

Sr. No.134

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

**CRM-M-42056-2019(O&M)
Date of decision:30.09.2019**

Rajiv Jain

.....Petitioner

versus

M/s Aggarwal RMC and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Vikram Bali, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed for quashing of private complaint under Section 138 of Negotiable Instruments Act (for short, 'the Act') dated 13/3/14//11/02/2016 bearing complaint number 58/16(Annexure P-2).

It is contended by learned counsel for the petitioner that since the petitioner had signed the cheques in the capacity of an employee of the Company and not in his personal capacity, therefore, the petitioner can not be held liable, if the cheques are defaulted in their payment. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered in ***2019(1)R.C.R.(Criminal) 867; Himanshu versus B.Shivamurthy and another.*** Relying upon the above-said judgment, the learned counsel for the petitioner has submitted that the petitioner can not be prosecuted for the offence punishable under Section 138 of the Act in his individual capacity. It is further contended by learned counsel for the petitioner that the amount due to the complainant from the company of the petitioner had already been paid. Therefore, cause of action

does not survive in any manner.

Having considered the argument raised by learned counsel for the petitioner and after perusing the case file, this Court does not find any substance in the argument of learned counsel for the petitioner.

So far as the judgment relied upon by learned counsel for the petitioner is concerned, the same is not applicable to the facts of the present case. In that case, the company as such was not impleaded as an accused. Therefore, relying upon another judgment of the Hon'ble Supreme Court rendered in *Anita Hada vs. Godfather Travels and Tours Private Limited, 2012(2) R.C.R.(Criminal) 854*; wherein it had held that in absence of the company, no officer of the company can be held liable vicariously for the liability of the company, it was held by the Hon'ble Supreme Court that the petitioner in that case was not personally liable. However, in the present case, the company, on whose behalf the petitioner had issued the cheques, is very much impleaded as an accused. Therefore, the petitioner being signatory of the cheque can not claim that he is not liable for the offence under Section 138 of the Act. Signatory to the cheque is always liable for the said offence, if the cheque is defaulted.

Still further, Section 141 of the Act provided for consequence in case of offence by the companies. The same is reproduced hereinbelow:-

Section 141 in The Negotiable Instruments Act, 1881

“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.”

A perusal of the above provisions shows that in case of an offence by a company, the person who was incharge of the business of the company and the person who owed responsibility towards the company for the conduct of business, as well as the company itself; has been made liable for punishment. Since as per the case of the complainant, the petitioner happened to be the in charge of the business of the company at the relevant time and in his capacity as such only; issued the cheques, therefore, the petitioner can not now raise the plea that he had issued the cheques as functionary of the company, therefore, he can not be held liable for the offence personally. Accordingly, this argument by learned counsel for the petitioner is rejected.

Another argument of learned counsel for the petitioner is that the money has already been paid by the company of the petitioner, therefore, the cause of action by the complainant does not survive any more. However, this argument of learned counsel for the petitioner is also not sustainable. Firstly, the offence under Section 138 of the Act, stood completed; on the date when the default was committed and the petitioner had not ensured the payment of cheque on receipt of the notice. Therefore, any payments subsequent thereto, may be a ground for compounding of the offence; if the complainant company so agrees for, however, the same can

not be a ground for quashing of the complaint and the offence as such. Secondly, it is not even borne out from the record that the payment, stated to have been made by the company of the petitioner, subsequently, to the complainant, were in lieu of the cheques, which are involved in the present complaint or not. The said alleged payments are, otherwise also, totally irrelevant for the purpose of the trial of the accused for the offence under Section 138 read with Section 141 of the Act.

In view of the above, finding no merit in the petition, the same is hereby dismissed.

30th September, 2019

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*