

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

(i) CRM No.M-8207 of 2016 (O&M)

Dinesh Batsyn and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

(ii) CRM No.M-8436 of 2016 (O&M)

Dinesh Batsyn and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

(iii) CRM No.M-10184 of 2016 (O&M)

Dinesh Batsyn and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

Date of Decision: December 15, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjeev Patiyal, Advocate
for the petitioners.

Ms.Simranjeet Kaur, Asstt. Advocate General, Punjab
for respondent No.2-State.

Mr.K.S.Dadwal, Advocate
for respondent No.2.

INDERJIT SINGH, J.

petitions as the point for determination in all the cases is same.

The above-mentioned petitions have been filed by petitioners against respondents State of Punjab and M/s Bansal Traders, challenging the summoning order dated 16.12.2009 (in CRM No.M-8207 of 2016), order dated 28.01.2010 (in CRM No.M-8436 of 2016) and order dated 01.12.2009 (in CRM No.M-10184 of 2016) passed by learned Judicial Magistrate Ist Class, Hoshiarpur and also the orders declaring proclaimed person in the complaints in spite of the fact that petitioner No.2, is though the Director, but is not an active participant/endorsee of the cheques in question and petitioners No.3 and 4 are neither Directors nor endorsee of the cheques in question.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

At the time of arguments, learned counsel for the petitioners mainly argued on one point that the cheque has been issued from the account of the company. As per the complaints in these cases, for the transactions, the liability is of the company. The present petitioners have been made accused being Directors of M/s B.B. Foods High-Tech Processing Pvt. Ltd. Learned counsel for the petitioners further argued that company is the main offender and the present petitioners, even if it is taken that they are Directors or concerned with the company, are only vicariously liable. As the company has not been made a party, therefore, the Directors, without impleading the company, cannot be held liable and the complaint is not maintainable against them. Learned counsel for the petitioner relied upon the judgment passed by the Hon'ble Supreme Court in ***Aneeta Hada***

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.

On the other hand, learned counsel for the respondent argued that company is not necessary and the complaint is also maintainable against the Directors only.

I have learned counsel for the parties as well as learned State counsel and have gone through the record.

The Hon'ble Supreme Court in *Standard Chartered Bank vs. State of Maharashtra and others etc., 2016(2) RCR (Criminal) 778*, in which, the cheque issued by the company was dishonoured, held that complaint against Chairman, Directors, Manager etc. of the company is not maintainable without making the company as party. It is also held that there cannot be vicarious liability unless there is prosecution against the company. I have also gone through the judgment passed in *Aneeta Hada's case (supra)* and the same fully applies in the present case.

As the company M/s B.B. Foods High-Tech Processing Pvt. Ltd. has not been impleaded in the present complaints and the complaints have been filed only against present petitioners as Directors of the company and the cheque has been issued from the account of company, I find that the complaints in question without impleading the company, are not

maintainable.

In view of the above discussion, I find merit in all the petitions and the same are allowed. As the complaints are not maintainable, therefore, the impugned summoning orders dated 16.12.2009 (in CRM No.M-8207 of 2016), 28.01.2010 (in CRM No.M-8436 of 2016) and 01.12.2009 (in CRM No.M-10184 of 2016) passed by learned Judicial Magistrate Ist Class, Hoshiarpur and all subsequent proceedings including the proclamation order, are hereby set aside.

December 15, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No