IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 10.05.2019

1. CRM-M-10182 of 2017 (O&M)

Bhupinder Kaur Gill ...... **Petitioner**

Versus

Paramjit Singh ...... **Respondent**

2. CRM-M-38384 of 2017 (O&M)

Bhupinder Kaur Gill ...... **Petitioner**

Versus

Joginder Paul Chaudhary ...... **Respondent**

3. CRM-M-34873 of 2018 (O&M)

Bhupinder Kaur Gill ...... **Petitioner**

Versus

M/s Excel Properties & Builders ...... **Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shivam Malhotra, Advocate, for
Mr. Manuj Nagrath, Advocate
for the petitioner (in all petitions).

Mr. R.S. Athwal, Advocate
for the respondent (in CRM-M-10182-2017).

Mr. Vivek Salathia, Advocate
for the respondent
(in CRM-M-38384-2017 & CRM-M-34873-2018).

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ANIL KSHETARPAL, J. (ORAL)

Vide this judgment, three petitions bearing CRM-M-10182 of

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2017, CRM-M-38384 of 2017 and CRM-M-34873 of 2018 seeking quashing of separate criminal complaints and orders passed summoning the petitioner are being questioned.

Learned counsel for the petitioner has submitted that the petitioner is an Ex. Director of accused No.1 and there are no specific assertions with regard to the petitioner being Incharge of the business. He has further submitted that the petitioner had resigned from Directorship on 25.01.2012 and therefore, the complaint against the petitioner is not maintainable. He has relied upon a judgment passed by the Hon'ble Supreme Court in the case of *National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal and another, 2010(2) SCC (Criminal) 111*.

On the other hand, learned counsel for the respondents has drawn attention of the Court to Para 1 of the complaint and submitted that the complaint itself contains pleadings in terms of Section 141 of the Negotiable Instruments Act, 1881. They have further submitted that the liability in question for which cheques were issued is of the period when the petitioner was a Director as would be clear from the agreement signed between the parties on 23.12.2011. Still further, it is apparent from the reading of the agreement that post dated cheques were given. Learned counsel has further referred to final investigation report submitted by the police.

This Court has heard learned counsels for the parties at length and with their able assistance gone through the documents attached. It is apparent that accused No.1 is a private limited company and accused Nos.2 to 4 are its Directors. Accused Nos.2 to 4 are members of one family as accused No.3 Ajit Singh Gill, who is no more alive, was husband whereas

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accused No.4 was his wife and accused No.2 is son of accused No.1 and 2. As per the complaint, there was no Managing Director of the Company. Still further, in para 1 in all the complaints which are similar worded, the following assertions have been made:-

> *"That accused No.2 to 4 are the Doctors of accused No.1 company dealing in the business of metal scrap and they all the accused are in-charge of and are resposible for the conduct of the business of the accused No.1 company. The accused no.2 and 3 are also the Directors of another Company namely M/s Magnate Steel Pvt. Ltd. Company which is the sister company of accused no.1 and it is also engaged in the business of Metal scrap."*

Section 141 of the Negotiable Instruments Act, 1881 require that before a person is prosecuted for the offence committed by a company vicariously, such person should be Incharge of and was responsible for the company for the conduct of the business of the company. Section 141 of the Negotiable Instruments Act, 1881 is extracted as under:-

> ***"141. Offences by companies.-***
>
> *(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:*
>
> *[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or*

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a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]
(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
Explanation.— For the purposes of this section,—
(a) "company" means any body corporate and includes a firm or other association of individuals; and
(b) "director", in relation to a firm, means a partner in the firm."

This provision has been interpreted by the Larger Bench of the Hon'ble Supreme Court in the case of *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another, 2005(8) SCC 89.* While interpreting Section 141, it has been held that the complaint must contain pleadings to the effect that each of the accused apart from the company, was in charge of and responsible to the company for the conduct of its business.

Argument of learned counsel that there are no specific pleading while relying upon Para 25 of the judgment passed in National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal and another (supra) has been considered but found no merit in it for two reasons:-

1. Keeping in view the inter se relationship between all the Directors and the fact that the company is a closely held company of a family, the requirement of Section 141 stands fulfilled.

2. As regards second argument of learned counsel, it will be noted

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that the existence of agreement dated 23.12.2011 admitting the liability is not in dispute. It is specifically recorded in the agreement that post dated cheques were given. In such circumstances, the liability is of the period when the petitioner was Director of the company and even cheques were delivered to the complainant during that time.

While entertaining petitions under Section 482 of the Code of Criminal Procedure, the jurisdiction of the Court is very limited, therefore, the observations made in the order shall not influence the trial Court while deciding the case.

In view thereof, all the petitions are dismissed.

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned Yes / No

Whether Reportable Yes / No

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