

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

1. CRM-M-32946-2017 (O&M)
Date of decision : 07.05.2019

Anil Jindal

...Petitioner

Versus

Vishwa Jeet Sangwan

...Respondent

2. CRM-M-35268-2017 (O&M)
Date of decision : 07.05.2019

Rishi Parkash Chhikara

...Petitioner

Versus

Vishwa Jeet Sangwan

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Gautam Dutt, Advocate for the petitioner.

Mr. Sachin Kaushik, Advocate for the respondent.

ANIL KSHETARPAL, J.

By this order, CRM-M-32946-2017 and CRM-M-35268-2017 shall stand disposed of. These two petitions are arising out of complaints filed under Section 138 read with Section 141 of the

Negotiable Instruments Act, 1881.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the documents filed which are part of the paper book as also documents supplied at the time of arguments.

Learned counsel for the petitioner in petition filed by Anil Jindal has submitted that petitioner is neither Managing Director nor Chairman nor Joint Managing Director of accused No.2 i.e. a limited company and since there are no assertions in the complaint that petitioner who is accused No.3, was incharge or was in any way involved in day to day activities of the company, therefore, the order summoning the petitioner as also order passed by the Court rejecting the application for discharge are erroneous. He has further submitted that petitioner was and is Director of the company as per Annexure P-5, a print out of the information from the site of Registrar of Companies and, therefore, the proceedings against the petitioner cannot be continued.

On the other hand, learned counsel for the respondent has submitted that notice under Section 138 of the Negotiable Instruments Act, was issued to the petitioner-accused No.3 and since he did not respond thereto, therefore, at this stage proceedings against the petitioner cannot be quashed.

The concept of vicarious liability does not exist in the criminal jurisprudence unless there is a specific statutory provision in some special act providing for such vicarious liability. The Negotiable

Instruments Act, 1881, Section 141 deals with offences by the companies. The company is a legal entity which itself cannot be sentenced to undergo imprisonment. In such circumstances, statutory provision has been made to make every person who at the time of offence was incharge of or was responsible to the company for conduct of business of the company, has been made liable to be proceeded against and punished accordingly. However, the significant words in Section 141 are “was incharge of” and “was responsible to the company for conduct of business of the company”. Section 141 has been interpreted by a Three Judge Bench of Hon'ble Supreme Court in the case of **S.M.S. Pharmaceuticals Limited Vs. Neeta Bhalla and another, (2005) 8 Supreme Court Cases 89**. After interpreting Section 141, Hon'ble the Supreme Court has laid down that in the complaint itself, it is mandatory for the complainant to assert and plead, if he wishes that the Court should prosecute an official or a Director of a company to the effect that such official or Director of the company, was incharge of and was responsible to the company for the conduct of business of the company. Of course, Hon'ble the Supreme Court in the cases of a complaint filed against the companies have held that if a Chairman, Managing Director or Joint Managing Director is impleaded, the complainant is not required to assert/plead that such persons were incharge of and responsible to the company for the conduct of the business. However, in case of other persons connected with the company, it has been made mandatory. The reasons for laying down such requirement are not for to seek. Once someone is being made vicariously

liable for a criminal offence, the complainant is required to fulfill the requirements of Section 141 of the Negotiable Instruments Act. The judgment passed by Hon'ble the Supreme Court in S.M.S. Pharmaceuticals Limited (Supra) has been followed in subsequent judgments also.

Now let us examine the facts of the present case.

Petitioner-accused No.3 in the complaint is not signatory of the cheque in question. There are neither any pleadings nor any assertions that petitioner was incharge of or was responsible to the company for conduct of the business of the company. Petitioner has been impleaded as Managing Director/owner of accused No.2 i.e. company. Learned Court without even calling upon the complainant to produce prima facie evidence to prove that accused No.3 is the Managing Director as alleged, has passed the order of summoning.

Even the application filed for discharge has been dismissed. There are specific assertions in the present petition supported by documentary evidence which proves that on the day cheque in question was issued, petitioner-accused No.3 was not Managing Director of the company. As per Annexure P-5, a print out from the site of Registrar of Companies, it is apparent that the petitioner was appointed as a Director on 01.11.2007 and continued as such. In the aforesaid print out, it is apparent that there is another person who is Managing Director and then there is yet another person who is a whole time Director.

No reply to the present petition has been filed, therefore, the

assertions made in the petition have gone uncontroverted.

Since such type of cases are on increase, therefore, Delhi High Court as well as coordinate Bench of this Court in case of **Anil Chanana Vs. M/s Gyani Ram Ruliya Ram, CRM-M-36869-2018 decided on 30.10.2018** have taken a view that the Magistrate concerned in such cases should insist on production of Form-32 and Annual Return filed by the company in order to determine the persons who are to be summoned.

No doubt, the notice issued prior to the filing of the complaint was not responded to by the petitioner as contended by learned counsel for the complainant, however, merely because the notice was not responded to, would not be sufficient to initiate prosecution. There is statutory requirement as interpreted by Hon'ble the Supreme Court which has not been followed. Even before this Court, complainant has failed to prima facie prove that petitioner was incharge of accused No.2-company and was responsible to the company for the conduct of the business of the company.

To be fair to the learned counsel for the respondent, he has cited judgment passed by Hon'ble the Supreme Court in the case of **S.V. Mazumdar and others Vs. Gujarat State Fertilizer Company Limited, 2005(2) RCR (Criminal) 860**. On careful reading of the judgment, it is apparent that this judgment was passed when reference to three Judge Bench was pending as judgment in the case of S.V. Mazumdar and others (Supra) is dated 25.04.2005 whereas judgment in the case of S.M.S.

Pharmaceuticals Limited (Supra) is dated 20.09.2005. Hence, the judgment passed by Hon'ble the Supreme Court in S.V. Mazumdar and others (Supra) relied upon by learned counsel for the respondent, cannot be followed in view of the decision of the Larger Bench.

As regards Rishi Parkash Chhikara is concerned, admittedly he is the person who has allegedly signed the cheque in question which has been dishonoured. A person signing the cheque on behalf of the company can sufficiently be assumed at this stage to be a person who is incharge of or is responsible to the company for conduct of the business of the company. Normally, the company does not operate its bank accounts through ordinary officials who are not incharge of or responsible to the company for conduct of the business. Hence, his petition is dismissed.

Keeping in view the aforesaid facts, the petition filed by Anil Jindal bearing CRM-M-32946-2017 is allowed, whereas petition filed by Rishi Parkash Chhikara bearing CRM-M-35268-2017 is dismissed. The order of summoning as also order by which application for discharge of petitioner was rejected are set aside qua petitioner.

07.05.2019
Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**