



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-53778-2024

Date of decision: 21st May, 2025

Chetan Chopra

...Petitioner

Versus

Tushar Bansal

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rana Gurtej Singh, Advocate for the petitioner.
Mr. Aditya Grover, Advocate for the respondent.
(through video conferencing)

MANISHA BATRA, J (ORAL):-

The instant petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking quashing of criminal complaint No. NACT/7165/2024 titled as '*Tushar Bansal Vs. Vimarash Project Private Limited and others*', filed under Section 138 read with Section 141 of Negotiable Instruments Act, 1881 (for short, '*NI Act*'), the proceedings having emanated therefrom and the order dated 17.09.2024 whereby an application filed by the petitioner under Section 223 of BNSS making prayer for dropping the proceedings had been dismissed.

2. The aforementioned complaint has been filed by respondent against the petitioner and the proposed accused which include M/s Vimarsh Project Private Limited Company (for short, '*the company*'), its authorized signatory and some directors, on the allegations that to discharge a legally enforceable liability of the company, three post dated cheques for sums of Rs. 2,00,000,00/-, Rs. 2,00,000,00/- and Rs. 1,50,000,00/- respectively, were



issued by the company under the signatures of its authorized signatory Shreeramgam Dixit. Those cheques when presented for realization were dishonored. The respondent-complainant served legal notice upon the company, its signatory and directors including the petitioner and since the amount of the cheques had not been paid to the respondent, this complaint had been filed.

3. After presentation of the complaint, the learned Magistrate passed order dated 16.07.2024, thereby issued pre-cognizance notice against the company, the petitioner and the other persons named as accused therein. A copy of this order has been placed on record by the petitioner, which reads as hereunder:-

Present: Counsel for the complainant.

*Fresh complaint received by entrustment. It be checked and registered. Today, Examination of complainant and the witness is not being conducted in view of judgment of Hon'ble Supreme Court in **Jamuna Singh and Others Vs Bhadai Shah, AIR 1964 SC 1541**, wherein it has been held that recording of statement of complainant in complaint case amounts to taking cognizance.*

Accordingly, pre- cognizance notice to accused be issued as per mandate of Proviso to Section 223(1) BNSS, 2023, through ordinary process as well as through postal process on filing of PF, RC, copy of complaint for 30.08.2024. In addition to above, Dasti notice may also be given, if desired.”

4. As revealed from the record, the petitioner and other accused appeared before the learned trial Court, in response to the notice and filed objections/obligations. Vide order dated 17.09.2024, the learned Magistrate decided to proceed against the petitioner and some other accused. The order



dated 17.09.2024 reads as under:-

Present: Sh. Arjun Grover Advocate for the complainant.
Sh. Sunil Bhardwaj & Sh. Deepak Vashishth, Counsel for accused No.1, 6 & 8
Sh. Harmeet Singh, Counsel for accused No.2 to 4.
Sh. Rana Gurtej Singh, Counsel for accused No.7 and 9.
Ms. Babita Gupta, Counsel for accused No.5

Vide this order, I shall pass an order for taking cognizance of offence u/s 138 of NI Act in this complaint. Detailed arguments were advanced on the last date of hearing and written arguments/ objections/ applications on behalf of all the accused persons were filed which have already been perused by this Court.

First of all, it is important to note that cheque in question is of the accused company i.e, accused No.1 and has been signed by accused No.6 i.e. Sh. Shreeramgam Dixit, authorized signatory.

Now coming to accused No.2, 3 and 4, it is important to note that in the title as well as in para No. 13 of the complaint, the complainant has mentioned all these three accused persons as Ex-Directors. At this stage, it is important to discuss the relevant provision of law i.e. Section 141 of NI Act which states that every person who at the time of offence was responsible for the affairs/conduct of the business of the company shall be held liable and proceeded against under Section 138 NI Act. It is contention of the accused No.2, 3 and 4 that they resigned from the company before the cheque in question



was issued. This fact is further substantiated by the minutes of meetings dated 18.08.2023 which has been duly signed as Directors by the complainant.

*In these circumstances, where the accused persons No.2, 3 & 4 have already resigned from the post of Directors of the accused company before the issuance of the cheque, as per opinion of this Court no proceedings under Section 138 NI Act read with Section 141 NI Act can be initiated against them. In this regard, I draw support from judgment of Hon'ble Supreme Court in case titled as "**Rajesh Viren Shah Vs Redington (India) Ltd.**"*

Now coming to accused No.5, 7 & 8, these persons were Directors of the accused company against whom the complainant has alleged that they were directors on the date of issuance of cheque by the accused company to the complainant. In regard to accused No.9, it has been averred by the complainant that he is currently director of the accused company. In these circumstances, whether the accused No.5,6,7, 8 & 9 were responsible for the affairs/conduct of the business of the accused company and are to be held liable under Section 138 NI Act read with Section 141 NI Act, is a matter of trial which can be decided when both the parties will lead their respective evidence.

Accordingly, I deem it appropriate to proceed against accused No.1,5,6,7,8,9 and not against accused No.2,3 & 4. Now, to come upon 06.11.2024 for preliminary evidence and presence of accused No.5,6,7,8,9."

5. The petitioner has made prayer for quashing the complaint as well as the order dated 17.09.2024. It is argued by learned counsel for the petitioner that the impugned order dated 17.09.2024 is not sustainable in the



eyes of law and is liable to be set aside as while passing the same, the learned Magistrate did not consider the provisions of Section 223 of BNSS in a proper manner and took cognizance in the matter without caring that no evidence whatsoever had been, produced by the complainant.

6. It is argued by learned counsel for the petitioner that the complaint as well as the impugned order are not sustainable, also because of the fact that the learned Magistrate did not appreciate the fact that the petitioner had resigned from the post of Director as on 30.12.2023. His resignation was accepted by the company by passing a resolution on 28.02.2024. Even DIR-12 Form, notifying his resignation had been filed by Registrar of Companies and had been accepted. As on the date of dishonor of the cheques, in question on 08.05.2024, the petitioner was not a director and was not managing affairs of the company. As such, he could not be held to be vicariously liable for the business and conduct of the company or for managing the affairs thereof and therefore, no complaint under Section 138 of NI Act could be filed against him, nor any order for issuance of notice or taking cognizance against him, could be passed. It is therefore, argued that the complaint as well as the impugned order are liable to be quashed.

7. On the other hand, it is argued by learned counsel for the respondent that his preliminary evidence is yet to be recorded. The petition is premature, as no formal process has been issued against the petitioner. There is no illegality or infirmity in the order passed by learned trial Court. It is, therefore, argued that the petition is liable to be dismissed.

8. The respondent-complainant has filed a private complaint under the provisions of Section 138 of NI Act against the present petitioner, the



company and some of its authorized signatories/directors. In a private complaint case, the Jurisdictional Magistrate has power to take cognizance of an offence under Section 223 of BNSS (which is *pari materia* with Section 200 of the Code of Criminal Procedure). As per Section 200 of the Code, the Magistrate while taking cognizance of an offence on complaint, was required to examine upon oath, the complainant and witnesses and he could issue process thereafter on arriving at an opinion that there were sufficient grounds for proceedings. As per Section 223 of BNSS also, the Magistrate while taking cognizance shall examine upon oath and the witnesses present and the substance of such examination shall be reduced in writing. A proviso has been added to the effect that no cognizance of an offence shall be taken by the Magistrate that giving the accused an opportunity of being heard.

9. In the instant case, the concerned Magistrate immediately on receipt of the complaint, issued pre-cognizance notice to the petitioner and other proposed accused without examining the complainant and witnesses to be produced by him, if any. Not only this, he passed order dated 17.09.2024 thereafter, by observing that the petitioner and some other persons named as proposed accused therein in the complaint were responsible for affair/conduct of the company and that they could be proceeded against. Thereafter, he posted the case for preliminary evidence. In the considered opinion of this Court, a totally wrong procedure had been adopted by learned Magistrate and the provisions of Section 223 had not been interpreted in a proper manner and were not complied with. Since this provision is mandatory in nature and as per the same, the Magistrate was mandatorily



required to examine upon oath the complainant and the witnesses to be produced by him, if any and only then to give an opportunity of being heard to the proposed accused and the question as to whether, process was to be issued or not was to be considered thereafter, hence, it is apparent that the order dated 17.09.2024, as passed by learned Magistrate is not sustainable in the eyes of law and is liable to be set aside. As such, the question that the petitioner was involved in the day to day business of the company and process could be issued against him or not is not required to be gone at this stage. Accordingly, the petition is partly accepted and the order dated 17.09.2024 is set aside and the matter is remitted to the concerned Magistrate directing him to give opportunity to respondent No.1 to examine himself and his witnesses, if any, on oath and to proceed in accordance with the provisions of Section 223 of BNSS and only thereafter, he shall give opportunity of being heard to the petitioner and other proposed accused. The respondent shall appear before learned trial Court on the date fixed before it for this purpose. However, it will not be obligatory on the petitioner at this stage to appear before the learned trial Court.

10. A copy of this order immediately be sent to the concerned Court.

11. Since the main petition has been disposed of, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

21st May, 2025

Parveen Sharma

1. *Whether speaking/ reasoned*
2. *Whether reportable*

: *Yes / No*
: *Yes / No*