

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MMO No. 299 of 2015

Decided on: 3rd May, 2016

Mukul Khanna

.....Petitioner.

Versus

M/s Sood Steel Industries (P) Ltd.

...Respondent.

Coram

The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner:

**Mr. R.K. Gautam, Senior Advocate
with Mr. Gaurav Gautam,
Advocate.**

For the respondent:

Mr. Rahul Mahajan, Advocate.

Dharam Chand Chaudhary, Judge (Oral).

Challenge herein is to an order passed on
29.05.2015 by learned Additional Sessions Judge-I,
Kangra at Dharamshala in Criminal Revision No. (RBT) No.
6-1/X/2013.

2. The petitioner herein is an accused in a
complaint registered as Criminal Complaint No. 23/I/2009
under Section 138 of the Negotiable Instruments Act.

The respondent-complainant claims that the accused-

¹ Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

petitioner is one of the Directors of Vyom Infrastructure Private Limited. Respondent No. 1 in his capacity as Director of the Company issued a cheque bearing No. 001326 in the sum of ₹9,92,974/- on 30.09.2008 along with another Director of the Company Sh. Sidharth Sharma, another accused in the complaint. Learned trial Judge has put the notice of accusation to the accused-petitioner on the basis of an order Annexure P-2 passed to this effect on 31.07.2013. Order Annexure P-2 was assailed by the accused-petitioner in the Sessions Court, however, unsuccessfully as learned Additional Sessions Judge has dismissed the revision petition vide impugned order Annexure P-3.

3. The impugned order has been challenged on the grounds inter-alia that in the complaint there is nothing suggesting so as to the role of the accused-petitioner as Director of respondent No. 1-Company. Also that, composite complaint, by which the prosecution of the accused-petitioner has even been launched with respect to another cheque to which he is not signatory, is not maintainable.

4. This matter was previously adjourned to address this Court on the question of maintainability. On hearing learned counsel representing the parties further and placing reliance on the judgment of the High Court of Kerala in **Mohammed V. State of Kerala, 2005(1) Civil Court Cases 09 (Kerala)**, joint trial is permissible in case the disputed cheques were issued as part of the same transaction. In terms of the law laid down by the Punjab and Haryana High Court in **Kishan Lal More and another V. M/s Bibby Financial Services India Pvt. Ltd. and another, 2015 0 Supreme (P&H) 1607**, the question whether a single complaint could be filed against number of cheques, is an issue to be raised before the trial Court. Therefore, the complaint filed in the trial Court is maintainable. The accused-petitioner is at liberty to raise the question of maintainability thereof in the trial Court itself.

5. The notice of accusation put to the accused-petitioner, however, is defective because when he is not signatory to another cheque bearing No. 001130 dated 23.03.2009 amounting to ₹8,00,000/-, the

notice of accusation qua the said cheque could have not been put to him. He may be the Director of the respondent No. 1-Company, however, he had any role to play in issuance of this cheque is a question to be determined during the course of proceedings in the complaint, if raised. In case his role is established, it is at that stage the trial Court may consider putting notice of accusation to him qua this cheque also. However, at this stage, the notice of accusation could have only been put to him qua cheque bearing No. 001326 in the sum of ₹9,92,974/-, to which he is one of the signatory. Learned trial Court to put notice of accusation to accused-petitioner accordingly and proceed further in the matter thereafter in accordance with law. The impugned order is modified only to this extent. The parties through learned counsel representing them are directed to appear in the trial Court on 27.05.2016.

6. The petition stands disposed of accordingly. Pending application(s), if any, shall also stand disposed of.

An authenticated copy of this judgment be sent to the trial Court for being placed on record and compliance.

May 3, 2016
(naveen)

(Dharam Chand Chaudhary)
Judge