

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

CRA-AS-143-2018(O&M)

Date of Decision:-14.03.2023

R.K. Mehta.

.....Appellant.

Versus

Gurmail Singh.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Harprateek Singh Sandhu, Amicus Curiae for Appellant.

JASJIT SINGH BEDI, J.

The applicant/appellant has filed the present application for grant of leave to appeal against the order of acquittal dated 03.04.2013 passed by the Judicial Magistrate, 1st Class, Chandigarh, whereby the accused-respondent has been acquitted of the offence under Sections 138 of the Negotiable Instruments Act, 1881.

2. The brief facts of the case are that the instant complaint came to be instituted at the instance of the applicant against 05 persons namely Rajnath son of Mohinder Nath, Partner R.R. Beverages, Rupinder Singh Brar, Partner, Gurmail Singh Rai, Partner, Satinder Nath, Partner, R.R. Beverages and Sarabjot Singh, partner, R.R. Beverages. As per the contents of the complaint there was an agreement between the two entities i.e. M/s R.R. Beverages and M/s GEMCAP Enterprises. In discharge of its partial liability, R.R. Beverages issued cheque no.374441 dated 13.07.2006. The

said cheque got dishonoured, A legal notice demanding payment of the cheque amount was sent. However, the accused refused to repay the cheque amount leading to the filing of the complaint.

Based on the preliminary evidence lead by the complainant the accused were summoned to face trial for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. On their appearance notice of accusation was served upon the accused including the respondent no.1. Thereafter the complainant got examined Lt. Col. Raj Kumar as CW-1. After closure of the evidence the statement of the accused was recorded under Section 313 Cr.PC. He took the stand that he was not incharge and responsible for the conduct of the business of the respondent firm. His signatures had been obtained as a sleeping partner on various documents. Meanwhile, the offence against 04 accused other than the respondent Gurmail Singh Rai was compounded vide order dated 23.02.2013.

4. Based on the evidence led and after hearing the rival submissions of both the parties, the respondent came to be acquitted vide judgment dated 3.4.2013. It is this judgment which is impugned in the present appeal.

5. After the filing of the instant appeal as none had appeared for the applicant/appellant, on 20.04.2017 Mr. Harprateek Singh Sandhu, Advocate was appointed as Amicus Curiae to assist the Court. He very fairly states that the respondent/accused (only accused who faced trial) has infact rightly been acquitted as no specific averment in the complaint have been made qua the role played by the answering respondent. In addition he states that since the respondent partnership concern had not been made an

accused, the officers of the firm including the answering respondent could not be liable and convicted on account of vicarious liability as the primary accused was the firm. Reference is made to the judgment of the Hon'ble Supreme Court in **Dilip Hariramani Vs. Bank of Baroda 2022(3) RCR (Criminal) 1.**

6. I have heard the learned Amicus Curiae.

7. Admittedly in the instant case 05 accused face trial. During the course of the Trial, 04 of the accused compounded the offence and it was only the answering respondent Gurmail Singh who thus did face Trial and was acquitted on account of the fact that there were no specific averments as to any of the accused being incharge of and responsible for the conduct of the business of the firm. The reasoning adopted by the Trial Court while acquitting the accused cannot be faulted. In addition in the case of **Dilip Hariramani's (case)** it was held as under:-

*“ 14. The provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, which person(s) then, by deeming fiction, is made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender. This view has been subsequently followed in **Sharad Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781[17*]** **Himanshu v. B. Shivamurthy and Another, (2019) 3 SCC 797[18*]** and **Hindustan Unilever Limited v. State of Madhya Pradesh. (2020) 10 SCC 751[19*]** The exception carved out in **Aneeta Hada (supra),[20*]** which applies when there is a legal bar for prosecuting a company or a firm, is not felicitous for the present case. No such plea or assertion is made by the respondent.*

[17 "11. In the case at hand as the complainant's initial*

*statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in **Aneeta Hada v. Godfather Travels and Tours (P) Ltd.** in the context of the Negotiable Instruments Act, 1881."]*

[18 "13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused."]*

[19 : "23. Clause (a) of sub-section (1) of Section 17 of the Act makes the person nominated to be in charge of and responsible to the company for the conduct of business and the company shall be guilty of the offences under clause (b) of sub-section (1) of Section 17 of the Act. Therefore, there is no material distinction between section 141 of the NI Act and Section 17 of the Act which makes the company as well as the nominated person to be held guilty of the offences and/or liable to be proceeded and punished accordingly. Clauses (a) and (b) are not in the alternative but conjoint. Therefore, in the absence of the company, the nominated person cannot be convicted or vice versa. Since the Company was not convicted by the trial court, we find that the finding of the High Court to revisit the judgment will be unfair to the appellant-nominated person who has been facing trial for more than last 30 years. Therefore, the order of remand to the trial court to fill up the lacuna is not a fair option exercised by the High Court as the failure of the trial court to convict the Company renders the entire conviction of the nominated person as unsustainable."]*

[20 The exception would be when the company itself has ceased to exist or cannot be prosecuted due to a statutory bar.]*

15. *Given the discussion above, we allow the present appeal and set*

aside the appellant's conviction under Section 138 read with section 141 of the NI Act. The impugned judgment of the High Court confirming the conviction and order of sentence passed by the Sessions Court, and the order of conviction passed by the Judicial Magistrate First Class are set aside. Bail bonds, if any, executed by the appellant shall be cancelled. The appellant is acquitted.

8. In view of the aforementioned judgment, it is apparent that unless the firm/company is also facing trial, the persons who are stated to be responsible for the conduct of the business of the company cannot be held to be vicariously liable. In the instant case, apparently the firm was not an accused. Therefore, the question of the liability of the respondent/accused Gurmail Singh does not arise.

9. For the aforementioned reasons, this Court sees no reason to interfere with the well reasoned judgment of the Trial Court and therefore, the application for the grant of leave to appeal is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

March 14, 2023
Vinay

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