

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M-30783-2017 (O&M)
Reserved on: 14.10.2022
Pronounced on: 01.12.2022

M/s Royal Pressing and Component Pvt. Ltd. and another ...Petitioners

vs.

Bhushan Power & Steel Ltd. ...Respondent

2. CRM-M-30789-2017

M/s Royal Pressing and Component Pvt. Ltd. and another ...Petitioners

vs.

Bhushan Power & Steel Ltd. ...Respondent

3. CRM-M-30790-2017

M/s Royal Pressing and Component Pvt. Ltd. and another ...Petitioners

vs.

Bhushan Power & Steel Ltd. ..Respondent

4. CRM-M-30844-2017

M/s Royal Pressing and Component Pvt. Ltd. and another ..Petitioners

vs.

Bhushan Power & Steel Ltd. ...Respondent

5. CRM-M-30850-2017

M/s Royal Pressing and Component Pvt. Ltd. and another ...Petitioners

vs.

Bhushan Power & Steel Ltd. ...Respondent

6. CRM-M-29629-2017
M/s Royal Pressing and Component Pvt. Ltd. and another ...Petitioners
vs.
Bhushan Power & Steel Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Kunal Dawar, Advocate for the petitioners

Mr Vinish Singla, Advocate for the respondent

AMAN CHAUDHARY, J.

1. This order shall dispose of abovementioned six petitions involving common questions of law and facts between the same parties. For the sake of brevity, the facts are being taken from CRM-M-30783-2017.

2. By means of the instant petitions, the jurisdiction of this Court under Section 482 Cr.P.C. has been invoked seeking quashing of criminal complaint dated 14.07.2016 bearing no. 4801 of 2016 titled as Bhushan Power and Steel Ltd. vs. Royal Pressing and Component Pvt Ltd. and another filed under Section 138 /141 of the Negotiable Instruments Act, 1881 (for short 'the Act') and consequent summoning order dated 14.07.2016, Annexure P-3.

3. Concisely, the facts are that, three cheques dated 02.05.2016, 16.05.2016 and 30.05.2016 issued by Royal Pressing and Components were dishonoured with remarks "account closed" vide three different memos of even date 02.06.2016. The impugned complaint came to be filed on 13.7.2016 against the present petitioners. Consequent thereto, summoning

order dated 14.07.2016, Annexure P-3, was issued, whereby they were summoned.

Submissions:

4. Learned counsel for the petitioners had submitted that M/s Royal Pressing and Components Private Ltd. and Royal Pressing and Components, a proprietorship concern, are two separate legal entities, with petitioner no.2, as Director and Proprietor thereof. The cheques, the dishonour of which, has led to filing of the complaint had been issued by the Proprietorship concern-M/s Royal Pressing and Component operating from 436-C, Shri Developers, Industrial Estate, Mahuakhera Ganj, Kashipur, Uttarakhand and not by petitioner No.1 company, which carries its operations from I-36, Site -C, Greater Noida, UP. His solitary legal submission while making a reference to the provisions of Section 138 of the Act was that, no other person except the drawer of the cheque from whose account the cheque has been dishonoured can be held liable to face prosecution, as has been held in a catena of judgments of Hon'ble the Supreme Court of India. Reference in this regard is made by the learned counsel for the petitioners, to paras 5 and 11 of the petition. It has been mentioned in para 9 that cheques in question, that were issued and dishonoured, were drawn on the account of proprietorship concern and not on the private limited company.

5. Learned counsel drew the attention of the Court to the cheques, Annexure P-2, to show that the account from which the cheques were drawn was of the proprietorship concern Royal Pressing and Components and not on the account of petitioner No.1. – Royal Pressing

and Components Pvt Ltd which is a Private Limited Company, which though were signed by petitioner No.2, a fact admitted, but in his capacity as a sole proprietor, not as Director of the petitioner no. 1 -private limited company, and as stated in para 3 of the petition, instead of arraying the proprietorship concern, the complaint has been wrongly filed against petitioner No. 1- private limited company.

6. In order to substantiate the fact that the cheques in question were, as matter of fact, drawn on the account of the proprietorship firm and not the private limited company, reference is made to the certificate issued by HDFC bank dated 4.8.2017, Annexure P-4, wherein it has been certified that Royal Pressing and Component was holding one proprietorship current account, which, according to the learned counsel for the petitioners is the same account as mentioned in the cheque Annexure P-2, which was closed on 19.2.2016.

7. To buttress his submissions, he placed reliance on the judgments of Hon'ble The Supreme Court of India in the cases of **P.J. Agro Tech Limited and others vs. Water Base Limited** 2010(12) SCC 146 and Hon'ble Delhi High Court in the case of **Manish Kant Aggarwal vs. National Agricultural Cooperative Marketing Federation of India Ltd.** 2008(23) RCR (CrI.) 353 (DH) to contend that a company and its Director, could not be held liable or prosecuted, for a cheque not having been drawn on its account. Further, in case the proceedings, are found to be an abuse of process of law, the same can be quashed under section 482 of Cr.P.C. as was held by Hon'ble The Supreme Court of India in the case of **Jugesh Sehgal vs. Shamsher Singh Gogi** 2009(3) RCR (CrI.) 712. In view of the

above, he prayed that the complaint and the summoning order, are liable to be quashed and he thus rested his case.

8. Opposing the petitions, learned counsel for the respondent submitted that the hyper-technical objection taken by the learned counsel for the petitioners is that in place of M/s Royal Pressing and Components Pvt. Ltd. the proprietorship firm ought to have been arrayed as an accused, on the account of which, the cheques were drawn, is not tenable. In this regard it was his submission that when admittedly the company and the firm are being managed by petitioner No.2, in his capacity as Director and Proprietor, therefore the complaint is maintainable. Given that, the summoning order has been validly passed. He further submitted that accused No.2 (petitioner No.2 herein) had signed and issued the cheques, in question. His signatures are clearly identifiable from those appended to the present petition, affidavit in support thereof, as also the Vakalatnama and the same was admitted by the learned counsel for the petitioners. Even otherwise, non-arraying of the firm is not fatal, as per settled law. He further submitted that the address of the private limited company as also the proprietorship firm is the same, being plot No.436-C, Shri Developers Industrial Estate, Mahuakhara Ganj, Kashipur, US Nagar, (UK) Kashipur, as is also apparent from the Annexures P-5 and P-6, attached with the petition and the invoice dated 29.7.2014, issued by the complainant-respondent, Mark 'A'. Even the material was supplied at the said address of the private limited company-petitioner No.1, as such, the plea taken in the present petition, is misconceived. The legal notices of demand, sent at 436, Shri Developers, Mahuakharea Ganj, Kasipur, Uttrakhand, 244713, which

is the address of the proprietorship firm, as well as of the Director of the said company, who is also the sole proprietor of the said proprietorship firm, were refused to be accepted by him as per the report dated 6.8.2016, Mark 'B'. He further refers to Annexure P-4, which is the certificate issued by the Bank concerned to submit that the account of the firm was closed on 19.2.2016, however, still 15 cheques in question were issued, which form of part of six complaints involving an amount of Rs.59.47,871/-, between May, 2016 to November, 2016, which shows the ill-intention of the petitioner no.2 was to not discharge the legally enforceable debt.

9. While placing reliance upon the judgment of Hon'ble The Apex Court, in the case of **Rangappa vs. Sri Mohan**, (2010) 11 SCC 441, he argued that when issuance of cheques in question and signatures of petitioner No.2 are admitted, a presumption of a legally enforceable debt has arisen as per the Act and now it is for the accused-petitioners to rebut the said presumption, during trial.

10. In rebuttal, learned counsel for the petitioners, contended that the address of proprietorship firm in question, which had issued the cheques in question was Plot No.436-C, Shree Developers Industrial Estate, Mahuakharea Ganj, Kashipur, Udham Singh Nagar, Uttarakhand, address of which has been mentioned in Annexure P-5, which is a Central Excise Registration Certificate of the proprietorship firm as well as Central Board of Excise and Custom, Annexure P-6, wherein also the same address has been mentioned, whereas the address of petitioner No.1 was I-35 to I-38 & 51, 52 Site-C, Surajpur, Industrial Area, Greater Noida (UP), as is easily discernible from the complaint itself, mentioned therein as the second

address as well as in the Resolution of the Pvt. Ltd. Company, attached alongwith the power of attorney in this petition.

11. Submissions of the learned counsel appearing on behalf of the respective parties were heard at length and the material on record considered.

12. At the outset, a reference is made to the response of learned counsel for the petitioners to a pointed query posed during the course of hearing, admitting that accused No.2 in the complaint and petitioner No.2 in the present petition are the same person, whose name somehow due to typographical error or otherwise has been shown differently.

Analysis:

13. Before embarking to delve in the issues for determination in the present case, it would be apposite to advert to the chequered factual matrix. The admitted facts that emanate are namely; petitioner No.2 is both, a Director of petitioner No.1 company as well as the sole proprietor of the firm. The cheques signed by petitioner No.2, as not denied, rather admitted, were drawn on an account of the proprietorship firm maintained by him. Instead of filing a complaint against the firm, as stated in para 3 of the petition, the same has been filed against petitioner No.1- private limited company. Invoice Mark 'A', issued by the proprietorship firm has the same address as that of petitioner No.1-private limited company where material was delivered. The notices were sent to the petitioner no.1 company as well as petitioner No.2 at the address of the proprietorship concern i.e. "No.436, Shri Developers, Mahuakharea Ganj, Kasipur, Uttarakhand"; there is no denial that petitioner no.2 refused to accept the notice, Mark 'B'; the

aforesaid makes it evident that undeniably they are all one and the same, created and incorporated by petitioner No.2; furthermore, the three cheques in question were issued on 02.05.2016, 16.05.2016 and 30.05.2016, while the bank account was closed on 19.02.2016, as is evident from Annexure-P-

4. The main contention raised is that, petitioner No.1 and petitioner No.2 being the Director thereof, cannot be prosecuted for the cheque having been drawn on account of proprietorship firm, which is not an accused in the complaint. Even petitioner No.2, being a sole proprietor, cannot be prosecuted without the proprietorship firm, being arrayed as an accused in the complaint, in the same manner as the Directors cannot be held vicariously liable, in a case of a company not having been arrayed.

14. It would be pivotal to discuss the legal standards required to be met under the Negotiable Instruments Act to establish the offence under Section 138 of the Act, which read thus:-

“138- Dishonour of cheque for insufficiency, etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to

have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for 19 [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both.”

15. Perusal of the aforesaid provision makes it manifestly clear that the following conditions are required to be satisfied:

- i) that the cheque is drawn by a person and on an account maintained by him with a banker;
- ii) for the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability; and
- iii) the said cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.

16. In light of the aforesaid, a person who is the signatory to the cheque which is drawn by that person on an account maintained by him and the same has been issued for the discharge, in whole or in part, of any debt or other liability, which has been returned by the bank unpaid, such person can be said to have committed an offence.

17. Section 141 of the Act, is applicable when an offence is committed by companies. It reads thus:

“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 anybody corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

18. Pertinently, a reference to the dictum by Hon’ble The Supreme Court of India, in the cases of **Rangappa** (supra), **K. Bhaskaran vs. Sankaran Vaidhyan Balan & Anr.**(1999) 7 SCC 510 and **Triyambak S.Hegde vs Sripad** 2021 SCC OnLine SC 788, is made, wherein it has been held that once issuance of a cheque and signature hereon are admitted, presumption as envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption.

19. Hon’ble The Supreme Court of India in the case of **Basalingappa vs. Mudibasappa** (2019) 5 SCC 418 has summarised the principles pertaining to the presumptions and the onus of proof which read thus:-

"25. We having noticed the ratio laid down by this Court in the above cases on Section 118(a) and 139, we now summarise the principles enumerated by this Court in the following manner: 25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence. Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence."

20. It can be adduced from the foregoing, that the presumptions raised under Section 118(b) and Section 139 of the Act are rebuttable. A reverse onus is cast on the accused, who has to establish a probable defence on the standard of preponderance of probabilities to prove that either there was no legally enforceable debtor other liability.

21. Accordingly, cheques not having been drawn on the account of petitioner No.1- private limited company, which is a separate legal entity, the complaint qua it, is not maintainable.

22. Moving on to the next, with regard to liability in so far as petitioner No.2, sole proprietor, in absence of the firm being not arrayed as an accused, is concerned, the exposition of law as settled by Hon'ble The Supreme Court in the case of **Raghu Lakshminarayanan vs. M/s. Fine Tubes** (2007) 5 SCC 103, draws a clear distinction emerging therefrom that only the proprietor can be held liable under Section 138 of the Act, as the proprietorship concern has no separate legal identity, it means and includes sole proprietor and vice versa. Thus, a sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, the proprietor and the firm being one and the same. The para as relevant to the present case reads thus:-

"It is settled position in law that the concept of vicarious liability introduced in Negotiable Instruments Act is attracted only against the Directors, partners or other persons in charge and control of the business of the company, or otherwise responsible for its affairs. Section 141 of NI Act not covers within its

ambit, the proprietary concern. The proprietary concern is not a juristic person so as to attract the concept of vicarious liability. The concept of vicarious liability is attracted only in the case of juristic person, such as the company registered under the provisions of the Companies Act, 1956 or the partnership firm registered under the provisions of Partnership Act, 1932 or association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. The proprietary concern stands absolutely on different footing. A person may carry on a business in the name of the business concern being proprietor of such proprietary concern. In such case the proprietor of proprietary concern alone can be held responsible for the conduct of business carried in the name of such proprietary concern. Therefore, Section 141 of the Negotiable Instruments Act have no applicability in a case involving the offence committed by a proprietary concern."

23. Still further, in **M. M. Lal vs. State NCT of Delhi** 2012 (4) JCC 284, the High Court of Delhi while following the dictum of Hon'ble The Supreme Court of India, held as under:-

"It is well settled that a sole proprietorship firm has no separate legal identity and in fact is a business name of the sole proprietor. Thus, any reference to sole

proprietorship firm means and includes sole proprietor thereof and vice versa. Sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, which envisages that if the person committing an offence under Section 138 is a company, every person who, at the time of 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. Company includes a partnership firm and any other association of individuals. The sole proprietorship firm would not fall within the meaning of partnership firm or association of individual. Thus, in the case of a proprietorship concern, only the proprietor can be held liable under Section 138 NI Act as the proprietorship concern and the proprietor are one and the same.”

24. Significantly, as held above, non-arraying the proprietorship firm/concern is not an impediment in proceeding against the sole proprietor under Section 138 of the Act.

25. Inversely, the judgment referred to by the learned counsel for the petitioners do not lend support, being not applicable to the facts of the present case, inasmuch the petitioners in **Manish Kant Aggarwal** (supra), were neither drawer nor the signatories of the cheques. In Criminal Misc.

No.2667 of 2007 filed by one of the petitioners in the aforesaid case did not dispute that he was the Director of M/s MK International Ltd. on the relevant date of commission of offence and 36 cheques were sent to the complainant as security from his own personal account, while in other two cases, the petitioners had claimed that they were not Directors on the date of the commission of the crime, as they had already resigned from the Directorship of the company. It is in these facts and circumstances of the case it was held that the drawer of the cheque has necessarily to be the company itself and it is only thereafter vicarious liability on the Director or other Principal officers can be fastened and not otherwise. In the said case, the drawer of the cheque was not the company but an individual himself, who had signed the cheque in his individual capacity from his own bank account. It was also observed in the case that the bounced cheque did not even bear the seal of the company, thus, it could not be held liable, and the Directors can also not be held liable for dishonour of cheque drawn by one of the other Directors from his own personal account. Quite similar were the facts in the case of **PJ Agro** (supra) that the cheque in question had been issued by K. Balashankar Reddy from out of his personal savings bank account and that none of the Directors had signed the said cheque. It was thus submitted that the proceedings against the company and its Directors were not maintainable and it was held that the High Court had erred in law in not quashing the proceedings.

26. The *sine qua non* for an offence under Section 138 of the Act is that the cheque must be drawn on an account maintained by the accused and admittedly, it is the case of the petitioners themselves that in the

present case, cheques were drawn on the account of the proprietorship concern on the account on which the cheques in question were drawn on the account maintained by the sole proprietor of sole proprietorship firm- M/s Royal Pressing and Components, who signed the same. There is no denial that he is not the sole proprietor of the aforesaid firm or that he did not sign the cheques in question, the legal notice of demand was sent by registered AD post at the address as mentioned in Annexure P-5, which is the Central Excise registration certificate as appended and relied upon by the petitioners themselves and is the same address as that of petitioner No.2, mentioned in this petition and in the complaint, but was refused to be accepted by him, which as per Section 27 of the General Clause Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post, unless and until the contrary is proved by the addressee, held by Hon'ble The Supreme Court of India in case of **C.C. Alavi Haji Vs Palapetty Muhd. and another** (2007) 6 SCC 555.

Conclusion:

27. It is the solemn duty of the Courts to separate the grain from the chaff. As per Section 142(1)(a) of the Act, the sole criteria being that the complaint must be filed by the payee or the holder of the cheque in due course, is duly satisfied in the present case.

28. Further, it is accentuated that indubitably, as conceded by the learned counsel for the petitioners that accused No.2 and petitioner No.2 are one and the same person, who is a Director in petitioner No.1-company and is also the Sole Proprietor in the firm having the same name as that of the

company; address of petitioner No.2-Director/ Proprietor and the proprietorship firm was the same, as is discernible from certificates of Central Excise Registration, Annexures P-5 and P-6, the invoice of the proprietorship firm on which the material was supplied, complaint arraying petitioner no. 2 and the present petition; the legal notice of demand and summons were sent at the same address, but while the former was refused, the latter was received; the present case has been set up only on the ground that proprietorship firm was the drawer of the cheque having been signed by its sole proprietor, therefore, the complaint should have been filed against it and not against petitioner No.1-company, being a separate legal entity.

29. The argument of the counsel for the petitioners raised by applying the analogy of the cases **Manish Kant Aggarwal** and **P.J. Agro** (supra), that till the proprietorship firm is not arrayed as an accused, the complaint would not lie against petitioner No.2, has no force, in light of it having been elucidately held in the cases of **Raghu Lakshminarayan** and **M.M. Lal** (supra), that Section 141 of the Act does not cover within its ambit, the proprietary concern. It is not a juristic person so as to attract the concept of vicarious liability. A sole proprietorship firm has no separate legal identity and in fact is a business in the name of the sole proprietor. Thus, in the case of a proprietorship concern, only the proprietor can be held liable under Section 138 of the Act as the proprietorship concern and the proprietor are one and the same.

30. It is quite apparent from the facts of the case that petitioner no.2 has tried to avoid his liability of a legally enforceable debt, he having

not disputed his signatures on the cheques either in the petition or during the course of arguments, leading to a presumption as envisaged in Section 118 of the Act legally inferring that the cheque was drawn for consideration on the date which the cheque bears and Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability, the burden of which was on the accused to rebut the said presumption, as held in the cases of **Rangappa, K. Bhaskaran** and **Triyambak S.Hegde** (supra).

31. Hon'ble The Supreme Court of India in the case of **Surinder Singh Deswal vs. Virender Gandhi**, reported as (2019) 3 SCC (Crl.) 461, while interpreting Section 148 of the Act observed that if such tactics are permitted, the very object and purpose of the enactment of Section 138 of the Act would be frustrated.

32. Given the peculiarity of facts and circumstances as having referred to herein before and after giving thoughtful consideration to the submissions of the respective counsels, the legal provisions as well as the law enunciated, quashing of the complaint against petitioner No.2 at a pre-trial stage would prejudice the complainant, a view finding strength from the observations of Hon'ble The Supreme Court in the case of **Rathish Babu Unnikrishnan vs. The State (Govt. of NCT of Delhi) & anr**, SLP(Crl) Nos.5781-5782 of 2020.

Held:

33. Having implored itself with the abounding pronouncements of Hon'ble The Supreme Court of India as discussed above enunciating the proposition as has emanated in the present case and in the overall

conspectus of facts and circumstances of the case, this Court is persuaded to hold that the complaint against petitioner no.2 is maintainable.

34. As a corollary thereto, the present petition is allowed in part. The complaint, Annexure P-1, and the summoning order 14.7.2016, Annexure P-3 are set aside only qua petitioner No.1. However, the complaint and impugned summoning order qua petitioner No.2 are maintained.

35. Before parting, it is made clear that the observations made hereinabove are only for the limited purpose of adjudication of the present petition and shall not be construed as an expression of opinion insofar as the merits of the case are concerned, and the same should not stand in the way of the trial Court while deciding the case on merits.

36. Disposed of accordingly.

37. Photocopy of the judgment be placed on the connected files.

01.12.2022
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/**reasoned** : Yes / No

Whether reportable : **Yes / No**