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

**CRM-M-24639-2018 (O&M)**
**Date of decision:16.03.2023**

M/s Golden Agro Foods & others ...Petitioners

Vs.

M/s Sahil Trading Company ... Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

Present: Ms. Preeti Grover, Advocate for
Mr. Saurav Verma, for the petitioners.

Mr. Akshay Jindal, Advocate for the respondent.

...

**MANJARI NEHRU KAUL, J. (ORAL).**

Petitioners are seeking quashing of a Criminal Complaint bearing No.NACT/977 dated 18.07.2017 titled as "Sahil Trading Company Vs. Ms. Golden Agro Fooda" (Annexure P-1) and summoning order dated 17.10.2017Annexure P-2) passed by learned Judicial Magistrate, Panchkula, whereby, they have been summoned to face trial under Section 138 of the Negotiable Instruments Act.

Learned counsel appearing for the petitioner *inter alia* submits that the complaint under Section 138 of the Negotiable Instruments Act which was instituted by the complainant/respondent against the petitioners was not maintainable as the mandatory statutory provisions had not been complied with. Learned counsel while drawing the attention of this Court to the second proviso to Section 138 of the Negotiable Instruments Act has submitted that issuance of statutory demand notice to all the accused is mandated therein, however, admittedly in the case in hand, notice was issued only to petitioner No.2. Since the cheque in question had been drawn in the name of petitioner No.1/company, a complaint under Section 138 of the Negotiable Instruments Act could not have been instituted without issuance of any notice to petitioner No.1/company. Therefore, in the absence of any demand notice having been issued to petitioner No.1/company, no cause of action could have arisen in favour of the respondent. In support of this submissions, learned counsel has placed reliance upon a judgment of the Hon'ble Apex Court in **Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt. Ltd., 2012 (2) RCR (Criminal) 854.**

Per contra, learned counsel appearing for the respondent while inviting the attention of this Court to the contents of the petition as well as the complaint under Section 138 of the Negotiable Instruments Act (Annexure P-1) has vehemently contended that petitioner No.1 is a partnership firm governed under the provisions of the Indian Partnership Act and is not a company within the meaning of the Companies Act. He has asserted that as per Section 24 of the Indian Partnership Act, notice to a partner would be deemed to be a notice to the firm as well, hence, petitioners cannot seek quashing of the complaint on the ground that the partnership firm and other partners were not served with any legal notice. In support of this contentions, learned counsel has placed reliance upon a decision of this Court in **Subash Chander & others Vs. Ramesh Khanna, 2019 (3) RCR (Criminal) 992.**

I have heard learned counsel and perused the relevant material on record.

Admittedly, petitioner No.1 is a partnership firm and not a company incorporated under the Companies Act.

This Court finds no merit in the submissions made by learned counsel for the parties that since the demand notice had not been issued to all the accused, cause of action to institute a complaint under Section 138 of the Negotiable Instruments Act would not arise.

It would be apposite to reproduce Section 24 of the Indian Partnership Act, to deal with the issue in hand:

> ***"Section 24 - EFFECT OF NOTICE TO ACTING PARTNER.***
>
> *Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner."*

A bare perusal of the above provisions makes it abundantly clear that once a notice has been issued and served upon a partner, it would be deemed to be a notice to the firm as well.

Learned counsel for the petitioner has not disputed that the legal notice dated 12.08.2017, which was addressed to the petitioner was duly served upon him. In these circumstances, it cannot be said that there had been non-compliance of the second proviso to Section 138 of the Negotiable Instruments Act.

The case law relied upon by the learned counsel for the petitioners would not come to their rescue as in that case the Directors of a company were sought to be prosecuted under Section 138 of the Negotiable

Instruments Act without arraigning the company as an accused.

As a sequel to the above discussion, this Court is not inclined to invoke its inherent jurisdiction under Section 482 Cr.P.C. and quash the impugned complaint (Annexure P-1) and summoning order dated 17.10.2017 (Annexure P-2).

Petition stands dismissed.

**( MANJARI NEHRU KAUL )**
**JUDGE**

**16.03.2023**
*harjeet*

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