

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANIDGARH

204

CRM-M-4255 of 2018 (O&M)

Date of Decision: 07.05.2019

Sachin Khosla

..... Petitioner

Versus

M/s Chaudhary Metals

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gopal Sharma, Advocate
for the petitioner.

None for the respondent.

ANIL KSHETARPAL, J (ORAL)

Notice of motion was issued, however, no one is appearing on behalf of the respondent.

The petitioner through this petition under Section 482 of the Code of Criminal Procedure prays for quashing of criminal complaint Annexure P-1 i.e. complaint No.241 dated 28.01.2016. The petitioner has been impleaded as accused No.4 in the complaint as Director in accused No.1-Company. Learned counsel for the petitioner submit that the petitioner is neither the Director nor the employee of the company nor he is signatory to the cheque in question. He also relies upon an order passed by a Coordinate Bench with respect to other complaint between the same parties which has been allowed on 21.02.2019 in CRM-M-4295-2018.

Still further, the assertions made in the complaint against the petitioner who is accused No.4 are as under:-

“That accused No.1 being the company and accused No.2 being the Director/Signing authority over the cheque in question and accused No.3 & 4 being Directors of the company are liable to face the consequences arisen out of all of their act & conduct in this manner with complainant for which complainant is entitled to take legal necessary action against all of accused persons in the court of jurisdiction as per law.”

The petitioner has taken a stand that he is not even Director and has established that fact from copy of the annual return Annexure P-5 and P-6. It is well settled that if a Director is to be made vicariously liable to face criminal prosecution in a complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, the complainant is required to assert and plead that the accused is or was Incharge of or was responsible to the company for conduct of the business of the company. As noticed above, there are no assertions to this effect in the complaint. Reference in this regard can be made to a judgment passed by three Judges Bench of the Hon'ble Supreme Court in the case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another, 2005(4) RCR (Criminal) 141.

In view of the reasons recorded above as also for the detailed reasons recorded in the order dated 21.02.2019 in CRM-M-4295-2018 , the complaint as well as summoning order against the petitioner shall stand quashed.

Hence, the petition is allowed.

(ANIL KSHETARPAL)
JUDGE

07.05.2019
D.Bansal

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No