

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1622- -MA-2014 (O&M)

Date of decision: 20.11.2018

United Breweries Limited

.....Applicant

versus

J.D. Agencies and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Aruz Khan, Advocate for the applicant
Mr.Sandeep Chhabra, Advocate for the respondents

- 1. Whether Reporters of Local newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J. (Oral)

This order will dispose of an application filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 6.8.2014 passed by learned Judicial Magistrate First Class, Faridabad, vide which, complaint filed under Section 138 of Negotiable Instruments Act, 1881 was dismissed.

I have heard learned counsel for both the parties and have also carefully gone through the file.

Applicant is a company dealing in the business of brewery liquor. It is claimed in the complaint that on account of business transaction and in discharge of partial liability with the complainant, accused, who are M/s J.D.Agencies, a partnership firm and its partners Rajeev Garg and Suresh Bansal-respondent nos.1 to 3, issued a cheque for sum of Rs.10,00,000 on 27.4.2010. The cheque when presented before bank was

dishonoured with the remarks 'insufficient funds' vide bank memo dated 27.8.2010. Complainant issued a legal notice dated 8.9.2010 to respondents firm and thereafter filed a complaint.

In the statement under Section 313 Cr.P.C. accused had claimed that it was a security cheque, which has been misused.

Admittedly, in this case, legal notice was issued only to the firm and not to the partners.

Perusal of the original cheque shows that the cheque was issued by the accused firm and signed by its three partners. Unluckily, the third partner has not been arrayed as party in the complaint. The notice was admittedly issued to the firm.

The trial Court has taken the view that the notice was required to be issued to the partners also. The trial Court, while dealing with Section 24 of the Partnership Act took the view that as per the said section, notice on a person who habitually acts in the business of the firm or any matter relating to the affairs of the firm operates as a notice to the firm except in case of fraud on the firm committed by or with the consent of the partners but it is nowhere provided that notice to the firm is notice to all the partners.

Learned counsel for the petitioner has produced the authorities of Kerla High Court in Susan Zachariah v. Muthood Capital Services Ltd., 2013(4) RCR (Civil), 526 and Madras High Court in P. Lingappan v. R. Palanisamy, 2009(5) RCR (Criminal) 78, wherein single bench of both the High Courts took the view that notice to the firm is notice to all the partners.

Here, in the present case, the cheque was issued by three partners and complaint has been filed against two partners and the firm.

Notice was not replied. From the complaint, it comes out that the address of

the partners is the same. Therefore, once notice is sent to the firm and the partners are residing at the same address, they are deemed to have received the same. In any case, trial Court has also dismissed the complaint on the ground that no document of business transaction has been produced by the complainant to show that there were business transactions and that accused owed some money to the complainant. Admittedly, in this case, complainant claims to have supplied some brewery to accused. However, no bill or invoice has been produced to show that the brewery was supplied. No accounts books were produced. Therefore, complainant has failed to prove that there was a legally enforceable debt for which the disputed cheque was issued.

It being so, there is no illegality or infirmity in the findings record by the trial Court. Trial Court has arrived at a reasonable conclusion after examining the evidence.

There is no ground to interfere in the same.

Hence, the application under Section 378(4) Cr.P.C. for grant of leave to appeal is dismissed.

20.11.2018

gk

(Kuldip Singh)

Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No