IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-6971-2012

Date of Decision : March 5th , 2018

Surinder Kumar

..... Petitioner

Versus

M/s Punjab Agro Food Grains Corporation Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. V.K.Sachdeva, Advocate for the Petitioner.

Mr. Anupam Singla, Advocate for the Respondent.

SUDIP AHLUWALIA, J.

This Application is directed against the Complaint No.206 Dated 29.3.2005 filed on behalf of the Respondent against the Petitioner under Section 138 of the Negotiable Instruments Act, 1881 (in short "N.I.Act"), as also the Summoning Order passed by Ld. Judicial Magistrate Ist Class, Chandigarh on 16.9.2005. The impugned Summoning Order as well as all the consequential proceedings in the Ld. Trial Court are sought to be challenged in view of the fact that the complaint was made against the Petitioner in his capacity as Managing Director of 'Sadhana Phosphates and Chemicals Ltd.' without impleading the Company itself as an accused.

2. It is the contention of Petitioner that in view of the decision of Supreme Court in '**Aneeta Hada Versus M/s Godfather Travels and Tours Pvt. Ltd.' 2012(2) R.C.R. (Criminal) 854**, arraigning of a Company as an accused for an offence under the N.I.Act is imperative, and where the

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complainant simply seeks prosecution of the Director without arraying the Company as an accused, such prosecution becomes liable to be quashed. The Orders of the High Court whereby the prayer for quashing the complaint proceedings in such situation were set aside, and the proceedings therefore, quashed by the Apex Court, which held that in the absence of the Company itself being arraigned as an accused, prosecution of the Director alone was not permissible, and the earlier decision in this regard in the case of **'Anil Hada Versus Indian Acrylic Ltd.' 2000(1) R.C.R. (Criminal) 1**, wherein it had been held that in a complaint u/ss 138 and 141 of the N.I.Act, where the disputed (dishonoured) cheque was issued by the Company, for the purpose of prosecution of its Directors, it was not necessary that the Company should also be prosecuted, was overruled by the Supreme Court in **Aneeta Hada's case (supra)** by observing inter-alia -

> *"43. 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."*
>
> *45. Resultantly, the Criminal Appeal Nos. 838 of 2008 and 842 of 2008 are allowed and the proceedings initiated under Section 138 of the Act are quashed."*

3. Ld. counsel for Petitioner has further cited the decision of Apex Court in **'Ajit Balse Versus Capt. Ranga Karkere' 2015(2) R.C.R.**

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(Criminal) 369, wherein it was observed inter-alia -

> *"9. Learned counsel appearing on behalf of the respondent contended that the judgment in Aneeta Hada's case cannot be made applicable retrospectively in respect of cases where the conviction took place much prior to the judgment. However, on such ground the relief cannot be denied to the accused. The decision in Aneeta Hada's case may be prospective but that will be applicable to all the pending cases including the trial, appeal or revision or special leave petition/appeal pending before this court.*
>
> *17. Learned counsel appearing on behalf of the respondent while accepting that Adiwasi Machua Samiti, Sirsida on whose behalf cheque was issued was not impleaded as accused before the trial court, contended that judgment in Aneeta Hada's case cannot be made applicable retrospectively in respect of cases where the conviction took place much prior to the judgment. However, such objection cannot be raised in the present case. Though judgment in Aneeta Hada's is prospective but is applicable in all pending cases, including the trial, appeal, revision and special leave petition/ appeal pending before this court. The case of the appellants being covered by the decision in Aneeta Hada's case, we set aside the impugned judgment and conviction passed by the trial court as affirmed by the appellate court and impugned order dated 31.08.2012 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Revision No.365 of 2012. (Emphasis added)*
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> *The appellants stand acquitted.*
>
> *The appeal is allowed."*

4. A Coordinate Bench of this Court relying upon the aforesaid decision had in the case of '**Manish Jain Vs. Surender Singh' Crl. Misc. No.M-26819 of 2012 (O&M) decided on 25.02.2015,** similarly quashed the complaint as well as Summoning Order by holding that the complaint was not maintainable against the Petitioner alone who was the Director of the Company.

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5. It was nevertheless argued on behalf of Respondent/Complainant that admittedly when the complaint was filed, it was maintainable in spite of the Company not having been arrayed as an accused in view of earlier decision in **Anil Hada's case (supra)**. But, as has been seen in the subsequent decisions of the Supreme Court cited on behalf of the Petitioner, the aforesaid decision in **Anil Hada's case (supra)** was expressly overruled, and it was further held that the subsequent decision in **Aneeta Hada's case (supra)**, even though prospective would still apply to 'all pending proceedings including 'trial' of a complaint. Consequently, the present complaint certainly falls within the ambit of decision in **Aneeta Hada's case (supra)**, since it was pending after having been filed as long back as in the year 2005.

6. In addition, Ld. counsel for Respondent has cited three more decisions of different High Courts, in order to contend that the proceedings need not to be quashed, since the formal defect of not having arraigned the Company as an accused can be easily rectified by an appropriate amendment and addition of the said Company as an accused even at this stage.

7. In '**Playwood House Versus Wood Craft Products Ltd.' 1994 (1) Crimes 434** where a similar application for impleading the Firm as an additional accused in a complaint u/ss 138 and 142 of the N.I.Act, had been allowed by the CJM, the Kerala High Court upheld the said order by observing inter-alia -

> *"6. Thus, the legal position is, when once cognizance of the offence was taken, subsequent impleadment of any other person as accused would not affect the judicial process already adopted in taking cognizance of the offence.*
>
> *7. In the aforesaid context, a reference to Section 319 of the Code, is necessary. Under Sub-section (1), the Court is given*

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> *power to proceed against any other person who appears to have committed any offence for which such person could be tried together with the accused already arraigned in the case. Once the Court decides to proceed against such other person then Sub-section (4) will save the earlier act of taking cognizance of the offence. Sub-section (4) says that "the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced". Hence the stage at which the new accused was brought in the array of the accused had no legal impact on the proceedings."*

8. In '**M/s Bedi Sons Steels & Wires Versus M/s B.G.Brothers' 2002(2) R.CR.(Criminal) 45** a Coordinate Bench of this Court had similarly observed -

> *"14. The mandate of the above judicial pronouncements appears to be that if any defect in the format of the complaint is brought to the notice then the Court can allow permission to rectify the same and in this case the Court can even allow the respondent in his individual capacity to prosecute the complaint. Consequently, it has to be taken that the eligibility criteria prescribed under Section 142 of the Act have been fulfilled by the respondent because he being the payee or holder of the cheque in due course was competent to institute the complaint. Thus, from whatever angle the question is examined, there is no merit in the petition and the same is accordingly dismissed."*

9. In **'Rattan Lal Versus Raman Sharma' 2013(28) R.C.R. (Criminal) 769** in somewhat similar case, the Jammu and Kashmir High Court had observed -

> *"11. Respondent in rebuttal of the contention raised by the petitioner has submitted that he is proprietor of the company, however, inadvertently he has failed to plead such fact in the complaint which cannot form ground for declaring the complaint*

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as invalid and rejecting his complaint. Respondent has referred to and relied upon judgment of the Hon'ble Supreme Court reported as ***AIR 2013 Supreme Court 426 case titled Indra Kumar Patodia and Anr. v. Reliance Industries Ltd. and Ors.*** *In para 11 of the judgment, the Hon'ble Supreme court has observed as under:*

> *"11. It is also relevant to refer a decision of this Court in* ***M.M.T.C Ltd. and another v. Medchl Chemicals and Pharma (P) Ltd. and another, (2002) 1 SCC 234 : AIR 2002 SC 182 : 2001 AIR SCW 4793****. The question in that decision was whether a complaint filed in the name and on behalf of the company by its employee without necessary authorisation is maintainable. After analysing the relevant provisions and language used in Section 138 and 142(a) of the Act, this Court held that such complaint is maintainable and held that want of authorisation can be rectified even at a subsequent stage. This Court further clarified that the only eligibility criteria prescribed by Section 142 is that the complaint must be by the payee or the holder is due course. This Court held that this criteria is satisfied as the complaint is in the name and on behalf of the appellant-Company. It was further held that even presuming, that initially there was no authority, still the company can, at any stage, rectify the defect. It was further held that at a subsequent stage the company can send a person who is competent to represent the company and concluded that the complaint could thus not have been quashed on this ground:*
>
> *12. In view of the above position of law it can safely be concluded that any defect in the complaint can be rectified at the subsequent stage in the interest of justice."*

10. The Respondent's side however, would not appear to stand benefitted from the aforesaid three citations. This is so because the decisions in **Playwood House's case and M/s Bedi Sons Steels & Wires case (supra)** were pronounced much before the Supreme Court Ruling in

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Aneeta Hada's case (supra) was passed and which is the present law governing the pending proceedings under the N.I.Act as of now. Even the decision in **Rattan Lal's case (supra)** again is not helpful because there is no reference to the decision in **Aneeta Hada's case (supra)**, nor any discussion on it, on account of which, it is *per incuriam* and even otherwise not binding upon this Court.

11. For the aforesaid reasons, the proceedings arising out of pending complaint case are liable to be quashed on account of the non-arraignment of Company of which the present Petitioner is the Managing Director, as an accused in the same. Consequently, the Revisional Application is allowed after setting aside the impugned order and all further consequential proceedings in Complaint No.206 of 2005 are quashed.

March 05, 2018 **(SUDIP AHLUWALIA)**
AS **JUDGE**

1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No

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