

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

251

CRM-M-5446-2021

Date of Decision : November 07, 2023

A Mangaiyarkarasi

-Petitioner

V/S

M/s Crystal Crop Protection Pvt. Ltd. & anr. -Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Naman Jain, Advocate
for the petitioner.

Mr. Bhupinder Kaur, Advocate
for the respondent No.1.

Mr. P.S. Grewal, D.A.G., Punjab.

KULDEEP TIWARI, J.

1. Through the instant petition, as instituted under Section 482 of the Cr.P.C., the petitioner craves for quashing of Complaint No.COMA/732/2018, titled “M/s. Crystal Crop Protection Pvt. Ltd. V. Raj Agro Agencies and Ors.”, as filed under Section 138 read with Section 141 of the Negotiable Instruments Act, which is subjudice before the learned Judicial Magistrate Ist Class, Ludhiana.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

2. The learned counsel for the petitioner seeks the relief (supra), on the ground, that the husband of the petitioner is the Managing Partner of the firm “M/s. Raja Agro Agencies”, while the petitioner became inducted therein as a sleeping partner, on 01.04.2012. Therefore, since the petitioner is a sleeping partner in the firm (supra), she does not have any

concern or responsibility with the day to day affairs of the firm (supra) and consequently, gains immunity from the allegations, as levelled in the complaint against the firm (supra). Moreover, there is no specific allegation levelled against the petitioner in the complaint (supra).

3. Before evincing any opinion upon the arguments addressed by the learned counsel for the petitioner, this Court deems it imperative to first succinctly capture the factual matrix of the present case.

FACTUAL MATRIX

4. The respondent No.1 filed a complaint (Annexure P-2) bearing No.COMA/732/2018, under Section 138 read with Section 141 of the N.I. Act, before the Judicial Magistrate Ist Class, Ludhiana, wherein, the present petitioner, her husband and their partnership firm 'Raja Agro Agencies' were impleaded as accused.

5. What propelled the respondent No.1 to institute the complaint (supra) was the dishonour of a cheque bearing No.635440 dated 25.10.2017, worth Rs.11,00,000/-, drawn on UCO Bank, Tiruchirapalli (Main)-620008, Tamil Nadu.

6. The respondent No.1 alleged in the complaint (supra) that it deals in the manufacturing and trade of insecticides/ pesticides and it had business transactions with the accused partnership firm, who in order to discharge its legal liability, had issued the cheque (supra) in its favour. However, when the respondent No.1 presented the cheque (supra) for encashment, it became dishonoured by the banker of the accused partnership firm, vide memo dated 24.11.2017, with the remarks "Insufficient Funds".

**REASONS FOR REJECTING THE ARGUMENTS MADE BY THE
LEARNED COUNSEL FOR THE PETITIONER**

7. This Court has scrupulously scrutinized the record, inasmuch as, the partnership deed (Annexure P1) and the complaint (Annexure P2).

8. The learned counsel for the petitioner has vehemently relied upon Clause 11 of the partnership deed (supra), which is extracted hereinafter, to argue that the petitioner is a ‘sleeping partner’/ ‘incoming part’ in the partnership firm, therefore, has no role whatsoever in its day-to-day affairs.

*“11. **MANAGING PARTNER:** The party of the “THE CONTINUING PART” shall be the Managing partner who shall have the following powers:-*

i. To Operate all bank accounts of the firm.

ii. To draw, accept or endorse any bill of exchange of promissory note, cheque and other negotiable instruments.

iii. To enter into contracts or agreements on behalf of the firm with persons, including limited companies, Central and State Governments, Punjayat Union, Municipalities and Corporation etc.

iv. To compromise or relinquish the whole or any portions of the claim by the firm in the ordinary course of business.

v. To file or withdraw suit or other legal proceedings on behalf of the firm.

vi. To operate overdraft account, open loan, key loan with any bank or banks to sign and execute the necessary documents or deeds and to give security.

vii. To attend to all Civil and Criminal Court matters, Income Tax and Sales Tax matters.

viii. To receive on behalf of the firm money due to the firm from debtors, Companies, Central and State Governments, Municipalities, Punjayat and Unions and to issue receipts for the same.

ix. To receive all register posts, money orders, parcels, VPP etc., on behalf of the firm and sign for the same.”

9. Though a survey of the above extracted clause makes it discernible that “THE CONTINUING PART”, who is the husband of the petitioner in this case, is the Managing Partner of the partnership firm, who has the power to draw, accept or endorse any bill of exchange of promissory note, cheque and other negotiable instruments. However, upon a specific query being put to the learned counsel for the petitioner, as to whether the dishonoured cheque (supra) bears the signatures of the petitioner or not, he could not negate the presence of signatures of the petitioner on the dishonoured cheque (supra).

10. Moreover, paragraph 4 of the complaint (supra), which is also extracted hereinafter, carries categoric allegations against the petitioner, besides her husband, qua them being Incharge and responsible for the conduct and day to day business affairs of the partnership firm.

“4. That the accused No.1 is a partnership concern and accused No.2 & 3 being its partner are incharge and responsible for the conduct and day to day business affairs of the accused No.1. As such all the accused are jointly and severally liable for prosecution due to their aforesaid act.”

11. The hereinabove recorded material prima facie shows that the petitioner is rather a signatory to the dishonored cheque (supra) and consequently, shatters the argument of the learned counsel for the petitioner that she is a ‘sleeping partner’ in the partnership firm. Though the partnership deed (supra) empowers only the “Continuing Part” to draw a cheque, however, the emergence of signatures of the petitioner on the

dishonored cheque (supra), who has indeed been recorded therein to be an “Incoming Part”, impels this Court to draw an inference, at this stage, that she has been actively participating in the day-to-day affairs of the partnership firm and she was equally responsible for dishonour of the cheque (supra). However, the aspect, whether the petitioner has been a sleeping partner or not, yet requires to be established through adduction of cogent evidence before the learned trial Court concerned. Therefore, the plea qua the petitioner being a ‘sleeping partner’ is required to be adjudicated by the learned trial Court, after appreciating the relevant evidence, as becomes adduced before it by the parties concerned.

12. Though some other issues have also been raised herein by the learned counsel for the petitioner, however, the same cannot be adjudicated upon in the instant proceedings, being disputed questions of facts.

FINAL ORDER

13. In consequence, this Court does not find any merit in the present petition, which is accordingly dismissed. However, liberty is reserved to the petitioner to raise all these pleas before the learned trial Court concerned.

14. It is clarified that anything observed hereinabove shall have no bearing on the outcome of the trial, nor shall the learned trial Court concerned be influenced by any of the hereinabove made observations.

November 07, 2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No