

CRM-M-38027-2018

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

Sr. No.202

CRM-M-38027-2018

Date of decision : 18.11.2022

Parvesh Kaur

.....Petitioner(s)

VERSUS

State of Punjab and others

..... Respondent(s)

CRM-M-39108-2018

M/s Hero Enterprises

.....Petitioner(s)

VERSUS

State of Punjab and another

..... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr.Amit Arora, Advocate for the petitioners

Mr.Gurdarshan Sidhu, AAG, Punjab

None for respondent No.2.

**AMAN CHAUDHARY, J.**

Challenge in the aforesaid petitions filed under Section 482 Cr.P.C. is to the criminal complaint No. 323 dated 6.6.2011 /27.7.2011, Annexure P-5, filed under Section 138 read with Section 142 of of the Negotiable Act, 1881 (for short 'the Act') and to the summoning order dated 12.6.2018.

Briefly put, the complainant- respondent had filed the complaint dated 6.6.2011 against the petitioners for dishonour of a cheque dated 5.4.2011 amounting to Rs. 1215000/- drawn on Axis Bank Ltd., with

remarks “account closed” on 11.4.2011. The trial Court vide order dated 5.4.2012, Annexure P-2 had summoned the petitioners, which was challenged by him before the Additional Sessions Judge on the ground that since the Firm M/s Hero Enterprises has not been arrayed as an accused in the complaint, as such it, against the petitioners is not maintainable, as no vicarious liability can be fastened upon the petitioners without the company having been arrayed as an accused. The summoning order was consequently set aside vide order dated 5.8.2017, Annexure P-4, while allowing the revision filed by petitioner-Parvesh Kaur, with a direction to the complainant to appear before the learned Magistrate for carrying out necessary changes in the complaint, if she so desires and then for subsequent proceedings. The complainant thereafter filed the amended complaint on 7.5.2018, Annexure P-5, thereby impleading the proprietorship firm – M/s Hero Enterprises, as accused No.2, in which, the trial Court vide order dated 7.5.2018, Annexure P-6 summoned the accused.

Hence, the instant petition.

The solitary argument as raised by the learned counsel for the petitioners is that allowing the amendment of the complaint after 7 years of filing the complaint is barred by limitation and no formal application for condoning the delay has been filed. He relies upon on the judgments in the case of Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd. 2012(2) RCR (Crl.) 854, Anil Gupta vs. Star India Pvt. Ltd. And another 2014(3) PLR 787, N.Harihara Krishnan vs. J.Thomas 2017(4) RCR (Crl.) 41 and Pawan Kumar Goel vs. State of U.P. and another, Criminal Appeal No. 1999 of 2022.

Heard.

At the outset, it is imperative to notice the fact that it was upon the preliminary objection to the maintainability of the complaint, as raised by the accused-petitioners, while challenging the complaint and the summoning order vide CRR 63 of 2014, on the ground that the petitioner- Parvesh Kaur, being a proprietor cannot be held vicariously liable till such time the proprietary firm- M/s Hero Enterprises, is not arrayed as an accused, that having considered the aforesaid aspect of the matter, the Additional Sessions Judge, vide judgment dated 5.8.2017, had set aside the summoning order dated 5.4.2012, with a liberty granted to the complainant- respondent No.1, for carrying out necessary changes in the complaint. The operative part of the order reads thus:

“10. Now, applying this analogy to the facts and circumstances of the instant case, revisionist has been arrayed being proprietor of M/s Hero Enterprises, but surprisingly enough, the above said proprietary firm has not been prosecuted as an accused along with revisionist. So, that being so, how revisionist could be held vicariously liable for the offence u/s 138 of Negotiable Instrument Act without concurrence of the firm or said firm also being prosecuted. As such, the observation of Hon'ble Punjab & Haryana High Court at Chandigarh relied upon by revisionist is fully applicable to the facts and circumstances of this case. So, the present revision is found to have merits and hence the same stands allowed and impugned summoning order dt. 5.4.2012 is hereby set aside and respondent/ 5 Parvesh Kaur Vs Manjit Kaur complainant is directed to appear before the learned Magistrate/his successor on 31.8.2017 for carrying out

necessary changes in the complaint, if she so desires and then for subsequent proceedings. Let summoned file be sent back immediately along with copy of this judgement and revision file be consigned separately to the record room.”

It is therefore, evident that on the objection having been taken by the accused-petitioners to implead the proprietorship firm M/s Hero Enterprises and the liberty having been granted by the Additional Sessions Judge, vide judgment dated 5.8.2017, that the complainant-respondent No.1 filed the complaint dated 7.5.2018, Annexure P-5, thereby removing the objection as raised by the accused-petitioners, whereupon the trial Court had summoned them. Learned counsel for the petitioners has not been able to controvert the aforesaid fact, when confronted by this Court. The judgments sought to be relied by the petitioners, are clearly distinguishable *firstly*; as they relate to the companies and not the proprietorship firms, *Secondly*; to the aspect of vicarious liability of the Directors, which is not the case in hand, as a matter of fact, even the said argument is self-destructive, inasmuch as on the one hand the petitioners had challenged the summoning order way back in the year 2014 before the Additional Sessions Judge, on the ground that till such time, the proprietorship firm is not arrayed as an accused, the petitioners being the proprietor thereof, cannot be held vicariously liable.

Furthermore, infact the law as enunciated by Hon’ble The Supreme Court of India 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 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."

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 that, "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."

In view of the law as enunciated above, there was no legal requirement of the proprietorship firm to have been arrayed as an accused.

It is only on account the summoning order dated 5.4.2012 being set aside and pursuant to the liberty granted by the said Court, the complainant has impleaded the proprietorship firm, so as to remove the objection of the petitioners, which is still being objected to, though on an untenable ground, of it being belated or time barred, having being filed after 7 years from the date of the first complaint. While having raised this argument, learned counsel has overlooked a vital fact of the matter that goes to the root of the case, that it is only on account of the petitioners having challenged the summoning order dated 5.4.2012, which came to be set aside on 5.8.2017, that the amended complaint came to be filed, as such, the aforesaid argument pales into insignificance.

In the overall conspectus of the facts and circumstances of the case, this Court finds no infirmity or perversity in the order dated 12.6.2018, calling for any intervention. As such, both the petitions being devoid of merits, are dismissed.

Photocopy of the judgment be placed on the file of the connected case.

18.11.2022  
gsv

**(AMAN CHAUDHARY)**  
**JUDGE**

|                           |   |          |
|---------------------------|---|----------|
| Whether speaking/reasoned | : | Yes / No |
| Whether reportable        | : | Yes / No |