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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.201

CRM-M-18584 of 2013
DECIDED ON: *January 31, 2019*

VIKRANT BARANWAL

..PETITIONER

VERSUS

M/S STARMED LIFESCIENCES AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Arvind Thakur, Advocate, for the petitioner.

None for the respondents.

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SUDHIR MITTAL, J. (ORAL)

This petition has been filed for quashing of complaint No.1756 of 2012, dated 10.10.2012, under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act') as well as summoning order dated 09.04.2013 (P-11), whereby the petitioner has been summoned to stand trial.

The petitioner is alleged to be the proprietor of an entity by the name of M/s Natraj Medicine Centre, Bulanala, Varanasi. It is alleged that he purchased medicines from M/s Starmed Lifesciences (respondent No.1) through C & F agent M/s Gopal Enterprises, F-2302, Rajaji Puram, Lucknow. A sum of Rs.1,69,754/- was outstanding against him and in

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discharge of the said liability, a cheque dated 09.08.2012 was issued which was dishonoured with the remark that the drawer's signature incomplete/illegible/differs/required.

Learned counsel for the petitioner has contended that a perusal of the cheque dated 09.08.2012 (P-7/A) shows that the drawer thereof is M/s Natraj Medicine Centre. Documents Annexure P-1 (Certificate of Registration and Allotment of TIN as well as Annexure P-2 (Certificate of Registration Shop-cum-Commercial Institution) show that M/s Natraj Medicine Centre is a proprietorship firm and Sh. Nand Lal Gupta s/o Late Sh. Vishav Nath Gupta is its proprietor. The petitioner has no concern with the said firm. He is not the proprietor thereof nor is he an authorised signatory. The cheque in dispute has also not been signed by him. As per Section 138 of the Act, it is an essential requirement that the cheque should have been issued from an account being maintained by the accused. The cheque in question has been issued by M/s Natraj Medicine Centre from an account being maintained by the said entity and therefore, the accused in such a case could only have been the proprietor of the said entity or its authorised signatory. The summoning of the petitioner is thus a gross abuse of the process of the criminal Courts and the summoning order as well as complaint are liable to be quashed. Reliance is placed upon the judgment of the Supreme Court in ***Jugesh Sehgal vs. Shamsher Singh Gogi, 2009(3) R.C.R. (Criminal) 712***.

Pursuant to issuance of notice of motion, Mr. Vikas Sagar, Advocate put in appearance on behalf of the respondents. Further, proceedings were stayed vide order dated 31.03.2014. On the previous date of hearing, none had appeared on behalf of the respondents and therefore, a

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2019.02.04 16:28
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direction was issued to the Registry to inform the counsel. Office report indicates that the counsel for the respondents has been informed through a letter and the same has been duly received by him. However, none has appeared on behalf of the respondents and therefore, I am proceeding to decide the petition in the absence of learned counsel for the respondents.

As per the contents of the complaint, the entity which has purchased the medicines is M/s Natraj Medicine Centre. The cheque in dispute has been issued by the said entity but the signature is not legible. In any case, the signature is not of the petitioner as is apparent from a comparison thereof with the signature existing on the Vakalatnama. The documents (P-1 & P-2) further shows that M/s Natraj Medicine Centre is a proprietorship firm and the proprietor is Sh. Nand Lal Gupta. Thus, it is apparent that the petitioner is neither the proprietor of M/s Natraj Medicine Centre nor is he the signatory of the cheque. Further, the document Annexure P-3 (certificate issued by the concerned bank) clarifies that the cheque in dispute pertains to an account maintained by M/s Natraj Medicine Centre. Thus, one of the essential requirements of Section 138 of the Act has not been fulfilled in this case. The accused can only be a person from whose account the cheque has been issued for discharge of a legally enforceable liability. That is not the situation in this case and thus, the continuation of the complaint as well as issuance of the summoning order impugned amounts to an abuse of the process of the criminal Courts. In ***Jugesh Sehgal's case (Supra)***, the Supreme Court has held as under:-

> *"17. As already noted hereinbefore, in para 3 of the complaint, there is a clear averment that the cheque in question was issued from an account which was non-existent on the day it was issued or that the account from where the cheque was issued "pertained to someone*

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else". As per complainant's own pleadings, the bank account from where the cheque had been issued, was not held in the name of the appellant and therefore, one of the requisite ingredients of Section 138 of the Act was not satisfied. Under the circumstances, continuance of further proceedings in the complaint under Section 138 of the Act against the appellant, would be an abuse of the process of the Court. In our judgment, therefore, the decision of the High Court cannot be sustained."

The ratio of the said judgment is squarely applicable to this case.

The petition is thus allowed and complaint No.1756 of 2012, dated 10.10.2012, under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act') pending in the Court of learned Judicial Magistrate 1st Class, Chandigarh as well as summoning order dated 09.04.2013 (P-11), passed thereon, are quashed.

January 31, 2019 **(SUDHIR MITTAL)**
Ankur **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No