

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

CRM-M-32572-2017 (O&M)

Date of decision : 04.12.2019

Vikram Joshi

...Petitioner

Versus

M/s Raj Trading Company

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurav Bhatia, Advocate and
Mr. Gaurav Pathania, Advocate for the petitioner.

Mr. N.S. Shekhawat, Advocate and
Mr. Sahil Gupta, Advocate and
Mr. Rajinder Banku, Advocate and
Mr. Tarun Aggarwal, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Prayer is for quashing of criminal complaint filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 at initial stage on the ground that necessary averments as required under Section 141 have not been made.

Petitioner (accused No.4 in the criminal complaint) is admittedly a Director of accused No.1 company (Chintpurni Foods Private Limited). In para 2 of the complaint, it has been averred as under:-

“2. That the accused No.1 is a Private Limited Company and indulged in the business of sale and purchase of rice crops. The accused persons No.3&4 are the directors of the accused No.1 and the accused No.2 is the authorized person

of accused No.1, 3 & 4 and hence the accused persons No.2 to 4 are jointly and severally looking day to day business of the accused No.1, as such, the present complaint is being filed against all the accused persons being responsible persons and relating to each other.”

Learned counsel for the petitioner while relying upon the judgment passed by Hon'ble the Supreme Court in the case of **SMS Pharmaceuticals Limited Vs. Neeta Bhalla and another, AIR 2005 SC 3512**, submits that it was incumbent upon the complainant to plead that respondent No.4 (petitioner herein) is Incharge of and was responsible to the company for the conduct of business of the company. Hence, he submits that the proceedings under Section 138 cannot continue against the petitioner.

On the other hand, learned counsel for the respondent submitted that the accused No.1-company is a private limited company having only 3 Directors. He further drew attention of the Court to the averments made in para 2 of the complaint, extracted above, wherein it has been averred that accused Nos.2 to 4 are jointly and severely looking day to day business of accused No.1 company. It has further been pleaded that all the accused are responsible persons related to each other.

The judgment passed by Hon'ble the Supreme Court in the case of SMS Pharmaceuticals Ltd. (Supra) is in the context of a large Public Limited Company where there can be a possibility of a Director, not actively involved in the management of the company.

Here the facts of the present case are different. Accused No.1-company is a private limited company and has only 2 Directors. In these

circumstances, this Court does not find that the complaint against the petitioner can be quashed qua him at the preliminary stage.

Petitioner shall be at liberty to lead evidence before the learned trial Court which would be in better position to record a finding and adjudicate the issue on appreciation of the evidence produced.

In view thereof, petitioner is relegated to the remedy before the Magistrate.

Hence, the present petition is disposed of.

04.12.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No