

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.M-29992 of 2012 (O&M)

Vijay Aggarwal

...Petitioner

VERSUS

Digamber Singh and another

...Respondents

(ii) CRM No.M-30210 of 2012 (O&M)

Vijay Aggarwal

...Petitioner

VERSUS

Digamber Singh and another

...Respondents

Date of Decision: March 29, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.I.S.Sagoo, Advocate
for the petitioner.

Mr.R.S.Tacoria, Advocate
for respondent No.1.

Mr.D.R.Singla, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected cases, though arisen from different complaints but between the same parties and the point for determination in both the cases is also the same.

The above-mentioned petitions have been filed by petitioners for quashing of criminal complaints No.45 and 46 dated 17.05.2012 titled as 'Digamber Singh vs. Sh.Vijay Aggarwal' under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 as well as the summoning orders dated 06.07.2012.

Notice of motion was issued in both the cases and learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petitions.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that in the present case, Digamber Singh filed complaints against Managing Director and the Authorized Signatory for Action Construction Equipment Ltd. under Section 138 read with Section 142 of the Negotiable Instruments Act. It is in the complaint that the accused in order to discharge its liability, issued cheques dated 20.03.2012, which on presentation for encashment, were returned back unpaid with the remarks 'Payment stopped by drawer'.

Learned counsel for the petitioner argued that in the both the cases, the petitioner has been sued as Managing Director and authorized signatory of Action Construction Equipment Ltd. but the company has not been made a party in the complaint. He further argued that even in the complaint, no particulars regarding the liability of the company have been given as to how the liability arose. He next argued that petitioner has no personal liability towards the

complainant but only as of Managing Director of Action Construction Equipment Ltd.

On the other hand, learned counsel for respondent No.1 argued that it is not necessary to implead the company as the cheques are signed by petitioner Vijay Aggarwal being authorized signatory of the company.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in ***Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd., 2012(2) RCR (Criminal) 854***, in which the prosecution proceedings against the Director without arraying the company as accused were quashed and it is held that for maintaining the prosecution under Section 141 of the Act, arraigning of a Company as an accused is imperative and the other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. On the same point, learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in ***Ajit Balse vs. Capt. Ranga Karkere, 2015(2) RCR (Criminal) 369***, in which Managing Director of a Company issued cheque on behalf of the company and was dishonoured and in the complaint against Managing Director, company was not impleaded as accused and in that case, conviction of accused was set aside relying on Aneeta Hada's case (supra). I have gone through both the above-cited judgments and the same fully apply to the facts of the present case.

Learned counsel for the petitioner also relied upon the

judgment passed by the Hon'ble Supreme Court in ***Charanjit Pal Jindal vs. M/s L.N.Metalics, 2015(3) RCR (Criminal) 526***, in which, the complaint against the Director of Company without arraigning company as accused was dismissed and it is held that for maintaining the prosecution under Section 141 of the Act, arraigning a company as an accused is imperative. This cited judgment also apply in the present case.

No law has been cited by learned counsel for respondent No.1 in his favour.

In view of the law laid down by the Hon'ble Supreme Court as cited above, I find that a complaint cannot be filed against the Managing Director alone without arraigning the company as accused.

Keeping in view the above discussion, I find merit in both the petitions and the same are allowed. The criminal complaints No.45 and 46 dated 17.05.2012 titled as 'Digamber Singh vs. Sh.Vijay Aggarwal' under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 as well as the summoning orders dated 06.07.2012 and all subsequent proceedings arising therefrom are hereby quashed.

March 29, 2016
Vgulati

(INDERJIT SINGH)
JUDGE