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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-36877-2018
Date of Decision:- 07.03.2019

Sanju Singh **… Petitioner**

Versus

M/s Vishwas Industrial Autotech Pvt. Ltd. **... Respondent**

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. G.C. Shahpuri, Advocate
for the petitioner.
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<u>GURVINDER SINGH GILL, J. (Oral)</u>

By way of filing the present petition, the petitioner seeks quashing of Complaint No. NACT-2199/2018 dated 22.03.2018 filed under Sections 138/141/142 of the Negotiable Instruments Act, 1881 as well as summoning order dated 23.03.2018 passed by the learned Judicial Magistrate Ist Class, Faridabad.

The petitioner is a partner in the partnership firm namely M/s DRYCH STEELS wherein there are three partners having equal interest and share in the same. Upon a Cheque No. 036183 dated 25.12.2017 amounting to ₹96,000/- and Cheque No. 036169 dated 18.11.2017 amounting to ₹4,16,000/- having been dishonoured, the respondent-complainant filed the aforesaid complaint against the partnership firm and against Rakesh Singh, authorised signatory as well as against petitioner-Sanju Singh, who is one of the partners.

Learned counsel for the petitioner has submitted that since there are three partners having equal interest in the partnership concerned, therefore, the complainant having chosen to proceed against only one of the three partners, the complaint and entire proceedings are bad and that the complainant cannot choose to proceed against only one of the partner to the exclusion of other two.

Learned counsel in order to hammer forth his aforesaid submission has referred to the provisions of Section 141 of the Negotiable Instruments Act, 1881 which read as under:-

"Section 141 in The Negotiable Instruments Act, 1881

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 incharge 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."

I have considered the aforesaid submissions and have also perused Section 141 of the Negotiable Instruments Act, 1881. By enacting Section 141, the purpose is to hold all those who are in charge and responsible for the company as liable. In other words, the purpose is to widen the application of Section 138 of the Negotiable Instruments Act, 1881. However, the provisions certainly cannot be interpreted to mean that if one of the partners is not arrayed as accused, the others cannot be prosecuted. The submission raised on behalf of the petitioner that complaint filed against one of the several partners is not maintainable, cannot be accepted.

It has also been argued that since the Magistrate did not call for report under Section 202 Cr.P.C. before proceeding to summon the petitioner, the entire proceedings stand vitiated.

I find that the summoning order is not mechanically passed but has been passed after statement of complainant had been recorded and after having duly appraised the same as well as the documents led in evidence by complainant.

In these circumstances, I find that the Magistrate has not committed any error in summoning the petitioner.

In view of the aforesaid discussion, this Court does not find any ground for quashing a complaint or for setting aside the summoning order. The petition is sans merit and is dismissed.

(GURVINDER SINGH GILL)
JUDGE

7th March, 2019
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Whether speaking /reasoned	:	Yes / No
Whether Reportable	:	Yes / No