IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) CRM-M No.28437 of 2016
Date of Decision : January 20, 2017

Umang Tekriwal
…Petitioner

versus

Hukamchand Karta
…Respondent

2) CRM-M No.28661 of 2016

Umang Tekriwal
…Petitioner

versus

Hukamchand Karta
…Respondent

3) CRM-M No.28556 of 2016

Arvind Om Parkash Varma
…Petitioner

versus

Hukamchand Karta
…Respondent

4) CRM-M No.28455 of 2016

Arvind Om Parkash Varma
…Petitioner

versus

Hukamchand Karta
…Respondent

5) CRM-M No.34186 of 2016

Mrs.Anandi Vinod Rai Vashi
…Petitioner

versus

Hukamchand Karta
…Respondent

6) CRM-M No.34045 of 2016

Mrs.Anandi Vinod Rai Vashi
…Petitioner

versus

Hukamchand Karta
…Respondent

7) CRM-M No.34037 of 2016

Mrs.Anandi Vinod Rai Vashi

…Petitioner

versus

Hukamchand Karta

…Respondent

8) CRM-M No.33617 of 2016

Mrs.Anandi Vinod Rai Vashi

…Petitioner

versus

Hukamchand Karta

…Respondent

CORAM:- HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Dr. Rau P.S. Girwar, Advocate,
for the petitioner.

Mr.Sandeep Sharma, Advocate,
for the respondent.

AMOL RATTAN SINGH, J. (Oral)

These 8 petitions filed by three different persons (two by Umang Tekriwal, two by Arvind Om Parkash Varma and four by Smt. Anandi Vinod Rai Vashi), all seek quashing of the complaints impugned in each of the petitions. The complaints have been filed by the sole respondent in all 8 petitions, i.e. by Hukam Chand, Karta of M/s Hukam Chand Rajindra Kumar (HUF), for the alleged commission of offences punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. As per the complaints, the petitioners herein are Directors of a company which is the first respondent in all the complaints (except two complaints), i.e. M/s Abhishek Multi Agencies (India) Ltd. It is stated that the company was in need of money for the expansion of its business and the three petitioners, who are alleged to have complete control over the acts and management of the company,

approached the complainant, seeking financial aid from him, on the promise that the amount would be refunded within a few months.

The complainant is stated to have provided money/financial assistance to all four respondents in the complaints, i.e. the company and the present three petitioners, to the extent of Rs.30,00,000/- as per their demand, and thereafter, when he demanded the money back from them, one of the present petitioners, i.e. Smt. Anandi Vinod Rai Vashi, executed 15 cheques between 18.05.2015 to 07.09.2015, some for amounts of Rs.5,00,000/- and some for amounts of Rs.10,00,000/-, in all totalling Rs.1,20,00,000/-.

As stated in the complaint, the petitioners herein had assured the complainant that the cheques would be honoured as and when presented to the bank. However, when the cheques were presented, they were all returned on different dates as given in the complaints, with an endorsement by the bank to the effect that "Payment stopped by the drawer". (This is the endorsement stated to have been made by the HDFC Bank on all the cheques in question, except one, on which the endorsement was "Funds insufficient").

3. Consequently, the complainant is stated to have served legal notices dated 21.09.2015 upon the respondents in the complaint, through registered post, which is stated to have been duly served upon the accused, asking them to discharge their liability of making the payment in lieu of the cheques issued. (All notices are stated to be issued on 21.09.2015, except for one which was issued on 02.09.2015).

However, the needful not having been done, 8 complaints were filed by the respondent herein, i.e. the complainant.

4. Upon filing of the complaints, the learned Judicial Magistrate Ist Class, Rohtak, summoned the petitioners herein (respondents in the complaints), vide the orders impugned in these 8 petitions.

Thus, the petitioners have filed the present petitions taking various grounds on the basis of which the summoning orders/notices are sought to be quashed.

5. The petitions having been clubbed together, are all being disposed of by this Court by a common judgment, though the grounds for quashing taken in the case of each of the three petitioners being different, the petitions pertaining to each individual petitioner will be considered and decided separately within this judgment.

Before going to the individual cases, a common argument made before this Court by Dr. Girwar, learned counsel for the petitioners, is being noticed; that the respondent-complainant did not annex the reply stated to have been given by the petitioners, to the legal notices received by them from the complainant. Hence, his common contention in all these petitions is that the impugned summons/notices have been issued by the learned trial Court, without knowledge of the replies given by the petitioners, to such legal notices.

6. Having noticed argument common to all the petitions, the cases pertaining to each individual petitioner are being considered separately, though the different petitions filed by each petitioner would be taken up collectively in respect of that petitioner.

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7. Learned counsel for the petitioner, in these two petitions firstly submits that the petitioner is neither a Director with the Company, i.e. M/s. Abhishek Multi Agencies (India) Ltd., nor is he any executive of the said Company. He is only a consulting Chartered Accountant and therefore is not liable for the cheques in question being dishonoured, which may have been issued by a Director or other officer of the Company.

8. A perusal of Annexure P-5 annexed with these petitions, which is a document listing the 3 Directors of the company, shows that the petitioner, Umang Tekriwal, is not one of the three Directors having control over the acts and management of the aforesaid Company.

However, it has been alleged in the complaints that when the company was in need of money for expansion of its business, this petitioner too, along with the others, had approached the complainant (respondent No.2), seeking financial aid from him, as already noticed. They are stated to have promised him that the loan taken would be refunded/returned within a few months.

On specific query, learned counsel for the petitioner has categorically submitted that the petitioner is not a Director in the company, which has now also been admitted by the learned counsel for the respondents. Thus, with even counsel for the respondent not being able to deny that the petitioner is actually neither a Director nor an employee of the company, obviously, the averment in the complaints that the petitioner is a Director, is a wholly erroneous averment.

9. Learned counsel for the respondent however seeks to bring the petitioner within the ambit of being an offender in respect of the offence allegedly committed, on the basis of Section 5(e) of the Companies Act, 1956, which reads as follows:

> "**5. Meaning of "officer who is in default".-** For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:-
>
> xxxx xxxx xxxx xxxx
>
> (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act:"

Thus, according to Mr. Sharma, learned counsel for the respondent, the petitioner being a Chartered Accountant consulted by the aforesaid Company and the loan given to the company by the respondent being at his instance also, and thereafter also, in fact, he being responsible for the non return of the loan and the dishonouring/stoppage of the cheques in question, he is very much liable for the offence committed.

10. Having considered the aforesaid arguments, what has been held in K.K.Ahuja v. V. K. Vora and Anr., 2009(3) RCR (Criminal) 571, relied upon by Mr. Sharma, needs to be referred to in the present context, and is reproduced hereunder:

> "The position under Section 141 of the Act can be summarised thus:
>
> xxxx xxxx xxxx xxxx
>
> (iii) In the case of a Director, secretary or manager [as defined in Section 2 (24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141 (2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section."

Thus, though the petitioner is neither formally a Director, Secretary or Manager of the company, but whether or not, being the Chartered Accountant whom the company consults, he falls within the category of those persons on whose advice the company normally acts, in terms of Section 5 (e) of the Act of 1956, would be something which would need to be determined at the outset by the learned trial Court.

11. Consequently, these two petitions are disposed of with a direction to the trial Court to first determine whether the petitioner, in any manner, would fall within the purview of Section 5 (e) of the Act 1956, so as to bring him within the purview of an offence punishable under the Negotiable Instruments Act, 1881.

For the aforesaid purpose, the reply stated to have been furnished by the petitioner in response to the notices issued by the complainant, along with all material appended thereto, would naturally be taken into consideration by that Court, to determine any culpability of the petitioner. The respondent would also be, equally obviously, at liberty to produce relevant material to show that the petitioner was actually responsible towards the stopping of the cheques in question, at the behest of the Company or its Directors/employees.

These two petitions are thus disposed of with the aforesaid direction to the learned trial Court.

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12. In the case of the petitioner in these two petitions, it is admitted that he remained a Director of M/s. Abhishek Multi Agencies (India) Ltd. uptil 01.03.2010, after which he has no position at all in the company. The cheques which have been dishonoured/ the payment of which has been stopped at the behest of the Company, are all of the year 2015, as admitted by the learned counsel for the respondent also.

Learned counsel for the respondent, however, has submitted that the address of the other remaining petitioner who is admitted to be a Director in the Company, i.e. the Ms. Anandi Vinod Ray Vashi, is the same as that of the petitioner in the present two petitions (Arvind Om Parkash Varma). That fact is also not denied by the learned counsel for the petitioner.

Mr. Sharma, for the respondent, has further submitted that as such the present petitioner would be a person who continues to influence the person who is admitted to be a Director, i.e. the aforesaid Anandi Vinod Ray Vashi and he would, in fact, be a "shadow Director". On specific query, however, he has admitted that no documentary or any other evidence in that regard was available, apart from the address of the petitioner being the same as that of the Director.

13. In the opinion of this Court, even if the petitioner in these two petitions is a relative or some other person closely connected to the aforesaid Director, but with him not being a Director of the Company since 2010 and even the loan negotiations with the complainant having been initiated in the year 2012-13, it would not be possible to hold him to be a person responsible for any of the affairs of the Company, in the absence of any kind of evidence in that regard, even prima facie, presented against him before the trial Court, other than a common address with one of the Directors.

Consequently, these two petitions are allowed and the impugned summoning orders/notices issued to the petitioner in these two petitions, i.e. to Arvind Om Parkash Varma, are hereby quashed.

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14. The petitioner in these 4 petitions is admittedly a Director of the Company and one who is involved in the affairs of the Company and is also alleged to be the person who signed the cheques in question.

Hence, as regards her, without making any comment on the merits of the allegations against her, I find no ground to entertain these petitions.

Though learned counsel for the petitioner has submitted that the reply given by the petitioner to the notice issued by the respondent, was not even appended with the complaint filed, thereby leading to the summoning of the petitioner vide the impugned orders, I see no ground to interfere in the summoning orders/notices at this stage, in the case of this petitioner.

Hence, at this stage, finding no merit in the challenge to the summoning orders issued to the petitioner, these 4 petitions are dismissed.

15. The parties would now appear before the learned trial Court on a date to be fixed by that Court tomorrow, in view of the fact that these petitions have been disposed of by this Court today and learned counsel for the petitioners submits that both the petitioners, against whom the proceedings before that Court are to continue, being residents of Gujarat, would not be able to appear before it tomorrow. Hence, their personal appearance before that Court, on 21.01.2017, is exempted.

A photocopy of this order be also placed on the files of the other connected matters.

January 20, 2017 **(AMOL RATTAN SINGH)**
KD **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No