IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 825 OF 2022

Mukesh s/o Jamnadas Udeshi, Aged 48 years, occ. Business, and the partner of M/S Jamnadas and Company, R/o 247, Shrivallabh Complex, Dharaskar Road, Itwari, Nagpur

... APPLICANT

VERSUS

Haldiram Foods International Pvt. Ltd. (Formerly), Komal Foods Pvt. Ltd., Having its Corporate Office at 145/146, Old Pardi Naka, Bhandara Road, Nagpur, Through its Director Shri Srinivasrao s/o Sambhashivrao Vinnokata, Aged 52 yrs, Occ. Director, R/o Wathoda, Nagpur.

... NON-APPLICANT

Shri Prakash Naidu, Advocate for the applicant.
Shri Shyam Dayaram Dewani, Advocate for the non-applicant.

CORAM : VINAY JOSHI, J.
CLOSED FOR JUDGMENT ON : 03/08/2022
JUDGMENT PRONOUNCED ON : 30/08/2022.

JUDGMENT :

Heard. **ADMIT**.

2. The matter is taken up for final hearing by consent of both

the parties.

3. This is an application seeking quashment of issuance of notice and a complaint filed in terms of Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (for short 'the NI Act').

4. The applicant is an accused in Summary Criminal Complaint No. 8037 of 2020 filed by the non-applicant – Private Limited Company. The applicant (accused) seeks to quash the complaint on account of non-compliance of mandatory averments as required in terms of Section 141 of the NI Act. It is contended that the complaint is filed against a Partnership Firm without specific averments that the accused were in-charged of and were responsible for the conduct of the business of the Firm. According to the applicant/accused, the complaint is not tenable for want of specific pleadings to that effect.

5. At the outset, learned Counsel appearing for the non-applicant contended that in the light of availability of the alternate remedy in terms of Section 397 of the Code, the application under Section 482 of the Code of Criminal Procedure (for short 'the Code') is not maintainable. Besides that it is submitted that, the complainant has

made sufficient averments; the challenge is untenable.

6. The complainant is a Company registered under the provisions of the Companies Act indulging into a manufacturing and marketing of food items. The accused is a registered partnership Firm, who is a vendor and supplier of Steel material. The complainant – Company has placed an order for supply of Steel for which advance amount of Rs.50 lakhs have been paid. The contract was not materialized, therefore, the accused Firm refunded sum of Rs.25 lakhs. However, for refund of remaining amount of Rs. 25 lakhs, the accused – Firm issued a cheque of the equal sum dated 06.06.2020, which on presentation was dishonored. The statutory notice was issued, however it was not complied and therefore, the complainant -Company has filed a private complaint in terms of Section 200 of the Code for the offence punishable under Section 138 of the NI Act. The learned Magistrate by taking cognizance of the complaint, has issued a process against the Firm and its two partners. Being aggrieved by the issuance of summons, accused no. 2 Mukesh (one of the partner) has applied to this Court to quash the complaint for the aforesaid reasons.

7. At the inception, the learned Counsel for the non-applicant has objected the very maintainability of the application under Section

482 of the Code for availability of alternate remedy. To substantiate said stand, the non-applicant has placed reliance on some decisions, which have no direct relevance.

8. On the other hand, the learned Counsel for the applicant strenuously argued that availability of remedy under Section 397 of the Code would not make an application under Section 482 of the Code, not maintainable. In support of the said contention, he relied on the decisions in cases of ***Prabhu Chawla vs. State of Rajasthan and anr. 2016 AIR SC 4245, Dhariwal Tobaco Products Ltd. And ors. vs. State of Maharashtra and anr. 2009 AIR SC 1032, M/s Pepsi Foods Ltd. vs. Special Judicial Magistrate 1998 AIR SC 128, Vijay and anr. vs. State of Maharashtra 2017 AIR SC 397 and Arron Purie vs. Jayakumar Hiremath 2017(7) SCC 767***. In view of clear dictum laid in above referred cases, it is evident that the remedy under Section 482 of the Code is available despite the availability of the alternate remedy.

9. On facts, the challenge is mainly on the ground that there are no specific allegations in the complaint about the part played by the accused. He would submit that there must be specific allegations in the complaint as to how the partners are in-charged and responsible for the conduct of the business of the Firm. It is submitted that only such a

persons would be held liable, if at the time when the offence is committed he was in-charged and was responsible for the conduct of the business of the Firm. Merely being a partner of the Firm, in absence of specific averments, will not make him responsible. According to him, in absence of specific averments, which is a statutory requirement under Section 141 of the NI Act, continuation of criminal prosecution is abuse of the process of the Court. To support the said contention, the applicant relied on the decisions in cases of ***N.K. Wahi vs. Shekhar Singh and ors. 2008(1) Mh.L.J. 833, Sabitha Ramamurty and anr. vs. R.B.S. Channabasavaradhya 2006(4) Crimes 67 and Shobhagmal Bankatlal Maloo and ors. vs. State of Maharashtra and anr. 2016 ALL MR(Cri) 2555***.

10. *Per contra*, the learned Counsel appearing for the complainant do not dispute the legal requirement, however would submit that, it is a factual aspect to be decided on case to case basis. He took me through the avernments of the complaint to contend that there is specific pleadings regarding the role and liability of each partner and thus, the complaint withstand on the test of legal requirement. He has also relied on the decisions in cases of ***Rallis India Limited vs. Poduru Vidya Bhushan and ors. (2011) 13 SCC 88, Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited (2016)***

10 SCC 458 and G. Ramesh vs. Kanike Harish Kumar Ujwal and anr. 2019 CRI L.J. 3340.

11. Reading of above decisions, postulate that there is almost unanimous judicial opinion that necessary averments ought to be contend in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the NI Act is sought to be fastened vicariously on a person concerned with the Firm/Company, if there is averment about his role and responsibility.

12. In the light of the above position, the avernment made in the complaint needs serious consideration. A Partnership Firm is made a principal accused along with two partners of the Firm. In paragraph 2 of the complaint, it is averred that the accused is a partnership Firm working through its partners i.e. Mr. Jamnadas Udeshi and Mukesh Udeshi (the applicant herein). My attention has been invited to paragraph 19 of the complaint, wherein it is specifically pleaded that the accused Firm is working through two partners namely Jamnadas and Mukesh who are jointly and severally responsible for the acts committed by the accused Firm. Moreover, the learned Counsel for the complainant has invited my attention to the aspect that the applicant Mukesh has signed the disputed cheque.

13. No doubt, the primary responsibility is on the complainant to make specific averments to hold the partners vicariously liable. It is not necessary for the complainant to specifically reproduce the wordings of the Section 141 of the NI Act, but what is required is a clear statement of fact, so as to enable the Magistrate to arrive at *prima facie* opinion that, the accused are vicariously liable. Section 141 of the NI Act raises a legal fiction if foundational facts are proved. The complaint is to be examined by the Magistrate from the perspective whether there are sufficient averments to meet the statutory requirement. If the Magistrate is satisfied that the avernment makes out a case to fall in Section 141 of the Act, he would be well justified in passing an order of issuance of process. In above referred case of *G. Ramesh (Supra)*, it is observed that while determining the issue whether there are sufficient avernments in the complaint to meet the requirement of Section 141(1) of the NI Act, a holistic reading of the complaint is necessary. Therefore, in a given case on overall reading of the complaint one has to find whether the avernments made therein satisfies the basic requirement to form a *prima facie* opinion. The specific averments that the Firm is acting through the accused and they are responsible for the acts of the Firm are sufficient to take a *prima facie* view to fasten the liability. The complaint cannot be quashed

merely on the ground that the role of each partner has not been specified. The complaint speltout that the Firm is working through its partner and he is responsible, therefore, it is a fit case to send accused for trial. Moreover, the petitioner is a signatory of the cheque and therefore, he cannot scuttle the liability at the threshold.

14. Having regard to the above facts, the case of quashing of complaint, has not been made out. In view of that, the application stands rejected. No order as to costs.

(VINAY JOSHI, J.)

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