IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-19085-2019 (O&M)
Date of decision : 17.05.2019

Sunita Jain

...Petitioner

Versus

M/s Kay Jain Processors

...Respondent

2. CRM-M-19877-2019 (O&M)
Date of decision : 17.05.2019

Sunita Jain

...Petitioner

Versus

M/s Kay Jain Processors

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

Mr. Piyush Kant Jain, Advocate for the respondent.

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ANIL KSHETARPAL, J.

By this order, CRM-M-19085-2019 and CRM-M-19877-2019 shall stand disposed of. Both these petitions have been filed by Smt.

Sunita Jain under Section 482 of the Code of Criminal Procedure for quashing of the complaint and summoning order passed by the trial Court in a complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as "the Act of 1881").

This Court has heard learned counsel for the parties at length and with their able assistance gone through the documents produced.

Learned counsel for the petitioner has contended as under:-

1) Petitioner had resigned on 10.03.2018 as a Director of the accused company before the cheques in question dated 20.09.2018 were issued.

2) No notice under Section 138 of the Act of 1881, was sent to the petitioner.

On the other hand, learned counsel appearing for the respondent has submitted that in the complaint, there is specific assertion with regard to Directors being Incharge of and responsible for the conduct of the business. He has also drawn attention of this Court to annual report wherein the petitioner is the largest shareholder of the company. He has further drawn attention of the Court to the fact that the petitioner has been regularly attending the meetings of the Board of Directors as her attendance is 44.44%. He further submitted that as per Annual Return, petitioner is one of the Director of the company-accused No.1. He disputed the fact that petitioner has resigned. He further submitted that no individual notice is required to be served in a case where Managing Director, Director or official is to be made liable vicariously with the help of Section 141 of the Act of 1881. He has relied upon a judgment passed by the Kerala High Court in the case of ***Fakruddin Vs. State of Kerala, 2015(3) RCR (Civil) 797***, in support of his submissions.

After considering the arguments of learned counsel for the parties, this Court is of the considered view that both the petitions are liable to be dismissed for following reasons:-

i) On careful perusal of the complaint, annual return and other documents produced, it is apparent that the company i.e. accused No.1 is a closely held company belonging to one family. Anil Kumar Jain, accused No.2 is husband, Sunita Jain is the wife of Anil Kumar Jain, whereas accused Nos.3 and 4-Tarun Jain and Varun Jain are sons of Anil Kumar Jain and Sunita Jain. Still further, as per Annual Return, Sunita Jain is the largest shareholder in company-accused No.1. In such circumstances, it is not possible for this Court at this stage to hold that the petitioner was not involved in the management of the company. It would be a matter of evidence to be led by the parties. On careful perusal of first proviso to Section 141 of the Act of 1881, it is apparent that the Director or official who claims that offence was committed without his knowledge, is required to prove that fact. Section 141 of the Act of 1881 is extracted as under:-

> *"**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 purpose of this section-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relating to a firm, means a partner in the firm."

ii) Learned trial Court has issued the order of summoning after examining the averments/assertions made in the complaint wherein it has been alleged that the petitioner is also Incharge of or was responsible to the company for the conduct of the business of the company. Still further, the annual return of accused No.1-company was produced as Ex.C12. Thus, the order of summoning cannot be said to be without application of mind.

iii) Argument of learned counsel that the petitioner has resigned, is seriously contested by the learned counsel for the respondent. In such circumstances, merely on the assertions made by the petitioner and while relying upon resignation letter Annexure P-3 and print out from the Ministry of Corporate Affairs Annexure P-4, which shows that the petitioner ceased to be the Director of the Company on 10.03.2018, it is not possible to finally conclude that the petitioner had in fact resigned.

iv) As regards last contention, it may be noted that Section 138 of the Act of 1881, provides that a notice is required to be issued to the Drawer of the cheque. Section 138 of the Act of 1881 is extracted as under:-

> *"**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:*
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> *Provided that nothing contained in this section shall apply unless—*
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> *(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*
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> *(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.*

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability."

Reference in this regard can be made to Clause (b) of proviso to Section 138 of the Act of 1881. The drawer of the cheque in case of company is the company itself, therefore, the requirement of the Act is to issue cheque to the drawer of the company and not to anyone else who are to be made vicariously liable. Attention of this Court was not drawn to any provision in Section 141 of the Act of 1881 making it mandatory to issue individual notices to all the persons who are to be made vicariously liable. The persons who are being made vicariously liable are arrayed as accused on the strength of Section 141 of the Act of 1881. Once a notice has been issued to the company, there is sufficient compliance of requirements of the statute. The Kerala High Court, as rightly contended by the learned counsel of the respondent, in the case of Fakrudddin (Supra), has also similarly laid down.

Learned counsel for the petitioner has relied upon a judgment passed by the Court in the case of ***Anil Chanana and another Vs. M/s Gyani Ram Ruliya Ram and another, 2019(2) Civiil Court Cases, 238, (P&H)*** to contend that it is mandatory for the complainant to produce in preliminary evidence Form No.32, if complainant wishes to prosecute an individual as Director of the company or its officials on the strength of Section 141 of the Act of 1881.

This Court has carefully read the aforesaid judgment.

No doubt, the directions have been issued to the trial Court/Magistrates to insist on production of Form 32 and annual return filed by the company in order to determine the persons who were Directors on the date of commission of offence, however, in the present case, as noted, annual return of accused No.1-company has been filed in preliminary evidence. Such directions cannot be interpreted to mean that all summoning orders are liable to be quashed only because Form 32 has not been filed. The directions have been issued only to ensure that in future before summoning an accused, the Court must prima facie satisfy itself as to whether the persons sought to be summoned is or is not Director of the company.

In view thereof, there is no ground to quash the complaint and summoning order at this stage. It may be noted that learned trial Court while deciding the case finally would not get influenced by the observations made by this Court while dismissing these petitions.

In view of the above, both the petitions are dismissed.

17.05.2019 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No