(120) IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24578-2018
Date of decision : 17.08.2022

SWATANTER VAID & ANOTHER

... Petitioners

Versus

NARESH KUMAR & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

Mr. Rajdeep Singh Chugh, Advocate
for the applicant-respondent No.1.
Mr. Kirat Singh Sidhu, D.A.G, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The present petition under Section 482 Cr.P.C. has been filed for quashing of the complaint No.COMA-13289/2017 dated 01.11.2017 (Annexure P-2), the summoning order dated 02.11.2017 (Annexure P-3) along with all consequential proceedings.

2. The brief facts of the present case are that the aforementioned complaint was instituted by the complainant-respondent against four accused namely, M/s Alepine Garments Pvt. Ltd. through its authorised signatory Sh. Navnit Aggarwal, Sh. Navnit Aggarwal, authorised signatory, M/s Alepine Garments Pvt. Ltd., Swatanter Vaid, Managing Director, M/s Alepine Garments Pvt. Ltd. (petitioner No.1) and Pardeep Kumar, Financial Director, M/s Alepine Garments Pvt. Ltd. (petitioner No.2). The allegations were that a cheque had been issued by M/s Alepine Garments Pvt. Ltd. to the respondents and the said cheque had been signed by accused No.2-Navneet Aggarwal. At the relevant time, accused No.3-Swatanter Vaid and accused No.4-Pardeep Kumar (petitioner Nos.1 and 2) were the Managing Director and Financial

Director, respectively. The said cheque was dishonoured consequent to which the complaint was instituted and the summoning order dated 02.11.2017 (Annexure P-3) was passed.

The averment qua the role of the officers of the Company finds mentioned in para 01 of the complaint and the same is reproduced herein below:-

> *"1.That the accused No.2 is the authorised signatory of his company i.e. accused No.1. The accused No.3 is the Managing Director of the accused No.1 and managing its affairs. The accused No.4 is the Financial Director of accused No.1 and managing its finances. All the accused are incharge of day to day conduct of business of their company and responsible to their company."*

3. The present petition came to be filed on behalf of the petitioners and the sole contention of the petitioners was that only accused No.2-Navneet Aggarwal ought to be liable as he was the signatory of the cheque and responsible for running of the day-to-day affairs of the Company. The petitioners were Directors but had no specific role to play and there was no averment in the complaint as to how they were Incharge of and responsible for the day-to-day running of the Company.

4. Pursuant to the filing of the petition on 12.07.2018, the following order was passed:-

> *"It has been submitted that only Navneet Aggarwal was the signatory of the cheque and the petitioners are not liable. However, said Navneet Aggarwal has not been impleaded as party.*

Counsel for the petitioners is directed to implead Navneet Aggarwal as party in the case.

Adjourned to 6.8.2018.

Photocopy of the trial Court record be summoned."

5. Thereafter, on 06.08.2018, the following order was passed:-

*"**CRM-25749-2018***

This is an application for impleading Navneet Aggarwal as respondent No.3 in the case.

For the reasons and facts mentioned in the application, the same is allowed. Amended memo of parties is taken on record.

CRM-M-24578-2018

It has been submitted that no cheque was signed by the petitioner.

Notice of motion for 11.12.2018.

Trial Court is directed to adjourn the matter beyond the date fixed by this Court."

Pursuant to the passing of the aforementioned orders proceedings have been effectively stayed before the Trial Court.

6. The learned counsel for the petitioners while reiterating the grounds taken in the petition has submitted that petitioner No.1 is undoubtedly the Managing Director and petitioner No.2 is a Financial Director. However, a perusal of the complaint would reveal that no specific role has been attributed to them with respect to the management of the day-to-day affairs of the Company and therefore, in the absence of either of them being signatories they could not have been summoned under the provisions of the Negotiable Instruments Act. The liability if any lay with Navneet Aggarwal, who was the signatory to the cheque.

7. On the other hand, the learned counsel for the complainant/respondent submits that the averments in para 01 of the

complaint (supra) clearly establish the role played by the petitioners and nothing more needs to be mentioned so as to invoke the powers of the Court to summon the accused. He submits that even otherwise, qua petitioner No.1 who is the Managing Director no averments whatsoever are required and the designation 'Managing Director' is enough to establish his role. So far as petitioner No.2 is concerned his role has also been clearly spelt out when it is stated that in para 01 of the complaint that accused No.4 was the 'Financial Director' of accused No.1-Company and managing its finances. He contends that in terms of Section 141 of the Negotiable Instruments Act, the averment is sufficient and nothing more needs to be said. He has further referred to the Company/LLP Master Data taken from the website of the Ministry of Corporate Affairs, which clearly shows that petitioner Nos.1 and 2 were Directors w.e.f November, 2015 and the cheque in question has been issued during that period. The Company/LLP Master Data is taken on record as mark (X). He has placed reliance on the judgments of the Apex Court in **National Small Industries Corp. Ltd. Versus Harmeet Singh Paintal & another,** **2010(3) SCC330**, and **Standard Chartered Bank Versus State of Maharashtra & others**, **2016(2) R.C.R. (Criminal) 778**.

8. I have heard the learned counsel for the parties at length.

9. The Hon'ble Supreme Court has dealt with the issue in hand in a number of judgments.

In **National Small Industries Corp. Ltd.** (supra), it was held as under:-

"8.Section 138 of the Act refers about penalty in case of dishonour of cheque for insufficiency of funds in the account. We are more concerned about Section 141 dealing with offences by Companies which reads as under:-

"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.

Explanation.-- For the purposes of this section,-

(a) `company' means any body corporate and includes a firm or other association of individuals; and

(b) `director', in relation to a firm, means a partner in the firm.

It is very clear from the above provision that what is required is that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, 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. Every person connected with the company shall not fall within the ambit of the provision. Only those persons who were in-charge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action. It follows from the fact that if a Director of a Company who was not in-charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for a criminal offence under the provisions. The liability arises from being in-charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company."

*** *** ***

23. Section 291 of the Companies Act provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. A company, though a legal entity, can act only through its Board of Directors. The settled position is that a Managing Director is prima facie in-charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in-charge of and responsible for the conduct of the business of the company. A combined reading of Sections 5 and 291 of Companies Act, 1956 with the definitions in clauses 24, 26, 30, 31 and 45 of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:

(a) the Managing Director/s;

(b) the whole-time Director/s;

(c) the Manager;

(d) the Secretary;

(e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;

(f) any person charged by the Board of Directors with the responsibility of complying with that provision;

Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

But if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in-charge of the business of the company" or by stating that "he was in-charge of the day-to-day management of the company" or by stating that "he was in-charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act.

24. From the above discussion, the following principles emerge :

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act,

> *1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.*
>
> *(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.*
>
> *(v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.*
>
> *(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.*
>
> *(vii) The person sought to be made liable should be in-charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."*

[Emphasis supplied]

10. A perusal of the aforementioned judgment would clearly establish that in the case of a Managing Director no averment is required as to how he was responsible for the conduct of the business of the Company as his very designation i.e. that of being a Managing Director is sufficient to establish his active role in the affairs of the Company. With respect to any other Director, there must be an averment in the complaint that the said Director was Incharge of and responsible for the conduct of the business of the Company at the relevant time. This has to

be averred as a fact as there is no deemed liability of a Director in such a case.

11. Examining the facts of the present case in light of the discussion above, it may be pointed out that so far as petitioner No.1 is concerned, he is the Managing Director. So far as petitioner No.2 is concerned, he is the Financial Director. A perusal of para 01 of the complaint reproduced above would clearly establish that the complainant has duly set out the role of both the petitioners clearly and specifically. Nothing more needs to be said. Undoubtedly, the petitioners were at the relevant point in time Directors of the Company concerned. This fact otherwise has not been disputed by the counsel for the petitioner. Therefore, the petitioners cannot in any manner evade their liability under the Act.

12. In view of the above, I find no merit in the present petition and the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

17.08.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No