

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

124

CRM-M-11565-2019 (O&M)

Date of Decision : 11.4.2019

Raman Josan

....Petitioner

vs.

M/s Pritam Lal & Sons Commission Agent Patti and another

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Vaibhav Narang, Advocate
for the petitioner.

Mr. H.S.Randhawa, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

This is a petition for quashing the summoning order dated 14.6.2017 and complaint No. 134/2017 under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act').

The case of the complainant was that the petitioner was a partner in Surya Industries alongwith one Anil Josan and both were in-charge of running the partnership firm. A cheque had been issued from the account of the firm which was dishonoured and notice was issued to all three. No reply was filed and ultimately, the complaint was filed. In the head note of the complaint Section 141 of the N.I. Act was not mentioned. Though there was a categoric averment about the role of the petitioner in the partnership firm in paragraphic No.11 that the petitioner was liable to be punished 'under Sections 138-142 of the Negotiable Instruments Act'. After

leading preliminary evidence the Magistrate issued the impugned summoning order probably because there was omission in the head note the summoning order was also issued under Section 138 of the N.I. Act. It is thereafter that the present petition has been filed.

The first argument raised by the learned counsel for the petitioner is that in fact much before the issuance of the cheque the petitioner had exited from the partnership and relied upon the judgment of the Supreme Court passed in the matter of “*Pooja Ravinder Devidasani vs. State of Maharashtra and another*” reported as 2015 (3) SCC (Civil) 384.

The second argument raised by learned counsel for the petitioner is that the petitioner having not been summoned under Section 141 of N.I. Act, and thus the complaint and the summoning order be quashed.

Counsel for the respondents has argued that as regards the first point raised by the learned counsel for the petitioner, if the petitioner had filed a reply to the notice under Section 138 of N.I. Act and had brought out these facts, the complainant could well have checked their veracity and then proceeded against the other persons, but by not filing any reply at all, the petitioner cannot attack the order of the Magistrate on the ground that he has not considered the material which was not before him at all. As regards the second point, counsel for the respondents has argued that the essential averments for the invocation of Section 141 of N.I. Act are very much present in the complaint and the mere fact that there was an unintentional omission of specifically mention of Section 141 of N.I. Act in the complaint and the mere fact that due to same inadvertence, Section 141 of the N.I. Act was not incorporated in the summoning order would not render the

complaint and the summoning order liable for quashing. Moreover, an application for correction of the impugned summoning order is also pending.

In my opinion, the argument of the learned counsel for the respondents carry more weight. The Magistrate cannot be faulted for having ignored material which was not before him. As regards the subsequent argument that no correction can be made in the summoning order, that question is still in the womb of the future. As regards the case of **Pooja Ravinder Devidasani (supra)**, it deserves to be mentioned here that in that case, the complainant were shown to be aware of the fact that the accused was no longer be the director in the company and consequently, that judgment is not applicable in the present case.

Consequently, the petition stand dismissed with liberty to the counsel for the petitioner to take all pleas before the appropriate Court.

Registry is directed to detach all those cases which was ordered to be attached with this case on 3.4.2019.

Since the main case has been dismissed, the pending criminal miscellaneous application, if any, also stands disposed of.

11.4.2019
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No