

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 3357/2014**

TAJMEET SINGH

..... Petitioner

Represented by: Mr.Aashish George, Advocate
with Mr.Abhimanyu Dhawan,
Mr.R.K.JJeenwal, Mr.Nihit
Dalmia, Advocates

versus

**APPAREL EXPORT PROMOTION
COUNCIL & ANR**

..... Respondents

Represented by: Mr.Kuljeet Rawal, Advocate
for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

ORDER
07.09.2016

%

CrI.M.A.No.11648/2014

Allowed subject to just exceptions.

CRL.M.C. 3357/2014

1. A singular becoming plural has resulted in the petitioner being unnecessarily troubled in the criminal complaint lodged by the respondents under Section 138 of the Negotiable Instruments Act, 1881.
2. As per the complaint, Gulbansh Trading Co.(A-1) is a partnership firm of which one Rajbir Singh (A-2) and the petitioner Tejmeet Singh (A-3) are partners. As per the complaint, accused No.1 was registered with the respondent No.1 as a merchant exporter and to be allotted a quota for export of garments had issued 10 cheques which were dishonoured. In the

complaint, the plea is that the accused No.1 issued 10 cheques. Now, a partnership firm has to act through a living human being. The question would be as to who were the ones who had issued the cheques? The reference in the complaint is generic. It simply states that the accused issued the cheques.

3. The cheques which were dishonoured were filed before the learned Metropolitan Magistrate and a perusal thereof would have revealed to him that bearing the rubber stamp in the name of accused No.1, two partners : Rajbir Singh and his wife Harleen were the signatories to the cheques. Whilst it may be true that the complainant may not be aware that the petitioner was a sleeping partner, but from the cheques issued would be aware of the fact that the cheques drawn on the account of accused No.1 were signed by two partners : Rajbir Singh and his wife Harleen.

4. It is trite that an offence under Section 138 of the Negotiable Instruments Act, 1881 is by the person who has drawn the cheque on an account maintained in his name, and in the case of juristic entities additionally by the person who was responsible for the financial affairs of the juristic entity. The Explanation to Section 141 of the Negotiable Instruments Act, 1881 includes within the meaning of the word 'company' a firm and within the meaning of the word 'director' includes a partner of the firm.

5. Thus, where a partnership firm is the principal offender, liability of its partners can be fastened on the partner who has issued the cheque and specific averment against the other partner, who has not a signatory to the cheque, to the effect that the person concerned was responsible for the conduct of the business of the firm with facts exemplified as to on what facts

it is so pleaded.

6. Finding none, the petition is allowed. The summoning order dated March 02, 2007 is quashed. CC No.2207/1/06 filed by the respondent against the petitioner is also quashed. The complaint shall continue against the other two accused.

CrI.M.A.No.11648/2014

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

SEPTEMBER 07, 2016

skb