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

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**C.R.M-M No.46873 of 2017 (O&M)
Date of Decision : 11.02.2019**

Amit Sood and others ...... Petitioners

Versus

M/s India Dyes & Chemicals ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. Om Pal Sharma, Advocate
for the petitioners.

Mr. Arshdeep Bhullar, Advocate
for the respondent.

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AJAY TEWARI, J. (ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of complaint bearing COMA No.638 of 2015 (Annexure P-1) instituted by respondent on 21.01.2015 against the petitioners under Section 138 of the Negotiable Instruments Act as well as summoning order dated 22.01.2015 (Annexure P-2) passed by the JMIC, Ludhiana whereby the petitioners have been summoned.

The ground taken by the petitioners is that these three petitioners did not sign the cheque and therefore could not be fastened with the liability. Counsel for the petitioners has argued that the position was cleared by the Supreme Court in the matter of ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another, 2005(4) R.C.R. (Criminal) 141*** which was subsequently followed by the Ld. Single Judge of the Andhra Pradesh High Court in the matter of ***M/s Merbanc Financial Services Ltd. vs. M/s Chilipi***

Krish Garments (P) Ltd. and others, 2005(3) R.C.R. (Criminal) 763.

Counsel for the respondent points out that in the complaint the following averments were made:-

> *"It is pertinent to mention here that all the accused have been actively participating in the acts and day to day dealings of the accused firm."*

As per the counsel for the respondent, this averment covers the points mentioned in S.M.S. Pharmaceuticals Ltd.'s case (supra) and M/s Merbanc Financial Services Ltd.'s case (supra).

In my opinion, the petition has to fail. In S.M.S. Pharmaceuticals Ltd.'s case (supra), the Supreme Court held as follows:-

> *"21. In view of the above discussion, our answers to the questions posed in the Reference are as under:-*
>
> *(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied."*

Even in the judgment of M/s Merbanc Financial Services Ltd.'s case (supra), the appeal had been filed against the order of an acquittal as against A-4. The allegations in that complaint were as follows:-

> *".....The said cheque was signed and issued by the accused Nos.2 and 3 being the Managing Director and Joint Director of accused No.1, being they are looking after the day-to-day affairs of the accused No.1 company for and on behalf of accused No.1, with the knowledge, consent and connivance of the accused Nos.4 and 5."*

A perusal thereof makes it clear that there was no averment that

A-4 was either in charge of the company or actively participated. As mentioned above, the situation in the present case is completely different as it was specifically averred in the complaint that all the accused have been actively participating in the acts and day to day dealings of the accused firm.

Consequently, the petition is dismissed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

February 11, 2019
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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No