

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

CRM No.M-7152 of 2013 (O&M)

Date of Decision: March 14, 2017

Ankit Jain

...Petitioner

VERSUS

Dinesh Aneja

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajeev Anand, Advocate
for the petitioner.

Mr.Yogesh Saini, Advocate for
Mr.Manoj Bajaj, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 26.09.2012 passed by learned Addl. Sessions Judge, Faridabad and the consequent proceedings thereon resulting into summoning of the petitioner under Section 319 Cr.P.C. vide order dated 22.12.2012.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that a complaint was filed by

Proprietor Adhishwar Jain and Adhishwar Jain, Proprietor under Section 138 of the Negotiable Instruments Act (for brevity 'NI Act'). During the pendency of the trial, an application under Section 319 Cr.P.C. was filed before the trial Court. Learned Chief Judicial Magistrate, Faridabad, vide order dated 02.02.2012, dismissed the application. Aggrieved from the above-said order, a revision was filed by the complainant and learned Addl. Sessions Judge, Faridabad, vide impugned judgment dated 26.09.2012, accepted the revision, set aside the order dated 02.02.2012 and remanded the matter back to the trial Court to dispose of the application under Section 319 Cr.P.C. afresh after hearing parties and keeping in view the foregoing discussion. Then, learned JMJC, Faridabad, vide impugned order dated 22.12.2012, summoned Ankit Jain as additional accused to face trial under Section 319 Cr.P.C.

The perusal of the record shows that complaint was filed by Dinesh Aneja against M/s Rishabh Enterprises through its Proprietor Adhishwar Jain and Adhishwar Jain, Proprietor of M/s Rishabh Enterprises. The perusal of the complaint shows that Adhishwar Jain being proprietor of accused No.1, approached the complainant for the purpose of certain fabric and complainant agreed to sell the same to accused persons. In respect of this purchase, accused No.1 and 2 issued a cheque of ₹1 lakh bearing No.500214 dated 01.10.2004 in favour of the complainant, which on presentation for encashment, was returned back with the remarks 'Insufficient Funds'. The perusal of the whole complaint nowhere shows that Ankit Jain, who has been summoned now by the Magistrate under Section 319 Cr.P.C. is the proprietor of M/s Rishabh Enterprises. The

has shown that any legal notice was served upon Ankit Jain under Section 138 of the NI Act, which is mandatory and one of the necessary ingredient to prove the case under Section 138 of the NI Act. The perusal of the complaint nowhere shows that complainant has any dealings with Ankit Jain or Ankit Jain has purchased the fabric. It is further clear that there is nothing on the record that Adhishwar Jain had purchased the fabric on behalf of Ankit Jain or he was having any authorization or attorney from Ankit Jain. There is also nothing on the record to show that Adhishwar Jain has been employed in the firm.

Now, learned counsel for the respondent has argued that Ankit Jain has cheated the complainant. This argument has also no merit. No complaint has been filed by complainant Dinesh Aneja under Section 420 IPC. There is no averment in the complaint that Ankit Jain has cheated the complainant. Therefore, now merely saying that Ankit Jain has cheated the complainant without any pleading or averment, cannot be looked into. The present petitioner Ankit Jain was not under any liability to pay any amount to the complainant and even if he has issued the cheque, he is not liable under Section 138 of the NI Act. There is no mention of Ankit Jain, in any way, in whole of the complaint. The complainant has nowhere stated that Ankit Jain is under any liability to pay any amount.

Furthermore, as already discussed, no notice under Section 138 of the NI Act has been served upon Ankit Jain. Therefore, on that ground also, no offence is made out against Ankit Jain. Even if it is taken that Adhishwar Jain has purchased the fabric, even then, Adhishwar Jain is liable but there is nothing to show that Adhishwar Jain, in any way,

Jain is father of Ankit Jain, is no ground to hold Ankit Jain as vicariously liable. It is admitted fact that M/s Rishabh Enterprises is owned by Ankit Jain only or in other words, Ankit Jain is sole proprietor of M/s Rishabh Enterprises and Adhishwar Jain has no concern with the accused-firm.

From the above discussion, I find that the judgment dated 26.09.2012 passed by learned Addl. Sessions Judge, Faridabad and order dated 22.12.2012 passed by learned JMIC, Faridabad, summoning Ankit Jain as additional accused, are not as per evidence and law and the same are set aside. The application under Section 319 Cr.P.C. filed by the complainant stands dismissed.

Therefore, finding merit in the present petition, the same is allowed.

March 14, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No