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

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CRM-M-12008-2019 (O&M)
Date of decision: 23.08.2023

Rajeev Garg
....Petitioner

Versus

M/s Des Raj Ram Gopal
...Respondent

CRM-M-12423-2019 (O&M)

Rajeev Garg
....Petitioner

Versus

M/s Des Raj Ram Gopal
...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. Anuj Balian, Advocate for the petitioner

Mr. Ravinder Bangar, Advocate for the respondent

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<u>AMAN CHAUDHARY, J.</u>

1. This common order shall dispose of the above-mentioned petitions as they relate to the same parties having allegations of dishonour of cheques.

2. The present petitions have been filed under Section 482 Cr.P.C. for quashing criminal complaints bearing Nos. NACT-417-2016 and NACT-416-2016 titled as 'M/s Des Raj Ram Gupta vs. Rajeev Garg' and for setting aside the summoning orders dated 21.05.2016.

3. Succinctly, the facts of the case are that the complainant-M/s Des

Raj Ram Gopal had filed two complaints on 20.05.2016 under Section 138 read with Section 142 of Negotiable Instruments Act, 1881 (for brevity, 'the Act'), against the petitioner-Rajeev Garg, authorised signatory of M/s Dev Dhan Raj Agriculture Products International Private Limited Dhand, Kaithal, with the allegation that he, in the name of the company, had issued cheques dated 25.12.2015 and 04.01.2016 for Rs.4,00,000/- each, in discharge of the legal liability of the company. The said cheques upon presentation were returned unpaid along with a memo dated 21.03.2016, with remarks "Account Closed". The complainant served a demand notice upon the accused to make the payment of unpaid amount but it was received back, stating 'unclaimed'. Thus, the above complaints were filed.

4. Learned counsel contends that the complaints have been instituted against the petitioner under Section 138 of the Act for cheques that were drawn on the account of the above company, of which he was an authorized signatory but only he has been arraigned in the complaint without the principal offender i.e. the company being made an accused, thus, the same is not maintainable. In this regard, reliance is placed on the judgment of **Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd.**, (2012) 5 SCC 661.

5. Further reference is made to **M/s Indus Airways Pvt. Ltd. vs. Magnum Aviation Pvt. Ltd.,** (2014) 12 SCC 539, wherein even an application under Section 319 Cr.P.C. was filed for arraigning the company as co-accused, which was also allowed by the High Court. Hon'ble The Supreme Court set aside the same on the ground that an initial defect in the complaint

could not be cured. The present case, he submits, is on a better footing for quashing the complaints, as no such application had ever been filed. Moreover, in discharge of the liability, the accused issued two cheques of Rs.4,00,000/- each, which on presentation got dishonoured with remarks 'Account Closed' vide memo dated 21.03.2016, thus, the same cannot be termed as legally enforceable debt.

6. Learned counsel for respondent on the other hand expostulated that the respondent-complainant was cheated by the petitioner insofar as the cheques issued, of an account that was closed, which itself proves deception on his part. The cheques in question were issued in discharge of legally enforceable debt and the petitioner is trying to wriggle out of the liability on a mere technical ground, which is impermissible. Thus, prays for the dismissal of the petition.

7. Heard learned counsel on either side.

8. For the adjudication of the matter, it would be worthwhile to refer to cardinal provisions that establish the criminal liability upon a defaulter for dishonour of cheque. Sections 138 and 141 of the Act read thus:

> "**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.

Explanation.- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

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. Bare reading of the aforesaid provisions *expressis verbis* reveals that Section 138 of the Act casts criminal liability upon a person who issues a cheque towards discharge of a debt or liability in whole or in part and the cheque is dishonoured by the bank on presentation. Section 141 of the Act extends such criminal liability in case of a company, to every individual, who when the offence was committed was in charge of, and responsible for the conduct of the business of the company. The offender in Section 138 is the drawer of the cheque. He alone would have been the offender thereunder if the Act did not contain other provisions. It is only due to Section 141 that penal liability under Section 138 in case of a company, is cast upon other persons connected with it. The company is a body corporate and a juristic person. When it is the drawer of the cheque, the dishonour of which is complained of, in that scenario, it becomes the principal offender and the remaining persons are made offenders by virtue of the legal fiction created by the legislature. Section 141 is a deeming provision to enable the complainant to prosecute the company alongwith the persons who were incharge therein and responsible for the conduct of its business. It is in the nature of a vicarious liability. However, there is a proviso to the aforesaid Section, which enables those persons to prove that the offence was committed without their knowledge or that the said person exercised all due diligence to prevent the commission of such offence.

This safeguard is available only to the persons who are prosecuted by virtue of Section 141(1) and not to the drawer of the cheque.

10. In the present case, the complainant-respondent had supplied paddy to the company of the accused-petitioner and for making good the payment for the same, cheques were issued by the company, which on presentation got dishonoured. Thereafter, complaints were filed wherein the petitioner, being the authorised signatory of the company, was made an accused but the company was not arraigned, even though it was the principal offender, the cheque having been drawn on an account held by it. The issue that arises for consideration before this Court is regarding the maintainability of the complaints.

11. The issue is no longer *res integra*. The judgment in **Aneeta Hada** (supra), governs this area of dispute wherein the issue that fell for consideration of Hon'ble The Supreme Court, was whether an authorized signatory of a company would be liable for prosecution under Section 138 without the company being arraigned as an accused. It was observed that, "…for maintaining prosecution under Section 141, arraigning of a company as an accused is imperative, only then can the other categories of offenders be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself…" It was further held thus:

> "58. 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.
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> 59. 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."

12. The above *dicta* was reiterated in the case of **Anil Gupta vs. Star India (P) Ltd.,** (2014) 10 SCC 373, in which, the part of the judgment of the High Court holding that the proceedings against appellant can be continued even in absence of the company, was set aside and the summoning order and proceedings pursuant to complaint were quashed, so far as they related to the appellant. Similarly, in **Charanjit Pal Jindal vs. L.N. Metalics**, (2015) 15 SCC 768, the accused was acquitted by observing that, only the appellant-Director had been impleaded as an accused and the company namely M/s Naina Devi Steel Castings Pvt. Ltd. was not arraigned as accused, on whose behalf the cheques were issued, thus, the complaint with respect to the offence under Section 138 read with Section 141 of the Act was not maintainable following the decision in **Aneeta Hada** (supra).

13. Hon'ble The Supreme Court in the case of **N. Harihara Krishnan vs. J. Thomas,** (2018) 13 SCC 663 had held that the offence under Section 138 NI Act is person specific. There cannot be prosecution without an accused. The offence under this Section is capable of being committed only by

the drawer of the cheque and it was observed that the logic of the High Court that since the offence is already taken cognizance of against the person, there is no need to do the same against the company, was found to be flawed.

14. The legal elucidation of Section 141 NI Act in Aneeta Hada (supra) has been reiterated in **Himanshu vs. B. Shivamurthy,** (2019) 3 SCC 797, wherein it was held that, "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."

15. Ineluctable conclusion that can be drawn is that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative, only then can other categories of offenders be brought in the drag-net on the touchstone of vicarious liability, as is postulated by the said provision. Incontrovertibly, the cheques in question were issued by the company on its account, which purchased paddy from the complainant-respondent, in order to absolve itself from the legal liability. The complaint was however instituted only against the petitioner, he being the authorised signatory without indicting the principal offender-the company.

16. The facts of the present case when juxtaposed with the exposition of law referred to hereinabove, this Court is persuaded to hold that the complaints are not maintainable.

17. Sequentially, the present petitions are allowed and criminal complaint Nos.NACT-417-2016 and NACT-416-2016 dated 20.05.2016, as well as the summoning orders dated 21.05.2016 are hereby quashed.

18. A photocopy of this order be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

August 23, 2023
M.Kamra

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