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

**CRM-M-24975-2022 (O&M)
Reserved on: 26.07.2022
Date of Decision: 26.09.2022**

Neeraj Goel and others

..... Petitioners

Versus

M/s Harshil Trading Co.

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Fateh Saini, Advocate,
for the petitioner.

Mr. Arun Bansal, Advocate,
for the respondent.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the Complaint bearing No.720 of 2016, dated 28.03.2016, under Sections 138/142 of the Negotiable Instruments Act titled as “M/s Harshil Trading Co. Vs. Richi Rich Agro Foods (P) Ltd. and others” (Annexure P-4) and also quashing of the order dated 28.03.2016 (Annexure P-5), whereby the summoning orders have been issued to the petitioners.

Learned counsel for the petitioners has submitted that the present complaint was filed by the respondent-M/s Harshil Trading Co. under Section 138 read with 142 of the Negotiable Instruments Act against one Richi Rich Agro Foods (P) Ltd. and the present two petitioners and has further submitted that the said complaint was not maintainable and the consequent summoning order issued to the petitioners was also not maintainable in view of the fact

that there is no specific averment made in the complaint that they were managing the affairs of the company. He also submitted that there is no valid reason assigned while the passing the order of summoning against the present petitioners for facing the trial and there is no logical ground to summon the petitioners. He further submitted that mere issuance of a cheque is not an offence but it becomes punishable when the said cheque is dishonoured. He also submitted that in the present case petitioner No.3-Company had been sealed by the authorities on 07.04.2017 and the same was put in auction as is evident from the letter dated 12.05.2017 and 04.10.2018 respectively, and therefore, the petitioners were not liable to be proceeded under the provisions of Negotiable Instruments Act. He further submitted that moreover petitioner No.1 was not signatory of any cheque whereas only petitioner No.2 had only signed the cheque for and on behalf of the Company and a perusal of the cheque would reveal that it was issued by the company and not by petitioner No.2 in his individual capacity.

Learned counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court passed in "**S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another**", 2005(4) R.C.R. (Criminal) 141, to contend that it is necessary to specifically aver in the complaint that the Directors were Incharge of, or responsible for conduct of business of the Company and this averment was essential requirement of Section 141 of the Negotiable Instruments Act.

On the other hand, Mr. Arun Bansal, learned counsel for the respondent has submitted that the present petition is liable to be dismissed on the ground that the complaint is at the fag end of the trial and refer to an order

passed by the learned trial Court dated 12.07.2022 wherein the case was adjourned to 26.07.2022 for defence evidence and it was directed that if on the next date, no defence witness is present then the evidence of the defence shall deemed to be closed. He further submitted that the prosecution evidence has already been closed and as per the aforesaid order, 20 effective opportunities were availed of by the accused (Petitioners) and in the aforesaid facts and circumstances, the present petition is liable to be dismissed. He also submitted that on merits also the present petition does not deserve to succeed and referred to the complaint (Annexure P-5) in this regard. While referring to Para No.7 of the complaint, he submitted that three cheques were issued by the petitioners which were presented in the Bank. It has been specifically averred in the complaint that all the cheques were issued with the signatures of Atul Goyal (Petitioner No.2), who is the authorized signatory on behalf of petitioner No.3-Company and all the cheques were issued in the presence and consultation of petitioners No.1 & 2, since both of them are real brothers and they are liable jointly and severally along with petitioner No.3-Company for the outstanding payment of the complainant. He has also referred to the judgment of the Hon'ble Supreme Court passed in “**Standard Chartered Bank Vs. State of Maharashtra and others**”, 2016(2) R.C.R. (Criminal) 778, wherein the earlier judgments of the Hon'ble Supreme Court were referred to and he submitted that in case an accused is a Director or an officer of the Company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company. He further submitted that it is an admitted position which is so stated by the petitioner himself in the

petition in Para No.5 of the petition that petitioner No.2 signed the cheques on behalf of the Company and even the cheques have also been attached with the petition as Annexure P-1, and therefore, it cannot be said that the present complaint is not maintainable. He also submitted that so far as petitioner No.1 is concerned, the factual position is that petitioner No.1 and petitioner No.2 are real brothers. Petitioner No.3 is a private limited firm in which both the petitioners No.1 and 2 are Directors and it has been specifically averred in the complaint that all the cheques were issued in the presence and consultation of both the petitioners. He also submitted that the trial is at the fag end and so far as petitioner No.1 is concerned, even he was not signatory of the cheque, the complaint cannot be quashed only on this ground particularly in view of the fact that the complaint is of the year 2016 and the summoning order was also issued in the year 2016. He further submitted that so far as the argument raised by the learned counsel for the petitioners that the premises of petitioner No.2 was sealed, he submitted that it was a result of an FIR pertaining to theft in which the premises was sealed, and therefore, that does not have any effect on merits of the present case and it cannot be said that the complaint cannot proceed because of this reason and especially in view of the fact that the trial has already been commenced and now the case is at the fag end of the trial.

I have heard the learned counsel for the parties.

In the complaint which was filed under Section 138 of the Negotiable Instruments Act, the summoning orders were issued way back in the year 2016, and thereafter, the trial of the case has been commenced and now as per the learned counsel for the parties, the matter has been fixed for defence evidence and it has been specifically directed by the learned trial

Court vide order dated 12.07.2022 that in case no defence witness is present then defence evidence shall be deemed to be closed. The argument raised by learned counsel for the petitioners that the premises of petitioner No.2 was sealed, has been answered by the learned counsel for the respondent that it was due to some FIR on the basis of allegations of theft that the premises were sealed but that itself cannot become a ground for quashing of the complaint itself. The argument raised by the learned counsel for the respondent in this regard is justified. Another issue which deserves consideration is with regard to the maintainability of the complaint. A perusal of Para No.5 of the present petition as well as the cheques (Annexure P-1) would show that petitioner No.2 had signed the cheques since he was the authorized signatory and petitioner No.3 is a private limited company in which petitioners No.1 & 2 are Directors. So far as petitioner No.2 is concerned, since he himself had signed the cheques, there was no need of any specific averment that he was incharge and was managing the office of the company. So far as petitioner No.1 is concerned, there is a specific averment made in the complaint itself in Para No.7 that all the cheques were issued in the presence and consultation of petitioner Nos.1 & 2, since both of them are real brothers and it was a private limited company wherein both the petitioners No.1 & 2 were Directors. It cannot be said that the company was a big company where there are some non-executive directors etc. but the entire company governed by petitioners No.1 & 2 and there is a specific averment in the complaint that both of them had issued the cheques with their mutual consent. The relevant portion of the judgment of Hon'ble Supreme Court in *Standard Chartered Bank's case (supra)* is reproduced as under:-

*“24. Be it noted, the observations made in Saroj Kumar Poddar (supra) and clarification given in SMS Pharma II (supra) and Everest Advertising (P) Ltd. (supra) were taken note of in **K.K. Ahuja v. V.K. Vora and Anr., 2009(3) RCR (Criminal) 571 : 2009 (3) RCR (Civil) 788 : 2009 (4) Recent Apex Judgments (R.A.J.) 310 : (2009) 10 SCC 48.** In the said case, the Court explaining the position under Section 141 of the Act has stated thus:-*

“The position under Section 141 of the Act can be summarised thus:

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix “Managing” to the word “Director” makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the

company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

Even as per the learned counsel for the petitioners and Para No.5 of the petition, petitioner No.2 had signed the cheques, and therefore, the only issue which this Court would consider with regard to petitioner No.1 as to whether the complaint should proceed against him or not. Considering the averments made in the complaint itself that both petitioners No.1 & 2 are brothers and they had issued the cheques with the mutual consent coupled with the fact that now the case is at the fag end of the trial, this Court does not deem

it fit and proper to quash the complaint or the summoning order.

Therefore, in view of the aforesaid facts and circumstances of the case, finding no merits in the present petition and the same is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

26.09.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:
2. Whether reportable:

Yes
Yes/No