IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-56569-2018 (O&M)
Date of decision: 18.12.2018

Shyam Poddar

... Petitioner

Vs.

Jai Narain Jain

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. C.S. Pasricha, Advocate
for the petitioner.

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ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of complaint No.301/2016 (filing No.993/2016-Date of Institution: 13.10.2016) titled as Jai Narain Jain Vs. M/s Amira Pure Foods Private Ltd. and ors. and the summoning order dated 13.10.2016 (Annexure P-4) as well as all the consequential proceedings arising out of the complaint.

Learned counsel for the petitioner submits that the petitioner was an independent director in the company M/s Amira Pure Foods Private Ltd. and he was neither a shareholder nor a signatory of cheque and was acting as Foreign Exchange Consultant. Counsel for the petitioner further submits that the petitioner has resigned from the directorship on 06.05.2016 and the same was duly accepted by the Registrar of Companies. It is further submitted that on a bare perusal of the allegations in the impugned complaint (Annexure P-3), there is no averment with regard to role of the petitioner, who has been arrayed as accused No.4 in the impugned complaint except that all the accused are jointly and severally liable to pay the compensation.

Learned counsel for the petitioner has relied upon **Ashoke Mal Bafna Vs. M/s Upper India Steel Mfg. & Engg. Co. Ltd., 2017 AIR (SC) 2854** in which the Hon'ble Supreme Court has held as under: -

> *"Turning to the case on hand, admittedly the cheques dated 28.12.2004 were issued while the appellant was Director of the Company with validity of a period of six months but during that period they were not presented for realization at the bank. The appellant has resigned as Director w.e.f. 2.1.2006 and the fact of his resignation has been furnished by Form 32 to the Registrar of Companies on 24.03.2006 in conformity with the rules. Thereafter, the appellant had played no role in the activities of the default Company. This fact remains substantiated with the Statement filed by the default Company on 20.02.2006 with the Registrar of Companies that in an advertisement of the Company seeking deposits (Annexure P3), only the names of three Directors of the Company were shown as involved in the working of the Company and the name of appellant was not therein. Indisputably, therefore, the cheques bounced on 24.08.2006 due to insufficient funds were neither issued by the appellant nor the appellant was involved in the day to day affairs of the Company.*
>
> *Before summoning an accused under Section 138 of the Act, the Magistrate is expected to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and then to proceed further with proper application of mind to the legal principles on the issue. Impliedly, it is necessary for Courts to ensure strict compliance of the statutory requirements as well as settled principles of law*

> *before making a person vicariously liable.*
>
> *The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of process of Court. Looking at the facts of the present case in the light of settled principles of law, we are of the view that this is a fit case for quashing the complaint. The High Court ought to have allowed the criminal miscellaneous application of the appellant because of the absence of clear particulars about role of the appellant at the relevant time in the day to day affairs of the Company.*
>
> *For all the foregoing reasons, we allow this appeal by setting aside the impugned judgment passed by the High Court and quash the criminal proceedings pending against the appellant before the Trial Court. Ordered accordingly."*

Learned counsel for the petitioner has further submitted that the petitioner is a senior citizen and has undergone by-pass surgery and is involved in number of similar cases. Learned counsel for the petitioner has also relied upon the order dated 06.07.2018 passed by this Court in CRM-M-17895-2018, wherein the petitioner had filed a similar petition and operative part of the said order reads as under: -

> *"After hearing learned counsel for the petitioner, I deem it appropriate to direct the petitioner to appear before the trial Court through his counsel and file an application for discharge along with his defence documents within a period of two weeks from today and the trial Court is further directed to dispose of the application within a period of two months in the light of judgment of the Hon'ble Supreme Court in* ***Ashoke Mal Bafna*** *(supra) in case the summoning order is already passed against the petitioner."*

Learned counsel for the petitioner has also submitted that in the present case, the trial Court has also passed the summoning order and the petitioner is impugning the same on the grounds stated above.

On a query put to the petitioner, whether the petitioner has put in appearance before the trial Court, it is stated that the petitioner has not appeared before the trial Court so far and has relied upon a judgment in **M/s Bhaskar Industries Ltd. Vs. M/s Bhiwani Denim & Apparels Ltd., 2001 (4) RCR (Crl.) 137**, wherein the Hon'ble Supreme Court has held that the Magistrate may dispense with even first appearance of the accused provided the accused person is represented by a counsel.

After hearing learned counsel for the petitioner, I deem it appropriate to direct the petitioner to appear before the trial Court through his counsel and file an application for discharge along with his defence documents within a period of two weeks from today and the trial Court is further directed to dispose of the application within a period of two months in the light of judgment of the Hon'ble Supreme Court in **Ashoke Mal Bafna** (supra).

Disposed of, accordingly.

[ARVIND SINGH SANGWAN]
JUDGE

18.12.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No