

118.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34932-2017
Date of decision:24.08.2018.

ABHA AGGARWAL ... Petitioner

versus

M/S MUKESH UDYOG LTD. Respondent

CORAM: HON’BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sourabh Goel, Advocate, for the petitioner.

None for the respondent.

HARI PAL VERMA, J.(Oral)

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing the complaint bearing COMA No.55546/2013 titled as “M/s Mikesh Udyog Limited Versus M/s Yogsons and others”, filed by the respondent under Section 138 of Negotiable Instruments Act read with Section 420 IPC.

The aforesaid complaint has been filed with an averment that the respondent is a partnership firm and the petitioner is one of the whole time partners who carries business on behalf of the firm i.e. M/s Yogsons, Karta Ram Street, near Ghas Mandi, Chaura Bazar, Ludhiana and the accused including the petitioner have been dealing in the business transactions. In order to discharge their liability, the accused issued the following cheques:-

Sr. No.	Cheque No.	Date	Amount
1	017274	23-9-2013	Rs.3,00,000/-
2.	017275	06-11-2013	Rs.2,79,618/-
3.	017256	06-11-2013	Rs.2,50,000/-
4	017277	06-11-2013	Rs.2,81,317

However, on presentation, Cheque Nos.017275, 017276 and 017277 were returned vide memo dated 07.11.2013 and Cheque No.017274 was returned vide memo dated 13.11.2013 on account of “funds insufficient”. The aforesaid complaint was filed, in which, summoning has been issued to the petitioner.

Learned counsel for the petitioner has argued that the petitioner is a housemaker and she is not a partner in the firm. She is not participating in the aforesaid firm in any manner directly or indirectly. But still the trial Court has summoned to the petitioner to face trial in the aforesaid complaint vide order dated 20.02.2014. Petitioner has been arrayed as accused in order to mount pressure on the other parties, whereas one of the parties is her husband.

On the question of maintainability of present petition against the impugned summoning order, learned counsel has relied upon judgment of Hon'ble Apex Court in **Prabhu Chawla Versus State of Rajasthan-2016(4) RCR (Crl.) 270**. He states that when prima facie it is established that the very process of summoning is contrary to law, the complaint as well as the summoning order are liable to be quashed.

Learned counsel has invited the attention of this Court to the partnership deed dated 01.04.2011 (Annexure P-3) wherein the petitioner has not been shown as a partner of the firm, namely, M/s Yogsons.

Though notice was issued in this case, but no one has put in appearance on behalf of the respondent despite service.

Having heard learned counsel for the petitioner and considering the fact that the averments made in the present petition have not been

service and taking into consideration the partnership deed dated 01.04.2013 (Annexure P-3), this Court is of the view that petitioner is stranger to the firm as her name does not find mention in the partnership deed. Moreover in the complaint so filed by the complainant, there is no averment against the petitioner. She being wife of Gaurav Aggarwal, one of the partners, cannot be arrayed as an accused.

Accordingly, present petition is allowed and the summoning order dated 20.02.2014 (Annexure P-2) is set aside qua the petitioner.

(HARI PAL VERMA)
JUDGE

24.08.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No