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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-33930-2013 [O&M]
Date of Decision : February 08, 2019

Reena Gambhir and others
.... Petitioners

Versus

Satyawan Mann (deceased) through LR. .... Respondent

2. CRM-M-33978-2013 [O&M]

Reena Gambhir and others
.... Petitioners

Versus

Satyawan Mann (deceased) through LR. .... Respondent

3 CRM-M-41617-2013 [O&M]

Sanjay Gambhir .... Petitioner

Versus

Satyawan Mann (deceased) through LR. .... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Animesh Sharma, Advocate,
for the petitioners.

Mr. Ramesh Malik, Advocate,
for the respondent.

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SHEKHER DHAWAN, J.

By filing the above titled three petitions filed under Section 482 of the Code of Criminal Procedure, petitioners have sought quashing of Criminal Complaints filed by the respondent under Sections 138/141 of the Negotiable Instruments Act, 1881 (for short, "**the Act**") and the summoning orders passed by learned trial Magistrate, Sonepat. As common questions of law and fact are involved in all these three petitions, with the consent of the parties, those are being disposed of by this common judgment. However, for facility of reference, facts relevant for the purpose of decision of these present petitions are being taken from **CRM-33930-2013** – Reena Gambhir and others Vs. Satyawan Mann now deceased through LR.

2. A Criminal Complaint No. 126-2 (Annexure P/1) titled – **Satyawan Mann Vs. M/s D.D. Merchant Bankers Ltd. and others,** under Sections 138 and 141 of the Act was filed by respondent-complainant, Satyawan Mann (since deceased) and M/s D.D. Merchant Bankers Ltd. (hereinafter referred to as "the Company") was arrayed as accused No.1 and the present petitioners, namely, Reena Gambhir, Karan Gambhir and Sanjay Gambhir were arrayed as accused Nos. 2 to 4.

3. Learned counsel for the petitioners contended that petitioners - Reena Gambhir and Karan Gambhir were neither the directors of the Company at any point of time nor they are signatories to the cheques in question. They were never associated in any manner with the affairs of the company either as an employee or Directors of the Company. Similarly, petitioner - Sanjay Gambhir ceased to be the director of the Company w.e.f. 28.12.2007, whereas the alleged cheques in question

were issued in the year 2011 and the same were not issued under the signatures of the petitioners. As such, petitioner – Sanjay Gambhir was not associated with the affairs of the the Company in any manner because he was neither the Director nor employee of the Company at the relevant point of time.

4. Learned counsel for the petitioners further contended that the complainant – respondent filed complaint against the present petitioners and other accused for dishonour of the cheques and learned Magistrate passed the summoning order in routine without considering the legal points and as such, the summoning order is liable to be quashed and the complaint is not maintainable qua the present petitioners.

5. While arguing on this point, learned counsel for the respondent contended that the petitioners themselves had taken the plea before Hon`ble Delhi High Court while filing bail application that they were Directors of the the Company and now, they cannot take this plea. More so, all these aspects can be looked into by learned trial Magistrate during the course of trial and there are no grounds for setting aside the said order.

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is nothing on the file that petitioners No.1 and 2 were either Directors or employees of the the Company or they were signatories to the cheques in question. More so, petitioner No.3, Sanjay Gambhir was director of the Company but he had ceased to be Director in the year 2007, whereas the cheques in question were issued in the year 2011.

7. While dealing with identical matter, Hon`ble Apex Court in

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Pooja Ravinder Devidasani Vs. State of Maharashtra and another, (2014) 1 SCC 1, observed as under:-

> "Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence Under Section 141 of the N.I. Act. In National Small Industries Corporation (supra) this Court observed:
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> 13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.
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> 14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements Under Section 141."

8. Similar matter was also before Hon`ble Apex Court in **Harshendra Kumar D. Vs. Rebatilata Koley and Others, (2011) 3 SCC**

351, wherein Hon`ble Apex Court observed as under:-

> "10. The legal position concerning the vicarious liability of a director in a company which is being prosecuted for the offence under Section 138 NI Act has come up for consideration before this Court on more than one occasion. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, the following questions were referred to a Three-Judge Bench for determination:
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> (a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.
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> (b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.
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> (c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors or Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against.
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> 11. The three-Judge Bench of this Court answered the aforesaid questions thus:
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> (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a Director of a company is not sufficient to make the person liable under Section 141 of the Act. A Director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under Sub-section (2) of Section 141."

9. As regard to the plea taken by learned counsel for the respondent that the petitioners had taken the plea before Hon'ble Delhi High Court and at the most that can be plea of defence, which the petitioners can take during trial of the case, similar matter was before Hon'ble Apex Court in ***Anita Malhotra vs. Apparel Export Promotion Council and another,*** ***(2012) 1 Supreme Court Cases 520*** wherein it was held as under:-

"Though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed on record by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 Cr.P.C."

10. Applying the same principles of law to the facts of the present cases, as per documents available on the file, petitioners No.1 and 2 were not the Directors of the Company at the relevant time and petitioner No.3, Sanjay Gambhir had already ceased to be the Director of the company much before the date of issuance of the cheques in question. The same is evident from Annexure P/3 (Colly.), and especially Form 32, which establishes that Sanjay Gambhir had ceased to be the Director of the Company w.e.f. 28.12.2007. If that be the position and the proceedings against the petitioners are allowed to continue on the basis of impugned summoning orders where all these facts have not been considered absolutely, the same shall be mis-carriage of justice and the Complaint (Annexure P/1) and the summoning orders passed by learned trial Magistrate, Sonepat are liable to be set at rest as per law while invoking the provisions of Section 482 of the Code of Criminal Procedure.

11. Resultantly, all the above titled three petitions, bearing Nos. **CRM-M-33930-2013; CRM-M-33978-2013 and CRM-M-41617-2013** are allowed and the impugned summoning orders and Criminal Complaint titled – **Satyawan Mann Vs. M/s D.D. Merchant Bankers Ltd. and**

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others, are hereby quashed **qua the petitioners.**

12. Petitions stand allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

February 08, 2019
som/jitender

Whether speaking/reasoned? : Yes
Whether reportable? : Yes