

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

CRM-M-31164 of 2015.

Decided on:-20.10.2015.

M/s Maa Durga Cotton Mills, Fazilka.

.....Petitioner.

Versus

Abhitex Enterprises and others

.....Respondents.

***CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.***

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Jaideep Verma, Advocate  
for the petitioner.

**HARI PAL VERMA, J.**

Petitioner M/s Maa Durga Cotton Mills, Fazilka has filed the present petition for setting aside the order dated 4.7.2015 (Annexure P-8) passed by learned Additional Sessions Judge, Fazilka as well as order dated 22.9.2012 (Annexure P-5) passed by learned Sub-Divisional Judicial Magistrate, Fazilka.

Briefly stated, the petitioner has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 IPC. The learned Magistrate has ordered summoning of respondent No.3 vide order

dated 22.9.2012 which read as under:

*“I have heard the learned counsel for the complainant and perused the case file minutely. Complainant examined himself as CW-1 who deposed by way of affidavit Ex.CW-1/A and reiterated the allegations as mentioned in the complaint. He also proved original cheque Ex.C1, memo Ex.C2, legal notice Ex.C3, postal received Ex.C4 to Ex.C6, acknowledgements Ex.C7 and Ex.C8, Form C Ex.C9 and Form-A Ex.C10. Apparently, the impugned cheque is under the signatures of accused No.3 Anil Sharma. There is no sufficient evidence on record that remaining accused are partners or that accused is a partnership concern. Hence complaint qua remaining accused is ordered to be dismissed. Therefore, in view of the allegations made in the complaint and the oral as well as documentary evidence brought on record by the complainant, there appear to be sufficient grounds to summon the accused No.3 Anil Sharma for an offence punishable under Section 138 of the Negotiable Instruments Act. Accused Anil Sharma is ordered to be summoned for 7.1.2013 on filing of PF and copy of complaint etc.*

*Pronounced  
Dt.22.9.12.*

*Sd/  
Sumit Ghai.  
SDJM Fazilka.”*

Since learned Magistrate has dismissed the complaint against respondent No.2, the petitioner filed revision petition before learned Additional Sessions Judge, Fazilka against order dated 22.9.2012.

Learned Additional Sessions Judge vide order dated 4.7.2015 did not find any illegality or infirmity in the order passed by the learned trial

Court whereby respondent No.3 alone was summoned as accused and dismissed the revision petition by observing as under:

“7. After perusing the file meticulously and hearing the respective submissions of the *Ld. counsel for the parties* this court agrees with the contentions raised by the *Ld. counsel for the respondent* is of the opinion that the *Ld. trial court* has rightly summoned accused no.3 Anil Sharma who is the signatory (in the capacity of proprietor/ manager) of the cheque Ex.C1. The perusal of the averments in the complaint would go to show that the complainant has not averred in his complaint that accused no.2 was in-charge and responsible for the conduct of business at the time of when offence was committed. In para no 6 of grounds of revision it is categorically pleaded that account books of firm are maintained jointly by accused Anita Gupta and Anil Sharma and are jointly responsible for the acts of firm. However, in the complaint the complainant has simply stated only a single line in para no.4 "that accused no.3 issued a cheque in discharge legal liability of firm and proprietor accused no.2 in favour of complainant firm as a part payment----". The whole of the contents of the complaint would further go to show that the complainant has sought the action under Section 138 of Negotiable Instrument Act read with Section 420 IPC only against the accused by simply writing in the whole of the pleadings that accused (Signatory)has committed an offence and be summoned to face the trial. No record of proprietorship firm/ deed of respondent no.2 has been brought on the record. Now the perusal of the judgment referred by the counsel for petitioner Hora Sales Agencies clearly shows

*that in that case the complainant had categorically averred that proprietor/manager of M/s Hora Sales Agencies was in-charge of and responsible for the conduct of business at the time when offence was committed and in that case accused were summoned whereas in the instant case it has already been discussed that there is no such averment about the accused no.2 except now in the grounds of revision which is not acceptable. The accused no.3 has issued cheque in the capacity of proprietor/manager and is responsible for the same. The Hon'ble Apex Court in **Raghu Laxmi Narayan v. Fine Tubes (2007) 5 SCC 103** and **PJ Agro Limited and Others v. Water Base Limited Corporation AIR 2010 SC 2596** has observed that the vicarious liability of principle as provided under Section 141 of Negotiable Instrument Act would not be applicable in case of proprietorship firm."*

Learned counsel for the petitioner has contended that the Courts below have committed illegality by not summoning the respondent No.2 who is the sole proprietor of firm M/s Abhitex Enterprises. Since respondent No.2 Anita Gupta is the sole proprietor in the firm and cheque in question has been issued in the name of the firm, she is liable to be summoned. He has drawn the attention of this Court to an affidavit filed by respondent No.2 Anita Gupta wife of Anil Gupta and submitted that the respondent No.2 has claimed herself to the sole proprietor of the firm M/s Abhitex Enterprises in Shop No.SCF-44, New Grain Market, Fazilka.

I have heard learned counsel for the petitioner.

The contention of the petitioner that respondent No.2 is also required to be summoned as she is a proprietor of the firm, cannot be accepted for the reason that the affidavit (Annexure P-10) of Anita Gupta has been executed in the year 2007 (though no date has been furnished by the petitioner) wherein said Anita Gupta has claimed herself the sole proprietor of “M/s Abitex in Shop No.SCF-44, New Grain Market, Fazilka”, whereas in the case in hand, the petitioner has impleaded “Abhitex Enterprises, Wool Bazar, Fazilka”. Thus, the identity of the firm is not established. Moreover, no record of proprietorship of the firm in the name of respondent No.2 was produced before the Courts below and no such plausible evidence has been brought to the notice of this Court, which may warrant interference of this Court.

Accordingly, I find no merit in the present petition and the same is dismissed.

**October 20, 2015**  
Yag Dutt

**(HARI PAL VERMA)**  
**JUDGE**