

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRM-M-24286-2017 (O&M)

Subash Chander

..... Petitioner

Versus

Ramesh Khanna

..... Respondent

2. CRM-M-25937-2017 (O&M)

Subash Chander and another

..... Petitioners

Versus

Ramesh Khanna

..... Respondent

Date of decision: 28.02.2019

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Aalok Jagga, Advocate for the petitioner.

Mr. Animesh Sharma, Advocate for the respondent.

RAMENDRA JAIN, J. (ORAL)

By this common order, two above titled petitions are being disposed of, as similar facts are involved therein. For brevity, the facts are being extracted from CRM-M-24286-2017.

Briefly, respondent filed a Complaint No. 816 dated 02.03.2016 (Annexure P-1), titled 'Ramesh Khanna Vs. Subash Chander' against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short -'the Act'). After summoning of the petitioner, vide order dated 03.03.2016 (Annexure P-2), the petitioner appeared and thereafter, immediately approached this Court for dismissal of said

complaint, on the ground that he could not have been summoned, without impleading his partnership firm.

Relying upon Sections 138 and 141 of the Act, learned counsel for the petitioner *inter alia* contends that drawer of the cheque in favour of respondent-complainant was partnership firm of the petitioner and he has not issued the same in his individual capacity. The partnership firm is covered under the definition of company under Section 141 of the Act. Under general law, a company and firm are different entities. Therefore, the same could not have been made applicable in the impugned complaint, more particularly, when a firm has been specifically included in the definition of company. In support of his contentions, learned counsel for the petitioner has relied upon judgments in **(i) Krishna Texport and Capital Markts Ltd. Vs. Ila A. Agrawal and others**, 2015(8) SCC 28; **(ii) I.C.S.D. Ltd Vs. Beena Shabeer and another**, 2002(4) RCR (Criminal) 74; **(iii) Anil Sachar and another Vs. M/s Shree Nath Spinnder P. Ltd. and others etc.,** 2011 AIR (SC) (Cri) 1695; **(iv) Jugesh Sehgal Vs. Shamsher Singh Gogi**, 2009(3) RCR (Criminal) 712; **(v) Mrs. Aparna A. Shah Vs. M/s Sheth Developers Pvt. Ltd. and another**, 2013(4) SCC(Cri) 241; **(vi) Anil Gupta Vs. Star India Pvt. Ltd. and another**, 2014(3) RCR (Criminal) 587; **(vii) Jitendra Vora Vs. Bhavana Y. Shah and another**, 2015 (4) RCR (Criminal) 398; **(viii) Mainuddin Abdul Sattar Shaikh Vs. Vijay D. Salvi**, 2015(3) RCR (Civil) 711; **(ix) M/s Target Overseas Exports Pvt. Ltd. Vs. A.M. Iqbal and others**, 2005(2) RCR (Criminal) 773; **(x) Indira Gandhi Memorial General Marketing**

Society Ltd. Vs. Roys Abraham, Maliekkal House, 2017 (4) Ker L.J. 155; (xi) Srikant Somani and others Vs. Sharad Gupta and another, 2005(3) RCR (Criminal) 304; (xii) Paulose Vs. M/s Malabar Cements Ltd. and another, 2018(2) NIJ 398; (xiii) Suresh Kumar Kochhar and another Vs. State of Punjab, 2014(2) RCR (Criminal) 206; (xiv) N. Elangovan Vs. C. Ganesan, 2014(31) RCR (Criminal) 242; (xv) Ratishbhai D. Ramani Vs. State of Gujarat and another, 2014(35) RCR (Criminal) 798; (xvi) K. Babu, Shiva Surya (Putehn Tharayil), Padinjare Nada Vs. State of Kerala, 2017(4) Ker. L.J. 33; (xvii) K.S. Gupta Enterprises Vs. Mr. Ashok Shaligram Gupta and others, 2015(34) RCR (Criminal) 637; (xviii) Oanali Ismailji Sadikot Vs. State of Gujarat and another, 2016(1) Crimes 79 and (xix) Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd. 2012(2) RCR (Criminal) 854 .

On the other hand, learned counsel for the respondent vehemently refuting the submissions of learned counsel for petitioner pleaded the legality and validity of complaint (Annexure P-1) and summoning order (Annexure P-2). Referring to Section 24 of the Partnership Act, 1932 (for short-the 1932 Act) which envisages that any notice issued to the partner of a company, automatically means notice to the partnership firm. In the instant case, notice was issued to the petitioner as well as his firm through him. Therefore, the petitioner was impleaded in the impugned complaint in his individual capacity as well as in the capacity of his partnership firm. Referring to a judgment of a co-ordinate Bench of this Court, dated 25.04.2018, passed in CRM-M-

11362-2017 and other connected cases, Tarun Kumar Vs. Parvinder Kumar and another, he further contends that when dealing is with a private individual, in that eventuality, judgment of Apex Court relied upon by learned counsel for the petitioner in **Aneeta Hada's and Anil Gupta's cases (Supra)**, does not apply.

Having given thoughtful consideration to the rival submissions, this Court finds both the petitions completely meritless for the reasons to follow:

For ready reference, Section 24 of the 1932 Act, is reproduced hereunder:-

**“Section 24
EFFECT OF NOTICE TO ACTING PARTNER.**

Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.”

The language of above Section makes it abundantly clear that notice to a partner is also a valid notice to the firm. In the instant case, legal notice dated 02.02.2016 (Annexure P-5) was issued by the respondent to petitioner-Subash Chander, in his individual capacity as well as partner of firm M/s SS Steel Industry. The same was never replied by the petitioner, which automatically means that he, admitting his liability, had not chosen to contest the legal notice. For brevity, title of the impugned complaint is also reproduced, which reads as under:-

“Sh. Ramesh Khanna Vs. Sh. Subash Chand and Subash

Chand, Partner of SS Steel Industry”

The above title shows that petitioner was impleaded as accused in his personal capacity as well as in vicarious liability towards his partnership firm M/s SS Steel Industry, which has also been specifically arrayed as respondent No. 2. Therefore, it does not lie in the mouth of learned counsel for the petitioner that without impleading the partnership firm of petitioner, the impugned complaints Annexure P-1 (in both the cases) were not liable to be entertained. Reference of Section 141 of the Act, by learned counsel for the petitioner, is totally misconceived, inasmuch as, in order to leave no ambiguity in the proceedings under the Act, the Parliament, in its wisdom, included a firm under the definition of Company, but that does not, in itself, mean that in a partnership firm in which the partners are liable individually as well as jointly, can be equated with limited or private limited company, where director has no personal or individual liability. In other words, in a partnership firm all the partners are personally liable to discharge liability of their firm in their individual capacity as well as under vicarious liability. In the instant case, as discussed above partnership firm of the petitioner is very much impleaded and has been sued through petitioner as one of its partner, apart from issuing him notice in his individual capacity.

The facts and circumstances of Aneeta Hada's case (supra) are altogether distinguishable and not identical to the facts of present case. Therefore, no benefit of the same can be given to the petitioner.

It is well settled that nobody should be condemned unheard

or in other words a genuine litigant should not be non-suited for technical reasons. Endeavour of the Court should always be to hear a person on merits and, if, he is entitled for any relief, that must be given to him, ignoring all intricacies and technicalities of law.

More so, learned counsel for the petitioner has not been able to show as to what prejudice has caused to him, in case, his partnership firm as alleged is not impleaded in the complaints. Most of the judgments relied upon by learned counsel for the petitioner are based on Aneeta Hada's case (supra) which has been dealt with distinctly by a co-ordinate Bench of this Court in Tarun Kumar's case (supra). It was held that when a person had direct dealings with a Director of the company, in that eventuality, Director of the company can be sued in his individual capacity, without impleading the company of which, he is a Director.

In the instant case also, the petitioner was dealing with respondent in his individual capacity being partner of M/s SS Steel Industry. Therefore, this Court is in complete agreement with the aforesaid judgment of a co-ordinate Bench of this Court. Filing of instant petition for quashment of impugned complaints and summoning orders on the basis of some technical defect is a clear cut abuse of the process of law by the petitioner. Had the petitioner been honest, instead of coming to this Court, he must had made endeavour to settle the dispute with respondent, inasmuch as, he has not denied his signatures on the cheque in question for which the impugned complaint has been filed or that the same does not belong to the bank of his partnership concern. Filing of

instant petition is also a mala fide and dishonest attempt of the petitioner to usurp the hard earned money of complainant-respondent by taking frivolous pleas.

In view of discussion made above, both the above petitions, being meritless, are dismissed.

February 28, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No