IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

232+110 **CRM M-19236 of 2014 (O&M)**
Date of Decision: 22.03.2024

Satish Ahuja ...Petitioner

Versus

Raj Kamal Iron and Steel Co. and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Vikas Mohan Gupta, Advocate
for the petitioner.

Mr. Lovish Rattan, Advocate for
Mr. Surinder Sharma, Advocate, for respondent No. 1.

N.S.SHEKHAWAT, J. (Oral)

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 1881 (hereinafter to be referred as '**the Act'**), bearing No. 28533 dated 05.12.2012 titled as **"Raj Kamal Iron & Steel Company Vs. M/s Krishna Engg. Works and others"** (Annexure P-1), summoning order dated 30.01.2013 (Annexure P-2) and order dated 10.02.2014 (Annexure P-4) and all consequential proceedings arising therefrom.

2. Learned counsel for the petitioner contended that the petitioner had been wrongly arrayed as an accused in a complaint filed under Section 138 of the Act (Annexure P-1) by respondent No. 1 and vide order dated 30.01.2013 (Annexure P-2), the trial Court wrongly summoned the petitioner to face a trial with the other

accused under Section 138 of the Act, without appreciating the fact that the petitioner had no concern with the allegations levelled by the respondent No.1/complainant and was a total stranger to the accused/company. Learned counsel further contended that respondent No.1/complainant had filed a complaint (Annexure P-1) against the petitioner and 04 more accused by alleging that Mukesh Juneja, who has now expired, had issued a cheque of Rs. 34.50 lacs dated 30.10.2012 and when the said cheque was presented to the bank, it was dishonoured on account of the reasons “payment stopped by the drawer”. It was mentioned in the complaint that the petitioner was also incharge of day to day affairs of the accused/company and was responsible for the conduct of the business of the complainant and was wrongly projected as Finance Director. Learned counsel for the petitioner further contended that the accused/company was incorporated under the provisions of the Companies Act, 1956 and was a separate legal entity. At no point of time, the petitioner was even a shareholder, Director, Nominee Director or the Managing Director of the accused/company. Further, the petitioner was never employed as an ordinary employee also by the accused/company. Learned counsel further contended that the petitioner was never responsible for day to day affairs of the accused/company and was wrongly mentioned as Director (Finance) of the accused/company. Apart from that, from a perusal of the complaint (Annexure P-1), a vague averment was made that the petitioner alongwith other accused was incharge of day to day affairs of the accused/company and was responsible to the company for the conduct of business of the company. It was nowhere mentioned in the complaint that as to and what capacity and in what manner, he was working with the company and without any evidence, the petitioner was wrongly ordered to be summoned vide summoning order dated 30.01.2013 (Annexure P-2). The petitioner appeared before the trial Court and moved an application for recalling of the summoning order, which was declined vide the impugned order dated 10.02.2014 (Annexure P-4). Learned counsel for the petitioner contended that the petitioner cannot be prosecuted and fastened with criminal liability for a company, with which, the petitioner had no concern at all. Learned counsel also placed reliance on the annual reports of the accused/company for the last 05 years (Annexures P-6 to P-10) to contend that he was never on the Board of Directors nor was employee of the said company. Even, the petitioner also placed reliance on the annual return filed by the accused/company with the Registrar of the Companies for the last 03 years (Annexure P-11) to submit that he was never the Director, Nominee Director or the Managing Director of the accused/company nor any role was played by him in the Board of Directors. He further contended that in fact the petitioner was an employee of another company known as M/s KEW Industrial Limited, a company under the provisions of the Companies Act, 1956, which was having a separate legal entity. Even, the company was not a sister concerned or associate company of the accused/company, even though, it was also managed by accused No. 2 and 3. Thus, the petitioner had been wrongly summoned in the present case.

3. Learned counsel for the petitioner further contended that further proceedings qua the petitioner were stayed by this Court, however, his co-accused were tried by the Court of Judicial Magistrate 1st Class, Jalandhar and vide judgment and order dated 13.12.2018, the co-accused of the petitioner were convicted for an offence under Section 138 of the Act and were sentenced. The co-accused preferred an appeal before the Court of Sessions Judge, Jalandhar and during the pendency of the said appeal, the entire payment was made by the co-accused to the respondent No.1/complainant and with the permission of the Court, the offence was compounded on 09.09.2023 in the National Lok Adalat, held at Jalandhar.

4. Even during the course of arguments, on 23.05.2017, the complainant was granted an opportunity by this Court to place on record the evidence against the petitioner, after noticing the contentions raised on behalf of the petitioner. However, nothing was placed on record before this Court by the respondent No.1/complainant to indicate the official position of the petitioner in the accused/company.

5. On the other hand, learned counsel appearing on behalf of respondent No.1/complainant submitted that the petitioner had

raised several disputed questions, which could be adjudicated only during the course of trial. Even, fresh evidence was led by respondent No.1/complainant to show that the criminal liability could be fastened on the petitioner as well as his co-accused and after due appreciation of the evidence, the co-accused of the petitioner were ordered to be convicted by the trial Court. However, during the pendency of the appeal, the co-accused of the petitioner had made the payment to respondent No.1 and the offence was ordered to be compounded in the National Lok Adalat, Jalandhar. However, the petitioner was not a party in the said appeal and cannot take advantage of the said judgment and the present petition deserves to be dismissed.

6. Having considered the rival submissions made by the learned counsel for both the sides, this Court is of the considered opinion that the submissions made by the learned counsel for the petitioner are well founded and deserves to be accepted by this Court.

7. In various judgments passed by the Hon'ble Supreme Court and this Court, it has been held repeatedly, while referring to the provisions of Section 482 Cr.P.C. that nothing under the Code of Criminal Procedure shall deem to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. The Hon'ble Supreme Court in the matter of **Ajay Mitra Vs. State of M.P. & others, 2003(3) SCC 11,** has held as follows:-

"Leave granted.

These appeals by special leave are directed against the judgment and order dated January 16, 2002 of High Court of Madhya Pradesh, by which three Petitions filed by the appellants under *Section 482 Cr.P.C.* *were dismissed.*

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Thereafter, the appellants filed three Criminal Miscellaneous Petitions under Section 482 Cr.P.C. before the High Court for quashing of the FIR and the proceedings of the case before the learned Magistrate. After hearing the parties, the High Court held that the investigation had not yet commenced in connection with the FIRs which had been registered at the Police Station and, therefore, the Petitions were pre-mature and accordingly all the three Petitions were rejected.

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The High Court has held that the Petitions filed by the appellants for quashing the complaint and the FIRs registered against them are pre-mature. The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage? This *question was examined by this Court in* ***State of West Bengal &Ors. V. Swapan Kumar Guha & Ors., AIR 1982 Supreme Court 949*** *and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered* ***in State of Haryana &Ors. V. Ch. Bhajan Lal &Ors. 1991(3) RCR (Criminal) 383 (SC)*** *and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. either to prevent abuse of the process of any Court or to secure the ends of justice, were sumarised in para 108 of the Report and sub- paras 1 to 3 thereof are being reproduced hereinbelow :*

"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

8. The said judgment by the Three Judges Bench of the Hon'ble Supreme Court had affirmatively held that where an FIR does not disclose the essential requirements of the penal provision or does not disclose the commission of a cognizable offence, the same can be quashed at the initial stage. Reference has also been made to the judgment of Hon'ble Supreme Court in case ***"State of Haryana and others Vs. Ch. Bhajan Lal & Ors., 1991(3) RCR (Criminal) 383),*** in which, it was observed that the High Court can exercise its

extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. 1973 either to prevent abuse of the process of any Court or to secure the ends of justice.

9. Section 141 of the Act provides for **"Offences by the companies",** which has been reproduced below:-

> "**141. Offences by companies. —**
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> *(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".

10. In fact, Section 141 of the Act is a penal provision creating vicarious liability, and which, as per the settled law must be strictly construed. It is, therefore, not sufficient to make a bald cursory statement in the complaint that the accused was incharge and responsible to the company for the conduct of business of the company, without knowing more as to the role of the accused. The complainant is under a legal obligation to spell out as to how and in what manner the accused was incharge or was responsible to the accused/company for the conduct of its business. This is in consonance with the strict interpretation of penal statutes, especially, where the said statues create vicarious liability in person, who was not a Director, Nominee Director, Managing Director, Additional Director, Non-Executive Director, shareholder and employee of the accused/company and cannot be fastened with a criminal liability.

11. In the present case, the petitioner has placed on record the annual reports of the accused/company for the last 05 years (Annexures P-6 to P-10) to show that the petitioner was never on the Board of Directors nor the employee of the company. Still further, the petitioner also placed on record the annual return filed by the accused/company with the Registrar of the Companies for the last 03 years (Annexure P-11), which established that the petitioner was never associated with the accused/company nor was the Director, Nominee Director or the Managing Director of the accused/company. Even, the petitioner had specifically pleaded that the petitioner had never been associated with the accused/company and was not responsible for day to day affairs of the company nor had any role to play in the affairs of the accused/company. Thus, the ingredients, which were required under Section 141 of the Act were completely missing in the present case. Still further, even the complainant was afforded an opportunity of hearing by this Court and was granted time to place on record any evidence to show that the petitioner had any concern with the affairs of the accused/complainant, but the complainant utterly failed in bringing on record any evidence to that effect. Thus, it would be the travesty of justice, if such a person, who had no concern with the accused/company is dragged in the criminal prosecution and is fastened with any kind of criminal liability.

12. In view of the above discussion, the present petition succeeds and the impugned complaint bearing No. 28533 dated

05.12.2012 titled as **“Raj Kamal Iron & Steel Company Vs. M/s Krishna Engg. Works and others”** (Annexure P-1), summoning order dated 30.01.2013 (Annexure P-2) and order dated 10.02.2014 (Annexure P-4) alongwith all consequential proceedings arising therefrom are ordered to be quashed qua the present petitioner.

22.03.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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