IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40609 -2022 (O & M)
Date of decision:12.09.2022

M/s Four House Sourcing Pvt. Ltd. through its Accountant Shailender and anr.

.... Petitioners

V/s

M/s Orion Processors Pvt. Ltd. through its Branch Manager

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Lovish Rattan, Advocate, for the petitioner.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.PC is for quashing of complaint case No.NACT 3057 of 2017 dated 18.11.2017 titled as 'M/s Orion Processors Pvt. Ltd. vs. M/s Four House Sourcing Pvt. Ltd. and another alongwith all subsequent proceedings arising therefrom.

2. The brief facts of the case are that the accused (petitioners herein) to discharge their liability issued three cheques i.e. (i) Cheque No. 004376 dated 22.09.2017 for a sum of Rs.7,11,860/-, (ii) Cheque No.004377 dated 29.09.2017 for a sum of Rs.7,11,862/- and (iii) Cheque No. 003552 dated 22.09.2017 for a sum of Rs. 3,69,660/- drawn at Bank of Baroda, Karol Bagh, New Delhi to the complainant/respondent

3. The complainant/respondent is said to have presented the said cheques for payment in its account with Punjab National Bank, Amar Bhawan Chowk, Panipat but the said cheques were dishonoured with the

remarks "payment stopped by drawer", "payment stopped by drawer" and "exceed arrangements" respectively.

4. Based on the aforementioned allegations, a complaint under Section 138/142 of the Negotiable Instruments Act came to be filed and the petitioners were ordered to be summoned to face trial under the provisions of the Negotiable Instruments Act.

5. The learned counsel for the petitioners contends that in fact security cheques had been misused by the complainant-respondent. He contends that the complainant has deliberately presented the cheque for encashment at Panipat despite the fact that the respondent-complainant company was incorporated at Delhi and had received all earlier payments through RTGS into their account at Punjab National Bank, Noida. He further contends that no averment has been made as to the specific role played by petitioner No.2 as she being a mother, was a director till 01.01.2018 but was never incharge of the day-to-day affairs of the company. He, thus, contends the complaint and all consequential proceedings are liable to be quashed.

6. I have heard the learned counsel for the petitioner.

7. The first submission of the learned counsel for petitioner No.2 is that the aforementioned three cheques were, in fact, security cheques, which had been misused. As they had not been issued in the discharge of a legally enforceable debt or liability, the proceedings sought to be quashed. It may be apposite to mention here that whether the cheques were issued as security or not would be a matter of adjudication during trial. At this stage, in summary proceedings under Section 482 Cr.P.C. it cannot by any stretch of imagination be held that the said cheques had been issued as 'security cheques' and had been misused by the complainant.

8. With respect to the argument that the Court at Panipat did not have territorial jurisdiction, it may be pointed out that admittedly, the bank account of the respondent-complainant is at Panipat. A perusal of the complaint would reveal that the complainant-company M/s Orion Processors Pvt. Ltd. is situated at Panipat. Therefore, no fault can be found, at least at this stage, with the conduct of the complainant for having presented the cheques for encashment with his Bank at Panipat. Whether the earlier cheques had been presented at Noida or not and what would be the consequence of the same, would be a matter of adjudication during trial and cannot be examined at this stage in proceedings under Section 482 Cr.P.C.

The Hon'ble Supreme Court in the case of '*M/s Himalaya Self Farming Group & Anr. versus M/s Goyal Feed Suppliers, 2020(4) RCR (Criminal) 542,* held as under:-

> *"The petitioners have filed the above Transfer Petition seeking transfer of the proceedings filed by the respondent under Section 138 of the Negotiable Instrument Act pending on the file of Additional Chief Judicial Magistrate, Agra, Uttar Pradesh to the competent Court at Siliguri, Darjeeling, West Bengal.*
>
> *2. It is contended by the learned counsel for the petitioners that the proceedings are liable to be transferred to Siliguri for three reasons namely; (1) that under the delivery challan, all disputes between the parties are made subject to the jurisdiction of courts in Siliguri; (2) that the petitioners have already lodged a criminal complaint on 29.05.2017 about the offences committed by the respondent and during the pendency of the criminal complaint, the present proceedings have been initiated on 27.10.2018 and (3) that when the respondent has its Head Office in Siliguri there was no reason to lodge the complaint at Agra except to harass the petitioners.*

3. I am not convinced about any of these reasons. If the delivery challan which states that all disputes will be subject to the jurisdiction of courts in Siliguri, is construed by the petitioners to constitute a bar for the courts in any other jurisdiction to entertain the proceedings, it is always open to the petitioners to raise this point before the Agra Court. This cannot be a ground for seeking transfer.

4. The fact that the petitioners have made a prior complaint to the police about the loss that he sustained on account of the poor quality of feed supplied by the respondent herein cannot be a ground to seek the transfer of the proceedings under Section 138.

5. The fact that the respondent has its Head Office at Siliguri and that there is no reason why it chose to file a complaint in Agra except to harass the petitioners, cannot also be a ground for seeking transfer. Under Section 142(2)(a) of the Negotiable Instrument Act, the court within whose jurisdiction the branch of the bank where the payee maintains the account is situated, will have jurisdiction to try the offence, if the cheque is delivered for collection through an account. Therefore, all the grounds on which the petitioners seek transfer, are unsustainable.

6. The Transfer Petition is therefore dismissed.

7. Pending application(s), if any, stands disposed of accordingly".

In the case of '*Bridgestone India Pvt. Ltd. versus Inderpal Singh, 2016(1) RCR (Civil) 320',* it was held as under:-

"12. We are in complete agreement with the contention advanced at the hands of the learned counsel for the appellant. We are satisfied, that Section 142(2)(a), amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015, vests jurisdiction for initiating proceedings for the offence under Section 138 of the Negotiable Instruments Act, inter alia in the territorial jurisdiction of the Court, where the cheque is delivered for collection (through an account of the branch of

the bank where the payee or holder in due course maintains an account). We are also satisfied, based on Section 142A(1) to the effect, that the judgment rendered by this Court in Dashrath Rupsingh Rathod' s case, would not stand in the way of the appellant, insofar as the territorial jurisdiction for initiating proceedings emerging from the dishonour of the cheque in the present case arises.

13. Since cheque No. 1950, in the sum of L 26,958/-, drawn on the Union Bank of India, Chandigarh, dated 02.05.2006, was presented for encashment at the IDBI Bank, Indore, which intimated its dishonor to the appellant on 04.08.2006, we are of the view that the Judicial Magistrate, First Class, Indore, would have the territorial jurisdiction to take cognizance of the proceedings initiated by the appellant under Section 138 of the Negotiable Instruments Act, 1881, after the promulgation of the Negotiable Instruments (Amendment) Second Ordinance, 2015. The words "as if that sub-section had been in force at all material times..." used with reference to Section 142(2), in Section 142A(1) gives retrospectivity to the provision".

In the present case, the cheques were presented at Panipat so the Court at Panipat have the necessary Territorial jurisdiction.

9. So far as the role of the present petitioner No.2 is concerned, suffice it to say that all the cheques, in question, have been signed by petitioner No.2. Therefore, she cannot avoid her liability by arguing that her role is not spelt out in the complaint. In '*National Small Industries Corp. Ltd.* versus Harmeet Singh Paintlal and anr., 2010(3) SCC 330' it has been held that a signatory of a cheque is liable and no further averments qua the role of the accused need to be spelt out. The relevant Para 24 thereof is reproduced hereunder:-

"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.

The aforementioned judgment has been followed by this Court in the case of '*Swatanter Vaid & Another versus Naresh Kumar & Another, (CRM-M-24578-2018 decided on 17.08.2022)'*.

10. A perusal of the case details of the complaint (Annexure P-10) would reveal that the statement of the accused under Section 313 Cr.P.C. was recorded in February, 2021 and thereafter, the case was posted for defence evidence on 31.03.2021 and lastly on 06.09.2022. It may also be

relevant to mention here that on 29.08.2022, proceedings under Section 82 Cr.P.C. have been initiated against petitioner No.2. Apparently, the present petition has been fled at a belated stage only to delay the proceedings. Further proceedings for declaring petitioner No.2 as a proclaimed offender/person are already pending. In such a situation, the question of entertaining such a petition at the instance of an absconding accused that too at this belated stage would not arise.

11. In view of the aforementioned discussion, I find no merit in the present petition and the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

September 12, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No