



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126+213

CRM-M-12168-2025 (O&M)

Decided on : 14.05.2025

Gagandeep Singh Swami

... Petitioner(s)

Versus

Neeraj Dhanda

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Manish Jain, Advocate and
Mr. Siddhant Jain, Advocate, for the petitioner(s).

Mr. Viren Jain, Advocate and
Mr. Raj Shekhar, Advocate, for the respondent(s).

SANJAY VASHISTH, J. (Oral)

1. Present petition has been filed u/s 528 of BNSS, 2023, for quashing of the summoning order dated 09.10.2023, passed in COMA/49283/2023, titled as “Neeraj Dhanda v. Gagandeep Singh Swani” (Annexure P-1), whereby, petitioner has been summoned u/s 138 of the Negotiable Instruments Act, 1881 (in short, ‘NI Act’).

Besides, a prayer has also been made for quashing of COMA/49283/2023, dated 09.10.2023, titled as, “Neeraj Dhanda v. Gagandeep Singh Swani”, filed u/s 138 of NI Act (Annexure P-2).

2. By referring to the complaint, Mr. Manish Jain, Advocate, for the petitioner submits that Neeraj Dhanda (respondent herein) being complainant filed a complaint against the accused – Gagandeep Singh Swami (petitioner herein) by alleging that accused had issued A/c payee cheque dated 21.08.2023 (Ex.C1), of the amount of Rs.10,00,000/-, of ICICI



Bank, payable to ‘**Sadem Industries**’, and on bouncing of the same, required legal notice dated 06.09.2023 (Ex.C5) was issued to the accused, namely; Gagandeep Singh Swami (petitioner herein). In the said legal notice, it has been averred that *‘my client (complainant in the complaint) and you (accused-Gagandeep Singh Swami) were having friendly relations, and for obtaining financial help of Rs.10.00 lakh (Rupees Ten Lakhs only) you received the amount under the assurance to repay the same within a short period.’* Thus, in order to discharge the legal liability, cheque bearing No.033380, dated 21.08.2023, drawn on ICICI Bank Ltd., Nehru Sidhant Kendra, Trust Building, Feroze Gandhi Market, Ludhiana, was issued by the accused/petitioner in favour of the client of the Advocate, who sent the legal notice.

However, on presentation of the said cheque, in IndusInd Bank, Ludhiana, for its encashment, same was reported to be dishonoured vide memo dated 24.08.2023, with remarks “**Funds Insufficient**”. It is, thereupon, after issuance of legal notice, impugned complaint was instituted before the Court of Ld. Judicial Magistrate, Ludhiana, to claim the cheque amount, which was issued in favour of the ‘Sadem Industries’.

3. Counsel for the petitioner argues that learned trial Court has erred in observing that *‘cheque was drawn in favour of the complainant’*, whereas, perusal of the cheque would show that same has been drawn in favour of ‘Sadem Industries’ and not complainant.

Thus, on the basis of all the material appended with the complaint, and the contents mentioned therein, counsel for the petitioner argues that neither complainant is a ‘payee’, nor the ‘holder’ of the cheque in



due course, nor any legally enforceable debt is owed to him by the accused. Therefore, legal notice, complaint and the summoning order issued thereon are against the admitted factual position on record.

4. By stretching out his submissions, counsel for the petitioner further argues that at best, it could be submitted that the alleged loan was advanced by partnership firm, i.e., Sadem Industries (now M/s Saidan Corp.) and not by the complainant. Thus, it could be alleged that the cheque was drawn in favour of M/s Sadem Industries, and thereupon, it is only M/s Sadem Industries, who could issue legal notice and file criminal complaint also, through its partner 'Neeraj Dhanda' or any other partner.

To make it more clear, no such legal notice could ever be issued nor the complaint could have been filed by the present complainant (respondent herein), towards whom the petitioner never owed any legally enforceable liability to discharge the debt amount.

5. In support of his contentions, learned counsel for the petitioner places reliance upon certain judgments rendered by this High Court as well as by other High Courts, which are as follows:-

- (I) ARVIND SINGH RAJPOOT v. M/S INTERSIGHT HOLIDAYS PVT. LTD. AND ORS., CRL.MC NO.984 OF 2018, D.O.D.: 16.08.2023.
- (II) PRASHANTH.S v. PUNJAB NATIONAL BANK, CRL.O.P. NO.21286 OF 2022 AND CRL.M.P. NO.13867 OF 2022, D.O.D.: 25.11.2024.
- (III) MEDISYS BIOTECH PVT. LTD. v. D.S. NUTRITION AND ANOTHER, 2024 SCC ONLINE P&H 12907 : [CRM-M-29316-2024, D.O.D.: 17.07.2024).
- (IV) CHARANJEET SINGH v. KULWANT SINGH, 2025(1) LAW HERALD 441 : LAW FINDER DOC ID #2687915 : [CRM-M-54012-20223 : D.O.D.: 16.01.2025]

6. While opposing the contention of counsel for the petitioner, Mr. Viren Jain, Advocate and Mr. Raj Shekhar, Advocate, appearing on behalf of



the respondent, submit that the judgment cited by the petitioner's counsel, are not applicable.

Moreover, it is admitted position that the complainant – Neeraj Dhanda, is the partner of the firm 'M/s Sadem Industries', and therefore, the defect pointed out by the petitioner's counsel is curable by seeking amendment. For the said purpose, an appropriate application has already been moved by the complainant before this Court, i.e., CRM-20009-2025, wherein, prayer has been made to grant permission to file application seeking correction in the memo of parties of the complaint before the trial Court.

7. It is further argued that once it has been mentioned in the memo of parties of the complaint, 'Neeraj Dhanda', partner of M/s Sadem Industries (now M/s Saidaen Corp.), having its registered office at NH-1, GT Road, Village Rajgarh, Doraha, District Ludhiana, then being a partner of the firm, the complainant is entitled to file complaint and consequently, has filed the same as per law.

It is also argued that there is no definite law, denying complainant that the complaint would not be filed by any partner of the firm, even if the cheque has been issued in the name of the firm.

8. Counsel for the respondent relies upon M/s Sree Gokulam Chit Fund (P) Limited v. M/s Gem Sanitary and Ors., CrI. O.P. No.30699 of 2019, DOD: 15.03.2023 : Law Finder Doc Id #2417980 of Madras High Court, and Amandeep Singh Pahwa v. Ever Onward Private Limited, 2024(1) PLR 122 : Law Finder Doc Id #2514568 of this High Court.

9. I have heard the submissions and gone through the relevant



record, and also the judgments cited by both the sides and more specific the cheque in question, legal notice and the copy of complaint, and thereupon, examined the impugned summoning order dated 09.10.2023 (P-1).

10. In Arvind Singh Rajpoot's case (*supra*), it was argued that the certain cheque for Rs.1,00,000/- each, were issued in the name of 'Intersight Tours and Travels Pvt. Ltd.', but on dishonouring of the cheque, legal notice was issued by the Director of Intersight Holidays Pvt. Ltd. and complaint was also filed by Intersight Holidays Pvt. Ltd. In the paragraph No.7 of the Arvind Singh Rajpoot's case (*supra*), the Hon'ble Single Bench of the Kerala High Court, observed in the judgment dated 16.08.2023, as under:-

"7. On perusal of the complaint, nothing stated as to change of name of the Intersight Tours and Travels Pvt. Ltd. to Intersight Holidays Pvt. Ltd. Prima facie, it appears that the present complainant has no locus standi to prosecute the accused and as such, the complaint is liable to be quashed. Therefore, I am inclined to invoke the power under Section 482 Cr.P.C. in this particular case and accordingly, this petition stands allowed.

It is ordered that the complaint against the petitioner pending before the Judicial First Class Magistrate Court-IV Ernakulam as C.C. No.235/2016 and the proceedings thereof stand quashed."

In Prashanth.S's case (*supra*), Single Bench of Hon'ble Madras High Court in its judgment dated 25.11.2004, observed as under:-

"12. In this case, the complainant is not neither a 'payee' nor a 'holder in due course' of the disputed cheque and the cheque is in the name of M/s.Krish Associates, where the petitioner is a partner. Therefore, by applying the above proposition of law, the complaint given by the complainant against the petitioner is not maintainable under Section 138 and 142 of the Negotiable Instruments Act. The trial Court has not considered the above said aspects and has taken cognizance. Therefore, the order of taking cognizance based on the present complaint is abuse of process of law and is not in accordance with law and hence, the present complaint is liable to be quashed.



13. *In the result, the Criminal Original Petition is allowed and the pending proceedings in C.C. No.21 of 2020 on the file of the learned Metropolitan Magistrate, Fast Track Court No.I, Allikulam building, Egmore, Chennai are quashed. No costs. Consequently, the connected miscellaneous petition is closed.”*

In Medisys Biotech’s case (*supra*), this High Court, made certain observations therein and also by relying upon the ratio of law laid down by the Hon’ble Apex Court in S.R. Sukumar v. Sunaad Raghuram, (2015) 9 SCC 609 : AIR 2015 SC 2757, decided the issue by discussing the fact & law, and same is reproduced here-under:-

“5. *Before proceedings further, it would be pertinent to note that Hon'ble the Supreme Court in S.R. Sukumar vs. S. Sunaad Raghuram, AIR 2015 Supreme Court 2757 has observed that while there is no specific provision in the Cr.PC for amending a complaint or a petition filed under its provisions, Court have permitted amendments to correct curable infirmities. It would apposite to reproduce the relevant observation observations of the Supreme Court in S.R. Sukumar's 's case (supra):*

"17. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. complaints."

18. What is discernible from the U.P. Pollution Control Board's case is that easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint."

6. *Hon'ble the Supreme Court in UP Pollution Control Board Vs others AIR 1988 SUPREME COURT 1128 settled that Modi Distillery and others, a legal infirmity, which is easily curable, can can be rectified through a formal amendment application, if the amendment pertains to a simple and curable infirmity and does not cause prejudice to the opposing*



party, the Court may allow such an amendment even in the absence of an explicit enabling provision in the Cr.PC. However, on the other hand, if the amendment sought does not address a curable infirmity, it cannot be corrected by a formal amendment, or if it is likely to cause prejudice to the other party, then the Court should not permit the amendment.

7. *In the instant case, the petitioner has submitted that the name of the complainant is 'Medisys Universal Pvt. Ltd.' but was incorrectly mentioned in the complaint as 'Medisys Biotic Pvt.Ltd.' This correction cannot by an any stretch of imagination be considered a clerical or a typographical error that too at such a belated stage when the complainant's evidence has commenced because 'Medisys Universal Pvt. Ltd.' Ltd. and 'Medisys Biotic Pvt. Ltd. are admittedly distinct legal entities entities with separate identities under the law.*

8. Furthermore, this Court does not find any substance in the submissions made by the learned counsel that inadvertent inadvertently the name of the Company was wrongly mentioned in the complaint, as in the power of attorney,, the complainant has been cited as 'Medisys Biotec Pvt. Ltd'. Additionally, the resolution passed by the Board of Directors of Medisys Biotec Pvt.Ltd. explicitly authorized Sandeep Khemka to represent the case. Therefore, it is evident that the present complaint was filed by Medisys Biotec Pvt. Ltd. The error as asserted by the learned counsel for the petitioner is not merely clerical but is fundamental in nature, affecting the very essence of the case. As a sequel to the above, this Court does not find any merit in the present petition.

9. *Dismissed.*”

Again this Court in Charanjeet Singh's case (*surpa*), in para

No.8, observed as under:-

“8. Furthermore, the legal notice was served upon one Rishi Jain and not the petitioner. Section 138(b) NI Act reads as follows:

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

XXX

XXX

XXX

(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

It is trite law that serving a notice is a sine qua non for instituting a complaint under Section 138 NI Act. The intention behind the said



requirement is to give him an opportunity to settle the debt before criminal proceedings are initiated against him. As such, it becomes all the more important to ensure that such a notice contains all necessary details pertain to the cause of action, in unmistakable terms. While Section 138(b) NI Act does not specify the ingredients of a valid notice, this Court cannot overlook the fact that the notice was issued in the name of a different person altogether. The infirmity as such, is not merely formal in nature and impacts the heart of the case. Further still, the memo qua the disputed cheque was issued on 13.06.2019 and legal notice was originally issued on 05.07.2019, however, not to the petitioner(s), as such, the defective notice would vitiates the entire proceedings rendering it suffering from incurable illegality. To correct the same, a corrigendum was issued on 24.07.2019. Even if for the sake of arguments, the corrigendum is considered to be valid, the same was issued after the lapse of the 30-day-period stipulated by the statute.”

11. The judgments/case law cited by learned counsel for the respondent have also been examined, but the facts and the law are entirely different. From both the judgments/case law, neither the counsel for the respondent points out any such situation, nor this Court while reading the same, able to find out that, when the cheque had been issued in favour of a person ‘X’, whereas, the legal notice and the complaint has been filed by a person namely ‘Y’, and subsequently, on realizing the mistake, any such permission can be granted to introduce the name of ‘X’, as the person issuing legal notice and the complainant in the complaint case. Thus, such amendment to correct the mistake is not allowed.

Therefore, after considering the submissions addressed and placing reliance upon all four judgments/case laws cited by learned counsel for the petitioner, this Court holds that due application of mind was lacking at the stage of issuing the legal notice, and the same was the position when the complaint was filed. In fact, the contents of the application failed to



confirm the status of the complainant, who filed it. A complainant in a complaint case can never be declared as the holder of the cheque in question, as a partner of a firm cannot substitute himself as the 'payee' or the holder of the cheque. Thus, the impugned summoning order dated 09.10.2023 (Annexure P-1) is held to be bad in law.

12. In view of the aforementioned facts and circumstances, the prayer made in the present petition is allowed. Consequently, the impugned summoning order dated 09.10.2023 (Annexure P-1) and the complaint (Annexure P-2) filed under Section 138 of the NI Act, are hereby quashed and rather, complaint is held to be not maintainable.

Since, in the present petition, the complaint and the impugned summoning order have already been examined on merits, there is no necessity to pass a separate order in the application filed by the respondent/complainant, i.e., CRM-20009-2025.

The petition stands **disposed of** accordingly.

Pending miscellaneous application(s), if any, also stand disposed of.

(SANJAY VASHISTH)
JUDGE

May 14, 2025

J.Ram/Lavisha

Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: Yes/~~No~~