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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1062-MA-2015

Date of Decision : December 13, 2018

Manoj Kumar Diwan

.... Applicant

Versus

Sajjan Kumar

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. S.K.Garg Narwana, Senior Advocate,
with Mr. Nitin Sachdeva, Advocate,
for the applicant.

Mr. Pawan Kumar, Senior Advocate,
with Mr. Abhimanyu Batra, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present application under Section 378 (4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 10.4.2015 passed by learned Judicial Magistrate Ist Class, Bhiwani whereby the complaint filed by the applicant against Sajjan Kumar, respondent herein, under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") was dismissed and he was acquitted of the charge.

2. Facts relevant for the purpose of decision of this controversy; that the applicant joined RBC Marketing (Private) Limited (for short, "the Company") as a distributor on 16.01.2007, but his payments were not released as agreed upon and a post-dated cheque bearing No. 116401

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dated 18.08.2009 amounting to Rs.11,04,207/- was issued in favour of the applicant by the respondent accused in his capacity as Managing Director of the Company. The said cheque was dishonoured and complaint under Section 138 of the Act was filed.

3. Learned Magistrate completed various formalities including recording of preliminary evidence, service of notice of acquisition and after considering the entire evidence, dismissed the complaint vide judgment dated 10.04.2015.

4. Learned senior counsel representing the applicant, contended that learned Magistrate has completely ignored the settled proposition of law that a person dealing with the affairs of the Company shall be presumed to be Director of the Company or In-charge of the affairs of the Company. If the said person had committed offence punishable under Section 138 of the Act, the Company would also be liable for the said offence as per provisions of section 141 of the Act. More so, learned Magistrate has not considered the evidence led by the applicant and dismissed the complaint. So, the present application be accepted and the respondent be punished.

5. Learned senior counsel for the respondent contended that learned Magistrate has rightly considered all the aspects and dismissed the complaint by passing a detailed order. If a complaint is filed against any Director of the Company, the complainant has to explain in detail that in what capacity the person named was in charge and responsible for the affairs of the company. On this point, reliance was placed on the judgment from Hon`ble Apex Court in **Standard Chartered Bank Vs. State of Maharashtra and others etc., 2016(4) JT 197.**

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6. Learned senior counsel for the respondent also contended that if a complaint is filed under Sections 138 and 141 of the Act on the averment that the Managing Director or Director of the Company issued the cheque on behalf of the Company, then the said Company must be impleaded as an accused and if that is not done, conviction is liable to be set-aside. On this point reliance was placed upon the judgment of Hon`ble Apex Court in **Ajit Balse Vs. Capt. Ranga Karkere, 2015 (2) R.C.R. (Criminal) 369.** On the same point, reliance was also placed on the judgment of Co-ordinate Bench of this Court in **G.P. Kotyal @ Kottiyal Vs. Jindal Udyog and another, 2016 (4) R.C.R. (Criminal) 723.**

7. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case and after going through the judgments referred to and relied upon by learned counsel for the parties, this Court is of the considered view that learned trial Judge has rightly considered all the aspects while passing the order dated 10.04.2015 whereby complaint under Section 138 of the Act against respondent – Sajjan Kumar, Managing Director of M/s RBC (Pvt.) Limited was dismissed.

8. Similar matter was before Hon`ble Apex Court in **Anita Hada Vs. Godfather Travels and Tours Pvt. Ltd, 2012 (2) R.C.R. (Criminal) 854,** wherein Hon`ble Apex Court held as under:-

“ It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the

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provision would be necessitous and, in a way, the warrant.”

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In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning 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. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

9. Learned trial Judge has rightly observed that applicant is claiming amount as shown in the cheque in question as he had worked with the Company and earned commission. The said company is a registered company and is having separate legal entity. While fixing the liability of the respondent as an accused, who was functionary of the Company, the Company is to be arrayed as an accused first. Such a view was taken by Hon`ble Apex Court in **Standard Chartered Bank, Ajit Balse** and **Anita Hada's cases (supra)**.

10. In view of the above, the present application seeking leave to appeal is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

December 13, 2018
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Whether speaking/reasoned? : Yes
Whether reportable? : Yes