

204

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANIDGARH

CRM-M No.19097 of 2017

Date of Decision: 19.01.2023

Anil Chanana

..... Petitioner

Versus

Ram Parkash

..... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Aashish Chopra, Advocate
for the petitioner.

GURBIR SINGH, J (ORAL)

The present petition has been filed under Section 482 Cr.P.C. for quashing of summoning order dated 21.02.2017 (Annexure P-3) and also Compliant bearing CIS No.1007/16 pending in the Court of learned Judicial Magistrate, Ist Class, Kaithal.

Complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed against M/s Amira Pure Foods Pvt. Ltd and 8 others including the petitioner as Director. On the basis of preliminary evidence led, the trial Court held that there was sufficient material on record to issue the summons against the accused and thereafter, accused was summoned accordingly.

It has been argued by learned counsel for the petitioner that the petitioner had already resigned from the said company w.e.f. 10.02.2006, i.e., more than 10 year prior to the issuance of cheques. On the basis of

which, complaint was filed and the same was dishonoured. Form No.32 is attached as Annexure P-4 showing that the petitioner had resigned from the said company. The said documents are 'public documents' within the meaning of the term according to Section 74(2) of the Indian Evidence Act. The cheques in dispute were issued on 13.06.2016 and 20.08.2016. The petitioner is not signatory of the said cheques. The petitioner was not the Director of the company on the date of issuance of cheques. He was not ever be made liable as a person or incharge of the affairs of the company or responsible to it for its business. No specific allegation has been levelled against him in the complaint regarding the manner in which he was responsible for the conduct of the business of the company. Thus, the filing of the complaint and issuance of summoning order against him, is an abuse of process of law and those are deserve to be quashed, qua the petitioner, in view of the law laid down in “**Anil Chanana vs. M/s Gyani Ram Ruliya Ram**”, 2019(1)RCR(Criminal)388, and “**SMS Pharmaceuticals Limited vs. Neeta Bhalla and another**”, (2005) 8 SCC 89.

Para No.2 of the complaint is as under:

2. *That the accused are doing the business of Rice Shelling and Milling under the name and style of Accused No.1 and the Accused Nos.2 to 8 are the Directors and are liable for all acts and liabilities being incharge and responsible to the company, for conduct the business of accused No.1.”*

Section 141 of the Negotiable Instruments Act dealing with the 'offence by companies' is reproduced below:

“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.]*

Every person, who was incharge of the business of the company and responsible to the company for the conduct of its business is vicariously liable apart from the company itself. Such person can prove that offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence. In case of **SMS Pharmaceuticals Ltd. (supra)**, it has been laid down that there should be

pleadings/assertions/averments to the fact that accused was incharge or was responsible to the company for the conduct of the business of the company, failing which such accused is not liable to be proceeded against and punished.

On careful reading of the complaint, it is apparent that no such allegation has been specifically levelled against the petitioner. Form 32, which is annexed as Annexure P-4, wherein it has been shown that petitioner had resigned from the company on 10.02.2006, the cheques in dispute was issued after 10 years thereof. There is no specific averment in the complaint regarding the role of the petitioner in the conduct of the business of the Company , so, the petitioner could not be summoned to face trial. Such view has already been taken by a Coordinate Bench of this Court in the case of *Anil Chanana's case (supra)*.

Consequently, this petition is allowed. The summoning order dated 21.02.2017 (Annexure P-3) as well as complaint bearing CIS No.1007/16 pending in the Court of learned Judicial Magistrate, Ist Class, Kaithal and all other proceedings arising therefrom against the petitioner, are hereby quashed.

19.01.2023

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**(GURBIR SINGH)
JUDGE**

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