2023: PHHC: 139831

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-11650-2019
Reserved on: 30.10.2023
Pronounced on: 02.11.2023

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Kamaljit Singh

. . . . Petitioner

Vs.

State of Punjab and another

. . . . Respondents

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. Narinder Lucky, Advocate, for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

Mr. Amardeep Singh Gill, Advocate, for respondent No.2.

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<u>DEEPAK GUPTA, J.</u>

By way of this petition filed under Section 482 CrPC, petitioner has prayed for quashing of complaint No. NACT/3730/2018 titled *"Baweja Industries vs. Gobind Enterprises & Others'* (Annexure P1) and summoning order dated 03.07.2018 passed by JMIC, Jalandhar (Annexure P2) along with all the consequential proceedings.

2. It is revealed that Baweja Industries through its proprietor Ravinderjit Singh Baweja *(respondent No.2 herein)* filed the complaint (Annexure P1) to prosecute accused - Gobind Enterprises and its two partners namely Harvinder Singh; and Kamaljit Singh *(petitioner herein)* under Section 138 of the Negotiable Instruments Act, 1881 [for short the 'NI Act']. It was alleged that all the partners, managers and other officials of the accused-firm had been actively taking part in the business dealings with the complainant-firm and during the course of business

and in order to discharge their legally enforceable liability, against bill No. T-600 dated 17.03.2018, the accused-firm issued multicity State Bank of India Cheque bearing No.006804 dated 11.04.2018 for an amount of ₹2,56,650/-. However, on presentation, the cheque was dishonoured vide return memo dated 12.04.2018 with remarks 'funds insufficient'. At the request of the accused, the cheque was again presented for encashment, but it met the same fate vide return memo dated 15.05.2018. Complainant then issued a legal notice dated 17.05.2018 to the accused firm as well as both of its partners through registered post asking for payment of the cheque amount but in vain. With these allegations, prayer was made to summon and prosecute the accused under Section 138 of the NI Act.

3. After recording preliminary evidence, process against the accused was issued vide order dated 03.07.2018 (Annexure P2).

4. Contention of ld. counsel for the petitioner is that petitioner had retired from the firm M/s Gobind Enterprises on 01.04.2018 vide retirement deed dated 01.04.2018 (Annexure P3) and as per the terms of the said retirement deed, all assets and liabilities shall go to continuing partner at their book values. It is contended further that later on, a new partnership deed was executed with new partner namely Smt. Gurjit Kaur on 30.04.2018 vide Annexure P4. Ld. counsel contends that since cheque in question was issued after the date of retirement of the petitioner from the accused-firm, so he has no liability.

With these submissions, prayer is made for quashing the complaint in question along with the summoning order and the subsequent proceedings.

5. (i) Opposing the petition, ld. counsel for respondent No.2 - complainant pointed out that as per the averments made in the complaint Ex.P1, cheque in question was issued against bill No. T-600 dated 17.03.2018 i.e., prior to the alleged retirement of the petitioner as partner of the accused-firm. Though, it is conceded that petitioner is not a signatory to the cheque, but attention is drawn towards the fact that specific averment was made that petitioner and other partners and managers of the accused firm were taking active part in business dealings with the complainant-firm. Ld. counsel contends that in these circumstances, petitioner being the partner of the firm at the relevant time, is clearly liable as per Section 141 of the NI Act.

(ii) Still further, it is urged that the question as to whether the petitioner had retired or not by way of retirement deed dated 01.04.2018 as contended by him, is a matter of trial and the said contention cannot be considered at this stage. In support of this contention, ld. counsel has referred to a decision of the Hon'ble Supreme Court rendered in ***"Rallis India Ltd. Vs. Poduru Vidya Bhusan and others"*** *2011 (4) RCR (Criminal) 723*.

(iii) Ld. counsel further referred to Sections 32 & 45 of the Indian Partnership Act, 1932 [for short the 'Act'] in order to contend that a retiring partner can be discharged from any liability to 3rd party for the acts of the firm done before his retirement, only if an agreement is made by him with such third party. It is also urged that in view of Section 45 of the Act, despite dissolution of the firm on account of alleged retirement of the petitioner, he shall continue to be liable to the third party.

With all these submissions, prayer is made for dismissal of the petition.

6. I have considered submissions of both the sides and have appraised the record carefully.

7. In the case of ***Rallis India Ltd. (supra)***, cheques were issued by the partnership firm, which were dishonoured on account of instruction of the drawer to 'stop payment'. Prosecution of the partners of the firm was sought. Said partners sought quashing the complaint on the ground that they had already retired before issuance of the cheque. In these facts and circumstances, it was held by Hon'ble Supreme Court that the question as to whether or not the petitioners were partners in the firm on the relevant date is one of the facts, which has to be established in trial.

8. In the present case also, it is the specific averment in the complaint (Annexure P1) that all the partners of the accused firm including the petitioner were actively participating in the business dealing with the complainant-firm. The cheque has been issued against a bill dated 17.03.2018 i.e., prior to the retirement deed dated 01.04.2018 (Annexure P3) relied upon by the petitioner. So, the contention as raised by the petitioner, is subject matter of trial.

9. Apart from above, ld. Counsel for the respondent-complainant has rightly pointed out towards page No.2 of retirement deed (Annexure P3) revealing that it has been executed only amongst the two partners, with no witness. No date of execution is mentioned. In these circumstances, genuineness of the retirement deed is a seriously contentious issue, which will also be subject matter of trial.

10. Further, Section 32 of the Indian Partnership Act, 1932 reads as under: -

> *"**RETIREMENT OF A PARTNER**. (1) A partner may retire –*
>
> *(a) with the consent of all the otter partners,*
>
> *(b) in accordance with an express agreement by the partners, or*
>
> *(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.*
>
> *(2) **A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm**, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.*
>
> *(3) **Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement***
>
> *Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a party.*
>
> *(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.*

11. Bare perusal of above makes it clear that though the partner may retire with consent of other partners, but he can be discharged from any liability to any third party for the acts of the firm done before his retirement only by way of agreement made by him with such third party and the partners of the reconstituted firm.

12. In the present case, there is no averment on the part of the petitioner that before retiring, he entered into any such agreement with the complainant-respondent No.2.

13. Still further, Section 45 of the Indian Partnership Act, 1932 provides as under: -

"LIABILITY FOR ACTS OF PARTNERS DONE AFTER DISSOLUTION.

(1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm, if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner."

Thus, despite dissolution of the firm, the partners continue to be liable as such to third parties for any act done by any of them, which would have been an act of the firm if done before dissolution, unless public notice is given of the dissolution.

14. In the present case, there is no averment on the part of the petitioner that before dissolving the firm with other partner by way of retirement deed Annexure P3, any public notice was issued. In the same facts and circumstances, it has been held by Allahabad High Court in ***Anil Kumar Singh Vs. Kanak Prabha Dutta,*** *2003 CriLJ 4078* that partners cannot be exonerated from their liability. In ***Oriental Bank of Commerce Vs. Smt. Dhara Devi and others,*** *1993(1) CurLJ 174,* this Court has held that a retiring partner could be absolved of his liability to a third party for acts done prior to his retirement only by an agreement with such party and the reconstituted firm.

15. In view of the aforesaid discussion, this Court finds no merit in the present petition so as to quash the complaint or the summoning order. However, petitioner will be at liberty to raise the

issues as taken in this petition in his defence before the trial Court concerned.

Dismissed.

(DEEPAK GUPTA)
JUDGE

02.11.2023
Vivek

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? *Yes/No*