

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1)

Crl. Misc. No. M-26234 of 2015 (O&M)

Date of decision: September 12, 2018

Mohit Dhawan and another

..... PETITIONER(s)

Versus

State of Punjab and another

....RESPONDENT(s)

(2)

Crl. Misc. No.M-25136 of 2015 (O&M)

Hitesh Dhawan and another

..... PETITIONER(s)

Versus

State of Punjab and another

....RESPONDENT(s)

(3)

Crl. Misc. No.M-25987 of 2015 (O&M)

Mohit Dhawan and another

..... PETITIONER(s)

Versus

State of Punjab and another

....RESPONDENT(s)

(4)

Crl. Misc. No.M-25988 of 2015 (O&M)

Mohit Dhawan and another

..... PETITIONER(s)

Versus

State of Punjab and another

....RESPONDENT(s)

(5)

Crl. Misc. No.M-26007 of 2015 (O&M)

Hitesh Dhawan and another

..... PETITIONER(s)

Versus

State of Punjab and another

....RESPONDENT(s)

(6)

Crl. Misc. No.M-25374 of 2015 (O&M)

Hitesh Dhawan and another

..... PETITIONER(s)

Versus

State of Punjab and another

....RESPONDENT(s)

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Anupam Bhanot, Advocate
for the petitioner (s).

Mr. Sandeep Kumar, D.A.G. Punjab
for the respondent-State.

Mr. Kashish Garg, Advocate for
respondent No.2.

SURINDER GUPTA, J(Oral)

This judgment will dispose of all the aforementioned six petitions filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of six complaints all titled as “*M/s G.H. Crop Science Pvt. Limited Vs. M/s Dhawan Brothers*”.

Six complaints for the offence punishable under Section 138 of Negotiable Instruments Act have been filed on behalf of M/s G.H. Crop

Science Pvt. Limited-respondent No.2 against M/s Dhawan Brothers through its partners Vijay Kumar, Dwarika Parshad Dhawan, Mohit Kumar Dhawan and Hitesh Kumar Dhawan.

Learned counsel for the petitioners has submitted that facts of all the complaints are similar, as such, for the sake of convenience, facts of the complaint in petition bearing No.CRM-M-26234-2015 may be taken.

In the coming paras, reference to the facts of the case will be taken from petition bearing No.CRM-M-26234-2015 and the facts of the complaint titled "*M/s G.H. Crop Science Pvt. Limited Vs. M/s Dhawan Brothers*" bearing No.701 of 2014 filed on 4.3.2014 will be referred.

While describing the liability of petitioners, respondent has stated in para 3 of the complaint as follows:-

"That accused i.e. Vijay Kumar, Dwarika Parshad, Mohit Kumar Dhawan and Hitesh Kumar Dhawan, Partners of M/s Dhawan Brothers, Bhikhiwind are managing the affairs and business of the said firm actively as such represented to complainant to appoint accused firm as dealer of complainant to sell the products manufactured by complainant and for purchase of pesticides on credit stating that accused are actively, jointly managing the affairs and business of partnership concern of accused M/s Dhawan Brothers, Bhikhiwind. Complainant bonafidely believed representation of accused in good faith and appointed accused as their dealer in good faith vide Dealership Agreement executed by accused Vijay Kumar one of the partner of M/s Dhawan Brothers for and on behalf of M/s Dhawan Brothers, partnership firm of accused."

Learned counsel for the petitioners has supported his submission by referring to the partnership deed dated 01.04.2010, copy of which has

been placed on file as Annexure P-2, which show that Dwarika Parshad and Vijay Kumar were partners of firm M/s Dhawan Brothers, which was earlier constituted on 01.04.2002 and terms of partnership were modified vide this deed. He has argued that after death of Vijay Kumar, who died on 02.11.2014, Mohit joined the partnership firm with Dwarika Parshad, his uncle, who has also died. As the petitioners were neither partners nor signatory to the cheques, no offence under Section 138 N.I. Act, is made out against them. In the year 2014, petitioner Hitesh was minor and was studying in Lovely Professional University, Jalandhar.

Learned counsel for the respondent No.2 has argued that respondent No.2-complainant was never shown the partnership deed, as such, he is not aware about the list of partners of M/s Dhawan Brothers. While referring Sections 20 and 28 of Partnership Act, he has argued that any person who represents himself to be the partner is liable to be proceeded for the liability of the firm. He has also referred to the observations of Hon'ble Apex Court in case of ***Venkatesh Waran & Anr. Vs. Singravel Yarn Traders 2009(16) SCC 757*** and has argued that partnership of a firm is a disputed question of fact, which could not be dealt with in petition under Section 482 Cr.P.C.

During the course of arguments, learned counsel for respondent No.2, was asked as to whether the respondent till date after filing of the complaint has been able to trace any document including the copies of Form-A and C issued by Registrar of Firms, of M/s Dhawan Brothers, their bank documents etc. to rebut the partnership deed, copy of which has been placed on file as Ex.P2 which proves that Vijay Kumar and Dwarika Parshad were

only two partners of M/s Dhawan Brothers. To this query, he has not responded in affirmative but has reiterated his contention that even presentation as partner is suffice to make a person liable to be dealt with as a partner.

To appreciate the contention of learned counsel for the respondent, it will be relevant to have a look on the provisions of Section 20 of Partnership Act, which reads as follows:-

“20. Extension and restriction of partner’s implied authority.—The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.”

Perusal of the above provision shows that it only deals with the extension and restriction of partners implied authority and provide that unless the person with whom he is dealing knows of the restriction, the act of such partner falls within his implied authority.

Section 28 of Partnership Act reads as follows:-

“28. Holding out.—

(1) Any one who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

(2) Where after a partner’s death the business is continued

in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death."

From the above facts, it is apparent that the respondent though denying the contention of petitioners that they are not partners of M/s Dhawan Brothers, but have virtually been unable to rebut this contention that they are not partners, which is supported by copy of the partnership deed placed on file.

In the case of ***Venkatesh Waran & Anr. Vs. Singravel Yarn Traders(supra)***, there was specific averment about accused that they are partners of accused No.1-firm. In these circumstances, petition filed by them seeking quashing was dismissed by the High Court and appeal against order of High Court was not accepted by Hon'ble Supreme Court. The above observations are not applicable to the facts of the present case as the respondent has not come up with any document to rebut the contention of the petitioners and document Ex.P2 i.e. partnership deed produced by them. Learned counsel for the respondent has not been able to point out during the course of arguments whether the respondent has any document like form 'A' and 'C' issued by Registrar, Firms, to show that petitioners are partners of M/s Dhawan Brothers. The only stress of learned counsel for the respondent is on holding out which is also not supported by any specific averment in the complaint to this effect. The respondent had dealing with Vijay Kumar as partner of the firm M/s Dhawan Brothers and for his act, it is the firm, which is liable and not sons of partners. The cheques in question were admittedly signed by Vijay Kumar and by impleading sons of Vijay Kumar with the

avermment that they were managing the affairs of the business of the firm actively and represented to the complainant to appoint the accused firm as dealer of complainant company without any document in support of his contention, does not attract the liability of the petitioners and is a sheer misuse of process of Court.

In para 3 of the complaint, it has been alleged that accused Vijay Kumar, Dwarika Parshad, Mohit and Hitesh are managing the affairs of M/s Dhawan Brothers. It is nowhere stated therein that they ever represented themselves as partners of M/s Dhawan Brothers. Admittedly, dealership agreement was signed by Vijay Kumar in his capacity as partner of M/s Dhawan Brothers. It cannot be believed that the dealership had been given by respondent without even knowing the names of the partners of the firm M/s Dhawan Brothers. In the absence of any document to show that petitioners were partners of firm M/s Dhawan Brothers or specific pleading that they have represented themselves at the time of agreement for dealership, as partners of firm M/s Dhawan Brothers, the plea of learned counsel for respondent to this effect has no substance.

In view of what has been discussed above, I find merits in the petitions filed by the petitioners. The same are accepted. All the six complaints filed by respondent No.2 titled "*M/s G.H. Crop Science Pvt. Limited Vs. M/s Dhawan Brothers*" along with all consequential proceedings, qua petitioners, are quashed.

(SURINDER GUPTA)
JUDGE

September 12, 2018
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No