IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42980-2017(O&M)
Date of Order:21.08.2019.

Anil Chanana

..Petitioner

Versus

M/s Kisan Sales Corporation

..Respondent

CRM-M-47854-2017(O&M)

Anil Chanana

..Petitioner

Versus

M/s Ved Parkash Arun Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None.

ANIL KSHETARPAL, J.

By this order, CRM-M-42980 and CRM-M-47854 of 2017 filed under Section 482 of the Code of Criminal Procedure shall stand disposed of. Facts of both the cases are similar and the issue which requires determination is also same. Hence, the facts are being taken from CRM-M-42980-2017.

A complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') was filed against the following accused:-

"1. Amira Pure Foods Private Limited, Head Office, Plot No.54, MG Road, Prakarti Marg, Mahrauli, Delhi-110030, through its Director Anita Daing.

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> *2. Anita Daing, Director of Amira Pure Foods Private Limited, Head Office, Plot No.54, MG Road, Prakarti Marg, Mahrauli, Delhi-110030."*

The Court *prima-facie* found the offence punishable under Section 138 of the NI Act was made out against the accused and the accused were summoned vide order dated 24.08.2016.

Subsequently, an application was filed for impleading the petitioner Anil Chanana as accused in place of Anita Daing, accused no.2. The aforesaid application has been allowed by similarly worded order which is extracted as under:-

> "*Today, an application for impleaded by name Sh, Anil Chnana instead the name of Anita Daing as owner of accused no.1 company and also summons/warrants against him is moved by complainant. In view of the contents in this application, same is hereby allowed. Amended title filed. Let, notice issued to accused through RC for 18.12.2017."*

In the present case, complaint under Section 138 of the NI Act was filed alleging offence having been committed by accused no.1-company (Amira Pure Foods Private Limited). Accused no.2 as originally impleaded was sought to be prosecuted being vicariously liable as provided under Section 141 of the NI Act. Section 141 of the NI Act is extracted as under:-

> ***Section 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-*

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> *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."*

It is apparent that 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, shall be liable to be proceeded against and punished accordingly. The provisions of Section 141 of the NI Act have been interpreted by the Hon'ble Supreme Court in the case of ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another, (2005) 8 SCC 89*** and it has been laid down that in the complaint before an accused who is sought to be prosecuted for having vicariously committed the offence, is summoned, there should be pleadings/ assertions/averments to the fact that the accused was in charge or was

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responsible to the company for the conduct of the business of the company, failing which such accused is not liable to be proceeded against and punished.

On careful reading of the complaint, it is apparent that there are no pleadings against the petitioner i.e., Anil Chanana, who has been impleaded in place of Anita Daing. In absence of such pleadings in a criminal complaint, Anil Chanana cannot be made accused and proceeded with.

Still further, it has been pleaded in the application that Anil Chanana is owner and Chairman of Amira Pure Foods Private Limited. Whereas, in the present petition, Form No.32 has been annexed, according to which petitioner Anil Chanana resigned as Director and Chairman of the Company with effect from 10.02.2006. The transactions in the present case are during the crop years 2012-2014 and the cheque in question was issued in 2016. In the reply filed, no document has been produced by the respondent to prove that Anil Chanana is still in charge of, and was responsible to the company for the conduct of the business of the company. Anil Chanana is not a signatory of the NI Act (cheque in question).

Still further, if an accused is to be added in a trial arising from the criminal complaint, the provision applicable is Section 319 of the Code of Criminal Procedure, which is extracted as under:-

> ***319. Power to proceed against other persons appearing to be guilty of offence.***
>
> *(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*
>
> *(2) Where such person is not attending the Court, he may be*

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> *arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.*
>
> *(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.*
>
> *(4) Where the Court proceeds against any person under sub-section (1), then-*
>
> *(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;*
>
> *(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.*

On careful reading of Section 319 Cr.P.C., it is apparent that the Court is competent to pass an order summoning the additional accused when it appears from the evidence in the course of any inquiry into or trial that any person not being the accused has committed any offence. In the present case, from the reading of the order, it is apparent that the order in question has not been passed in exercise of powers under Section 319 Cr.P.C.

For the reasons stated above, the order under challenge is set aside. However, the Court shall be at liberty to pass appropriate order, if an application is moved at an appropriate stage supported by the evidence available on file, in accordance with Section 319 Cr.P.C.

The petition is allowed.

21st August, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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