

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

Crl. Revision 659 of 2005

Date of Decision : September 14, 2016

G.P.Kotyal @ Kottiyal

.....Petitioner

VERSUS

Jindal Udyog and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Hemant Bassi, Advocate
for the petitioner.

Mr. B.R.Gupta, Advocate
for respondent No.1.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana
for respondent No.2-State.

T.P.S. MANN, J.

The petitioner was tried for committing the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as “**the Act**”). Vide judgment and order dated 25/26.2.2003, learned Judicial Magistrate 1st Class, Fatehabad convicted him for the said offence and sentenced him to undergo imprisonment for a period of one year and to pay a fine of Rs.3,000/- and in default of payment of fine, to further undergo imprisonment for a period of three months.

Aggrieved of his conviction and sentence, the petitioner preferred an appeal. Vide judgment dated 15.3.2005,

learned Additional Sessions Judge, Fatehabad while holding that there was sufficient, cogent and reliable evidence on record which proved that the petitioner had committed the offence punishable under Section 138 of the Act, held the appeal to be devoid of any merit and consequently dismissed the same. Still not satisfied, the petitioner preferred the present revision which was admitted on 6.5.2005. The jail sentence of the petitioner was also suspended and he was ordered to be released on bail during the pendency of the revision.

The criminal proceedings were initiated against the petitioner on the basis of a complaint filed by Shri Sat Narain, Proprietor of Jindal Udyog, Bhattu Kalan, District Fatehabad under Section 138 of the Act. It was alleged by the complainant that he was running a cotton factory and also conducting the business of sale and purchase of cotton and cotton seeds. He had been transacting business with G.P. Economical Traders Private Limited since 1991 and the petitioner was the Managing Director of the said firm. As on 15.2.1993, a sum of Rs.4,26,095/- including interest was due and outstanding towards the petitioner, who confirmed the aforementioned balance. In order to discharge the liability, the petitioner issued cheque No. 367151 dated 24.2.1993 for an amount of Rs. 4,00,000/- drawn on State Bank of India, New Mandi, Sirsa to the complainant, who

presented the cheque in Punjab National Bank, Fatehabad on 24.2.1993 for collection. The cheque was, thereafter, sent to the State Bank of India, New Mandi, Sirsa for collection. However, the cheque in question was dishonoured by the State Bank of India for lack of funds in the account of the petitioner and was sent back with the endorsement "refer to drawer". The State Bank of India returned the cheque to the Punjab National Bank being uncollected. The Punjab National Bank, Fatehabad returned the cheque to the complainant on 13.3.1993. On receiving the cheque, the complainant sent a legal notice to the petitioner on 27.3.1993 through registered post for payment of the amount of the cheque within fifteen days of the receipt of notice. The notice was duly received by the petitioner on 29.3.1993 as per the acknowledgment which was signed by the Accountant of the petitioner. However, despite this, the petitioner failed to pay the cheque amount which forced the complainant to file a complaint.

After filing the complaint, the complainant led preliminary evidence. Vide order dated 30.11.1993, the petitioner was summoned to face trial for the commission of offence under Section 138 of the Act. The petitioner, thereafter, appeared before the trial Court and notice of accusation was served upon him to which he pleaded not guilty and claimed trial.

In support of its case, the complainant examined PW1 Har Bhagwan Miglani, Asstt. Manager, P.N.B. Fatehabad; PW2 Sh.Bharat Singh Sharma, Advocate, Civil Court, Fatehabad; PW3 Sher Bahadur Nagla, Clerk, SBI, New Mandi, Sirsa; PW4 Sat Narain son of Gopi Ram and PW5 Satish Kumar, Civil Ahlmad. The complainant also relied upon various documents viz. Exs.P1 to P7, Ex. PA, Exs. PH/1 to PH/15 and Exs. PW3/A to PW3/C. In additional evidence, he tendered Exs. PI and PJ.

When examined under Section 313 Cr.P.C., the petitioner denied the entire incriminating evidence brought on the file by the complainant and pleaded his false implication. He alleged that he had not issued cheque Ex. P1 to the complainant. In the year 1992, the above said cheque was misplaced but somehow the complainant procured this cheque after colluding with Sh.R.N.Sharma, an employee of the petitioner and presented the same in the Bank. As such, he could not be prosecuted for the dishonour of the cheque.

In his defence, the petitioner examined DW1 Anil Kumar Gupta, Examiner of Questioned Documents; DW2 Rai Singh, Clerk, SBI, New Mandi, Sirsa; DW3 Partap Narain Gupta, Ahlmad and DW4 Bharat Bhushan. He also relied upon various documents viz. Exs.D1 to D9, Exs. D/A, D/B, DW/A, DW1/A, DW4/A, Exs. D/X and D/Y.

After hearing learned counsel for the parties and on going through the record, the trial Court came to the conclusion that the complainant had been successful in proving that the petitioner had committed the offence under Section 138 of the Act and, accordingly, convicted and sentenced him, as mentioned above.

This Court has heard learned counsel for the parties and examined the entire record.

The short point involved in the revision is as to whether the authorized signatory of a firm/company would be liable for prosecution under Section 138 of the Act without the firm being arraigned as an accused.

Admittedly, the cheque in question was drawn from the account of G.P. Economical Traders Private Limited and signed by the petitioner, being its Managing Director. Being the Managing Director of the aforementioned firm, the petitioner was the authorized signatory and for that reason had duly signed the cheque in question in such capacity. Despite the same, the complainant had filed the complaint by arraigning the petitioner in his personal capacity being the Managing Director of the aforementioned firm. At the same time, the complainant did not arraign the firm i.e. G.P. Economical Traders Private Limited as an accused.

The three Judge Bench of the Hon'ble Supreme Court in **Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt. Ltd.**, 2012(2) RCR (Criminal) 854, after going through plethora of judgments has held that there could be no vicarious liability of the signatory of the cheque issued from the account of the firm unless there is a prosecution against the firm. Further, if the cheque in question is issued by a firm, arraigning of such a firm as an accused is imperative and only, thereafter, the other categories of offenders could be brought in the dragnet on the touchstone of vicarious liability as has been stipulated by Section 141 of the Act. The relevant observations made by the Hon'ble Supreme Court are reproduced here-below:-

“Be it noted, the two-Judge Bench has correctly stated that there can be no vicarious liability unless there is a prosecution against the company owning the industrial unit but, regard being had to the factual matrix, namely, the technical fault on the part of the company to furnish the requisite information called for by the Board, directed for making a formal amendment by the applicant and substitute the name of the owning industrial unit. It is worth noting that in the said case, M/s. Modi distilleries was arrayed as a party instead of M/s. Modi Industries Limited. Thus, it was a defective complaint which was curable but, a pregnant one, the law laid down as regards the primary liability of the company without which no

vicarious liability can be imposed has been appositely stated.

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Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation.

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In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. 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.”

In the present case, as the cheque in question was

issued by the firm of which the petitioner was a Managing Director, the petitioner could not be tried in his personal capacity unless and until the firm also stood arraigned as an accused. In the absence of the firm not being arraigned as an accused, the petitioner could not be vicariously liable of the charge levelled against him.

Once it is held that the petitioner, in his personal capacity could not be arraigned as an accused unless and until the firm of which he was a Managing Director was also arraigned as an accused, his conviction and sentence, as awarded by the trial Court and upheld by the lower appellate court, cannot be upheld.

Resultantly, the revision is accepted, conviction and sentence of the petitioner is set-aside and he is acquitted of the charge against him.

September 14, 2016
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(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No