IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2024
(Arising out of S.L.P. (Crl.) No(s). 16051-16052 of 2023)

ADHIRAJ SINGH **APPELLANT**

VERSUS

YOGRAJ SINGH AND OTHERS **RESPONDENTS**

O R D E R

1. Leave granted.

2. Assailing the common judgment of the High Court of Himachal Pradesh dated 28.11.2023 rejecting the petitions[1] under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the complaint under Section 138 of the Negotiable Instruments Act, the present appeals have been filed.

3. The facts of the case in brief are that three post-dated cheques dated 17.07.2019, 17.09.2019 and

1 Cr. MMO No. 341 of 2020 a/w Cr. MMO No. 777 of 2019

23.09.2019 were issued by the Respondent No. 2 – Company on 12.07.2019. The appellant was the director of Respondent No. 2 – Company from 28.09.2016 to 21.06.2019. He had submitted resignation letter dated 21.06.2019 with the Registrar of Companies on statutory form DIR-11 on 26.06.2019. Respondent No. 2 – Company had also submitted statutory form DIR – 12 with the Registrar of Company acknowledging resignation of the petitioner w.e.f. 21.06.2019.

4. Learned counsel appearing on behalf of the respondents has not disputed the fact that on the date of issuance of the cheque i.e., 12.07.2019, the appellant was not a director and he had resigned. Therefore, this fact regarding tendering of resignation by the appellant and acknowledgment of the same by competent authority, is not in dispute.

5. In the above factual context, the quashing of the complaint is prayed for, *inter alia,* contending that on the date of issuance of the cheques, the appellant was not the director of the Company and he had not signed the cheques. Therefore, he cannot be held responsible for the affairs of the Company. In case any debt existed and the Company, had issued any cheque, the appellant cannot be held liable for offence under Section 138 of the Negotiable Instruments Act and saddling him to face trial would amount to misuse of process of law.

6. Per contra, learned counsel appearing on behalf of the respondents, though has not disputed the fact that the resignation was submitted by the appellant on 21.06.2019, which was furnished with the Registrar of Companies on 26.06.2019, but has contended that on the date of debt, the appellant was a director in the Company and therefore, the

factual aspect of submission of the resignation prior to the issuance of cheque and dishonouring is required to be examined during trial in view of the judgment of this Court in the case of *Malva Cotton and Spinning Mills Limited Vs. Virsa Singh Sidhu and Others"* reported in (2008) 17 SCC 147.

7. Having considered the submissions made by learned counsel for the parties, we find that in the present case on the date of issuance of the cheques, the appellant had already resigned. The fact regarding resignation is not in dispute. It is also not in dispute that the cheques issued by the Company were signed by another competent person on behalf of the Company. Once the facts are plain and clear that when the cheques were issued by the Company, the appellant had already resigned and was not a director in the Company and was not connected with the company, he

cannot be held responsible for the affairs of the Company in view of the provisions as contained in Section 141 of the NI Act.

8. The judgment of *Malwa Cotton and Spinning Mills* (supra) is factually distinguishable from the present case. The resignation of the director accused therein, was submitted with the Registrar of Companies on 05.07.2001, after the issuance of the cheques therein, which were issued on various dates in December 2000 and February 2001, while the accused director maintained that he had intimated his resignation to the Company on 02.04.1999, i.e., before the issuance of cheques. In the light of such disputed facts, quashing of complaint was not allowed. On the contrary, as discussed, in the present case, the appellant's resignation dated 21.06.2019 was submitted before the Registrar of Companies on 26.06.2019. Whereas the cheques in question,

were issued on 12.07.2019, i.e., after his resignation.

9. In view of the said factual scenario and in absence of any other material brought before us, we are inclined to set aside the common order passed by the High Court and allow the quashing petitions as filed by the appellant before the High Court.

10. Accordingly, the appeals are allowed. The impugned order passed by the High Court is set aside. The quashing petitions filed by the appellant under Section 482 of the Cr.P.C. for quashing of the complaints qua him stand allowed.

11. Pending application is disposed of.

......, J.
[J.K. MAHESHWARI]

......, J.
[RAJESH BINDAL]

New Delhi
December 02, 2024