IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

127 **CRM-M-15318-2025 (OL&M)**
Date of decision: 27.01.2026

Rajdavinder Kaur **...Petitioner**

Versus

Dr. Mulkh Raj and others **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Harvinder Pal Singh Ghuman, Advocate
for the petitioner.

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MANISHA BATRA, J. *(Oral)*

1. The petitioner is seeking quashing of order dated 30.10.2024 (Annexure P-22), passed by the Court of learned Judicial Magistrate First Class, Nabha in Criminal Complaint bearing No. COMA/166/2018, tiled as ***Dr. Mulkh Raj vs. Harjeet Singh and others***, filed under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 *(for short 'N. I. Act'),* whereby an application moved by the petitioner seeking her discharge, had been dismissed.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by respondent No. 1/complainant against the petitioner, her husband Harjeet Singh and M/s Guru Ram Dass Agro Industries & Implements *(for short 'firm')* on the allegations that the petitioner and her husband, who were partners in the firm, had insisted him to provide financial help. Respondent No.1 had given a cheque for a sum of Rs.5 Lakhs to them in December, 2013 and cash amount

of Rs.3 Lakhs in March, 2014. They had subsequently induced him to get collateral guarantee given by one farmer to them to the tune of Rs.14.50 Lakhs on the representation that on release of such guarantee, the farmer would return the aforementioned amount to them and he would return the amount of Rs. 8 Lakhs payable by him to respondent No. 1. They also issued 8 cheques to the tune of Rs. 8 Lakhs in favour of respondent No. 1. Those cheques were presented on 28.12.2017 for realization but had been dishonoured. The petitioner and other accused failed to pay the amount of cheques in question even after issuance of legal notice, thereby compelling respondent No. 1 to file the complaint.

3. After presentation of the complaint, preliminary evidence was recorded by the jurisdictional Magistrate and vide order dated 01.03.2018, the petitioner along with co-accused i.e. respondents No. 2 and 3 was ordered to be summoned as accused to face trial for commission of aforementioned offence.

4. As reflected from the material placed on record, the petitioner and co-accused had caused appearance before the learned trial Court. Notice of accusation was served upon him on 21.05.2018. Thereafter, cross-examination of respondent No. 1/complainant had been conducted. The petitioner and co-accused subsequently moved an application seeking their discharge. The said application has been dismissed by the learned trial Court, vide impugned order dated 30.10.2024 by observing that the Court had no power to discharge the accused since notice of accusation had been served and trial had also commenced. Feeling aggrieved from the same, the petitioner has

filed the present petition.

5. It is argued by learned counsel for the petitioner that respondent No. 1 had willingly and voluntarily become guarantor for her firm on 22.05.2014 and had executed documents in this regard, since he wanted to have control over the firm of the petitioner. Another guarantee deed had been executed by him on 03.03.2016 for a sum of Rs. 70 Lakhs. The petitioner had retired from the partnership of the firm at the insistence of respondent No. 1 on 04.02.2016 and was no more a partner at the time of dishonour of the cheques in question as well as filing of the complaint.

6. It is further argued by learned counsel for the petitioner that it was respondent No. 1, who was greedy and had compelled her husband Harjeet Singh for inducting partners of his choice in the firm. The impugned order dated 30.10.2024 is not at all sustainable in the eyes of law as while passing the same, the learned trial Court ignored the fact that respondent No. had willingly and voluntarily executed guarantee deeds in favour of the firm of the petitioner. It was on his insistence that the petitioner had retired from the partnership of the firm and on 04.02.2016, a dummy partner, namely Gurmit Singh, had been inducted. The cheques in question had not been signed by the petitioner. As on the date of issuance and dishonour of the cheques in dispute as well as on the date of filing of the complaint, she was not a partner in the firm and as such, she could not be implicated as an accused. This fact had been admitted by respondent No. 1 during his cross-examination. It is submitted that there are no chances of her conviction in this case and compelling her to face trial would be nothing but an abuse of process of law.

It is, therefore, urged that the impugned order is liable be set aside, the petitioner deserves to be discharged from offence alleged and accordingly, the petition deserves to be allowed.

7. This Court has heard the submissions made by learned counsel for the petitioner, besides going through the material placed on record.

8. The petitioner is admittedly and evidently facing trial in the aforesaid case, which is a summons case. The procedure for trial under summons case has been provided under Chapter XX of the Code of Criminal Procedure *(for short 'Code')*. As per Section 254 of the Code, as soon as the accused in a summons case appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make. The said step had been taken by the learned trial Court in this case by serving notice of accusation on the petitioner on 21.05.2018. The Full Bench of Hon'ble Supreme Court in ***Court On Its Own Motion v. State Crl. Ref.4 of 2019*** had observed that the trial Court cannot be conferred with the inherent powers, either to review or recall the order of issuance of process. The Court of a Magistrate does not have the power to discharge the accused upon his appearance in Court in a summons trial case based upon a complaint in general, and particularly in a case under Section 138 of the N.I. Act, once cognizance has already been taken and process issued under Section 204 Cr.P.C.

9. The next step after serving notice of accusation is provided under Section 254 of the Code, as per which, the Magistrate shall proceed to hear the prosecution and take such evidence as may be produced in support of the

prosecution and also to hear accused and take all such evidence he produces in his defence. The Code does not provide for any provision for the accused in a summons case to seek discharge. As such, the learned trial Court had rightly observed that it had no power to discharge the accused. Moreso, the act and conduct of the petitioner is also required to be seen. The notice of accusation was served upon her on 21.05.2018, whereas this application had been moved in the year 2024, when even the evidence of respondent No. 1/complainant had already been adduced. The complaint pertains to the year 2018. Obviously, this was done by the petitioner to prolong the disposal of the case. In view of the above discussion, this Court finds no illegality or infirmity in the impugned order warranting any interference by this Court. Hence, the petition is dismissed.

[MANISHA BATRA]
JUDGE

27.01.2026
Waseem Ansari

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes