

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

CRM-M-54111-2021

Reserved on: 09.08.2022

Pronounced on: 26.08.2022

SARDAR BHUPINDER SINGH

.....Petitioner

Versus

M/S GREEN FEEDS THROUGH ITS PARTNER VIPIN KUMAR

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Argued by: Mr. Atul Goyal, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. A cheque enclosing therein a sum of Rs. 5,50,000/-, and, as becomes embodied in Annexure P-5, became issued by the accused petitioner herein, to the respondent-complainant, towards purported discharge of a contractual, or, other legal liabilities, as entered into amongst the concerned.

2. Since upon presentation of Annexure P-5, it became declined to be honoured, as such, after the apposite statutory notice being served upon the petitioner, a complaint existing at Annexure P-1, of the instant petition became instituted by the aggrieved complainant before the learned Judicial Magistrate First Class, Karnal.

3. Subsequent to the learned Judicial Magistrate concerned, making application of mind to the complaint, and, to the documents/material appended therewith, besides upon his making an application of mind to the preliminary evidence, as became adduced by

the complainant, rather proceeded to issue a summoning order upon the accused-petitioner herein. The summoning order is appended as Annexure P-2 to the instant petition.

4. The learned counsel appearing for the petitioner has prayed for the quashing of the complaint, and, has also asked for relief of annulment of the summoning order.

5. The memo of parties as displayed in the petition complaint is extracted hereinafter.

“ M/s Green Feeds, Near Shamshan Ghat, VPO Bastara,
District Karnal through its Partner Sh. Vipin Kumar

.....Complainant

Versus

Sardar Bhupinder Singh, Proprietor, M/s Thind Traders,
VPO Mohie, New Mullarpur, District Ludhiana, Punjab, PIN 141103

.....Accused”

6. The learned counsel appearing for the aggrieved accused petitioner herein, has argued that even though, the accused petitioner herein, is the sole proprietor of M/s Thind Traders, but yet, he argues that for the drawing of a valid inculcation, even against the sole proprietary entity, or a sole proprietary firm, it was but imperative, for the complainant, to sue the sole proprietary entity concerned, whereas, contrarily, the above extracted memo of parties, as carried in the petition complaint, rather revealing qua the complaint suing only the accused/petitioner herein. Therefore, he contends that for absence of suing of the sole proprietary concern, rather the complaint is defective, and, also argues that since the above suing of the sole proprietary entity, is a condition precedent, for making the complaint well constituted. Resultantly he prays for the above reliefs being granted.

7. In making the above argument, he rests them upon the

provisions of Section 141 of the Negotiable Instruments Act (for short call 'the Act'), provisions whereof became extracted hereinafter.

[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.]”

8. In other words, the learned counsel appearing for the petitioner has contended that for well maintaining the prosecution under Section 141 of 'the Act', the arraigning of the sole proprietary entity concerned, was a dire statutory necessity, as the sole proprietary entity concerned, is the principal offender, whereas, the other natural, or, non juristic persons, can become arrayed as an accused alongwith it,

merely on the touchstone of vicarious liability becoming attracted upon them, and, as arises from the dishonour of the negotiable instrument concerned.

9. On the other hand, the learned counsel appearing for the respondent-complainant, has argued, that a keen perusal of the provisions of Section 141 of 'the Act' does not disclose, that they are applicable to a sole proprietary entity concerned, and, as such, he argues that the petition complaint instituted in the name of the accused petitioner herein, and, also his being described to be the proprietor of M/s. Thind Traders, is a valid motion, for the drawing of a valid prosecution against the accused petitioner herein, qua an offence, constituted under Section 138 of 'the Act'.

10. For the reasons hereinafter, the above made submission is completely fragile, and, is amenable for becoming discountenanced by this Court.

11. The above made submissions, has spurred from a gross mis-appreciation, and, also from his being completely oblivious to the import, of the explanation, occurring in Section 141 of 'the Act', and, also obviously arises from his complete failure to either fathom the import thereof, and, or, to apply it to the imperative description of the apposite accused, in the memo of parties of the petition complaint.

12. Clause (a) of the explanation as occurs in Section 141 of 'the Act' describes, a 'Company' to not only include any corporate body, but also makes a firm, or, other association of individuals, to become included within the realm of statutory coinage 'Company', and, besides when clause (b) thereof, when defines a 'Director', it makes the said

statutory phrase, to in relation to a firm, to also include a partner in a firm.

13. If so, when the statutory signification assigned to a 'Company', does visibly cover not only any corporate body, but also covers a firm, or other association of individuals, therefore, not only a corporate entity either private, or, public limited becomes a 'Company', for the purpose of application thereons of Section 141 of 'the Act', but also a firm, or, other association of individuals, do also, become covered by Section 141 of 'the Act', besides a partner in a firm when is given the colour of a Director of a firm, also does become covered for the relevant purpose.

14. In consequence, even the sole proprietary entity namely M/s Thind Traders, though is obviously solitarily owned by Sardar Bhupender Singh, yet, the said juristic person, or, legal entity rather becomes 'a person' committing an offence under Section 138, and, besides the said juristic person, is also a 'Company'. Therefore, not only the juristic entity concerned, was amenable for being arrayed as an accused in the petition complaint, but also all those persons responsible to the sole proprietary concern, for the conduct of its business were also required to be arrayed as accused in the memo of parties of the petition complaint. However, a close reading of the above memo of parties, appertaining to the extant complaint, reveals that the sole proprietary concern, inasmuch as, M/s Thind Traders has not been arrayed as an accused, but only its sole proprietor Sardar Bhupinder Singh has been arrayed as an accused.

15. In consequence, when the arraigning of the sole proprietary

concern rather was a condition precedent for making the complaint well constituted, as it becomes the principal offender, and, with its remaining un-impleaded, as such, the absence of its impleadment cannot make the instant complaint to be well constituted, nor, any valid prosecution can in its absence, be drawn, even against the accused petitioner, who can be assigned only a vicarious liability alongwith it.

16. In coming to the above view, reliance is made upon paras nos. 42 and 43, of the verdict rendered by Hon'ble Apex Court in case titled as Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt. Ltd., to which Criminal Appeal No. 838 of 2008 is assigned, paras whereof are extracted hereinafter.

42. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term “as well as” in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words “as well as” have to be understood in the context. In **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others, (1987) 1 SCC 424** it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in **Deewan Singh and others v. Rajendra Prasad Ardevi and others, (2007) 10 SCC 528** and **Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417**. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the

company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

43. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph.”

17. In consequence, there is merit in the petition, and, the same is allowed, and, the complaint bearing No. 467 dated 30.01.2019 under Section 138 of the Negotiable Instruments Act, titled as 'M/s Green Feeds V/s. Sardar Bhupinder Singh' (Annexure P-1), as well as, the summoning order dated 05.08.2019 (Annexure P-2), both are quashed and set aside.

18. Since the main case itself has been decided, hence, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

26.08.2022
kavneet singh

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