



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.10 of 2022 a/w 11 to 13 of 2022

Reserved on:20.05.2026

Date of Decision: 01.06.2026

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1. CRMMO-10 of 2022**Rajeshwar Sabarwal & Ors.****.....Petitioners****Versus****M/s Royal Apple Merchants****.....Respondents**

2. CRMMO-11 of 2022**Rajeshwar Sabarwal & Ors.****.....Petitioners****Versus****M/s Royal Apple Merchants****.....Respondents**

3. CRMMO-12 of 2022**Rajeshwar Sabarwal & Ors.****.....Petitioners****Versus****M/s Royal Apple Merchants****.....Respondents**

4. CRMMO-13 of 2022**Rajeshwar Sabarwal & Ors.****.....Petitioners****Versus****M/s Royal Apple Merchants****.....Respondents**

Coram:**Hon'ble Mr. Justice Sandeep Sharma, Judge.**Whether approved for reporting? ¹ **Yes.**

For the petitioner(s): Mr. R.K. Bawa, Senior Advocate with
Mr. Jeevesh Sharma, Advocate.**For the Respondent(s):** Mr. Pramod Singh Thakur, Advocate, for
respondent No.1, in all the petitions.

¹Whether the reporters of the local papers may be allowed to see the judgment?



Mr. Ajay Kumar, Advocate, for respondents
No.3 & 4, in all the petitions.

Sandeep Sharma, Judge:

Since common questions of facts are involved in all the above-captioned cases, this Court heard them together and the same are now being disposed of vide common judgment.

2. For having bird's eye view, facts, which are common in all the cases, are that respondent No.1-complainant (in short "**complainant**") instituted complaint under Section 138 of Negotiable Instruments Act (in short "**Act**") in the Court of learned Additional Chief Judicial Magistrate, Shimla, Himachal Pradesh, alleging therein that petitioner-accused and proforma respondents No.2 to 4 (hereinafter collectively referred to as the "**accused**") had purchased 36952 apple boxes from him for a sum of Rs.4,90,80,459/-. However, accused paid only sum of Rs.1,68,10,000/- till 22.05.2013 and subsequently, with a view to discharge their lawful liability, accused No.2 issued a cheque dated 30.05.2013 for a sum of Rs.30,00,000/- drawn on Punjab National Bank, SDA Complex, Kasumpti, Shimla, as part payment towards the balance payment of the complainant. Since afore cheque was dishonoured by the banker of accused No.2 on account of insufficient funds in his account, coupled with the fact that despite his having received legal notice, afore amount was not paid, complainant instituted proceedings under Section 138 of the Act in the competent Court of law, which taking note of averments made



in the complaint as well as preliminary evidence adduced on record by the complainant, passed order dated 18.11.2013, thereby summoning the accused.

3. Being aggrieved and dissatisfied with issuance of summoning order, accused filed a petition under Section 482 Cr.P.C i.e. Cr.MMO No.150 of 2015, titled as ***Rajeshwar Sabharwal son of Sh. Om Prakash Sabharwal and others Vs. M/s Royal Apple Merchants & Ors.***, praying therein to set aside order dated 18.11.2023 on the ground that complaint filed at the behest of the complainant was not maintainable. In afore proceedings, accused pleaded that the complainant had not prosecuted company through its duly authorized natural person and no specific pleadings had been made in the complaint with regard to role, if any, played by accused No.2 to 6 in day to day affairs of the company. However, afore pleas taken at the behest of the accused came to be negated by this Court vide judgment dated 25.02.2016 (Annexure P-4). In afore judgment, it came to be ruled that as per Section 204 Cr.P.C, at the time of issuing process, Magistrate is required to satisfy himself that there are sufficient grounds for proceeding against the accused persons. If the Magistrate is satisfied that sufficient grounds exist for proceeding, he/she shall issue summons in a summons case and warrants in a warrant case.



4. In afore proceedings, it also came to be held that Magistrate is not required to go into detailed discussion of merits and demerits of the case at the time of issuing process. In support of aforesaid findings, this Court placed reliance upon the judgment passed by the Hon'ble Apex Court in ***Nagawwa Vs.Veeranana Shivalingappa Konjalgi and others AIR 1976 Apex Court 1947 (DB) and Chandra Deo Singh Vs. Prakash Chandra AIR 1963 Apex Court 1430 (Full Bench)***. In the afore judgment passed by the Hon'ble Apex Court, it specifically came to be ruled that complainant has impleaded Tara Business Group Pvt. Ltd. as co-accused No.1, but he failed to mention the name of the natural person, through whom company was being represented as co-accused No.1, however, court is of the opinion that mistake is procedural irregularity only, which can be rectified in the interest of justice at any stage of the judicial proceedings.

5. Afore judgment rendered in the year 2016 has attained finality because no further proceedings were initiated before the superior court of law against the aforesaid judgment. Matter was again listed on 05.08.2019, on which date it came to be recorded that *“defence of accused No.2 to 6 seems to be that they are not responsible for day to day working of the company and thus, not in a position to represent accused No.1. Court is of the opinion that in the present case, at this prima facie stage there is no denial of the*



accused that they are directors of the company. The cheque as per record has been signed by accused No.2. Thus, Court, at this prima facie stage will presume, unless and until contrary is proved that accused No.1 i.e. company is being represented through accused No.2 and also by accused No.3 to 6 being directors of the company. Since case is of the year 2013, no further exemption will be allowed on behalf of accused No.2 to 4. Now to come up for presence of accused before the Court on 11.09.2019.” Aforesaid order has also attained finality because the same was never laid challenge in the appropriate proceedings (Annexure P-5). Vide order dated 17.01.2020 (Annexure P-1), matter came to be listed before the court below for putting notice of accusation to the accused persons. On that day, accused No.2 to 4 questioned the maintainability of the complaint alleging that accused No.1, being a company, had not been arrayed through its director or any other authorized person, as such, same was not maintainable. However, Court below, taking note of order dated 25.02.2013 passed in Cr.MPM No.1165 of 2012 under Section 482 Cr.P.C as well as order dated 05.08.2019 passed by it, rejected the aforesaid ground raised at the behest of the accused for dismissal of the complaint and proceeded to frame notice of accusation to the accused persons under Section 138 of the Act. In afore background, accused have approached this Court in the instant proceedings for quashing the complaint No.97-3 of 2017/13 as well as order dated



17.01.2020, whereby notice of accusation came to be put to the accused.

6. In nutshell, case of the accused, as has been highlighted in the grounds of petition and further canvassed by Mr. R.K. Bawa, learned Senior counsel representing the petitioner duly assisted by Mr. Jeevesh Sharma, Advocate, is that complaint sought to be quashed is not maintainable for the reason that accused-company i.e. Tara Business Group Pvt. Ltd., on whose behalf cheque in question was allegedly issued by accused No.2, has not been impleaded through natural person. Mr. Bawa submitted that since company is a juristic person, same is required to be impleaded through a natural person. He submitted that since on account of aforesaid omission on the part of the complainant, accused No.1 cannot be said to have been impleaded as an accused in the complaint initiated at the behest of the complainant, complaint filed against other accused i.e. directors of the company is not maintainable. To substantiate his aforesaid arguments, he placed reliance upon judgments rendered by Hon'ble Apex Court in ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.***, (2012) 5 SCC 661, and ***Associated Cement Co. Ltd. Vs. Keshavand***, (1998) 1 SCC 687 as well as judgment dated 11.09.2023, passed by the Coordinate Bench of this Court in Cr.MMO No.109 of 2020, titled as ***Prithi Pal Singh Vs. State of Himachal Pradesh***, wherein it came to be ruled that in the absence of specific



avertment in the complaint with regard to day-to-day functioning and over-all control of the person, proposed to be held vicariously liable, no complaint is maintainable against such person and prosecution launched beyond prescribed period of limitation is also not tenable. Mr. Bawa, learned Senior Counsel for the petitioner, further argued that there is no whisper in the complaint with regard to role, if any, played by accused No.2 to 6 in day to day affairs of the company, as such, complaint deserves to be quashed and set aside. He further submitted that though aforesaid grounds/objections were very much taken at the behest of accused at the time of framing of notice of accusation, but court below failed to take note of them at the relevant time, as such, order dated 17.01.2020, thereby putting notice of accusation to the accused, is also not sustainable in the eye of law.

7. To the contrary, Mr. Parmod Singh Thakur, learned counsel for the complainant, while supporting the impugned order dated 17.01.2020 (Annexure P-1), vehemently argued that present petition is not maintainable, rather same deserves outright rejection because the accused have not approached Court with clean hands. He submitted that grounds, otherwise sought to be raised through instant petition, already stand adjudicated by this Court vide judgment dated 25.02.2016 passed by this Court in Cr.MMO No.150 of 2015. He submitted that in afore judgment, this Court had already held that since company has been impleaded as an accused, omission, if any,



on the part of the complainant to specifically implead the company through natural person, is merely a curable defect and same can be rectified at any stage of the trial. He further submitted that “*whether accused No.2 to 6 were incharge of the company or whether they are responsible for the conduct of business of the company*” shall be decided by the learned trial Court in totality of evidence collected on record by the respective parties. Lastly, Mr. Thakur, submitted that otherwise also, present petition deserves dismissal on the ground of delay. He submitted that principles of laches as well as *res judicata* are clearly attracted in the present case. He submitted that though summoning order, which has been sought to be quashed, was passed in the year 2013 and thereafter, notice of accusation was put to the accused on 17.01.2020, but present petition has been filed on 20.10.2021 that too without rendering any plausible explanation qua delay.

8. Having heard learned counsel for the parties and perused material available on record, this Court finds that complaint as well as summoning order, as detailed hereinabove, have been sought to be quashed through instant proceedings filed under Section 482 Cr.P.C on the ground that accused could not have been prosecuted being Directors of the company without there being impleadment of the company namely M/s Tara Business Group Pvt. Ltd. Though in the instant case, complaint under Section 138 of the Act filed by the



petitioner (Annexure P-3) reveals that company i.e. M/s Tara Business Group Pvt. Ltd., Thakur Vatika, Khalini, Shimla, Himachal Pradesh, has been arrayed as accused No.2, but since afore company has not been impleaded through natural person, argument has been raised at the behest of the petitioner that impleadment of company in afore capacity cannot be said to be a valid impleadment. If it is so, complaint lodged at the behest of the complainant cannot be said to be maintainable against the accused, who have been otherwise impleaded in the capacity of Directors of the company named hereinabove. Besides above, it is also argued at the behest of accused that since there is no specific averment in the complaint with regard to control of the accused in day-to-day affairs of accused No.1-company, complaint filed against him is not maintainable.

9. True it is that in terms of Section 141 of the Act as well as law laid down by the Hon'ble Apex Court in number of judgments as pressed into service by learned Senior Counsel for the accused, Directors of company cannot be prosecuted in a case filed under Section 138 of the Act without there being impleadment of the company. It is also well settled that to maintain complaint under Section 138 of the Act against the Directors of the company, it is incumbent upon the complainant to make specific averment with regard to control of the Directors, who have been made accused, in day-to-day affairs of the company. Since both the aforesaid points



raised at the behest of the accused are well settled and there is no quarrel qua the same, this Court finds no reason to elaborate upon the same and refer these judgments in detail. However, question, which needs to be determined in the case at hand, is, “whether afore pleas raised at the behest of the accused for setting aside the complaint, summoning order as well as notice of accusation can be permitted to be raised at this stage, especially when, this Court, while passing judgment dated 25.02.2016 in Cr.MMO No.150 of 2015, titled as ***Rajeshwar Sabarwal & Ors. Vs. M/s Royal Apple Merchants***, has already decided these issues?”

10. Pleas otherwise sought to be raised in the instant petition for quashing the complaint as well as consequential proceedings stand negated by the afore judgment dated 25.02.2016 in the case detailed hereinabove. Afore judgment has attained finality because admittedly no appropriate proceedings in appropriate court of law were ever initiated to lay challenge to the aforesaid judgment, rather after passing of aforesaid judgment, Court below, having taken note of observations made in afore judgment passed by this Court, not only decided the issue with regard to maintainability of complaint against the accused without there being impleadment of the accused-company through natural person, but it also proceeded to frame notice of accusation vide order dated 17.01.2020 (Annexure P-1). If order dated 17.01.2020 laid challenge in the instant proceedings is



perused in its entirety, it clearly reveals that same has been passed taking note of findings/observations made by this Court vide judgment dated 25.02.2016 passed in Cr.MPM No. 1165 of 2012, which was admittedly filed by the accused. Since vide judgment dated 25.02.2016, this Court had observed that omission, if any, on the part of the complainant to sue company through natural person could be rectified in accordance with law, court below, vide order dated 05.08.2019, having taken note of the fact that accused No.2 to 6 are the directors of the company and cheque was signed by accused No.2, returned a finding that at this prima facie stage, Court will presume that until and unless it is proved that accused No.1 i.e. company, is being represented through accused No.2 and also by accused No.3 to 6, being Directors of the company. While returning aforesaid findings, trial Court also negated the pleas set up at the behest of accused that they were not responsible for day to day affairs of the company and therefore, were not in a position to represent accused No.1. Afore order dated 05.08.2019 never came to be laid challenge in the appropriate proceedings, as a result thereof, same has attained finality.

11. Though while referring to the various judgments, as have been taken note hereinabove, an attempt came to be made at the behest of learned Senior Counsel for the accused that judgment dated 25.02.2016 passed by this Court in Cr.MMO No.150 of 2015,



titled as ***Sh. Rajeshwer Sabharwal son of Sh. Om Prakash Sabharwal and others*** was not based upon proper appreciation of law on the point, but this Court is of the view that correctness of the afore judgment passed by this Court in proceedings detailed hereinabove cannot be examined/ ascertained in the instant proceedings, rather for that purpose, accused ought to have filed appropriate proceedings in the appropriate Court of law, laying therein challenge to afore judgment dated 25.02.2016. Careful perusal of orders dated 05.08.2019 and 17.01.2020 clearly reveals that same are based upon observations/findings given by this Court in judgment dated 25.02.2016, as such, no fault can be found therein.

12. Leaving everything aside, this Court finds that pleas otherwise sought to be raised in the instant petition for quashing the complaint as well as consequential orders, already stood negated by the competent Court of law in the appropriate proceedings vide judgment dated 25.02.2016, but thereafter accused chose to remain silent and now, after inordinate delay of five years, have attempted to rake up the decided issues by laying challenge to order dated 17.01.2020, thereby putting notice of accusation to the accused. Having noticed facts, as detailed hereinabove, this Court is persuaded to agree with learned Senior Counsel for the accused, that petition at hand is nothing but a smart/clever move at the behest of the accused



to negate the findings given by this Court vide judgment dated 25.02.2016 in Cr.MMO No.150 of 2015, which has attained finality.

13. At the first instance, accused, by way of filing Cr.MMO No.150 of 2015, titled as ***Rajeshwar Sabarwal & Ors./s Royal Apple Merchants***, laid challenge to order dated 18.11.2013 passed by learned Judicial Magistrate First Class-3, Shimla, Himachal Pradesh, thereby issuing process against them. As has been noticed hereinabove, similar pleas were raised in afore proceedings, but same came to be negated by this Court vide judgment dated 25.02.2016. After passing of aforesaid judgment, accused subjected themselves to the jurisdiction of learned trial Court as an accused and thereafter, vide order dated 17.01.2020, Court below proceeded to put notice of accusation to them. If afore order is seen, again similar pleas as have been sought to be raised in the instant proceedings, came to be raised, however, Court below rejected the same in terms of findings/observations made by this Court in judgment dated 25.02.2016. Since for the reasons best known to the accused, they failed to lay challenge to order dated 25.02.2016 passed in Cr.MMO No.150 of 2015, an attempt has now been made by the accused to again rake up the decided issue by laying challenge to order dated 17.01.2020, which admittedly has been passed by court below in terms of findings/observations made by this Court in afore judgment.



14. Otherwise also, this Court finds that main ground raised for rejection of the complaint is that impleadment of company without there being natural person cannot be said to be impleadment of company, if it is so, prosecution of directors of the company, i.e. accused Nos. 2 to 6, without proper impleadment of the company would not be permissible. Though in terms of judgment passed by the Hon'ble Apex Court, afore pleas taken at the behest of accused appear to be justifiable, but when same are tested on the touchstone of peculiar facts and circumstances of the case, coupled with the fact that in terms of observations made by this Court in its judgment dated 25.02.2016, omission to implead company through natural person could be rectified in accordance with law and thereafter, vide order dated 05.08.2019, accused No. 1 company was considered to be impleaded through accused No. 2, and accused No. 3, who were otherwise impleaded in their capacity as Directors of the company, they do not deserve to be accepted. Complaint otherwise sought to be quashed cannot be quashed on afore ground. Similarly, having carefully perused averments contained in the complaint filed under Section 138 of the Act as well as preliminary evidence adduced on record on behalf of the complainant by way of affidavit at the time of filing of complaint, this Court is not persuaded to agree with learned Senior Counsel for the accused that there are no specific averments with regard to control of accused No.2 to 6, being directors, on the



day to day affairs of the company. In para 14 of the complaint, it has been specifically averred that *“accused/ respondent no. 1, being the company, accused /respondent No. 2, being the managing director and signatory of the cheque and accused/ respondents No. 3 to 6, being directors are responsible for the day to day affairs of the company, are liable for the dishonour of the cheque under Section-138 read with Section 141 and 142 of the Act. Besides this, since the above named accused/ respondents had directly approached the complainant for the sale of the apples and had dealt with the complainant, they are also liable on the principle of vicarious liability.”*

15. Besides above, complainant, in his preliminary evidence, tendered by way of affidavit has specifically stated that accused No.2 to 6 formed a private limited company in the name and style of M/s Shri Tara Buisness Group Pvt. Ltd., having its office at Thakur Vatika, Khalini, Shimla, Himachal Pradesh, and registered office at H.No.C-4, New Verma Apartments, Dayton Bear Khana, PS Chotta Shimla, Shimla, Himachal Pradesh. It has been categorically stated in afore affidavit that accused No.2 to 6 are directors of the company and have been actively participating in the business of the company. During the apple season from July to December, 2012, the accused No.2 to 6 contacted the complainant at Shimla as Managing Director and Directors of the above named company i.e. Shri Tara Business



Group Ltd. for carrying on the business of apples and other fruits with it. It has been further stated that accused No.1 to 6 purchased apples from the complainant on credit basis on different dates from August 2012 to October, 2012. They also assured the complainant that they would make regular payments and the outstanding balance amount, if any, would be cleared by the end of December, 2012. Complainant has specifically averred in the affidavit, which is admittedly to be read in conjunction with the complaint, that accused respondents No.1 to 6 purchased 36,952 apple boxes from the complainant for an amount of Rs.4,90,80,459/- and paid only Rs.1,68,10,000/- upto 22.05.2013. Thus, the accused were liable to make the balance payment of Rs. 3,22,70,459/- to the complainant. Though having taken note of specific finding given by the court qua afore issue in its earlier judgment dated 25.02.2016, there was otherwise no occasion for this Court to go into aforesaid question, but even otherwise having carefully perused averments contained in the complaint as well as affidavit furnished at the stage of preliminary evidence, plea raised in that regard by the accused deserves outright rejection.

16. While referring to para 11 of preliminary evidence, learned Senior Counsel for the accused, also attempted to argue that complaint filed at the behest of the complainant is not maintainable as it was filed prematurely. He submitted that as per own case of the complainant, complainant had issued legal notice to the accused



through his counsel on 16.09.2013 through registered AD letter within stipulated period, as mentioned under the Act, thereby calling upon the accused to pay sum of Rs.30,00,000/-, being the amount of the cheque issued by the accused, within the statutory period of fifteen days from the receipt of notice, but thereafter without waiting for 45 days to elapse, complainant proceeded to file complaint on 30.07.2013. He submitted that since no specific proof with regard to service of legal notice was available with the complainant, service of notice upon the accused could have been presumed after the expiry of 30 days from the date of issuance of legal notice and thereafter, further 15 days' time was required to be given to the accused for making the payment. He submitted that no proceedings under Section 138 of the Act could have been filed by the complainant before expiry of 45 days from the date of issuance of notice. Though aforesaid submission made at the behest of accused appears to be legally correct, but *"whether complainant had received intimation, if any, with regard to service of notice or he proceeded to lodge complaint by presuming service of notice upon the accused within a period of 30 days"* are the questions to be decided by the Court below in totality of evidence led on record by the respective parties. Moreover, this Court finds that no such ground has been taken by the accused at the time of laying challenge to summoning order or at the time of framing of notice of accusation. Even in the instant proceedings, no such ground



has been raised in the grounds of the petition, rather during arguments, learned Senior Counsel for the accused made aforesaid argument in a most casual manner. Since no specific evidence has been adduced on record by the accused suggestive of the fact that complainant has filed complaint on the basis of presumed service of legal notice upon the accused, plea raised at the behest of the accused for quashing the complaint on the ground that it was filed prematurely cannot be considered. Though para 11 of the preliminary evidence suggests that legal notice was issued by the complainant to the accused through his counsel on 16.09.2013 through registered AD within stipulated time, but there is nothing to suggest that *“whether same was actually served or complaint was filed on the basis of presumed service of legal notice after expiry of 30 days from the date of issuance of the notice?”* Had complainant specifically averred in the complaint that though he had issued notice to the accused on 16.09.2013, but same was received back unserved, as such, accused shall be presumed to have been served after 30 days from the date of issuance of the notice, accused could have taken a plea with regard to premature filing of the complaint, but since no specific plea was taken by the accused that they had not received the legal notice, coupled with the fact that pursuant to the issuance of summons vide order dated 18.11.2013, the accused subjected themselves to the



jurisdiction of the court below, they are otherwise estopped from raising such a plea.

17. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds no merit in all the petitions and accordingly, the same are dismissed. Interim order, if any, stands vacated. All pending applications, stand disposed of.

18. Learned counsel for the parties undertake to cause presence of their respective clients before Court below on 20.06.2026, enabling the Court below to proceed with the matter. Record of court below be sent back forthwith.

**(Sandeep Sharma),
Judge**

June 01, 2026
(*sunil*)