

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

136)

CRM-M-43181 of 2019 (O&M)

Date of Decision: 14.10.2019

Sh. Vinay Badera

...Petitioner

Versus

M/s S.G. Technofab Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vishal Satija, Advocate, for the petitioner.

...

AMOL RATTAN SINGH, J. (Oral)

This petition has been filed challenging the order passed by the learned JMIC, Faridabad, dated 08.02.2019 (Annexure P-2), summoning the petitioner, Vinay Badera, in complaint No.NACT/11233/2018 dated 25.12.2018, instituted under the provisions of Sections 138 of the Negotiable Instruments Act, 1881.

Learned counsel for the petitioner relies upon a judgment of the Supreme Court dated February 28, 2019, passed in SLP (Crl.) nos.9626-28 of 2017, titled as **A.R. Radha Krishna v. Dasari Deepthi and others**, to submit that if a Director has been impleaded/arraigned as an accused in a complaint under the provisions of Sections 138 and 141 of the Negotiable Instruments Act, 1881, the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company's business at the time when the offence was committed.

He submits that no such averment having been made in the complaint, (copy Annexure P-1), specific to the petitioner, the complaint

itself is not maintainable.

A perusal of the aforesaid copy of the complaint shows that M/s Shubham Civil Projects Pvt. Ltd. has been impleaded as accused no.1, through its Director, Vinay Badera, with the petitioner, “Vinay Badera, Director of M/s Shubham Civil Projects Pvt. Ltd.,” having been impleaded as accused no.2.

For the purpose of dealing with the contention of the learned counsel for the petitioner, paragraphs 3, 4 and 5 of the complaint are reproduced hereinbelow:-

- “3. That the complainant have been supplying material and executing the works in terms of specifications as stipulated in the said work orders and total bills raised from time to time for the materials supplied and services rendered in the execution of the works was of the amount of Rs.1,55,86,024.00 against which total amount of Rs.1,04,71,000.00 has been paid by the accused from time to time, thereby leaving a balance amount of Rs.51,15,024.00 payable to the complainant.
4. That upon the insistence and persuasion of the complainant, the accused issued cheque number 005242 dated 18.07.2018 for Rs.46,00,000.00 drawn on HDFC Bank, Laukik Apartment, Ground Floor Plot No.3, Bhandarkar Road, Pune-411004, Maharashtra. Original cheque is annexed herewith as Annexure-B.
5. That the complainant presented the said cheque at our bank namely ICICI Bank Ltd. at Kanshiram Nagar, Kasganj-207123, Uttar Pradesh. However, payment was refused by the Drawee Bank with the endorsement “Payment Stopped by Drawer” vide return memo dated 15.10.2018 which was received by the complainant on 19.10.2018. The complainant was shocked to see the remark because the accused had completely assured the complainant that the said cheque would not be dishonoured. An original copy of return memo dated 15.10.2018 is annexed herewith as Annexure-C.”

Upon specific query to learned counsel as to who had signed the cheque in question (a copy of which would have obviously been annexed with the complaint), he has produced in court a photocopy of cheque no.005242, shown to be drawn on the HDFC Bank, Pune, on 18.07.2018, signed by one V. Badera, for M/s Shubham Civil Projects Pvt. Ltd., as its authorized signatory.

That being so, as to whether the petitioner is actually V. Badera or not, is something which is to be proved before the trial court on the basis of the evidence led before it.

Hence, as regards the ratio of the judgment of the Supreme Court as aforesaid, I do not see how it is applicable at all as regards challenging the order of the learned trial court summoning the petitioner as an accused, with the only two persons named as accused, being the aforesaid company through Vinay Badera, and Vinay Badera himself, (seen also with the averments made in the complaint).

Consequently, without making any comment on the actual merits of the case, for or against the petitioner, in my opinion this petition does not deserve to be entertained, and is consequently dismissed.

14.10.2019
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes