IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: November 28, 2019

(i) CRR-2002-2013

Smt. Amandeep Kaur ....Petitioner

Versus

M/s Videocon Industries Ltd. and others

.....Respondents

Present: Mr. Sunil Chadha, Senior Advocate, with
Mr. Lakshay Bector, Advocate, for the petitioner.

Mr. Vikas Mohan Gupta, Advocate, with
Mr. Varun Mittal, Advocate and
Mr. Anshul Sharma, Advocate, for respondent No.1.

Mr. Tanuj Sharma, AAG, Haryana.

(ii) CRR-287-2013

M/s Videocon Industries Ltd. ....Petitioner

Versus

Sardar Harjit Singh and others ....Respondents

Present: Mr. Vikas Mohan Gupta, Advocate, with
Mr. Varun Mittal, Advocate and
Mr. Anshul Sharma, Advocate, for the petitioner.

Mr. Sunil Chadha, Senior Advocate, with
Mr. Lakshay Bector, Advocate, for respondent No.2.

Mr. Tanuj Sharma, AAG, Haryana.

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Harnaresh Singh Gill, J.

This order shall dispose of the above noted two revision petitions as they arise out of the common judgment dated 13.10.2012 passed by the learned Additional Sessions Judge, Gurgaon, dismissing the appeals filed by the petitioner –

Amandeep Kaur and others and the respondents, thereby upholding the judgment of conviction dated 22.3.2011 and order of sentence dated 23.3.2011 in a complaint filed under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (for short `the Act').

However, for the facility of reference, the order is being passed in CRR-2003-2013.

As per the facts on record, M/s Electrolux Kelvinator Ltd., earlier known as M/s Electrolux Voltas Ltd., and later amalgamated and merged with M/s Electrolux Kelvinator Ltd., and still later changed into M/s EKL Appliances Ltd. and now the said Company stands amalgamated and merged with M/s Videocon Industries Ltd. (complainant).

It is the case of complainant Company that they are in the business of manufacturing and sale of various electrical gadgets and home appliances, including refrigerators and washing machines and M/s Dashmesh Tele Tronics Pvt. Ltd. (of which respondent No.1-accused before the trial Court was one of the Directors) was carrying on the business of purchase and sale of the said items and other goods. The accused-Company had approached the complainant-Company for supply of the manufactured products to them on credit and during this business an amount of Rs.24,44,517/- was outstanding towards the accused-Company as per statements of account Ex.P5/1 to Ex.P5/7 and to discharge the said liability, petitioner and respondent Nos. 3 and 4 had issued and delivered cheque No. 537541 dated 6.9.2001 amounting to Rs.24,44,516/- and when presented for encashment, it was returned with the remarks “insufficient funds” vide memo dated 8.9.2011. Though a legal notice dated 27.9.2001 was issued, yet no payment was made.

After preliminary evidence let by the complainant, petitioner and respondent No.3 accused were summoned and served with the notice of accusation under Section 138 of the Act.

In order to prove its case, the complainant Company had examined its authorized person Ranjit Singh (PW1). The Accused denied the incriminating material against them and also denied the liability.

The trial Court carved out for determination, the following point:-

> “Whether in order to discharge his legal liability the accused issued a cheque bearing No. 537541 dated 6.9.2011 for an amount of Rs.24,44,516/- in favour of complainant and the said cheque was dishonoured on its presentation for collection on account of “Insufficient Funds” in the account of accused and thereafter, the accused has failed to make the payment of said cheque amount inspite of legal notice dated 27.09.2001 and thereby committed an offence punishable under Section 138 of the Act or not?”

The trial Court concluded that presumption was in favour of the complainant-Company holding the cheque in question, that the cheque was in order to discharge the legal debt or liability under Sections 139 and118 of the Act and both, the petitioner and Harjit Singh (respondent No.3-since deceased) were found guilty of the offence under Section 138 of the Act and were accordingly convicted and sentenced. The petitioner, however, was released on probation with a direction to pay a compensation of Rs.10 lacs to the complainant-Company.

The judgment of conviction dated 22.3.2011 and order of sentence dated 23.3.2011 passed by the learned trial Court, were challenged by both the parties and both the appeals were decided together and the decision of the trial Court was upheld by the learned Additional Sessions Judge, vide judgment dated 13.10.2012.

Still aggrieved, both the parties i.e. the complainant and accused-respondent No.3 have filed the present two revision petitions.

I have heard the learned Senior Advocate appearing for the petitioner and learned counsel appearing or the respondents at a length and with their able assistance have also gone through the record of the case.

Learned Senior counsel appearing on behalf of the petitioner has argued that the accused-Company M/s Dashmesh Tele Tronics (Pvt.) Ltd., gave three undated blank signed cheques bearing No. 5375539, 537540 and 537541 in the name of M/s Electrolux Voltas Ltd., from its account No. 0D-90 with Canara Bank out of which, two cheques were encahsed on 28.1.1999 and 3.2.1999 and the third cheque is Ex. P/7 which was lying with the payee Company and was presented by M/s Electrolux India Ltd., by putting the date as 6.9.2001. It is further argued that respondent No.3, who was alone looking after the affairs of the accused-Company (respondent No.4) had written registered post letter dated 20.12.1999 (Ex.DW/4) stating that the Account OD-90 against which the disputed cheque was issued had been closed on 20.12.1999 and requested to return the cheque and as per the statement of account, there was no liability and the cheque in question had been misused by forging the statement of account and invoices. Moreover, respondent No.4 -company had business dealings with M/s Electrolux Voltas Ltd. and no material, whatsoever, had been purchased from respondent No.1-M/s Videocon Industries Ltd.

It is further argued that the petitioner was not the Director of respondent No.4 i.e. M/s Dashmesh Tele Tronics (Pvt.) Ltd. Company nor she was involved in any transaction and had no role to conduct and control the business of the Company-respondent No.4 as she got married in the year 2002 and shifted to United States to join her husband. The cheque in dispute was not under the signatures of the petitioner nor any notice under Section 138 of the Act was ever served upon her individually. Ex. P10 is the only notice on record, which clearly shows that the same was not issued to the petitioner.

It is still further argued that M/s Dashmesh Tele Tronics (Pvt.) Ltd, respondent No.4, which was accused No.1 before the trial Court has been acquitted and if Company is acquitted of the charge, then the Director cannot be held liable. It is yet further argued that no role has been attributed to the petitioner so as to fall within the parameters of vicarious liability. Moreover as per Ex. PA i.e. From No. 32 dated 30.09.2001, the petitioner resigned on 1.9.2001 and cheque in question was issued on 6.9.2001, when she was not a Director and agreement (six business points) between the two Companies i.e. respondent Nos. 1 and 4 executed on 28.1.1999 (Ex.PB) was not signed by the petitioner and was rather signed by Harjit Singh on behalf of respondent No.4-Company and Baljeet Singh Chaudhary on behalf of respondent No.1-Company. In the entire complaint, no specific averment had been made regarding the role of the petitioner.

Learned senior counsel has relied on the judgment of the Hon'ble Supreme Court in National Small Industries Cor. Ltd. Vs. Harmeet Singh Paintal & Anr., (2010)3 SCC 330 to contend that where there is no specific role of a Director or who is not a Director when the cheque is issued, proceedings initiated against such person are liable to be quashed.

Regarding notice under Section 138(b) of the Act, reliance has been placed on a judgment of this Court in Vijay Kumar Sharma Vs. Chhida Mal, 2012(3) RCR (Criminal) 567 to contend that notice is required to be served on a person in his personal capacity. It is, thus, argued that when no agreement was executed by the petitioner-Director and there was no involvement of the petitioner in the day to day affairs of the Company, no liability could have been fastened upon the petitioner. Reliance in this regard was placed on the judgment of

Delhi High Court in Sameer Karnani Vs. The State & Anr., 2010(6) RCR (Criminal) 1278.

Per contra, learned counsel for respondent No.1 has argued that no fault can be found with the judgments and order passed by the Courts below, inasmuch as, the learned trial Court, while holding the petitioner guilty, sentenced her leniently when, being a lady, she was ordered to be released on furnishing probation bonds in the sum of rs.50,000/- with one surety of the like amount for the period of two years and was also directed to pay compensation of Rs.10 lacs to the respondent within a period of two months, whereas respondent No.3-Harjit Singh (since deceased) was also held guilty and he was sentenced to undergo simple imprisonment for a period of six months and to pay a compensation of Rs.20 lacs to respondent No.1-complainat within a period of two months.

Learned counsel for the respondent-complainant has further argued that the Courts below held that the cheque in question was issued by the petitioner and respondent No.3 (since deceased) in discharge of their legal liability, which is enforceable in law and the petitioner and respondent No.3 were not able to rebut the presumption available under law because both of them were the Directors of the Company and even the appeal filed by the petitioner was dismissed by the appellate Court. But as far as the compensation is concerned that has not been awarded adequately by the trial Court and this factor has not been legally appreciated by the appellate Court and thus, a prayer has been made to adequately compensate the complainant-Company by enhancing the same.

While rebutting the arguments raised by the learned Senior Counsel for the petitioner, it is argued by the learned counsel for respondent-complainant that the complainant-Company had supplied goods manufactured by them on credit and payment of some goods was made, but not the entire outstanding amount, which led to the balance dues to the tune of Rs.24,44,517/- regarding which cheque No. 37541 dated 6.9.2001 was issued. It is further argued that earlier M/s Electrolux Kelvinator Limited Company was duly incorporated and was registered under the Companies Act, which was earlier known as M/s Electrolux Voltas Ltd. and later amalgamated with M/s Electrolux Kelvinator Ltd., and was later changed to EKL Appliances Ltd. and now the complainant Company stands amalgamated and merged with M/s Videocon Industries Ltd.

It is also pointed out by the learned counsel for the respondent-complainant that in the Memorandum of Association, it had been shown that Harjit Singh being the Managing Director of the Company, had 100% share in his name and such document was on record. It is further pointed out that the last deal with the complainant-Company was made on 23.07.2001 and accordingly, cheque in question was issued on 6.9.2001 and on this basis, the Courts below have held that the cheque was not for the security purposes. It has also been argued that the change in the names of the Companies their amalgamation took place as per Section 17, Section 391 to Section 394 of the Companies Act, 1956.

To my mind, the petitioner was not the Director of the Company, when the cheque in question was issued nor the petitioner was, thus, responsible for the conduct of the business of respondent No.4-Company at the relevant time. Therefore, no vicarious liability can be fastened upon her in the context of Section 141 of the Act for the offence under Section 138 of the Act. There is no specific averment in the complaint regarding the role of the petitioner as a Director and/or one of the Directors of the accused-Company.

The requirement of Section 141 of the Act is that the person sought to be made liable should be incharge of and responsible for the conduct of the business of the Company at the relevant time. Since, this has not been averred as a fact, therefore, there is no deemed liability of the petitioner as a Director of the Company. There should be a clear and unambiguous allegation as to how the concerned Director i.e. petitioner was in-charge of and was responsible for the conduct and affairs of respondent No.4-Company. Still further, no specific notice has been issued to the petitioner, which is the requirement of the mandate of the law.

For the sake of repetition, it may be noticed that the petitioner had resigned from the Directorship of the Company and the date of resignation is relevant and in the complaint, there is no averment as to how and in what manner, the petitioner was responsible for the conduct of the business of the

Company or otherwise responsible for it in regard to its functioning. The petitioner had not issued any cheque and how she was responsible for the dishonour of the cheque had not been stated. To make a Director responsible or liable for the vicarious liability, strict compliance of the statutory requirements would be insisted. Thus, issue in both the present petitions is no longer res-integra and has been squarely covered by the decisions of the Apex Court and the High Court, as discussed above.

In view of the above, CRR-2002-2013 is allowed; the judgments and orders passed by the Courts below qua, petitioner-Smt. Amandeep Kaur, are set aside and she is acquitted of the charge framed against her. However, CRR-287-2013 preferred by the complainant-Company, is dismissed.

(HARNARESH SINGH GILL)
JUDGE

November 28, 2019
ds

Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No