

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

(i) CRM No.M-28044 of 2015 (O&M)

Mr.Narender Kumar Yadav @ Narender Rao authorized representative of
M/s Alliance-JMR Land Products Pvt. Ltd.
...Petitioner

VERSUS

Bharat Bhushan Arya
...Respondent

(ii) CRM No.M-28062 of 2015 (O&M)

Mr.Narender Kumar Yadav @ Narender Rao authorized representative of
M/s Alliance-JMR Land Products Pvt. Ltd.
...Petitioner

VERSUS

Bharat Bhushan Arya
...Respondent

Date of Decision: July 25, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Jain, Advocate
for the petitioner.

Mr.Rajesh Arora, Advocate
for the respondent.

INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together as the same are between same parties and point of determination is also the same.

Petitioner Narender Kumar Yadav @ Narender Rao has filed these petitions for quashing the complaints i.e. complaint No.2367 and 2368 dated 12.09.2014 titled as Bharat Bhushan Arya vs. Narender Kumar Yadav and another, summoning orders dated 23.01.2014 and 21.02.2014 and all subsequent proceedings arising thereof.

respondent appeared and contested both 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 complainant Bharat Bhushan Arya filed two complaints against Narender Kumar Yadav @ Narender Rao authorized representative and Santosh, authorized signatory of M/s Alliance-JMR Land Products Pvt. Ltd. under Section 138 of the Negotiable Instruments Act. It is mainly stated in the complaints that accused issued the cheques in discharge of their pre-existing liability, which on presentation for encashment, were returned back dishonoured with the remarks 'Payment Stopped by drawer'. Legal notices were served. When the amount was not paid, present complaints were filed.

The only point in both these petitions, as argued by learned counsel for the petitioner, is that the company has not been made a party and present petitioners Narender Kumar Yadav and Santosh have been impleaded being authorized representative and signatory respectively.

On the other hand, learned counsel for the respondent argued that Santosh, who is authorized signature and Narender Kumar Yadav, who is authorized representative of the company, have been impleaded through company in this case.

The perusal of the record shows that in both the cases M/s Alliance-JMR Land Products Pvt. Ltd. has not been impleaded as an accused. Rather, Narender Kumar Yadav has been impleaded as authorized representative and Santosh has been impleaded as authorized signatory of M/s Alliance-JMR Land Products Pvt. Ltd. and M/s Alliance-JMR Land Products Pvt. Ltd. has not been impleaded as a party. It is settled law as laid

down 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. It is further held that the Company is a juristic person. Companies and corporation houses can no longer claim immunity from criminal prosecution on the ground that they are not capable of possessing the necessary mens rea for commission of criminal offences.

The company is the principal offender and the present petitioner is vicariously liable being the authorized representative, as stated by the complainant. When principal offender has not been made party, the question of vicarious liability does not arise.

In view of the above law laid down by the Hon'ble Apex Court, I find merit in both the petitions and the same are allowed.

The complaint No.2367 AG/12-9-14 and complaint No.2368 AG/12-9-14 dated 12.09.2014, both titled as 'Bharat Bhushan Arya vs. Narender Kumar Yadav and another', summoning orders dated 23.01.2014 and 21.02.2014 and all subsequent proceedings arising thereof, are hereby quashed qua the petitioner.

July 25, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No