2026:PHHC:022961

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(125) CRM-M-17681-2024(O&M)
DATE OF DECISION: 12.02.2026

Dharambir ....Petitioner

VERSUS

Rajiv ....Respondent

(125/2) CRM-M-17617-2024(O&M)

Ravinder Kumar ....Petitioner

VERSUS

Rajiv Kumar ....Respondent

(125/3) CRM-M-17649-2024(O&M)

Ravinder Kumar ....Petitioner

VERSUS

Rajiv Kumar ....Respondent

(125/4) CRM-M-18237-2024(O&M)

Ravinder ....Petitioner

VERSUS

Rajiv ....Respondent

CORAM HON'BLE MR. JUSTICE SUBHAS MEHLA

Present Mr.J.P.Sharma, Advocate,
for the petitioner in all petitions.
Mr.Anup Singh, AAG, Punjab.
Mr. Ashish Naik, Advocate,

for Mr. Tara Chand Dhanwal, Advocate,
for respondent in all petitions.
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SUBHAS MEHLA, J (ORAL)

1. All the four aforementioned petitions have been filed against the same respondent/accused Rajiv, one by petitioner Dharambir and three by his son Ravinder, qua dis-honour of four different cheques, in which, similar orders dated 22.02.2024 passed by the Court of learned SDJM, Kanika, have been challenged, whereby four applications for permission to Amend the Title of four complaints were dismissed. Since similar question of law is involved in all aforementioned petitions, therefore, are being decided by a common order.

2. Learned counsel for the petitioners contended that being a sole proprietorship entity, apparently there is no legal requirement to amend the title of the complaint for impleadment of the sole proprietorship entity namely **"Guru Institute of Information Technology Private Limited"** (herein after called as entity) which is run by sole proprietor i.e petitioner in all petitions. However, in order to avert any mis-perception and mis-interpretation at later stage, inasmuch as the impugned cheques were drawn on bank account of the said entity, the petitioners (complainants) made applications before the trial court, to amend the title of the complaint and to implead aforesaid entity as one of the accused. But, trial court vide order dated 22.02.2024 dismissed such applications which is against law. He further submitted that such kind of amendment is merely formal in nature which must be allowed.

3. On the other hand, Mr. Ashish Naik, Advocate, appeared on behalf of respondent and opposed the petitions by submitting that the impugned order does not suffer any illegality or infirmity and is based on well reasoned and justified findings given by learned trial Court. He submitted that entity, on whose bank account cheque was drawn, is not a sole proprietorship entity but a private limited company. In support of his contentions, learned counsel for the respondent has placed reliance upon documents like Certificate of Incorporation, Article of Association and Memorandum of Association, which are taken on record. He further submitted that in the present complaints, no notice have ever been issued upon Guru Institute of Information Technology Pvt. Ltd. within 30 days of coming into the knowledge of factum of dishonour of cheques, which is *sine qua non* for the prosecution against the company as per mandate of the provisions of the Negotiable Instrument Act, 1881 (herein after called as Act). He further submitted that in a coalesce of cases Hon'ble Apex Court has held that complaint pertaining to dishonor of cheque cannot be made against the signatory of the cheque alone unless and until company i.e. the main accused be made accused in the complaint. Moreover complainants have not given any reference to Guru Institute of Information Technology Pvt. Ltd. in their complaints regarding any pre-existing liability and has also not prayed for any relief against the said company, so the complaints cannot be allowed to be amended for impleading the company as party, if it be allowed then it would tantamount to allowing the complainants to fill up the lacunae at a later stage which would be prejudicial to the respondent. Learned counsel for the respondent further submitted that there is no legal

provision under the Act which the complainant can seek amendment of complaint's title; that present accused has been impleaded in his personal capacity and the complainant is not seeking any amendment in the body of the complaint except in its title, whereby the company cannot be implicated; petition has been filed just to prolong the proceedings as complainant has already concluded his preliminary and after charge evidence and it is not specified as to for what relief he is seeking amendment in the title of the case and hence, prayer for dismissal of the petitions is made. Reliance has been placed upon the law laid down in **Pawan Kumar Goel versus State of U.P and another** (Criminal Appeal No.1999 of 2022 arising out of Special Leave Petition (Crl.) No. 1697 of 2020, decided on 17.11.2022).

4. Learned counsel for the parties have been heard and the material available on paper book perused.

5. The petitions before this Court are filed for quashing of the impugned orders dated 22.02.2024 passed by the learned trial Court in complaints made under section 138 of the Act, whereby applications for making amendment in the title of the complaints have been dismissed.

6. This is the case of the petitioner/complainant that respondent is a sole proprietor of the sole proprietorship entity and trial Court has committed an error by not allowing application for amendment of title of the complaint which is merely a formal in character and is not prejudicial to the respondent. *Per Contra* counsel for the respondents countered the submissions made by the counsel for the petitioner by submitting that the **"Guru Institute of Information Technology Private Limited"** is not a sole proprietorship entity but a private limited company incorporated under the

provisions of the Companies Act, 1956, in support of which he placed reliance on the documents i.e. **Certificate of Incorporation, Article of Association, and Memorandum of Association**. Filing a complaint pertaining to dishonor of cheque is not sustainable qua the respondent only without arraigning the company an accused in such complaint and thus amendment of title of the complaint by arraigning company as an accused at a later stage would amount to filling up of lacunae.

7. Hon'ble Apex Court in catena of cases have settled the position of law that in case of a cheque issued on behalf of a company by its authorized signatory, prosecution cannot proceed against the such authorized signatory or other post-holders of the company as described under Section 141 of the NI Act, unless the company who is the drawer of the cheque is arrayed as an accused in the complaint case filed before the Magistrate. Further, vicarious liability can only be affixed against the directors, authorized signatories, etc. of the company after the company is held liable for the commission of offence under Section 138 of NI Act. Hon'ble the Supreme Court in **Bijoy Kumar Moni vs. Paresh Manna & Anr. [2025(1) RCR(Criminal) 265]** has observed as under:

> " 62. It follows from a conspectus of the aforesaid decisions that it is the drawer Company which must be first held to be the principal offender under Section 138 of the NI Act before culpability can be extended, through a deeming fiction, to the other Directors or persons in-charge of and responsible to the Company for the conduct of its business. In the absence of the liability of the drawer Company, there would naturally be no requirement to hold the other persons vicariously liable for the offence committed under Section 138 of the NI Act."

8. In so far as the amendment of the complaint is concerned, it would be worthwhile to refer to the law laid down by Hon'ble Supreme Court of India in the case ***U.P. Pollution Control Board v. Modi Distilleries, (1987) 3 SCC 684*** and ***S.R. Sukumar v. S.Sunaad Raghurav, (2015) 9 SCC 609*** holding that, "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."

9. Reverting to the facts of the case in hand, it may be accentuated that the respondent is concededly the signatory to the cheque, which is drawn on the bank account maintained in the name of the company (i.e. Guru Institute of Information Technology Private Limited), that came to be dishonoured, ensuing which the complaint under section 138 of the Act was filed. But in such complaint company was not made party as an accused, only the respondent was arraigned as accused. Neither any legal notice nor any averments have been made in the complaint by the petitioners in reference to the company. Petitioners made applications for amendment of

the title of the complaints proposing to arraign the company as accused, citing it as a sole proprietorship company and showing it to be a mere formal amendment. But impleadment of company as an accused at a later stage would render substantial change in the nature as well as character of the complaint. Thus such kind of amendment cannot be allowed just to fill up lacunae on behalf of the complainant.

10. In view of facts and circumstances of the case and also keeping in view of the above discussion, this Court does not find any reason to interfere with the well reasoned order passed by the learned trial Court.

11. Thus, without commenting on the merits of the case pending before the trial court, the present petition, being devoid of merit, is hereby dismissed.

12. All pending misc. applications, if any, be also disposed of.

13. A photocopy of the order be placed on the file of connected petitions.

12.02.2026 **(SUBHAS MEHLA)**
mamta **JUDGE**

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