



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

Date of decision : 12th May, 2025

(1) CRM-M-51624-2024 (O&M)

Dr. Manjot Singh Waraich and another ...Petitioners

Versus

Rajinderpal Singh ...Respondent

(2) CRM-M-24730-2023 (O&M)

Dr. Manjot Singh Waraich and another ...Petitioners

Versus

Rajinderpal Singh ...Respondent

(3) CRM-M-26710-2023 (O&M)

Dr. Manjot Singh Waraich and another ...Petitioners

Versus

Rajinderpal Singh ...Respondent

(4) CRM-M-26779-2023 (O&M)

Dr. Manjot Singh Waraich and another ...Petitioners

Versus

Rajinderpal Singh ...Respondent

(5) CRM-M-24727-2023 (O&M)

Dr. Manjot Singh Waraich and another ...Petitioners



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Versus

Rajinderpal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Dilpreet Singh Gandhi, Advocate and
Ms. Jaspreet Kaur Sandhu, Advocate for the petitioners.

Mr. L.S. Sidhu, Advocate and
Mr. Ishan Thakur, Advocate for the respondent.

Mr. Kunal Dawar, Advocate (Amicus Curiae).

MAHABIR SINGH SINDHU, J.

Controversy involved in the aforesaid five cases is similar in nature and arising out of complaint(s) from same transaction; hence being disposed off by common order.

2. With consent of parties, facts have been noticed from CRM-M-51624-2024.

3. Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C') for, *inter alia*, quashing of criminal complaint titled as ***Rajinderpal Singh versus M/s Hopper*** bearing case No.NACT-460-2023 (P-5) filed by complainant /respondent alongwith all subsequent proceedings arising therefrom including order dated 07.11.2023 (P-6) passed by learned Judicial Magistrate First Class, Amritsar (for short 'JMIC') whereby petitioners were summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act').



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BRIEF FACTS

4. On 01.07.2016, petitioners were leased out property No. 28, SCF, Kabir Park, Kot Khalsa, Amritsar (Halls at ground floor and first floor) in front of Guru Nanak Dev University, Amritsar (GNDU) by the complainant/respondent on monthly rent of Rs. 85,000/-. The lease was to commence from 16.07.2016 till 15.07.2019 with annual increase of 5% and thereafter increase of 7%. Petitioner made security deposit of Rs.1,70,000/- which was to be refunded on expiry of lease deed. As per the endorsement dated 31.03.2019, the security amount already deposited with the complainant/respondent was adjusted against the lease amount. In the month of May-2022, the petitioners vacated the premises with an outstanding amount of Rs.19,32,000/-. Out of which, petitioners paid Rs.10,00,000/- to complainant/respondent and as such, Rs. 9,32,000/- remained pending. Petitioners in discharge of their liabilities/debts issued five cheques bearing Nos. 150753 dated 08.10.2022; 150754 dated 08.11.2022; 150755 dated 08.12.2022; 150576 dated 08.01.2023 and 150757 dated 08.02.2023 for an amount of Rs. 2,00,000/-; Rs.2,00,000/-; Rs.2,00,000/-; Rs. 2,00,000/- and Rs. 1,25,000/- respectively, all drawn on Bank of India, Branch Ranjit Avenue, Amritsar in favour of complainant/respondent. The said cheques were issued by Rajanbir Singh Waraich from his account bearing No. 630810110006742 and at that time, petitioners were also present. Thereafter, complainant/respondent presented the above said cheques for encashment; but, the same were dishonoured vide memo dated



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09.12.2022 with the remarks “Insufficient Funds”. Subsequently, complainant/respondent sent a legal notice dated 27.12.2022 requesting the petitioners to pay the said amount; but, they failed to do so. Hence, present complaint was filed.

5. CONTENTIONS ON BEHALF OF PETITIONERS

5.1 Learned counsel for petitioners contends that impugned complaint(s) as well as summoning order(s) are liable to be quashed on the premise that cheques in question were issued by Rajanbir Singh Waraich (accused No.2 in complaint) and the allegation has been leveled against the petitioners to the effect that they were present at the time of issuance of cheques in question; hence, it does not fulfill the requirements of Section 141 of NI Act.

5.2 Further contends that cheques in question were issued to different entity i.e. Rajinderpal Singh HUF, but the complaint was filed by Rajinderpal Singh himself in his individual capacity; thus, neither any financial liability; nor *prima facie* offence against the petitioners is made out.

5.3 Again contends that the cheques in question were given to the respondent, subject to the conditions of releasing articles worth Rs.40,00,000/- lying at the premises of complainant/respondent, which were detained by him; but, he refused to return the same.

5.4 Lastly contends that there is no liability of the petitioners towards complainant/respondent, hence, the complaint filed by respondent is blatant use of process of law.



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5.5 In support of the above contentions, learned counsel has relied upon following judicial pronouncements:-

(i) ‘State of Haryana Versus Bhajan Lal, 1992 Supp (1) SCC 335’;

(ii) ‘Man Mohan Patnaik Versus CISCO Systems Capital India Pvt. Ltd. and others (CRL M.C.6461/2022 Delhi High Court).

6. SUBMISSIONS ON BEHALF OF RESPONDENT

6.1 *Per contra*, learned counsel submits that present complaint has been filed by respondent in his individual capacity against M/s Hoppers, which is a partnership firm consisting of three partners viz:-

(i) Rajanbir Singh Waraich;

(ii) Dr. Manjot Singh Waraich and

(iii) Dr. Gurjit Kaur

having shares upto 40%, 50% and 10% respectively, vide partnership deed dated 24.06.2016 (R-1).

6.2 Further submits that property bearing SCF No.28, Kabir Park, opposite Guru Nanak Dev University, Amritsar is the sole ownership of respondent in individual capacity and reference in this regard has been made to sale deed dated 29.05.2013 (R-2).

6.3 Also submits that firm, M/s Hoppers obtained the aforesaid SCF on lease from respondent vide lease deed dated 01.07.2016 (R-3) and in the month of May, 2022, the accused vacated the premises; but at that time, a sum of Rs.9,32,000/- was outstanding



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against accused, namely, Manjot Singh Waraich; Rajanbir Singh Waraich and Dr. Gurjeet Kaur.

6.4 Again submits that regarding outstanding lease amount, the matter was amicably settled between the parties i.e. petitioners and respondent @ Rs.9,25,000/- and in discharge of their liability, Rajanbir Singh Waraich issued four cheques for Rs.2 lakh (each) and one cheque of Rs.1,25,000/-. Further submits that though all five cheques were issued by Rajanbir Singh Waraich from his individual bank account; but those were issued against the liability of firm, M/s Hoppers regarding lease amount in question.

6.5 Lastly submitted that respondent is *Karta* of Rajinderpal Singh HUF and it cannot be said that Rajinderpal Singh and Rajinderpal Singh HUF are separate entities; even the property was purchased out of the funds of HUF, though in the name of respondent.

7. SUBMISSIONS BY LEARNED AMICUS CURIAE

7.1 Mr. Kunal Dawar, Advocate rendered assistance as *Amicus Curiae*; in all the cases. He shall be paid as per rules by High Court Legal Services Committee in each case. This Court records appreciation for the assistance by learned *Amicus Curiae* as a true, dedicated and fair professional.

7.2 Learned *Amicus Curiae* submits that offence under Section 138 of NI Act, which is not being tried in summary manner, is governed by Chapter XX as a Summons-Case by Magistrates.

7.3 Elaborating further, learned *Amicus Curiae* submits that Section 251 in Chapter XX of Cr.P.C dealt with the procedure to be



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followed after appearance of the accused; but now, petitioners have the remedy under Proviso to Section 274 BNSS for seeking discharge.

7.4 In support of his submissions, learned *Amicus Curiae* has relied upon ***Hitendra Vishnu Thakur vs. State of Maharashtra, 1994(4) SCC 602.***

8. Heard both sides as well as learned *Amicus Curiae* and perused the paper book.

9. Before proceeding further, it would be relevant to reproduce Section 274 BNSS and which reads as under:-

“274. When in a summons-case the accused 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, but it shall not be necessary to frame a formal charge:

Provided that if the Magistrate considers the accusation as groundless, he shall, after recording reasons in writing, release the accused and such release shall have the effect of discharge.”

10. Concededly, all the five complaints were filed in the year 2023. Now the question arises, whether proviso to Section 274 BNSS can be pressed into service to discharge the accused in an appropriate case filed prior to 01.07.2024 or that the said proviso can have a prospective effect?

11. In ***Hitendra Vishnu Thakur’s case (supra)***, Hon’ble the Supreme Court answered the question as to whether Terrorist and



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Disruptive Activities (Prevention) Amendment Act, 1993 (for short 'TADA'), amending Section 167(2) of Cr.P.C. by modifying Section 20(4)(b) of Terrorist and Disruptive Activities (Prevention) Act, 1987 and adding a new provision as 20(4)(bb), would be applicable to the pending cases i.e. whether it has retrospective operation or not? in the following manner:

“25. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases, the illustrative though not exhaustive, principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

"(i) A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a Statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning, and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature.

(iii) Every litigant has a vested right in substantive law, but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively, where the result would be to



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create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities, shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

12. Concededly, in the present case, on 21.10.2024, the matter was posted to 26.11.2024 for consideration on notice of accusation and the order dated 21.10.2024 passed by learned JMIC reads as under:-

"Accused surrendered along with the application for surrender and for granting the concession of bail to him.

From perusal of record, it transpires that the accused was summoned by the Court of Ms. Isha Goel, the then Ld. JMIC, Amritsar vide order dated 07.11.2023 u/s 138 of NI Act. Accused is appearing first time in the Court. The offence under which the accused was ordered to be summoned is bailable. Therefore, the accused is ordered to be released on bail subject to furnishing of bail bonds and surety bonds of Rs. 35,00/- with one surety in the like amount. The accused has prayed that he is not having surety bonds and he requested that he may be permitted to cash surety. Request heard and allowed. In compliance with Section 445 Cr.P.C, cash surety furnished against property receipt. Personal bonds also furnished, which are accepted and attested along with the identification of accused through an identifier.

Now the case stands adjourned to 26.11.2024 for consideration on notice of accusation. Paper be tagged along-with main file."



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Bare perusal of aforesaid extract reveals that notice of accusation is yet to be served upon the petitioner(s).

13. In such a scenario, this Court is of the considered opinion that proviso to Section 274 of BNSS has been introduced as a beneficial measure; thus, in order to secure the ends of justice, the same can be applied to the pending complaint(s) as well, where notice of accusation are yet to be served/considered by the Court of competent jurisdiction. Hence, taking into consideration the factual position in the present case(s), learned JMIC would be well empowered to consider the grounds of accusation and in case, it is found that there is no substance in the allegation(s), the accused can be discharged at this stage.

14. In view of the above discussion, the petitioners have an efficacious remedy in terms of proviso to Section 274 of BNSS (*ibid*) before learned JMIC and the same can be availed, if they are so advised.

15. Consequently, instead of delving any further, lest it may prejudice rights of either parties and in order to meet the ends of justice, petitioners are relegated to raise their plea(s) as per proviso to Section 274 BNSS before learned JMIC.

16. Needless to say that petitioners would also be at liberty to raise any other plea(s) available as per law.

17. Resultantly, all five petitions are disposed off with liberty aforesaid to the petitioners.



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18. Parties shall appear before learned JMIC on 15.07.2025.

Pending application(s), if any, shall also stand disposed off.

12.05.2025

d.gulati

**(MAHABIR SINGH SINDHU)
JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No