

221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20901-2018
Date of Decision:02.12.2022

M/S VIKAS TRADING COMPANY Petitioner

Versus

KRISHNA DEVI Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Abhinav Gupta, Advocate for the petitioner.

Mr. Lovish Arora, Advocate for the respondent.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition under Section 482 Cr.P.C is seeking quashing of order dated 12.09.2017 (Annexure P-4) passed by learned Sessions Judge, Sangrur whereby order dated 20.05.2016 passed by learned Trial Court has been set aside and complaint bearing NACT No.150 of 2015 dated 13.05.2015 has been quashed *qua* present respondent.

The facts which are necessary for adjudication of present petition are that the petitioner in the ordinary course of his business entered into transactions with M/s Sardar Agro Industries, which is a partnership firm. There are three partners of M/s Sardar Agro Industries and present respondent is one of them. As per partnership-deed the shares of respondents is 1/3.

The aforesaid partnership firm issued a cheque bearing No.418850 dated 29.12.2014 of Rs.22,47,496/- in favour of the petitioner which on being presentation was dishonored. The petitioner preferred a complaint under Section 138 of NI Act before Trial Court which

summoned all the partners. The respondent preferred revision petition before Sessions Court which came up for consideration before learned Sessions Judge, Sangrur, who vide impugned order dated 12.09.2017 set aside summoning order *qua* respondent. The summoning order was quashed on the sole ground that respondent though is partner yet has not signed the cheque in question.

Learned counsel for the petitioner submits that complainant/petitioner was supposed to make averment against the partners that they are actively involved in day to day affairs and it was responsibility of the respondent to point out that she is not involved in day to day affairs of the firm.

Learned Counsel relies upon a two Judge Bench recent judgment of Hon'ble Supreme Court in ***S.P. Mani and Mohan Dairy Vs. Dr. Snehalathat Elangovan 2022 SCC online SC 1238*** to contend that respondent could not be absolved from her responsibility merely because she is not signatory of the cheque.

Learned counsel for the respondent would submit that respondent is a sleeping partner and she was not involved in day to day affairs of the firm. The partnership firm which has issued cheque in question is running a rice mill. The respondent being house wife is not involved in the affairs of the firm and male members of the family are looking after affairs of the firm.

From the perusal of impugned order, it comes out that learned Sessions Judge has allowed petition of the respondent on the sole ground that respondent herein was not signatory of the cheque. Merely, the fact that respondent not was signatory of the cheque could not be

ground to set aside summoning order.

In view of the judgment cited by learned counsel, the impugned order is not sustainable. Hon’ble Supreme Court has clearly held that a partner/director cannot be absolved from his responsibility merely because he is not signatory of the cheque. If a person is not involved in the day to day affairs of the company/firm, he can put forth his defence to indicate that he is not involved in the affairs of the company/firm.

Faced with the judgment and situation obtained, the parties are ad idem that impugned order being non-speaking and contrary to law laid down by Hon’ble Supreme Court in *S.P. Mani and Mohan Dairy* (supra) deserves to be set aside and matter be remanded back to learned Sessions Judge, Sangrur to pass a fresh order.

In view of judgment of Hon’ble Supreme Court *S.P. Mani and Mohan Dairy* (supra) and consent of parties, the impugned order is set aside and matter is remanded back to learned Sessions Judge to pass an order a fresh after granting opportunity to both sides.

The parties at the first instance are directed to appear before learned Sessions Judge, Sangrur on 23.12.2022 and thereafter as directed by learned Sessions Judge, Sangrur.

Petition is disposed of in the above terms.

(JAGMOHAN BANSAL)
JUDGE

02.12.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No