IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-37799-2019 (O&M)
Reserved on : 03.11.2025
Decided on : 09.12.2025

M/s Radeena Jayachandran & Ors.

..... Petitioners

VERSUS

M/s H&R Johnson (India)

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Argued by : Mr. D.N. Ganeriwala, Advocate for the petitioners.

Mr. Aditya Jain, Advocate and
Mr. Rahul Vohra, Advocate for the respondent.

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SURYA PARTAP SINGH, J.

1. By invoking the extraordinary jurisdiction vested in this Court by virtue of Section 482 of Criminal Procedure Code, hereinafter being referred to as 'CrPC' only, the present petition has been filed for quashing of order dated 07.08.2019, passed by the learned Additional Sessions Judge Gurugram, hereinafter being referred to as 'revisional Court' only, (Annexure P-10) and order dated 24.09.2018, passed by the learned Judicial Magistrate First Class Gurugram, hereinafter being referred to as 'trial Court' only, (Annexure P-9).

2. The abovementioned orders have been passed with regard to summoning of petitioners as accused in a complaint, filed by the respondent/complainant under Section 138 of Negotiable Instruments Act, hereinafter being referred to as 'NI Act'.

3. The pith and substance of the complaint filed by the respondent/complainant, hereinafter being referred to as 'respondent' only, is that the respondent is a 'Private Limited Company' incorporated under the 'Companies Act, 1956', and carrying the business of integrated building material across the country, and abroad. According to respondent, 'M/s Narmada Business Links Pvt. Ltd.', i.e. accused No.1, had a business dealing with the respondent, and that the petitioners being Directors and 'Mr. Jayachandran Ramchandran' being Managing Director, had issued a cheque in favour of respondent in the discharge of liability of accused Company, namely 'M/s Narmada Business Links Pvt. Ltd.'. According to respondent, the abovementioned cheque for a sum of Rs.64,47,416/- was issued under the assurance that if presented before the banker, it will be encashed, but the same was dishonoured by the banker of accused Company, and thus, 'Mr. Jayachandran Ramchandran' being Managing Director and the petitioners being Directors of the Company, who had signed the cheques, are responsible for the commission of abovementioned offence.

4. It has also been alleged by the respondent that before filing of company, a legal notice was also served upon the petitioners and the

Managing Director of the Company, but the payment was not made. Hence, the complaint under Section 138 of NI Act.

5. The present petition has been filed by the petitioners alleging therein that although the petitioners are Directors of the Company, but they have nothing to do with the day-to-day working of the Company, and that the entire affairs of the Company are being looked after and managed by the Managing Director 'Mr. Jayachandran Ramchandran' only. According to petitioners, the petitioners No.2 and 3 are living in Dubai for the last 25 years, and that they have a 'Permanent Residence Visa' for Dubai, whereas the petitioner No.3 is wife of Managing Director 'Mr. Jayachandran Ramchandran'. According to petitioners, they have been falsely implicated (as accused) in the complaint, by alleging that they were signatory to the cheque, whereas the cheque was not signed by the petitioners, and it signed by 'Mr. Jayachandran Ramchandran' only.

6. It has also been contended by the petitioners that when a legal notice was served by the respondent through its counsel, it was brought into the knowledge of the respondent that petitioners have nothing to do with the day-to-day business of the Company, and therefore, any criminal liability with regard to payment of any dues cannot be fastened upon the petitioners. The petitioners have alleged that the order dated 24.09.2018 passed by the learned trial Court is an outcome of total non-application of judicial mind and that neither reply notice has been discussed in the order, nor the role

attributed to the petitioners in the commission of crime has been examined. According to petitioners, the impugned order for summoning has been passed by the learned trial Court in such a mechanical manner that even the cheque in question, which bears the signatures of only one person has not been seen.

7. The petitioners have further alleged that even in the complaint, the role played by the petitioners in the commission of crime has not been specified and thus, summoning of petitioners as accused for the commission of offence committed by the Company and its Managing Director, is nothing but an abuse of process of law.

8. In addition to above, it has also been contended by the petitioners that the learned trial Court has also failed to look into the fact that the complaint has been filed by an unnatural person, i.e. the Private Limited Company, and that it has been filed through a person, who was not duly authorised to file a complaint on behalf of the respondent No.1 Company, and thus, cognizance on the abovementioned complaint should not have been taken.

9. Heard.

10. The learned counsel for the petitioners, while assailing the impugned orders passed by the learned revisional Court, vis-à-vis by the learned trial Court, has contended that the complaint itself is not sustainable in view of the fact that complainant is a 'Private Limited Company' and the

person, who signed the complaint on behalf of the Company, and filed the same, was not appointed by the Board of Directors of respondent-Company, and therefore, the complaint has been filed through an unauthorised person and the same is not maintainable. In this regard, the observations made by the Hon'ble Supreme Court of India in the case of 'A.C. Narayanan & Ors. V/s State of Maharashtra & Ors.' AIR 2014 SC 630 have been referred, wherein it has been observed that a Power of Attorney holder can file a complaint, but there must be a statement asserting the personal knowledge of the Power of Attorney holder in the complaint. According to Hon'ble Supreme Court of India, a Power of Attorney holder, who has no knowledge regarding the transactions, cannot be examined as a witness in the case.

11. The learned counsel for the petitioners has also referred to the observations made by the Delhi High Court in Criminal M.C. 7534/2023 'M/s Krishan Lal Gulati & Anr. V/s State of NCT of Delhi & Anr.', wherein it has been held that a complaint under Section 138 of NI Act filed on behalf of a non-existent entity through unauthorised person is not maintainable.

12. In addition to above, the learned counsel for the petitioners has also contended that in a mechanical manner without looking into the preliminary evidence, i.e. the cheque in question, and the reply notice submitted by the petitioners, the impugned order has been passed by the learned trial Court in a mechanical manner, without specifying the roles played by the petitioners in the commission of offence punishable under

Section 138 of NI Act. While reiterating the contents of their petition, wherein it has been alleged that the petitioners No.1 and 2 are residing at Dubai, and have nothing to do with the day-to-day business of the accused Company, it has been argued by learned counsel for the petitioners that there is a false averment in the complaint that all the petitioners are signatory to the abovementioned cheque. As per learned counsel for the petitioners, the copy of cheque in question is available on record, which shows that the said cheque has been signed only by the Managing Director of the Company, and not by the petitioners.

13. While referring to the principles of law laid down by the Bombay High Court in Criminal Revision Application No.21 of 2014, titled as 'M/s Shradha Shipping Co. Pvt. Ltd. Vs. M/s Adhithri Trading Company & Anr.', and by the Hon'ble Supreme Court of India in the cases of 'Susela Padmavathy Amma V/s M/s Bharti Airtel Limited', Criminal Appeal No.1105 of 2022, titled as 'Sunita Palita & Ors. V/s Panchami Stone Quarry', 'Siby Thomas V/s M/s Somany Ceramics Ltd.', the learned counsel for the petitioners has contended that the filing of complaint against the petitioners, who are neither signatory to the cheque in question, nor working partners of the Company, any cognizance against them for the commission of offence punishable under Section 138 of NI Act should not have been taken. The learned counsel for the petitioner has further contended that the learned trial Court passed the impugned order for summoning in utter violation of law and, that the abovementioned order has been affirmed by the

learned revisional Court due to wrong appreciation of legal position as well as fact.

14. The learned counsel for the respondent has controverted the abovementioned arguments. According to learned counsel for the respondent, the present petition has been filed with *mala fide* intentions, firstly to delay the prosecution under Section 138 of NI Act, and secondly, to wriggle out of the legal responsibility fastened upon the petitioners being Directors of the Company. The learned counsel for the respondents has contended that in the present petition, there is no denial of this fact, by the petitioners, that they are Directors of the Company and therefore, for any legal debt to be discharged by the Company being Directors, who shares the profit of the business, they are liable to be prosecuted.

15. It has been further contended by learned counsel for the respondent that a proper complaint after complying with the necessary steps was filed before the learned trial Court, and that the learned trial Court called upon the respondent to lead preliminary evidence, and after appreciation of complaint and the preliminary evidence only, vide a detailed order, the cognisance against the petitioners, vis-à-vis other accused, has been taken and the summoning order dated 24.09.2018 has been passed by the learned trial Court.

16. While defending the abovementioned summoning order, it has been contended by learned counsel for the respondent that the learned trial

Court has duly exercised the discretion vested in it, for taking cognizance of an offence. As per learned counsel for the respondent, once the discretion has been exercised by the learned trial Court, the same cannot be interfered with.

17. It has also been contended by learned counsel for the respondent that the same questions were raised by the present petitioners before the learned revisional Court also, and that after giving an opportunity of being heard to both the parties, by virtue of detailed order dated 07.08.2019, the learned revisional Court has rightly concluded that at this preliminary stage, when evidence of the parties is yet to be recorded, this conclusion is not possible to draw that the objections raised by the petitioners are correct. According to learned counsel for the respondent since the petitioners will be having the responsibility to prove the allegations contained in the complaint, while denying the abovementioned opportunity to the petitioners it cannot be held that the allegations of the respondent with regard to involvement of petitioners in the commission of offence under Section 138 of NI Act are false.

18. With regard to objection raised by the petitioners qua the competence of Mr. Gopal Krishan Ahuja for filing of complaint on behalf of respondent-Company, it has been contended by learned counsel for the respondent that Mr. Gopal Krishan Ahuja is a person, who has been duly authorised to file a complaint on behalf of the Company, and that without

proving the document, whereby Mr. Gopal Krishan Ahuja has been authorised to file a complaint on behalf of respondent-Company, in a quashing petition this question cannot be determined whether the petition has been filed by an authorised person or not.

19. The learned counsel for the respondent, while referring to the principles of law laid down by the Hon'ble Supreme Court of India in the case of 'Sripati Singh V/s The State of Jharkhand & Anr.' 2021 SCC Online SC 1002, and 'S.M.S. Pharmaceuticals Ltd. V/s Neeta Bhalla' 2005(8) SCC 89, has contended that there is no illegality or perversity in the impugned order, and that there is no scope for indulgence or interference in the verdicts rendered by the learned trial Court and the learned revisional Court. While claiming that the instant petition filed by the petitioners is devoid of merit and deserves dismissal, the learned counsel for the respondent has urged for dismissal of present revision petition.

20. The record has been perused carefully.

21. The factual matrix of the present case shows that that in the present petition there are two points, which need to be determined:-

(a) whether the summoning order qua petitioners is illegal in view of grounds taken in the petition; and

(b) whether the complaint has been filed by an authorised person.

POINT NO.1:

22. As far as the first point of determination is concerned, at the very outset, it is pertinent to mention here that for summoning of a person as an accused, the first and foremost duty casts upon a Court of Judicial Magistrate is to look into the averments made in the complaint, and then consider the abovementioned averments in the light of preliminary evidence adduced by the complainant. In the present case, the contents of complaint shows that there was specific averment qua the petitioners that they were responsible for the commission of offence punishable under Section 138 of NI Act, being Directors and signatory to the cheque in question. In preliminary evidence, the cheque in question was also placed before the learned trial Court, copy of which is available on record in the present petition also. A bare perusal of abovementioned cheque shows that it bears only one signature and that signature is of Managing Director of the accused Company. Thus, the finding recorded by the learned trial Court on the basis of this averment of the respondent, that all the petitioners were signatory to the cheque, is patently wrong.

23. In addition to above, it is also relevant to mention here that before filing of complaint, a legal notice was duly served upon the petitioners and other accused by the respondent-Company. The copy of the same is available on record as Annexure P-4. The contents of reply notice makes it abundantly clear that in the reply, it was specifically mentioned that the petitioners being Directors of the Company were not responsible for the cheque issued by the Managing Director, and that they were not involved in

the day-to-day activity of the accused Company. In addition to above, it was also mentioned that the sole responsibility of the cheque issued by 'M/s Narmada Business Links Pvt. Ltd.' (accused Company) was upon 'Mr. Jayachandran Ramchandran', the Managing Director. However, the impugned order dated 24.09.2018 passed by the learned trial Court is absolutely silent about the abovementioned two components.

24. It is also relevant to mention here that the law in this regard is settled that only the Directors, who are responsible for day-to-day affairs of the Company, can be held liable for criminal action committed on behalf of the Company, and not the Directors, who are not working Directors or who were neither signatory to the cheque, nor responsible for day-to-day affairs of the Company, nor involved in the business dealing with the complainant. In this regard, the Hon'ble Supreme Court of India in the case of 'Sunita Palita' (supra) allowed the appeal of those Directors, against whom there was no allegation that they were either the 'Managing Director' or the 'Joint Managing Director' looking after the day-to-day working of the Company. In the abovementioned case, the Hon'ble Supreme Court of India also observed that although the inherent jurisdiction under Section 482 of CrPC should be exercised sparingly, carefully and with caution, but if the interest of justice so requires such discretion must be exercised. The Hon'ble Supreme Court of India further observed that the criminal liability depends on the role one plays in the affairs of a Company and not because of designation or status along. According to Hon'ble Supreme Court of India,

the Director of the Company, who was not incharge or responsible for the conduct of business of the Company at the relevant time, cannot be held liable under the provisions of NI Act.

25. Similar view has been taken by the Hon'ble Supreme Court of India in the case of Siby Thomas (supra), wherein it has been observed that "a vicarious liability would be attracted only when the ingredients of Section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of Section 141(1) of the NI Act, would reveal that only that 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 alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished".

26. If the facts and circumstances of the present case are analyzed in the light of abovementioned principles of law, it transpires that the learned trial Court, vis-a-vis the learned revisional Court, have failed to look into the fact that before summoning of a person as an accused in a complaint under Section 138 of NI Act, it is necessary to draw an inference that *prima facie* case against the accused is made out. However, in the instant case, the

learned trial Court, vis-a-vis the learned revisional Court, have failed to appreciated the followings facts:-

(a) that for dishonour of a cheque, signed by the Managing Director, in addition to abovesaid Directors, three other Directors, too, have been summoned as accused;

(b) that the learned trial Court, vis-a-vis the learned revisional Court have failed to appreciate that in the complaint, the role being played by the petitioners in the day-to-day business of the Company or at least with regard to the deal between the respondent-Company, and the accused-Company was not described, and therefore, without recording of specific finding with regard to the role played by the petitioners, the petitioners being non-signatory of the cheque, should not have been summoned as accused; and

(c) that the learned trial Court as well as learned revisional Court have also failed to appreciate that a legal notice served by the respondent before filing of complaint, was duly replied by the petitioners and in that reply also, it was specifically mentioned that the petitioners were not signatory to the cheque in question, nor they were responsible for day-to-day business of the accused-Company.

27. Taking into consideration the cumulative effect of all the abovementioned factors and the plea of the petitioners that they are living in Dubai for the last 25 years, it is hereby held that an error of judgment has been committed by the learned trial Court while taking cognizance for the commission of offence punishable under Section 138 of NI Act against the

petitioners. Hence, the impugned order dated 24.09.2018 passed by the learned trial Court with regard to summoning of petitioners as accused is hereby held to be patently illegal and perverse. Thus, there is need for indulgence or interference of extraordinary jurisdiction of this Court in the impugned order. Hence, the point of determination No.1 is hereby answered, accordingly, in favour of the petitioners.

POINT NO.2

28. As far as this point of determination is concerned in view of finding on the point of determination No.1, wherein it has been held that summoning of petitioners by virtue of impugned order is bad, the question of validity of a person, who has filed the complaint on behalf of respondent-Company cannot be looked. Rather, the competence of Mr. Gopal Krishan Ahuja for filing of complaint on behalf of respondent-Company can be challenged by the remaining two accused, i.e. 'M/s Narmada Business Links Pvt. Ltd.' and Mr. Jayachandran Ramchandran. Hence, the question with regard to abovementioned point is kept open to be determined in appropriate proceedings.

CONCLUSION

29. In view of abovementioned findings on two points of determination, it is hereby held that the impugned order dated 24.09.2018 passed by the learned trial Court with regard to summoning of petitioners as accused, which has been affirmed by the learned revisional Court vide order

dated 07.08.2019, deserves to be set aside. Accordingly, by accepting the present petition, the abovementioned order dated 24.09.2018 and the complaint are hereby quashed qua the petitioners.

30. However, it is made clear that there is no finding with regard to legality of summoning of remaining two accused, i.e. 'M/s Narmada Business Links Pvt. Ltd.' and Mr. Jayachandran Ramchandra.

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

(SURYA PARTAP SINGH)
JUDGE

09.12.2025
Gaurav Thakur

Whether speaking / reasoned Yes/No
Whether Reportable Yes/No