

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

205

CRM-M-8450-2018

Date of Decision:17.07.2019

Parvesh Kumar

....petitioner

Versus

CONFED Kaithal and another

.....respondents

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present: Mr.Sandeep Berwal, Advocate
for the petitioner

Mr.Pankaj Kundra, Advocate for
Mr.Deepak Sabherwal, Advocate
for the respondents

ANIL KSHETARPAL, J. (ORAL):

Quashing of Criminal Complaint No.2905/13 under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the Act”), has been sought in this petition, on the ground that the Limited Company has not been impleaded as accused.

Section 141 of the Act provides for vicarious liability on 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. However, on a careful reading of Section 141 of the Act, it is apparent that company is required to be arrayed as an accused. In the absence of the company being arrayed as an accused, complaint against the petitioner is not maintainable as he is sought to made liable vicariously. Law on this point is well settled. In a recent judgment passed by the Hon'ble Supreme Court in the case of “Himanshu vs. B.Shivamurthy and another”, 2019(1) RCR (Criminal) 867, the operative part whereof reads as under:

*In the absence of the company being arraigned as an
accused, a complaint against the appellant was therefore*

not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.

In view of the aforesaid observation, the petition stands allowed. Criminal Complaint No.2905/13 under Section 138 of the Act and subsequent proceedings are quashed.

17.07.2019

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**(ANIL KSHETARPAL)
JUDGE**