

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) CRR No.4748 of 2016 (O&M)

Jung Bahadur ...Petitioner

VERSUS

M/s Luxmi Iron Store and another ...Respondents

(ii) CRR No.4752 of 2016 (O&M)

Jung Bahadur ...Petitioner

VERSUS

M/s Luxmi Iron Store and another ...Respondents

(iii) CRR No.4755 of 2016 (O&M)

Jung Bahadur ...Petitioner

VERSUS

M/s Luxmi Iron Store and another ...Respondents

(iv) CRR No.4761 of 2016 (O&M)

Jung Bahadur ...Petitioner

VERSUS

M/s Luxmi Iron Store and another ...Respondents

(v) CRR No.4763 of 2016 (O&M)

Jung Bahadur ...Petitioner

VERSUS

M/s Luxmi Iron Store and another ...Respondents

Date of Decision: March 17, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.S.Shekhawat, Advocate
for the petitioner.

Mr.Vishal Malik, Advocate
for respondent No.1.

Mr.Parveen Kumar Aggarwal, DAG Haryana
for respondent No.2-State.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned five connected revisions as the point for determination in all the cases is same.

The above-mentioned revision petitions have been filed by petitioner against respondents M/s Luxmi Iron Store and State of Punjab, challenging the impugned judgments of conviction dated 12.02.2015 and orders of sentence dated 16.02.2015 passed by learned Judicial Magistrate First Class, Karnal, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 7 days under Section 138 of the Negotiable Instruments Act in each case and also challenging the judgment dated 01.12.2015 passed by learned Addl. Sessions Judge, Karnal, vide which the appeals filed by petitioner were dismissed.

Notice of motion was issued and learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

As per the record, the complainant M/s Luxmi Iron Store filed four complaints against accused Jung Bahadur and one complaint against accused M/s Sunshine Tissues (P) Ltd. through its Director and Jung Bahadur under Section 138 of the Negotiable Instruments Act. As per complainant's version, it was engaged in the business of sale and purchase of all kind of scraps. Accused Jung Bahadur, Director of accused M/s Sunshine Tissues (P) Ltd., used to purchase various type of scraps/raw material from complainant. Over a period of time, complainant and accused developed good friendly relations with each other. The accused required ₹19 lakhs to meet his business needs and promised to return the said amount within a short span of time. Acceding to the request of the accused, complainant lent amount of ₹19 lakhs to the accused in installments. In discharge of this liability, accused issued cheques No.694177, 694176, 694151, 694152 for a sum of ₹4 lakhs each and cheque No.694150 for a sum of ₹3 lakhs, which on presentation for encashment, were returned back with the remarks "Payment Stopped by Drawer" and "Exceeds Arrangement". Legal notices were served. When the amount was not paid, then the complaints was filed within time.

The accused examined DW-1 Raman Ahuja, Official of Punjab National Bank, who tendered into evidence statement of account of accused, cheques and application forms. The accused also tendered Form No.32-Mark A.

Learned JMIC, Karnal, after appreciating the evidence, convicted and sentenced the petitioner as stated above. Appeals were filed

by the petitioner and the same were dismissed by learned Addl. Sessions

Judge, Karnal, vide judgments dated 01.12.2016.

Aggrieved from the above-said judgments, present revision petitions have been filed.

From the perusal of the record, I find that in the complaints, it is the case of the complainant that accused Jung Bahadur, who is stated to be Director of M/s Sunshine Tissues (P) Ltd., used to purchase various type of scraps/raw material. In four of the above-said cases, M/s Sunshine Tissues (P) Ltd., has not been pleaded as a respondent, though, there is mention that Jung Bahadur is Director of the said company. The cheques in question are stated to be issued from the account of M/s Sunshine Tissues (P) Ltd. It is settled law that for the transaction of company, the company is liable for commission of offence and the Directors are vicariously liable. If the company is not pleaded in the complaint under Section 138 of the Negotiable Instruments Act, then the Director cannot be held as vicariously liable because the principal liability is upon the company and when the company is not the party and the liability has not been imposed upon main offender then vicarious liability cannot be imposed on anybody. In four cases where the company has not been impleaded, accused Jung Bahadur cannot be held liable.

The Hon'ble Supreme Court in ***Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd., 2012(2) RCR (Criminal) 854***, in which 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. The above judgment fully applies to the facts of the present case.

Now, as regarding fifth case, where the company has also been pleaded, I find that as per the allegations in the complaint, it looks that ₹19 lakhs has been provided to the accused Jung Bahadur. It is a huge amount, which was lent to the accused but no date, month and year has been mentioned as to when the amount was paid. It is stated that this amount was paid in installments but there are no particulars that on which date, month, how much money was paid. There are also no particulars qua payment, where the amount was paid by cheque or by cash. There is no mention that at which place and in whose presence the amount was paid. There is no other witness to corroborate the oral statement of the PWs.

The Hon'ble Supreme Court in *Vijay vs. Laxman and another, 2013(1) RCR (Criminal) 1028*, has held that it is one of the important circumstance to dismiss the complaint when no particulars of the liability have been mentioned. There is no date as to when the amount was demanded and there is also no date as to when the amount was asked to be repaid from the accused nor other particulars qua the liability. There is no document on the record to prove the liability. The account books have also not been produced. Otherwise also, no security document has been taken while lending such a huge amount to the accused.

Furthermore, there is nothing on the record to prove this loan transaction. Even otherwise, the presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused from the case of the complainant itself. The Court below held that it has come in the evidence of the complainant that he lent amount of ₹19 lakhs to the accused in the month of April 2011. The said amount was withdrawn from the bank

complainant and he duly shown the amount of ₹19 lakhs lent to the accused in account books. Mere putting no suggestion on all these points by the accused will not amount that all these facts have been admitted. Otherwise also, no reliance can be placed on this statement that ₹19 lakhs has been paid in April 2011, as in the complaint itself, this amount of ₹19 lakhs has been stated to be paid in installments, which shows that the statement given by the complainant in the evidence is contradictory to his own case and it is a material contradiction. Only on this ground that no suggestion was given, the accused cannot be held liable.

Both the Courts below have misread the material evidence and the findings are not as per evidence and law. The defence of the accused is that these blank signed cheques in question have been given as security by the company. The accused has raised probable defence. From the evidence as there is nothing on the record to show the loan transaction, nor any particulars of loan transaction have been given nor any document has been placed to show the capacity nor there is anything to show that this amount was withdrawn from the bank, nor there is anything as to when how much money was paid and only on oral statement, it cannot be believed that such a huge amount has been paid by M/s Luxmi Iron Store, which is maintaining the account books and non-production of account books, also rebuts the presumption.

Keeping in view all these facts and in view of the above discussion, I find that the Courts below have not appreciated the evidence in right perspective. Therefore, the judgments passed by the Courts below are not as per evidence and law and the same are set aside. The petitioner is

acquitted of the charges framed against him.

Resultantly, finding merit in all the revisions, the same are allowed. Petitioner Jung Bahadur, who is in custody, be released forthwith, if their custody is not required in connection with any other case.

March 17, 2017	(INDERJIT SINGH)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No