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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-31736-2013 [O&M]
Date of Decision:- August 11, 2017

Arun Kumar Goyal and others ... Petitioners

Versus

Rajender Mohan AggarwalRespondent

2. CRR-107-2014 [O&M]

Rajender Mohan Aggarwal ... Petitioner

Versus

M/s R.K.Alloys and othersRespondents

3. CRR-108-2014 [O&M]

Rajender Mohan Aggarwal ... Petitioner

Versus

Sh. Arun Kumar Goyal and anotherRespondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Sunil Chadha, Senior Advocate,
with Ms. Aarti Kaur, Advocate,
for the petitioners in CRM-M-31736-2013
and for the respondents in revision petitions.

Mr. Sanjeev Gupta, Advocate,
for the respondent in CRM-M-31736-2013
and for the petitioner in revision petitions.

SHEKHER DHAWAN, J.

Present petition (CRM-M-31736-2013) under Section 482 of
Code of Criminal Procedure [Cr.P.C.] filed by Arun Kumar Goyal and two

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others is for quashing of Complaint No.1109 dated 11.07.2013 (Annexure P/1) titled **Shri Rajender Mohan Aggarwal Vs. M/s R.K.Alloys and others**, filed under Section 138 of the Negotiable Instruments Act [for short, "the Act"] and the impugned summoning order, dated 11.07.2013, Annexure P/2, passed by learned Judicial Magistrate Ist Class, Ludhiana.

2. Complainant, Rajender Mohan Aggarwal has filed revision petitions, bearing Nos. CRR-107-2014 and CRR-108-2014 challenging the aforesaid order, Annexure P/2, to the effect that process against some of the accused persons arrayed in the complaint have not been issued. Therefore, all these three cases are being disposed of by this common order. For facility of reference and for the purpose of deciding these cases, facts are being taken from CRM-M-31736-2013.

3. Accused persons mentioned in the complaint dated 11.7.2013 (Annexure P/1) purchased bricks worth Rs.5.00 lakhs from the respondent on credit with the promise to pay the same within 30 days. In discharge of their liability, accused persons issued a cheque for Rs.5.00 lakhs in favour of the respondent and same, on presentation was dishonoured on account of "Funds insufficient". Legal notice dated 7.6.2013 was issued, but despite that proceedings, cheque amount was not paid and hence the present complaint was filed.

4. Learned trial court passed order dated 11.7.2013 (Annexure P/2) whereby present petitioners were ordered to be summoned to face trial.

5. Learned senior counsel representing the accused-petitioners contended that they have been arrayed as accused on the ground that

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they are partners of M/s R.K.Alloys and M/s R.K.Alloys is a partnership firm, but there is nothing on the file to establish that M/s R.K.Alloys is a partnership firm or present petitioners are partners of the same.

6. Learned senior counsel for the petitioners also submitted that R.K. Goyal has been arrayed as an accused as signatory but there is nothing on the file to show that he is liable in his capacity as authorized representative, though he is signatory to the cheque and as such, the summoning order as well as complaint and subsequent proceedings are liable to be quashed.

7. Learned senior counsel for the petitioners also contended that as per provisions of Sections 135, 138 and 142 of the Act, the answerable person is who had drawn the cheque and who is having the account, in which the cheque was drawn and not others. On this point, reliance was placed upon the judgment of Hon`ble Madras High Court in **Ravi Chandran Vs. Subramanian**, 2006(1) ISJ (Banking) 408, wherein it was observed as under:-

“9. Section 138 of the Act is clear that the person liable to answer this penal provision is only the person, who had drawn the cheque, which could be seen from the opening words "where any cheque drawn by a person on an account maintained by him....." thereby indicating, the person liable to be dealt with under Section 138 of the Negotiable Instruments Act or the person answerable under Section 138 of the Act must be the person, who had drawn the cheque and who is having the account, in which account the cheque was drawn and not others. In this case, as seen from the materials available on record, the cheque was drawn by M/s Southern Biologicals. The account holder is M/s. Southern Biologicals. The accused respondent is only a mandate holder, who was competent

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and authorised to sign on behalf of the account holder or on behalf of the drawer. Therefore, the mandate holder certainly will not come within the meaning of a person "cheque drawn by a person" or "on an account maintained by him". This being the position, the complaint ought to have been filed against the owner, or proprietor of M/s. Southern Bilogicals, who was maintaining the account, who had drawn the cheque, though it was signed by the mandate holder. In this context, we have to further see, who is the mandate holder, what is his duty."

8. Learned senior counsel for the petitioners further contended that M/s R.K.Alloys is a proprietorship concern and the respondent was not aware of difference between a 'partnership firm' and a 'business concern' as would be evident from the fact that it described itself as a partnership firm. Significantly, respondent deliberately or otherwise did not state as to which capacity, the petitioners had been serving the said business concern. A person ordinarily cannot serve in different capacities. The partnership firm differs from proprietorship form or by an individual. On this count also, the complaint and the summoning order are not maintainable.

9. While arguing on the point of maintainability of petition under Section 482 Cr.P.C., learned senior counsel for the petitioners contended that even if alternative remedy by way of revision, as per Section 397 Cr.P.C. is available to the petitioners, such petition for quashing of summoning order cannot be dismissed only on the premise that alternative remedy was available to the accused persons. On this point, reliance was placed on the decision of Hon`ble Supreme Court in **Dhariwal Tabaco Products Ltd. and others Vs. State of Maharashtra and another, 2011**

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AIR (SC) (Crl.) 1846.

10. Learned counsel representing the respondent submitted that there are specific allegations and role of petitioner, R.K.Goel in para No. 2 of the reply filed by the respondent to the legal notice. Only plea taken by the petitioners for quashing of the complaint, Annexure P/1 is that there is no material on the file to establish that. M/s R.K.Alloys is a partnership firm, is a matter of fact and there is sufficient material on the file. In this regard, attention of this Court has been drawn to the reply filed by the respondent wherein the respondent had stated that he had obtained information (Annexure R/2) from the website of the petitioner's firm in which petitioners No.1 to 3 and Mrs. Kamlesh Goyal (not summoned as accused) claimed themselves to be partners M/s R.K.Alloys. He further submitted that as per provisions of Section 141(2)(a) of the Act read with Section 25, 18 and 19 of the Indian Partnership Act, 1932, 'Firm' or 'Other Association of Individuals' along with 'every partner' are jointly and severally liable for all the acts of the 'Firm' done while he is partner. It has been further submitted that in the bank Account No. 0634256000071 maintained with HDFC Bank, Feroze Gandhi Market, Ludhiana, all the accused-persons were shown as partners and even learned trial Magistrate had not applied its judicious mind as required under Sections 204 reads with Section 203 Cr.P.C. and did not issue notice to Mrs. Kamlesh Goyal and for this purpose, the respondent has filed CRR-107-2014.

11. Learned counsel representing the respondent further contended that nothing has been produced on the file that the petitioners are not

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responsible for the conduct of business of M/s R.K. Alloys at the relevant time and as such, they cannot escape from their liability and there is nothing to set-aside the proceedings initiated on the basis of impugned summoning order (Annexure P/2) and the complaint (Annexure P/1). On this point, reliance was placed upon the judgment of Hon`ble Supreme Court in **Gunmala Sales Private Limited Vs. Anu Mehta and others, 2015(1) R.C.R. (Crl.) 54**. He further submitted that all these pleas can be taken as defence before Court below and this in itself is no ground for quashing the complaint or the summoning order and subsequent proceedings on the basis of the same. The present quashing petition filed by the accused be dismissed.

12. Having considered the submissions made by learned counsel for the parties and the fact that original complaint was filed by respondent - Rajender Mohan Aggarwal against M/s R.K.Alloys and the respondents were arrayed as under:-

- “1. M/s R.K.Alloys, 55-A, Kitchlu Nagar, Ludhiana, through its Partner Mrs. Kamlesh Goyal.
2. Mrs. Kamlesh Goyal, Partner, M/s R.K.Alloys, 55-A, Kitchlu Nagar, Ludhiana.
3. Sh. Arun Kumar Goyal, Partner, M/s R.K.Alloys, 55-A, Kitchlu Nagar, Ludhiana.
4. Sh. Ajay Kumar, Partner, M/s R.K.Alloys, 55-A, Kitchlu Nagar, Ludhiana.
5. Sh. R.K.Goyal, Partner, Authorized Signatories, M/s R.K.Alloys, 55-A, Kitchlu Nagar, Ludhiana”

13. The averments in the complaint (Annexure P/1) are that Mrs. Kamlesh Goyal, Arun Kumar Goyal, Ajay Kumar and R.K.Goyal were

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representing themselves as partners of the firm, M/s R.K.Alloys at one time or the other thereby fraudulently and dishonestly induced the delivery of goods and the present petition has been filed on the ground that M/s R.K.Alloys is still a partnership firm and Mrs. Kamlesh Goyal is the sole proprietor thereof.

14. As regards to the contention raised by learned counsel for the parties regarding maintainability of present petition, it is well established principle of law that inherent power conferred on this Court under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities of when some miscarriage of justice is done. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are initiated illegally, vexatiously or without jurisdiction and where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute the alleged offence and make out a case against the petitioner. Such a view was taken by Hon`ble Apex Court in **Union of India Vs. BajanLal, AIR 1992 SC 604**. However, in the present case, if the contents of the complaint and the material available on the file are taken into consideration in the light of the above observations, it is not a case where *prima facie* case is made out or there is sufficient material available on the file to quash the present complaint. The petitioners are at liberty to take all the above mentioned pleas in a revision petition under Section 397 Cr.P.C. and this is not a case where present petition should be entertained exercising the inherent powers under Section 482 Cr.P.C.

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16. As regards revisions petitions (CRR-107-2014 and CRR-107-2014), there is no material on record to come to the conclusion that Mrs. Kamlesh Goyal and Arun Kumar Goyal, arrayed as respondents in the said revision petitions, are also to be summoned as accused and as such, no ground for acceptance of the said revision petitions is made out. Accordingly, both the revision petitions are dismissed as not pressed.

17. Resultantly, all the above mentioned petitions, i.e. CRM-M-31736-2013, CRR-107-2014 and CRR-108-2014 stand dismissed. Any observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and shall have no bearing on trial.

August 11, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned	Yes
Reportable	Yes