IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-28735 of 2016
Date of decision: 25.07.2019

Naresh Arora ...Petitioner

Versus

Sulakshan Bramta Bali ...Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Bhatia, Advocate
for the petitioner.

Mr. Rajiv Kataria, Advocate
for the respondent.

SURINDER GUPTA, J.

The petitioner has filed this petition under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of complaint no. 990/16 dated 09.02.2016 (Annexure P-2) and summoning order dated 11.02.2016 in a complaint under Section 138 of Negotiable Instruments Act, 1881 (later referred to as "the Act") titled as 'Ms. Sulakshna Brama Bali vs. Naresh Arora, pending in the Court of Judicial Magistrate Ist Class, Chandigarh along with all subsequent proceedings arising therefrom.

2. Complainant-respondent filed complaint against accused-petitioner for offence punishable under Section 138 of "the Act", in which he was summoned by learned Judicial Magistrate Ist Class, Chandigarh vide order dated 11.02.2016.

3. As per allegations in the complaint, petitioner with *mala fide* intention trapped respondent with an offer to join as Project Director and Resident Editor in their Chandigarh office at SCO Nos. 371-373, Cabin Nos. 7-8, Sector 34-A, Chandigarh, in which her friend, namely, Gunjeet Kaur, was already a partner with him. It was presented that petitioner had a

large scale business and earning high profits. He is also having links with big corporate and business houses of Surat and political authorities at State and National level. He also apprised her about his property at Noida Highway and his plan to expand his business. After winning trust of respondent, petitioner asked her for a friendly loan for business with a promise to return the same. He assured respondent of designating her as director in his new firm and appointed her as director of firm M/s Design Boxed Creative's India Pvt. Ltd., in which Gunjeet Kaur and petitioner were also directors. She, however, resigned as there was no transparency on finances, company's standing, projects and other important issues. She had given a huge amount of ₹1,70,00,000/- to petitioner on various occasions. After persistent efforts to get back her loan amount, petitioner dishonestly and with *mala fide* intention issued cheque no. 000382 to respondent at his office M/s Design Boxed Creative's India Pvt. Ltd. for a sum of ₹1,70,00,000/- drawn on Kotak Mahindra Bank, Surat. The cheque, when presented, was received back with endorsement 'Payment Stopped by Drawer'. A legal notice dated 26.12.2015 was issued on 30.12.2015 but the payment was not made leading to filing of complaint under Section 138 of 'the Act'.

4. Learned counsel for the petitioner while referring to observation of the Apex Court in case of ***Aneeta Hada* vs. *M/s Godfather Travels and Tours Pvt. Ltd.*, 2012 (2) RCR (Criminal) 854** has argued that cheque in question was issued for and on behalf of M/s Design Boxed Creative's India Pvt. Ltd. The petitioner had signed the cheque as authorized signatory of firm. As per provisions of Section 141 of 'the Act', the authorized signatory and director of the company cannot be sued

without arraying the company as accused.

5. Learned counsel for the respondent has also relied on observations in case of ***Aneeta Hada (supra)*** and has argued that in this case all the allegations are against the petitioner and not against the company. Though, cheque was issued from the account of company but the same was issued by the petitioner as its authorized signatory. Respondent has not levelled any allegation against the company, as such, complaint against the petitioner in his personal capacity is maintainable.

6. In order to see the legal proposition for filing complaint under Section 138 of 'the Act', it will be relevant to first have a look at provisions of Section 138 of 'the Act', which reads as follows:-

> ***"138. Dishonour of cheque for insufficiency, etc., of funds in the account.*** *—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to [two] years, or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall*

apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

7. Some of the ingredients, which emerge on perusal of Section 138 of 'the Act', are as follows:-

(i) Cheque is drawn by a person on an account maintained by him with a banker;

(ii) the cheque is drawn for payment of any amount of money to another person from out of that account for discharge, in whole or in part of any debt or other liability;

(iii) the cheque drawn is returned by the bank upaid.

8. Before proceeding further, it will be relevant to have a look on provisions of Section 141 of 'the Act', which relates to offences by company or a firm, which reads as follows:-

*"**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 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."

9. The Apex Court in case of ***Aneeta Hada (supra)*** has held that for maintaining the prosecution under Section 141 of 'the Act', arraigning of a company as an accused is imperative. Prosecution of a director without arraying the company as accused was held as not sustainable in the eyes of law.

10. Learned counsel for the respondent has also relied on observations in case of ***Aneeta Hada (supra)*** and has argued that it is not a case against any company or a firm. The amount of loan was taken by petitioner-Naresh Arora and he had issued the cheque in discharge of his personal liability. The respondent has not sought prosecution of any firm or has levelled any allegations against the firm M/s Design Boxed Creative's India Pvt. Ltd. The arraying of firm is required if the liability to pay the debt is of the firm. It was Naresh Arora, who was maintaining accounts of the firm and issued the cheque for payment of his loan. To prove the above facts evidence is required to be produced before the trial Court and observations in case of ***Aneeta Hada (supra)*** are not helpful to advance the plea of petitioner.

11. Perusal of cheque (Annexure R-5) shows that it was signed by petitioner-Naresh Arora for M/s Design Boxed Creative's India Pvt. Ltd. being its authorized signatory. It is not a case that respondent was not

aware of this fact. Statutory notice before filing the complaint under Section 138 of 'the Act', copy of which has been placed on file as Annexure R-6, was also given to M/s Design Boxed Creative's India Pvt. Ltd. The respondent is very well aware that the cheque in question was not drawn by the petitioner on an account maintained by him, rather it is a cheque issued by M/s Design Boxed Creative's India Pvt. Ltd. of which petitioner is stated to be a partner. There may not be a dispute qua validity of the cheque issued by M/s Design Boxed Creative's India Pvt. Ltd. for discharge of loan of its partners but for the dishonour of that cheque, the company/firm as per law settled in case of ***Aneeta Hada (supra)*** is required to be arrayed as accused. For the cheque issued for and on behalf of M/s Design Boxed Creative's India Pvt. Ltd., complaint filed by respondent under Section 138 of 'the Act' does not fulfill ingredients (as discussed above) and legal requirement prescribed under Section 141 of 'the Act'.

12. There may be merit in the submission of learned counsel for the respondent that entire deal was with petitioner-Naresh Arora and not with M/s Design Boxed Creative's India Pvt. Ltd. but the cause of action to file the complaint had accrued to the respondent because of the cheque issued by M/s Design Boxed Creative's India Pvt. Ltd. As to why the respondent has avoided to array M/s Design Boxed Creative's India Pvt. Ltd. as party despite issuing a statutory notice before filing of complaint is a fact, which finds no explanation except submission of learned counsel for the respondent that claim was against the petitioner, as such, the firm was not arrayed as accused. For the cheque drawn on the account of firm, complaint against petitioner-Naresh Arora in his personal capacity is not maintainable and his prosecution as partner of M/s Design Boxed Creative's India Pvt.

Ltd., for dishonour of cheque issued by the firm is also not permissible without arraying the firm as party. The trial Court while passing summoning order has not looked into this legal aspect.

13. As a sequel of my above discussion, I find merit in this petition. Order of trial Court summoning the petitioner to face trial for offence under Section 138 of 'the Act' suffers from serious legal infirmity and is also a misuse of process of Court, hence quashed.

July 25, 2019 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No