206 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-9451-2023
Date of Reserve:04.10.2023
Date of Decision:18.10.2023

Amjad Ali …Petitioner

Vs.

Narinder Singh …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Sunny K. Singla, Advocate
for the petitioner.

Mr. Mukul Khatri, Advocate
for the respondent.

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N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act"), instituted on 07.09.2021 titled as "Narinder Singh Vs. Amjad Ali (Annexure P-1) along with summoning order dated 01.12.2021 passed by the Court of JMIC, Malerkotla (Annexure P-3) and all subsequent proceedings arising therefrom.

2. The respondent/complainant filed a complaint under Section 138 of the "Act" against the petitioner only and vide the order dated 01.12.2021, the petitioner was ordered to be summoned to face trial under Section 138 of the "Act" by the Court of Judicial Magistrate First Class, Malerkotla (Annexure P-3).

3. The respondent had filed the present complaint under Section 138 of the "Act" against the present petitioner, in his capacity as Director/Managing Director of Sohrab Textile Mills Limited, Nabha Road, Malerkotla. As per the

respondent/complainant, he was doing the transportation work of petitioner/accused's firm Sohrab Textile Mills Limited from 2011 onwards and the petitioner/accused had not made any payments to the respondent/complainant from July 2016 to March 2017, which was about Rs.12,40,000/-. The respondent requested the petitioner several times to make the said payment and ultimately, the petitioner agreed to pay a sum of Rs.12,40,000/- and in discharge of said legal liability, the petitioner issued a cheque No.962284 dated 22.07.2021 for a sum of Rs.12,40,000/- drawn on Punjab National Bank, Malerkotla Branch from the account No.0309002100211049 of his firm in favour of the respondent with the assurance that the said cheque will be honoured on presentation of the drawee of the cheque. Even the petitioner had signed the cheque in the presence of the respondent, However, when the cheque was presented by the respondent, the cheque was returned with the remarks "Funds Insufficient". On getting the information regarding the dishonoured of the cheque, the respondent sent a legal notice by way of registered post on 14.08.2021 to the petitioner, calling upon him to make the payment of the cheque amount of Rs.12,40,000/- within a period of 15 days of receipt of the notice. However, despite, service of notice on the petitioner, no payment was made by the petitioner/accused. Ultimately, the present complaint was filed by the respondent against the petitioner.

4. Learned counsel for the petitioner, while referring to the observations of the Hon'ble Supreme Court in the matter of ***"Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt. Ltd.",:2012 (2) RCR (Criminal)854*** argued that the cheque in question was issued for and on behalf of M/s Sohrab Textile Mills Limited and the petitioner had signed the

cheque as an authorised signatory. As per the provisions of Section 141 of the Act, “authorised signatory” Director/ Managing Director of the company cannot be prosecuted, without arraying the company as an accused. In the present case, the petitioner had been shown as Director/Managing Director of Sohrab Textile Mills Limited. Even the legal notice Annexure P-4 (Ex.C-3) was only issued to the petitioner as Director/Managing Director of Sohrab Textile Mills Limited and no notice was issued to the company. Even from a perusal of the cheque, Annexure P-2, it is clear that the petitioner had signed as an authorised signatory of Sohrab Textile Mills Limited.

5. Learned counsel for the respondent has also relied on observations in case of **Aneeta Hada (supra)** and has argued that in this case all the allegations are against the petitioner and not against the company. Though, cheque was issued from the account of company but the same was issued by the petitioner as its authorized signatory. Respondent has not levelled any allegation against the company, as such, complaint against the petitioner in his personal capacity is maintainable.

6. In order to see the legal proposition for filing complaint under Section 138 of 'the Act', it will be relevant to first have a look at provisions of Section 138 of 'the Act', which reads as follows:-

> “138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made

with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to [two] years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless:-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

7. Some of the ingredients, which emerge on perusal of Section 138 of 'the Act', are as follows:-

(i) Cheque is drawn by a person on an account maintained by him with a banker;

(ii) the cheque is drawn for payment of any amount of money to another person from out of that account for discharge, in whole or in part of any debt or other liability;

(iii) the cheque drawn is returned by the bank unpaid.

8. Before proceeding further, it will be relevant to have a look on provisions of Section 141 of 'the Act', which relates to offences by company or a firm, which reads as follows:-

"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."

9. The Hon'ble Supreme Court in the matter of ***Aneeta Hada (supra)*** has held that for maintaining the prosecution under Section 141 of the Act, it is imperative to arraign the company as an accused and the prosecution of a

director, without arraying the company as an accused, is not sustainable in the eyes of law. The following observations were made by the Hon'ble Supreme Court in the matter of ***"Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt. Ltd.",:2012 (2) RCR (Criminal)854:-***

> *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 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.

10. From the perusal of the cheque (Annexure P-2), it is clear that the present petitioner had signed as an authorised signatory of M***/s*** Sohrab Textile Mills Limited. It is not the case of the respondent that he was not aware of the said fact. Even the statutory notice, before filing of the complaint (Annexure P-4) was issued only to the present petitioner and not to the company in the present case. M/s Sohrab Textile Mills Limited was required to be arrayed as an accused and in view of the law settled in the case of

Aneeta Hada (supra), the petitioner in his capacity as director/managing director cannot be prosecuted in absence of the company. Even otherwise, all the dealings of the respondent were with M/s Sohrab Textile Mills Limited admittedly and not with the petitioner/accused in his personal capacity. Even the cheque was drawn on the account of the firm and the petitioner had signed in his capacity of an authorised signatory. However, the Trial Court, while passing summoning order had not looked into this legal aspect.

11. As a sequal of the above discussion and the law laid down by the Hon'ble Supreme Court, I find merit in the present petition. The complaint Annexure P-1 and the summoning order dated 01.12.2021 Annexure P-3 passed by the Court of JMIC, Malerkotla, suffer from serious legal infirmity and are ordered to be quashed by this Court.

12. The present petition stands allowed.

(N.S.SHEKHAWAT)
JUDGE

18.10.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No