**(1993) 11 P&H CK 0041**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous No. 4246-M of 1992

M.M.Rajagaria APPELLANT

Vs

State of Punjab RESPONDENT

**Date of Decision :** 03-11-1993

**Acts Referred:**

**Citation :** (1994) 2 AICLR 520 : (1995) 1 CCC 8 : (1995) 1 CivCC 8 : (1984) 2 DCR 122 : (1994) ISJ 693 : (1995) 1 LJR 361 : (1994) 2 RCR(Criminal) 464

**Hon'ble Judges :** Harmohinder Kaur Sandhu, J

**Advocate :** Ashish Kapoor, Me. S.C. Kapoor, Amarjeet Markan, Sunil Chadha, G.S. Nihal Singhwala, Advocates for appearing Parties

## Judgement

Harmohinder Kaur Sandhu, J.

1. This judgment will also dispose of Criminal Misc. Nos. 5291M of 1992, 5293M of 1992, 5295M of 1992, 5297M of 1992, 5299M of 1992, 5301M of 1992, 5305M of 1992, 5307M of 1992, 5309M of 1992, 5311M of 1992, 5313M of 1992, 5315M of 1992, 5317M of 1992, 5319M of 1992, 4248M of 1992 and 5303M of 1992, as the same legal question is involved in all these petitions filed by the same petitioners against different respondents.

2. M.M.Rajagaria has filed this petition under Section 482 of the Code of Criminal Procedure for quashing the complaint Annexure P/5 and the summoning order dated 8.1.1992 and further proceedings initiated against him and other accused in the Court of SubDivisional Judicial Magistrate, Malerkotla for an offence under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (the Act for short). Criminal Misc. No. 4248 of 1992 was filed by Shri V.K. Rajagaria for quashing of the same complaint and the summoning order. The rest of the petitions have been filed jointly by both these petitioners.

3. The facts of the case necessary for the disposal of these petitions as set up in the various complaints filed against the petitioners are that M/s Vinod Paper Mills Limited, Industrial Focal Point, Malerkotla, carried on the business of

 

manufacturing paper. The petitioners as well as Vijay Mehta and S.K. Chopra, accused Nos. 2 to 5 in all the complaints were in charge of and responsible for the conduct of the business of the company i.e. M/s Vinod Paper Mills. They used to purchase material from the various complainants and amount was outstanding against the company. In consideration of the price of the goods various cheques were issued in favour of the complainants for different amounts. The complainants presented the cheques in the Punjab National Bank, Branch Malerkotla, for the realisation of the amount of the cheques, but the same were dishonoured and returned unpaid with the Bank memo ''refer to drawer'' on account of insufficient funds in the accounts of the accused company. Intimation was sent to the various complainants by the Punjab National Bank, Branch Malerkotla. Thereafter notices were issued to the petitioners and other accused and a demand was made for payment of the amount within 15 days from the date of the receipt of the notice. The amount was not paid so the various complaints were filed against the company and the persons in charge of the business of the company. After preliminary evidence was recorded the petitioners were summoned to face trial for an offence under Section 138 of the Act.

4. The petitioners prayed for quashing of the complaint as well as the summoning order on the ground that the company had become a sick industrial unit and was registered with the Board for Industrial and Financial Re construction under Section 18(3) of the Sick Industrial Companies (Special Provisions) Act, 1985. The efforts to put the company on wheels of recovery failed due to the problem created by the workers and also due to the lack of financial resources and ultimately a lockout was declared at the factory of the company. Shri Vijay Mehta and Shri Vivek Bhargava were, thus, not permitted to issue any cheque. But in the month of April and May, 1991 the workers and local creditors illegally and coercibly detained the two managers in the factory for about 72 hours. They were physically tortured and were made to sign the cheques under threat. A letter was sent to Chief Manager, Punjab National Bank, Malerkotla informing him that certain cheques had been obtained by the creditors and their payment should not be made. The payment was, thus, not made because it was stopped when the cheques were presented for encashment. When the cheques were dishonoured on account of stoppage of payment, no offence under Section 138 of the Act was made out. The cheques were detained illegally by detaining and torturing the managers. The managers who issued the cheques were no longer the employees of the company as they had ceased to be the managers with effect from 3.5.1991. Shri Vinod Kumar Rajagaria petitioner further pleaded that he had submitted his resignation to the Board of Directors requesting for acceptance of his resignation with immediate effect. His resignation was accepted by the Board of Directors in its meeting held on 29.12.1990 and resolution passed by the Board was sent to the Registrar of the Companies. At the time when the cheques were issued he had nothing to do with the affairs of the company.

5. On receipt of the notice the respondents filed reply in the present case and

 

also in Criminal Misc. No. 4248M of 1992. They denied the averments made in the petition and contended that the managers were never illegally detained or physically tortured. In fact they had been authorised to issue cheques to the loan creditors by the company in order to clear the debts of the company. This fact was also denied that any intimation was given to the bank stopping payment of the cheques and it was pleaded that the letters alleged to have been sent to the Chief Manager of the Bank were fabricated with malafide intention. In fact the company owed debt to the complainants and cheques were duly issued, but when the same were presented for payment, those were dishonoured and returned with the remarks ''refer to drawer'' on account of insufficient funds in the account of the company. A legal demand notice was sent to the petitioners in each case calling upon them to make payment within 15 days of the receipt of the notice and since no payment was made the complaints were filed.

6. I have heard the learned counsel for the parties and have perused the record.

7. It was argued on behalf of the petitioners that in fact the company on whose behalf the cheques were issued had become a sick industrial unit and the persons who had issued the cheques had been asked not to issue any cheque. They had ceased to be the employees of the company but they were illegally detailed by certain creditors and cheques were obtained from them after they were physically tortured. It was further contended that Shri V.K. Rajagaria had ceased to be a Director of the company much before the cheques were issued and he submitted his resignation, which was accepted by the Board of Directors and an intimation was sent to the Registrar of the Companies. As such he was not primafacie liable for any offence and the complaint against him could not proceed.

8. The contention of the learned counsel does not carry any weight. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made primafacie establish the offence. Under Section 138 of the Act the necessary ingredients to establish the offence are that the cheque should be drawn by a person for discharging the already existing debt or liability. The cheque should be dishonoured by the bank on the ground of lack of sufficient funds or on the ground that it exceeded the amount arranged to be paid from that account by an agreement made with that bank, the cheque was presented within six months from the date of its issue or within the period of its validity, the payee or holder in due course of the cheque makes a demand for the payment of the amount of money by giving notice in writing to the drawer of the cheque within 15 days of the receipt of information from the bank regarding its dishonour and the drawer of the receipt of the notice. The complaints filed in various cases disclosed all ingredients of the offence under Section 138 of the Act. This Court can exercise its inherent jurisdiction of quashing a complaint only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of process of

 

the Court or otherwise to secure the ends of justice.

9. The learned counsel for the petitioners contended that the bank had been issued directions not to make payment of the cheques as the cheques were obtained illegally, so it could not be said that the cheques were dishonoured for want of sufficient funds to meet the claim of the claimants. This contention is also not valid because admittedly in all the cases the cheques were dishonoured and the memo informing about the dishonour of the cheques contained words ''refer to drawer'' which meant that there were not sufficient funds in the account of the company to meet the claim. Moreover, if the cheque is bounced on account of insufficiency of the funds in the account of the drawer or for the reason that it exceeded the arrangement made by the drawer, then the drawer is liable irrespective of the endorsement made by the banker. It is not the contention of the petitioners that they had sufficient funds to meet the claim of the claimants.

10. As regards the questions whether Shri V.K. Rajagaria was a director of the company or the managers had ceased to be the managers of the company when the cheques were issued, the same, cannot be determined at this stage. The petitioners shall have to prove the various facts alleged by them by producing evidence and the other party shall have to be given an opportunity to rebut the contention of the petitioners. At present the averments in the complaint are that the petitioners were the directors of the company and they were in charge of an responsible for the conduct of business of the company. Without evidence having come on record that one of the petitioners had resigned earlier and was no longer the director, it is not appropriate for that petitioner to invoke the inherent powers of this Court for getting the complaint quashed qua him. The mere fact that the company had been declared a sick industrial unit is also no ground to quash the complaint and further proceedings as prosecution of the criminal complaint against the company for the offence in question is not covered under any of the provisions of subsection (1) of Section 22 of the Sick Industrial Companies (Special Provisions) Act.

11. As the averments made in the complaint taken at their face value and accepted in their entirety constitute an offence for which the petitioners were summoned to face trial I find no merit in the petitions and dismiss the same. It will, however, be open to the petitioners to raise all the pleas including the ones put forward by them in the present petitions at appropriate stage of the cases.