

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

CRR No.3204 of 2013 (O&M)
Date of Decision: October 04, 2016

Jaskore Singh

...Petitioner

VERSUS

The State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Brar, Advocate
for the petitioner.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.S.S.Sidhu, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Jaskore Singh against respondents State of Punjab and Parminder Singh, challenging the impugned judgment of conviction and order of sentence dated 14.12.2011 passed by learned Sub Divisional Judicial Magistrate, Fazilka, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹10,000/- and in default of payment, to undergo rigorous imprisonment for a period of three months under Section 138 of the Negotiable Instruments Act and also to pay compensation of ₹3 lacs to the complainant and also challenging the

judgment dated 24.09.2013 passed by learned Addl. Sessions Judge,

Fazilka, vide which appeal filed by petitioner was dismissed.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

From the record, I find that Parminder Singh filed a complaint against Jaskore Singh under Section 138 of the Negotiable Instruments Act. As per complainant's version, the accused being on visiting terms and friendly relations with him, secured a sum of ₹3 lacs from the complainant in the month of September 2002 for his business purposes and agreed to repay the same within few days. In order to discharge his liability/debt towards the complainant, the accused issued a cheque bearing No.158713 dated 09.10.2002 amounting to ₹3 lacs from his firm M/s Jaskore Singh Lakhwinder Singh bearing account No.2491. When the cheque was presented for encashment, it was returned back unpaid with the remarks 'Insufficient Funds'. Legal notice was served. When the amount was not paid, then the complaint was filed.

Learned SDJM, Fazilka, after appreciating the evidence, convicted and sentenced the petitioner as stated above and awarded the compensation of ₹3 lacs to the complainant to be paid by the petitioner-accused. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Fazilka, vide judgment dated 24.09.2013.

Aggrieved from the above-said judgments, present revision petition has been filed.

At the time of arguments, learned counsel for the petitioner mainly argued on one point that the loan was taken by the firm M/s Jaskore Singh Lakhwinder Singh and Jaskore Singh alone has been sued as partner

the account of the firm.

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

The perusal of the record shows that it is even the case of the complainant that cheque was issued from the account of firm M/s Jaskore Singh Lakhwinder Singh. In the present case, the complainant did not made the firm as party. Learned counsel for the petitioner relied upon the 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 cheque issued by the company was dishonoured and proceedings against Director of company without arraying the company as accused were quashed and it is held that for maintaining the prosecution under Section 141 of the Act, arraying 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. I have gone through the above-cited judgment and the same fully apply to the facts of the case.

Learned counsel for the petitioner also placed reliance upon the judgment passed by the Hon'ble Supreme Court in *Standard Chartered Bank vs. State of Maharashtra and others etc., 2016(2) RCR (Criminal) 778*, in which also, the cheque issued by the company was dishonoured and it is held that complaint against Chairman, Directors, Manager etc. of the company is not maintainable without making the company as party. It is also held that there cannot be vicarious liability unless there is prosecution against the company. I have also gone through the above-cited judgment

and the same fully applies in the present case.

As the firm M/s Jaskore Singh Lakhkwinder Singh has not been impleaded in the present complaint and the complaint has been filed only against present petitioner Jaskore Singh as partner of the firm and the cheque has been issued from the account of firm, I find that the complaint in question without impleading the firm, is not maintainable. Therefore, the impugned judgments passed by the Courts below holding the present petitioner as guilty, are not as per law and are set aside.

Therefore, finding merit in the present revision, the same is allowed. The petitioner-accused is acquitted.

Since the petitioner is on bail, his bail/surety bonds stand discharged.

October 04, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes