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

119 **CRM-M-37890-2022 (O&M)**
Date of Decision: 30.08.2022
****

Chirag Janardan Doshi & Ors. ... Petitioners

VS.

M/s Jyoti Enterprises ... Respondent
****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
****

Present: Mr. Pankaj Katia, Advocate for the petitioners
****

Sandeep Moudgil, J. (Oral)

CRM-30730-2022

Allowed as prayed for.

Main case

(1) This order shall dispose of seven petitions i.e. **CRM-M-37890-2022, CRM-M-38063-2022, CRM-M-38084-2022, CRM-M-38605-2022, CRM-M-38616-2022, CRM-M-38637-2022** and **CRM-M-38648-2022** as issue involved being inter-related and common for adjudication by this Court. For the sake of order, CRM-M-37890-2022 is treated as the lead case.

(2) This petition has been filed by petitioners who claim to be non-executive nominee and independent Directors of accused No.1 company, namely, Manpasand Beverages Ltd., seeking quashing of the criminal complaint No.1603 of 2019 dated 02.07.2019 (Annexure P6) under Section 138 of the Negotiable Instruments Act, 1881 (in short the NI Act) pending before the ld. JMIC, Ambala as well as for setting aside the summoning order dated 04.10.2019 (Annexure P1) as also the bailable warrants of arrest dated 06.05.2022 (Annexure P2) and all consequential proceedings flowing therefrom.

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(3) Brief facts of the case are that complainant is a proprietorship concern and Jyoti Gupta w/o Mohinder Gupta is its Sole Proprietor. The respondent/complainant is engaged in the business of supply of chemical such as caustic soda, nitric acid, sodium hydrochloride, ammonia, sodium bisulphate and all other types of chemicals and laboratory equipments.

(4) The Company through the accused persons including the present petitioners have been making purchases of various chemicals and laboratory equipments from the respondent/complainant since May, 2016 and have been making part payment and last such purchase was made by accused persons vide bill No.11068 and 11069 dated 19.04.2019. As on 19.04.2019, there was an outstanding balance of Rs.3,33,186/- as per the ledger account statement for the year 2016 to 2019.

(5) The petitioners, towards part payment, had issued cheque No.012905 dated 24.04.2019 of Rs.2,42,645/- in discharge of their liability with an assurance that the cheque would be encashed on presentation in the Bank. However, on doing so, the said cheque was returned back by the Kotak Mahindra Bank Ltd. Ambala Cantt., with remarks "payment stopped by drawer". An email was sent on 02.05.2019 to the accused company informing about the dishonouring of cheque. The representative of the accused company Mr. Amit Raval responded to the email by saying that RTGS of the above amount shall be made within 10 days but no payment was made. The respondent/complainant served a legal notice upon the accused persons on 17.05.2019 and thereafter, the company transferred a sum of Rs.61,360/- in the bank account of the respondent/complainant as against the outstanding

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balance of Rs.3,33,186/-. Hence, a complaint was filed before the learned JMIC, Ambala on 02.07.2019.

(6) Thereafter, the petitioners were summoned by the trial court vide order dated 04.10.2019 (Annexure P1) which is still continuing. Besides, the petitioners even filed criminal revision petition before the Sessions Judge, Ambala. Impugning the summoning order dated 06.07.2019 passed in NACT/254/2019 wherein the respondents have not yet put in appearance and meanwhile, non-bailable warrants of arrest have been issued against the petitioners by the trial court on 06.05.2022. Aggrieved by the same, the petitioners have approached this Court.

(7) Learned counsel for the petitioners contended that the respondent-complainant has failed to adduce any evidence to prove regarding the petitioners being involved in the day-to-day affairs of the company. It is averred on the basis of Form DIR-12 by the Registrar of Companies and the extracts of the Minutes of meeting, that the petitioners are non-executive nominee/independent directors and only attend Board meetings. It is further submitted that no specific averment has been made against the petitioners in the complaint. The petitioners were not the in-charge of the affairs and conduct of business of the accused company so as to make them vicariously liable for an offence under Section 138 of the NI Act. That being so, since no specific role and responsibility in the management, affairs and conduct of business of the accused-company has been made, the order summoning the petitioners itself is bad in law.

(8) It is also urged that the petitioners resigned from the company way back in 2014 but were taken back in the company as non-executive

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independent directors who yet again resigned as such in 2019. It is further contended that the petitioners are not the authorized signatory of the accused-company to establish their plea that they were not connected to the impugned transaction. In this regard, reliance has been placed on a judgment of this Court rendered in **Anil Chanana & Anr. vs. M/s Gyani Ram Ruliya Ram & Anr. 2019(1) RCR (Crl.) 388**.

(9) It is further averred that the court below has ignored the mandate of law which requires that before issuance of process, cognizance of an offence under Section 190 read with Section 200 CrPC should be taken by it. However, in the present case, learned trial court has straightway issued process against the petitioners under Section 204 CrPC without even recording reasons and evidence.

(10) I have heard learned counsel for the petitioners and gone through the record.

(11) Firstly, the petitioners have no where denied that there was business dealing with the respondent. Once cheque has been issued by a person, or by a person on behalf of a legal entity to whom he/they are representing, it shall be presumed that the same has been issued for discharge for its debt liability. Fact of the matter is that at the relevant time when cheque was issued, the petitioners were Independent Directors of the accused-company. Nevertheless, their role and the extent of responsibilities and powers is a matter of trial.

(12) It would be apposite to refer to Section 141 of the NI Act dealing with 'offences by Companies', which reads as under:-

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"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.]

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(13) Thus, it is evident that every person being in-charge of the business of the Company and is responsible to the Company for the conduct of its business, is vicariously liable, apart from the Company itself. Such a person may be somebody other than a 'Director' so long as he is an officer of the Company, who may prove his innocence during trial since the question regarding innocence of a Director or culpability of an officer of the Company, who is not a Director is a question of fact and, therefore, is to be tested by leading evidence.

(14) Admittedly, in the case in hand, the petitioners were Directors of the accused company in 2019 and the cheque was issued in April 2019. Prima facie, it does not lie in the mouth of the petitioners to say that they were not in the knowledge of the business transactions of the Company and had resigned at the relevant time. That plea, if at all, lies with the petitioners in defence at the time of trial. The respondent has made a specific averment against the petitioners showing the manner in which the petitioners were responsible for the conduct of business of the company. This fact weighed in the mind of the learned summoning court, *prima facie,* feeling satisfied that the persons being summoned have committed an offence. Thus the judgment in **Anil Chanana** case (supra) is of no help to the petitioners.

(15) Learned trial court has taken cognizance of the fact that the accused-company/petitioners did not make the payment within the stipulated period and as such there is sufficient ground to proceed against the petitioners under Section 138 of the NI Act. That being so, it cannot be said that the learned trial court has not taken cognizance of the material available before it

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and on that basis, it proceeded to summon the petitioners, in accordance with law.

(16) For the reasons afore-stated, I am of the considered view that the petitioners have not made out a case for quashing of the complaint/summoning order(s) being impugned herein.

(17) Dismissed.

(18) However, any of the observations made herein, shall not, in any way, be construed as final opinion while testing the case on merits by the learned trial court.

30.08.2022
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*

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