



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-22470-2023 (O&M)
Date of decision: 02.02.2026

Ayush Garg @ Aayush**...Petitioner**

Versus

Sudesh Kumar**...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Navneet Jindal, Advocate
for the petitioner.

None for the respondent.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of Cr.P.C. seeking quashing of complaint bearing NACT No. 66 of 2019 titled as ***Sudesh Kumar v. Ayush Kumar Garg***, filed under Sections 138 and 142 of Negotiable Instruments Act, 1881 (*for short 'NI Act'*) which is pending before the Court of learned Sub Divisional Judicial Magistrate, Hansi along with all the subsequent proceedings having emanated therefrom including the order dated 13.05.2019, whereby the present petitioner had been ordered to be summoned as an accused and had been called upon to appear and to face trial for commission of aforementioned offence.

2. Brief facts of the case relevant for the purpose of disposal of



present petition are that the aforementioned complaint has been filed by the respondent under Section 138 of the N. I. Act against the petitioner/accused on the allegations that the petitioner had borrowed a sum of Rs.5 Lakhs from him in three installments and had promised to pay the same back within a short time. When the respondent insisted him for repayment of his money, the petitioner had issued a cheque for a sum of Rs. 5 Lakhs to him. This cheque was, however, dishonoured on presentation with the remarks 'funds insufficient'. Despite, legal notice being served, the petitioner did not pay the amount of cheque in question to the respondent, thereby compelling the respondent to file the aforementioned complaint.

3. On presentation of the complaint and after recording of preliminary evidence produced by the respondent, the learned trial Magistrate, vide order dated 13.05.2019, summoned the petitioner to face trial for commission of offence punishable under Section 138 of the N. I. Act. The petitioner has prayed for quashing of the complaint as well as the summoning order by filing the present petition.

4. It is argued by learned counsel for the petitioner that the impugned complaint as well as the summoning order are not sustainable in the eyes of law and are liable to be set aside as while passing the impugned summoning order, the learned trial Court ignored the fact that the cheque in question was not issued by the petitioner in his personal capacity. Rather, the same was issued by M/s Keshav Oil and Cotton Ginn Ind. Pvt. Ltd. (*for short 'company'*) and not only the petitioner but another Director of the



company, namely Parmod Kumar, was also the signatory to the same. However, neither the company nor the said Parmod Kumar has been implicated as party to the complaint. There is nothing on record to show that the petitioner in his personal capacity had secured any loan from the respondent. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned complaint as well as the summoning order are liable to be set aside.

5. The respondent had been duly served but failed to appear and contest the petition.

6. This Court has heard the submissions made by learned counsel for the petitioner.

7. At the outset, it is to be considered as to whether, the prayer made by the petitioner for quashing of complaint can be considered by this Court in a petition filed under Section 482 of Cr.P.C. (*which is pari materia with Section 528 of BNSS, 2023*). The Hon'ble Supreme Court has laid down certain conditions whereby the complaint can be quashed by invoking the powers under the above mentioned Section in a case reported as ***Smt. Nagawwa v. Veeranna Shivalingappa Konjalzi and others (1976) 3 SCC 736*** which are as follows:-

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for



proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

8. Further, the question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in ***Bhushan Kumar and another v. State (NCT of Delhi) and another (2012) 5 SCC 424***, wherein it was observed that a petition filed under Section 482 of Cr.P.C. for quashing an order summoning the accused is maintainable.

9. Similarly, in a recent judgment dated 22.02.2024 titled as ***Vikas Chandra v. State of Uttar Pradesh and another 2024 INSC 261***, the Hon'ble Supreme Court reiterated the position that the order of issuance of summons could be interfered with by the High Court in exercise of powers under Section 482 of Cr.P.C.

10. In view of the above discussed proposition of law, it is explicit that a complaint can be quashed and an order of issuance of summons can be interfered with by this Court by invoking powers under Section 482 of Cr.P.C., however, at the same time, it is also to be kept in mind that the inherent jurisdiction under Section 482 is to be exercised sparingly and with caution only when such exercise is justified by the test specifically laid down in the section itself. It is well settled proposition of law that an appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise



of this power and the inherent powers so vested do not confer any arbitrary jurisdiction upon the High Court to act according to whims and caprices.

11. On applying the above mentioned proposition of law to the facts of the present case, it is to be seen as to whether the complaint as lodged by the respondent and the impugned order are liable to be quashed or not? The main thrust of the arguments address by learned counsel for the petitioner is that the cheque in question was not issued by him in his personal capacity. Rather, the same was issued on behalf of the company and the above named Parmod Kumar, being another Director of the company, was also the signatory to the cheque in question but they have not been implicated as accused in the impugned complaint. The petitioner had not borrowed disputed amount from the respondent in his personal capacity. He had no legally enforceable liability towards the respondent and as such the complaint could not be filed against him. The arguments raised by learned counsel for the petitioner have merit. Reliance can be placed upon three-Judge Bench judgment of the Hon'ble Supreme Court in ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661***, wherein it was conclusively settled that Section 141 of the N. I. Act postulates commission of an offence by the company as a *sine qua non* for fastening criminal liability upon persons in charge of its affairs and there cannot be prosecution of directors or officers alone, without prosecuting the company, as vicarious liability is a legal fiction that cannot exist in isolation.
12. Reliance can also be placed upon ***National Small Industries Corporation Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330***, wherein



Hon'ble Supreme Court has held that Section 141 of the N. I. Act does not create substantive liability but only extends criminal liability by way of a legal fiction, which cannot operate in the absence of the principal offender, namely the company. The Court cautioned that criminal law being penal in nature must be strictly construed and any deviation from statutory requirements would render the prosecution invalid. Reference can also be made to ***K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48***, wherein Hon'ble Supreme Court had held that while certain categories of persons such as Managing Directors may be presumed to be in charge of the company, such presumption cannot survive once the company itself is not before the Court as an accused. The existence of the company as an accused is the legal bedrock upon which all presumptions under Section 141 of the N. I. Act rest.

13. It has been consistently held by the Hon'ble Supreme Court as well as by different High Courts that where a cheque is issued on behalf of a company, the company is the principal offender and the criminal liability of directors, officers or authorized signatories arises only by application of Section 141 of the N. I. Act, which creates a statutory fiction of vicarious liability. Such vicarious liability cannot exist independently and presupposes the arraignment of the company as an accused. In the absence of the company being prosecuted, the very substratum of the complaint stands vitiated. Reliance can also be placed upon ***Bijoy Kumar Moni v. Paresh Manna and another, 2024 INSC 2024***, wherein Hon'ble Supreme Court, while referring to ***Aneeta Hada's*** case (supra), has reiterated that commission of an offence



by the company is a *sine qua non* for invoking Section 141 of the N. I. Act. It was categorically held that directors or officers cannot be prosecuted alone without prosecuting the company, except in cases where prosecution of the company is legally barred. Similar view had been taken by the Hon'ble Supreme Court in ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89*** and ***Anil Gupta v. Star India Pvt. Ltd., (2014) 10 SCC 373***.

14. In view of the ratio of law laid down by the Hon'ble Supreme Court in aforecited judgments, it is well settled that where a cheque is issued on behalf of a company, the company is the principal offender and prosecution of directors or officers in their individual capacity is not maintainable unless the company is arraigned as an accused. The vicarious liability contemplated under Section 141 of the N. I. Act is a statutory fiction which cannot be invoked in the absence of prosecution of the company, except where such prosecution is legally barred. On applying the aforesaid settled principles to the facts of the present case, it emerges from the complaint itself that the cheque in question was not issued by the petitioner in his personal capacity, but was drawn on behalf of M/s Keshav Oil and Cotton Ginn Ind. Pvt. Ltd., and was jointly signed by the petitioner along with another Director of the said company, namely Parmod Kumar. Admittedly, neither the company nor the other signatory-Director has been arrayed as an accused in the complaint. There are also no specific averments in the complaint to indicate any legally enforceable personal liability of the petitioner towards the respondent. In the light of the ratio laid down in the aforesaid judgments, the non-arraignment



of the company, which is the principal offender, strikes at the very root of the maintainability of the complaint. The continuation of proceedings against the petitioner alone, in the absence of the company and the other signatory-Director, is clearly impermissible in law, as the statutory requirements of Sections 138 and 141 of the N. I. Act stand unfulfilled.

15. Consequently, this Court is of the considered opinion that the impugned complaint and the summoning order, insofar as they relate to the present petitioner, cannot be sustained and deserve to be set aside as the prosecution is founded on a complaint which is not maintainable in view of the settled legal position. Accordingly, finding merit in the present petition, the same is allowed. The impugned complaint as well as summoning order dated 13.05.2019 along with all the subsequent proceedings having emanated therefrom are hereby quashed qua the petitioner.

[MANISHA BATRA]
JUDGE

02.02.2026
Waseem Ansari

1. Whether speaking/ reasoned

:

Yes/No
2. Whether reportable

:

Yes/No