IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Misc. No.M-19846 of 2015 (O&M)
Date of Decision: April 06, 2017

Vijaypal Singh @ Vijay Kumar and another

......PETITIONER(s).

VERSUS

Saminder Singh Virk and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Narender Pal Bhardwaj, Advocate
for the petitioner (s).

Mr. K.S. Khillan, Advocate
for respondent No.1-complainant.

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SURINDER GUPTA, J.

This is petition filed by Vijaypal Singh @ Vijay Kumar and Mange Ram seeking quashing of complaint No.291/2013 instituted on 08.02.2013 for offences punishable under Sections 138/141 of Negotiable Instruments Act, 1881 (for short-N.I. Act) titled as *"Saminder Singh Virk Vs. Rakesh Kumar Saini and others"*, wherein the petitioners were summoned to face trial vide order dated 27.02.2013 by learned Judicial Magistrate 1st Class, Karnal. As per allegations in the complaint filed by respondent Saminder Singh, petitioners along with Rakesh Kumar are partners of firm M/s Sports House, Karnal. Complainant because of his friendly relations with Rakesh Kumar and Vijaypal Singh, advanced a loan of ₹9 lakh to respondent No.4 during the period between September, 2010 to January, 2012. In May, 2012, he required his money back for purchase of house and in this regard petitioners issued 2 cheques of ₹4,50,000/- each in favour of respondent-complainant which on presentation to the bank were dishonoured for want of sufficient funds. Respondent-complainant issued legal notice dated 05.10.2012 to the petitioners and their co-accused. On receipt of notice, they contacted the respondent-complainant and sought further period of two months for making payment. Complainant acceded to their request and did not initiate any legal action against the accused and a writing to this effect dated 19.10.2012 was executed between accused No.2-Rakesh Kumar and complainant. Two separate cheques were issued to the complainant, each in the sum of ₹4,50,000/- and both cheques when presented to the bank were again dishonoured vide memo dated 19.12.2012 for want of sufficient funds. Again a legal notice was served but the payment was not made by the petitioners and their co-accused and ultimately this complaint was filed.

On filing of the complaint, learned Magistrate, Karnal passed order to summon the petitioners and co-accused Rakesh Kumar to face trial for the offence punishable under Section 138 of N.I. Act vide order dated 27.02.2013, which reads as follows:-

> "Today the case was fixed for arguments. Arguments have been heard. From the perusal of preliminary & documentary evidence available on record, a prima facie case is found to be made out against the accused under section 138 of Negotiable Instruments Act. Hence, accused be summoned through notice/registered AD/courier service for 03.05.2013 on filing of PF, copy of complaint, regd. AD and summons forms etc. Dasti

> summons be given, if so, desired. All three modes of service be complied with for the date fixed."

Learned counsel for the petitioners has argued that the complaint was filed by respondent against petitioners in their capacity as partner of M/s Sports House, which was impleaded as accused No.4 in the complaint. While referring to the partnership deed, copy of which has been placed on file as Annexure P-2 and copy of form-A issued by Registrar of Firms (Annexure P-3), counsel for the petitioners has argued that petitioner No.1 Vijaypal Singh has nothing to do with firm M/s Sports House. He is not a partner of the firm, as such, he cannot be prosecuted for the cheques issued by Rakesh Kumar, partner of the firm towards the liability of the firm. Petitioners are not signatory to the cheques issued by Rakesh Kumar, as such, they are not liable to be prosecuted for the dishonour of the cheques, for the offence punishable under Section 138 of N.I. Act. Even agreement (Annexure P-5) was executed between Rakesh Kumar and respondent No.1 to which both the petitioners were not party.

Learned counsel for respondent No.1-complainant while referring to the provisions of Section 28 of Indian Partnership Act, has argued that though petitioner Vijaypal Singh is not a partner of M/s Sports House but he has been dealing with respondent No.1 on behalf of firm representing himself as partner of the firm. Even DW Shishpal examined by the petitioner in their defence has stated that Vijaypal and his father are shareholders of firm M/s Sports House. This shows that he has been representing himself as one of the partner and is liable as partner of that firm. The trial Court has rightly summoned the petitioners to face trial along with Rakesh Kumar for offence punishable under Section 138 of N.I.

Act and there is no reason to interfere with the order of trial Court at this stage.

Admittedly, Vijaypal Singh petitioner No.1 is not partner of firm M/s Sports House. However, Mange Ram petitioner No.2 is partner of the firm. Before proceeding further, it will be relevant to take a note as to who is liable for offences by company/firm. To find answer, reference can be made to the observations of Hon'ble Apex Court in a case of ***Monaben Ketanbhai Shah and Anr. Vs. State of Gujarat 2004(3) R.C.R. (Criminal) 800***, wherein the Apex Court while discussing the proposition regarding liability for the offences by the company, observed in para 3 of the judgment as follows:-

> "It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole. If the substance of the allegations made in the complaint fulfill the requirements of Section 141, the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hyper-technical approach should not be adopted so as to quash the same. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind. These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within statutory period even after issue of notice. It is also true that the power of quashing is required to be exercised very sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. All the same, it is also to be remembered that it is the duty of the Court to

> discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking. The present case falls in this category as would be evident from the facts noticed hereinafter."

Before proceeding further, it will be relevant to have a look on the averments in the complaint filed by respondent No.1-complainant regarding the liability of petitioners. In para 1 of the complaint, he alleged that accused No.1 to 3 i.e. Rakesh Kumar (respondent No.2) and petitioners are partners of firm M/s Sports House and are actively involved in its working and day to day activities. The loan was advanced because of the family relations of complainant with accused No.1 to 3. The cheques were duly issued on behalf of firm by Rakesh Kumar, respondent No.2. It is nowhere pleaded in the complaint that petitioner No.1 ever represented himself as partner and complainant believed his representation while advancing alleged loan to firm M/s Sports House. In the absence of any such allegation, no reference towards the provisions of Section 28 of Indian Partnership Act is required while disposing of this petition. The mere mention in the complaint that accused No.1 to 3 i.e. petitioners and respondent No.2 are partners of M/s Sports House and actively involved in its working and day to day activities make out no liability of petitioner No.1 to attract the provisions of Section 138 N.I. Act. Filing of complaint against him is sheer misuse of process of Court.

In the case of ***Monaben Ketanbhai Shah and Anr. Vs. State of Gujarat (supra)***, the Apex Court while discharging some of the partners of the firm, has observed in para 5 and 6 of the judgment as follows:-

"5. From the above, it is evident that in the complaint there are no averments against the appellants except stating in the title that they are partners of the firm. Learned counsel for the respondents/complainant contended that a copy of the partnership deed was also filed which would show that the appellants were active in the business. No such document was filed with the complaint or made part thereof. The filing of the partnership deed later is of no consequence for determining the point in issue. **Section 141 does not make all partners liable for the offence. The criminal liability has been fastened on those who, at the time of the commission of the offence, was in charge of and was responsible to the firm for the conduct of the business of the firm.** These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint.

6. In ***K.P.G. Nair v. Jindal Menthol India Ltd. [(2001) 10 SCC 218***], this Court held that the substance of allegations read as a whole should answer and fulfill the requirements of the ingredients of Section 141. The criminal complaint was quashed in ***Katta Sujatha (Smt.)***

> ***v. Fertilizers & Chemicals Travancore Ltd. & Anr. (2002) 7 SCC 655***, since in the complaint it was not stated that the accused was in charge of the business and was responsible for the conduct of the business of the firm nor was their any other allegation that she had connived with any other partner in the matter of issue of cheque."

Applying the principle as laid down by Apex Court which emerge from the bare perusal of Section 141 N.I. Act, I find that the complainant has specifically alleged that petitioner No.2 being partner is actively involved in the working of the firm and its day to day activity. This being so, no reason is made out to quash the complaint filed by Saminder Singh against him.

As a sequel of my above discussion, this petition is partly allowed. Complaint filed by respondent No.1-complainant Saminder Singh against petitioner No.1 is quashed. However, the petition is dismissed qua petitioner No.2-Mange Ram. It is, however, made clear that nothing observed in this judgment shall be taken as expression of opinion on any point in issue in the complaint while deciding the same on merits.

As the complaint was filed in the year 2013 and the pronouncement of final judgment by the trial Court, was stayed vide order dated 21.01.2016 passed in this petition, the trial Court is directed to expedite the trial and dispose of the complaint expeditiously, preferably within three months on receipt of copy of this order.

(SURINDER GUPTA)
JUDGE

April 06, 2017
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No