complainant initiated proceedings. The learned Judicial Magistrate 1st Class, upon preliminary evidence, summoned the accused vide summoning order dated 25.05.2023 (Annexure P-2).

4. After hearing learned counsel for the petitioner and perusing the allegations levelled in the complaint in question as well as other material on record, it reveals that there are specific allegations against the petitioner, indicating that he is an authorized signatory and actively responsible for the day-to-day management of M/s Sunstone International. Such averments suffice at the preliminary stage to summon the petitioner for trial. The grounds raised by the petitioner, including his status as a dormant partner and the absence of his signature on the cheques, pertain to his defence. These matters require detailed evidence and cross-examination, which can only be adjudicated during the trial. At this stage, this Court cannot be expected to delve into the merit of such defences.

5. Given the prima facie allegations in the complaint, and the pre-requisite under Section 141 of the Act, this Court does not find any merit in the prayer of the petitioner to exercise its inherent jurisdiction under Section 528 of the BNSS to quash the proceedings emanating from the complaint in question. The petition is accordingly dismissed. 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.

(MANJARI NEHRU KAUL)
JUDGE

January 21, 2025
rps

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