

2025:PHHC:003094



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CRM M- 6696 of 2022
Date of Decision:-13.01.2025

Gaurav Gupta

Sumita Jain

Versus

... Petitioner

... Respondent
2.

CRM M-17311 of 2021

Gaurav Gupta

Sumita Jain

Versus

...Petitioner

... Respondent
3.

CRM M-39878 of 2021

Gaurav Gupta

Sumita Jain

Versus

...Petitioner

... Respondent
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CRM M-39975 of 2021

Gaurav Gupta

Sumita Jain

Versus

...Petitioner

... Respondent
5.

CRM M-50868 of 2021

Gaurav Gupta

Sumita Jain

Versus

...Petitioner

... Respondent

6. CRM M-40044 of 2021
Gaurav Gupta ...Petitioner
Versus
Sumita Jain ... Respondent

7. CRM M-40086 of 2021
Gaurav Gupta ...Petitioner
Versus
Sumita Jain ... Respondent

8. CRM M-50866 of 2021
Gaurav Gupta ...Petitioner
Versus
Sumita Jain ... Respondent

9. CRM M-6706 of 2022
Gaurav Gupta ... Petitioner
Versus
Sumita Jain ... Respondent

10. CRM M-6725 of 2022
Gaurav Gupta ... Petitioner
Versus
Sumita Jain ... Respondent

11. CRM M- 21122 of 2023
Gaurav Gupta ... Petitioner
Versus
M/s Mahabir Parsad Lakmi Chand ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ranjit Singh Kalra, Advocate
for the petitioner (s) in CRM M-39878-2021,
CRM-M-39975-2021, CRM-M-40044-2021,
CRM-M-40086-2021 and CRM M-17311-2021.

Mr. Abhinav Aggarwal, Advocate
for the petitioner (s) in CRM M-50866-2021,
CRM M-21122-2023, CRM M-50868-2021,
CRM M-6696-2022, CRM M-6725-2022 and
CRM M-6706-2022.

Mr. Ketan Antil, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. This order shall dispose off above mentioned 11 petitions, i.e., **CRM M-17311-2021, CRM M-39878 of 2021, CRM M-39975 of 2021, CRM M-50868 of 2021, CRM M-40044 of 2021, CRM M-40086 of 2021, CRM M-50866 of 2021, CRM M-6706-2022, CRM M-6725-2022 and CRM M-6696-2022** titled as **“Gaurav Gupta Vs. Sumita Jain”**, and **CRM M-21122-2023** titled as **“Gaurav Gupta Vs. M/s Mahabir Parsad Lakmi Chand”**, whereby, the petitioners have prayed for quashing of the complaints filed under Section 138 of the Negotiable Instruments Act 1881 as well as summoning orders passed by the Court of Sub Divisional Judicial Magistrate, Ganaur, Sonapat and all subsequent proceedings arising therefrom. Since, the litigation in all the complaints is between the same parties and common questions of law and facts are involved in all the petitions; consequently, all the petitions are taken up together and are being disposed off simultaneously by way of common judgment. For the facility of

reference, the facts have been culled out from the petition, i.e., **CRM M-6696 of 2022** titled as “**Gaurav Gupta Vs. Sumita Jain**”.

2. A complaint under Section 138 read with Section 142 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') and read with Section 420 IPC was filed by the respondent/complainant against the petitioner/accused, his father late Shri Surinder Kumar Gupta and their firm M/s SSG Foods, Gharaunda, District Karnal. The respondent/complainant alleged that she was a commission agent at Ganaur and was running her firm by the name of M/s Mahabir Parsad Lakmi Chand. The accused M/s SSG Foods is a Rice Mill and the petitioner/accused had placed an order for supply of paddy/rice from time to time. From 01.10.2018 to 31.03.2019, M/s SSG Foods, i.e., the accused/firm purchased a paddy of worth Rs.3,65,75,940.80/-, on which M/s SSG Foods made a payment of Rs.3,32,00,000/- and the remaining amount of Rs.33,75,940.80/- was carried forward to the next financial year. Again in the financial year 01.04.2019 to 31.03.2020, the accused paid Rs.6,81,24,000/- out of total amount of Rs.11,02,32,431.80/- leaving the total outstanding amount of Rs.4,21,08,431.80/-. The accused also borrowed a sum of Rs.1,34.26 lacs from the complainant as the accused were in dire need of money as their business was about to shut down due to scarcity of money. In order to discharge their liability, accused issued cheques bearing No. 077936 dated

28.02.2020 of Rs. 25 lacs and cheque bearing No. 082844 dated 30.03.2020 for a sum of Rs. 25 lacs, both drawn on Oriental Bank of Commerce at Gharaunda, District Karnal, in the name of the complainant-company with the assurance that the same would be encashed on its representation. The complainant presented the cheques with her banker, but both the cheques were dishonoured and returned to the complainant with the remarks “Funds Insufficient” and “Payment stopped by the drawer”, vide return memos dated 14.05.2020. Despite issuance of notice, the accused did not make payment equal to the amount of dishonoured cheques and the complainant filed complaint (Annexure P-4) before the Court of Sub Divisional Judicial Magistrate, Ganaur, Sonapat. Vide the impugned summoning order dated 20.10.2020, the petitioner and two other accused were ordered to be summoned under Section 138 of the Act. Challenging the validity of the summoning order dated 20.10.2020 (Annexure P-5), the petitioner has filed the present petition before this Court.

3. Learned counsel for the petitioner submitted that the petitioner has been illegally arrayed as an accused in the present case as a proprietor/partner of the firm M/s SSG Foods, Gharaunda. While referring to the registration certificate dated 07.09.2018 (Annexure P-1), learned counsel for the petitioner submitted that M/s SSG Foods, Gharaunda, is a sole proprietorship firm, having its

sole proprietor Surinder Kumar Gupta and he had already been arrayed as an accused in the complaint. This clearly shows that the petitioner had no role to play and has been falsely involved. Still further, Surinder Kumar Gupta was the sole proprietor and he had already expired on 03.08.2020. Learned counsel further referred to both the cheques (Annexure P-2) and submitted that both the cheques were issued by the sole proprietorship firm, i.e., M/s SSG Foods, Gharaunda, and one cheque is having the signatures of Surinder Kumar Gupta as its proprietor, whereas another cheque is having the signatures of the present petitioner, as proprietor of M/s SSG Foods, Gharaunda. Consequently, even if it is presumed that the petitioner had signed a second cheque, then also no offence is made out against the petitioner. As per the settled law, in the cases of dishonour of a cheque issued by the proprietorship firm, the prosecution can be launched only against its proprietor and not against the signatory of the cheque. Still further, a person cannot be prosecuted only on the ground that he was drawer of the cheque. Moreover, in the case of dishonour of cheques issued by a proprietary concern, no employee of the proprietary concern can be prosecuted and the liability under Section 138 of the Act is only attracted against the proprietor of the cheque. Still further, even if, the drawer of the cheque had expired, no proceedings could be initiated against the legal heirs of the proprietor

and only drawer of the cheque could be arrayed as a accused under Section 138 of the Act.

4. On the other hand, learned counsel for the respondent submitted that the respondent/complainant had always been dealing with the present petitioner as well as his father Surinder Kumar Gupta, who always claimed to be proprietor/partner of a firm M/s SSG Foods Gharaunda. Even, in the complaint, it has been repeatedly stated that the petitioner and his father had placed the order for supply of paddy and they were running the business of M/s SSG Foods Gharaunda. Even, in the entire complaint, specific allegations with regard to the role and affairs of the firm M/s SSG Foods Gharaunda have been levelled against the petitioner and he was responsible for the conduct of business of the firm. Even, the money was borrowed by the present petitioner and he and his father, were running the day to day affairs of the firm. Learned counsel further contended that since Surinder Kumar Gupta, father of the petitioner was not maintaining good health, the petitioner had been solely running the daily affairs of M/s SSG Foods Gharaunda and even prior and after the death of Surinder Kumar Gupta, the petitioner was incharge of the affairs and was solely conducting the business of M/s SSG Foods Gharaunda. Even, his father expired on 03.08.2020. Learned counsel further submitted that the fact that the petitioner was incharge of the business of M/s SSG Foods Gharaunda is further

corroborated from the fact that the in discharge of liability, the present petitioner had issued an acknowledgement dated 02.06.2019 (Annexure R-1). Further, even from the cheques (Annexure R-2), it is apparent that the present petitioner had signed one of the cheques as the proprietor of M/s SSG Foods Gharaunda. Moreover, from the list (Annexure R-2), it is also apparent that the petitioner had issued five cheques in all in his capacity of proprietor of M/s SSG Foods Gharaunda. Learned counsel further contended that the petitioner had issued cheques, signing as proprietor of M/s SSG Foods Gharaunda totaling to Rs. 1.1 crores whereas Surinder Kumar Gupta, his father had signed/issued cheques worth Rs. 4.40 crores, who also signed as proprietor. Thus, the cheques were issued by the petitioner and his late father for the discharge/settlement of total liability of Rs. 5.50 crores of M/s SSG Foods Gharaunda.

5. Learned counsel for the respondent/complainant further submitted that the petitioner always claimed himself to be the proprietor/partner of M/s SSG Foods Gharaunda and it was categorically admitted by the petitioner in CRM M-31435 of 2020 titled as **“Hari Krishan Gupta and others Vs. State of Haryana and another”** that his father had issued cheques to the respondent. He also signed the cheques (Annexure R-3). Thus, the petitioner cannot be permitted to state that the petitioner was not the proprietor of the M/s SSG Foods Gharaunda. Still further, the fact that the petitioner is

proprietor of M/s SSG Foods Gharaunda is established from the perusal of the judgment dated 28.10.2020 in Civil Suit No. 217 of 2020, in which the petitioner had contested the suit in the capacity of a legal representative of his deceased father, i.e., Surinder Kumar Gupta as well as the authorized signatory/person of M/s SSG Foods Gharaunda. Even, he was incharge of day to day affairs as well as proprietorship of M/s SSG Foods Gharaunda, thus, he cannot escape the liability for the cheques issued in discharge of liability of M/s SSG Foods Gharaunda by taking advantage of technicalities of law.

6. Learned counsel further contended that the petitioner had not approached this Court with clean hands and the inherent jurisdiction under Section 482 Cr.P.C. could not be exercised in favour of a person, who approaches the Court by strategically and selectively disclosing only a certain set of facts favouring him. In the present case, the petitioner had repeatedly signed various documents, by admitting himself to be the proprietor of M/s SSG Foods Gharaunda and now he is estopped from raising any such argument before this Court. Still further, the petitioner had entered into a memorandum of understanding (Annexure R-4) with the respondent, wherein, he acknowledged his liability towards the respondent to the tune of Rs. 5.50 crores. The said memorandum of understanding is dated 02.03.2022, i.e., much after filing of the present petition, where

he was claiming that he is not the proprietor of the firm M/s SSG Foods Gharaunda. Thus, the petitions deserve to be dismissed by this Court.

7. I have heard learned counsel for the parties and perused the record.

8. The provisions of Section 138 and Section 141 of the Act are reproduced as under:-

"Section 138. Dishonour of cheque for insufficiency, etc. of funds in the account.-

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque or with both.: Provided that nothing contained in this Section shall apply unless-

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

Explanation: For the purposes of this Section, "debt or other liability" means a legally enforceable debt or other liability."

"Section 141. Offences by companies.

(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

Provided that nothing contained in this sub-section shall render any person liable to punishment 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.

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation - For the purposes of this Section.-

(a) "company " means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm means a partner in the firm."

9. As per the provisions of Section 138 of the Act, the drawer of the cheque shall be deemed to have committed the offence, when the cheque drawn by him is returned unpaid on certain grounds mentioned in the Act. Thereafter, certain conditions precedent and the conditions subsequent are also provided by the statute. Upon fulfillment of these requirements, the commission of offence of “dishonour of cheque” is stated to be complete. By virtue of

provisions of Section 141 of the Act, the guilt for the offence and the liability to be prosecuted and punished is extended to every person, who, at the time of offence was committed, was incharge of and was responsible to the company for the conduct of its business, irrespective of the fact whether such person was a director, manager, secretary or other officer of the company. Such responsible person, in order to be exonerated in terms of the first proviso to prove that the offence was committed without his knowledge and despite his due diligence. The important feature in sub-Section 1 of the Act is control of a responsible person over the affairs of the company rather than his holding of an office or his designation. While the liability under sub-Section 2 arises out of holding an office and consent, connivance or neglect of the persons, covered by sub-section (1) and (2) are liable to be prosecuted and also punished upon the prove of their being either incharge of and responsible to the company in the conduct of its business or of their holding of the office and having been guilty of consent, connivance or neglect, in the matter of commission of the offence by the company. The persons covered by Section (1) may escape the punishment only if he proves that the offence was committed without his knowledge or despite his due diligence. While interpenetrating the provisions of Sections 138 and 141 of the Act in **Criminal Appeal No. 1586 of 2022 [arising out of Special Leave Appeal (Criminal) No. 9811 of 2021]** titled as **S.P. Mani and**

Mohan Dairy Vs. Dr. Snehalatha Elangovan decided on 16.09.2022, the Hon'ble Supreme Court has held as follows:-

“33. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:-

(a) Vicarious liability can be fastened on those who are incharge of and responsible to the company or firm for the conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;

(b) It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;

(c) If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed in regards the law.

(d) In construing a complaint a hyper-technical approach should not be adopted so as to quash the same.

(e) The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141 respectively should be kept in mind by the Court concerned.

(f) These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within the statutory period even after the issue of notice.

(g) The power of quashing should be exercised very sparingly and where, read as a whole, the factual

foundation for the offence has been laid in the complaint, it should not be quashed.

(h) The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking”.

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47. Our final conclusions may be summarised as under:-

a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to subsection (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in

charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

c.) Needless to say, the final judgement and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners `qua? the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court”.

10. In the present case also, it has been specifically pleaded that the respondent/complainant had been dealing with the petitioner as well as his father Surinder Kumar Gupta, who died after issuing the cheques and was not even maintaining good health at the time of issuance of cheques in question. Even, the petitioner had always been projecting himself to be the proprietor/partner of the firm M/s SSG Foods Gharaunda, which is also apparent from a written acknowledgment dated 02.06.2019 (Annexure R-1), which was issued by him, prior to issuance of the present cheques in the present case. Still further, one cheque in the present case, i.e., cheque No. 082844 was issued by the petitioner on 30.03.2020 in his capacity as proprietor of M/s SSG Foods Gharaunda. Apart from that, it is also evident from (Annexure R-2) that the petitioner had issued total five cheques in his capacity as proprietor of M/s SSG Foods Gharaunda. Still further, even after filing of the present petition before this Court,

the petitioner entered into a memorandum of understanding with the present respondent/complainant, wherein, he acknowledged his liability towards the respondent of Rs. 5.50 crores and had appended his signatures on that. Thus, it is apparent that the complainant had reasons to believe that the petitioner was incharge of the affairs of the firm and he had always projected himself as the proprietor of M/s SSG Foods Gharaunda and cannot be permitted to raise such argument before this Court. The petitioner was apparently incharge of and was responsible for the conduct of the business of the firm M/s SSG Foods Gharaunda and both the parties may lead their respective evidence before the trial Court in that direction.

11. In the present case, the petitioner had vehemently argued that from the registration certificate (Annexure P-1), it can be easily inferred that firm M/s SSG Foods Gharaunda was the sole proprietorship firm and Mr. Surinder Kumar Gupta, i.e., the father of the petitioner was the sole proprietor of the firm whereas on the other hand, the respondent has clearly shown that there was sufficient evidence on record to prove that the petitioner was also proprietor of the firm M/s SSG Foods Gharaunda. Moreover, there was *prima facie* evidence to show that the petitioner was incharge of and was responsible for the conduct of the business of M/s SSG Foods Gharaunda. In fact, the disputed questions of facts are involved in the present case, which need to be adjudicated after the parties adduced

evidence in the complaint under Section 138 of the Act. The law is well settled that the legal presumption of the cheque having been issued in the discharge of liability must also receive due weightage. In a situation where the accused moves the Court for quashing of the complaint even before the trial had formally commenced, the Court's approach should be careful enough not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. Even such presumption is in the nature of rebuttable presumption and the accused can always raise a defence, wherein, the existence of a legal enforceable debt or liability can be contested. While dealing with the parameters of invoking the inherent jurisdiction of the Court, while quashing the criminal proceedings under Section 482 Cr.P.C., the Hon'ble Supreme Court has held in the matter of ***State of Haryana Vs. Bhajan Lal AIR 1992 SC 604*** as follows:-

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

12. Still further, the Hon'ble Supreme Court of India has held in the matter of ***Rajiv Thapar Vs. Madan Lal Kapoor (2013) 3 SCC 330*** as follows:-

"28. The High Court, in exercise of its jurisdiction under section 482 CrPC, 1973 must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same."

13. In view of the above discussion, it is apparent that the disputed questions of fact are involved in the present case and this Court should be slow in granting the relief of quashing of complaint at this pre trial stage as the consequence of quashing a criminal process at a pre trial stage can be grave and irreparable. The quashing proceedings at the initial stages will result in finality without the parties have had an opportunity to adduce evidence and the consequence is that the trial Court is ousted from weighing the material evidence. If these petitions are allowed, the accused may be

given an unmerited advantage in criminal process. Thus, at this stage, this Court is not inclined to grant the relief of quashing of complaints to the present petitioner. However, both the parties may lead their respective evidence before the trial Court to prove their respective claims.

14. Finding no merits, the petitions are ordered to be dismissed.

15. I must add before parting that the observations have been made in the above order only for the limited purpose for the disposal of the quashing petitions and the trial Court is directed to decide the case on merits, after appreciating the evidence led by both the parties.

16. All pending applications, if any, are disposed off, accordingly.

13.01.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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