

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

(224)

CRM-M-24894-2014

Decided on: August 21, 2015.

Shailesh Kumar

.... Petitioner

Versus

Major (Retd.) Chander Mohan Bhardwaj and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: None for the petitioner.

Mr. Amit Kohar, Advocate,
for respondent No.1.

Mr. D.R. Singla, DAG, Haryana,
for respondent No.2-State.

M.M.S. BEDI, J (ORAL)

Reply on behalf of respondent No.1 filed. Same is taken on record.

Petitioner seeks quashing of criminal complaint Annexure P-2 and the proceedings initiated therein against him under Section 138 of the Negotiable Instruments Act.

The petitioner in his petition claims that whenever the prosecution is launched against Director of the firm, it is imperative to array the firm itself as an accused. Without impleading the firm, the Directors or other employees cannot be prosecuted. In this context, reliance has been placed on the judgment in **Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt. Ltd., 2012 (2) RCR (Criminal) 854**, wherein it was observed that Directors cannot be prosecuted without arraying the firm as an accused.

Learned counsel for respondent No.1 has contended that the petitioner has been arrayed as an accused in the capacity as proprietor of M/s National Automobiles Carrier and that he had signed the cheque in the capacity as the proprietor of the authorized signatory of M/s National Automobiles Carrier.

I have considered the claim of the petitioner and I am of the opinion that when an individual issues a cheque in the capacity on behalf of a concern which is propriety concern, in order to discharge liability, in those circumstances the complaint cannot be thrown out merely on the ground that the propriety concern has not been made as an accused. A similar question came up before the Andhra Pradesh High Court in **Rohit Parushram and others Vs. Dhiraj Rawal and another, 2005 Criminal Law Journal, 4209** wherein it was held that when the accused was proprietor of concern, the proceedings cannot be quashed on the ground that the concern of which the accused was proprietor was not made an accused. Similar is the ratio of judgment in **Bedi Sons Steel and Wires Vs. B.G. Brothers, 2002 Company Cases 426.**

In view of above said circumstances, the plea that the petitioner cannot be prosecuted without impleading the firm is not sustainable.

This petition is dismissed. The petitioner is directed to appear before the trial Court on the date already fixed. Dismissal of the petition will not in any manner prejudice the right of the petitioner to contest the claim of the respondent-complainant on the other factual and legal aspects.

(M.M.S. BEDI)
JUDGE

August 21, 2015
harsha