IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-6115-2011 (O&M)
Date of decision: 11.05.2023

Manoj Mehra

....Petitioner

Versus

M/S Puri and Sons

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. Aalok Jagga and Mr. Harshit Anand, Advocates for the petitioner

Mr. D.K. Singal and Mr. Rahul Garg, Advocates for respondent

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AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 of Cr.P.C. for quashing the criminal complaint No.27/2 dated 27.03.2008, Annexure P-1, filed by respondent under Section 138 of the Negotiable Instruments Act, 1881 as well as under Sections 419, 420, 467, 468, 471 of the Indian Penal Code, 1860 titled as 'M/s Puri and Sons vs. Manoj Mehra' and summoning order dated 10.02.2009, Annexure P-2 passed by learned Judicial Magistrate First Class, Ludhiana.

2. Learned counsel would contend that non-arraignment of the company would render the complaint itself as non-maintainable against the Director, as the cheque in question was signed on behalf of the company by the petitioner in the aforesaid capacity, for which reliance is placed on the judgments of **Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd.**, (2012) 5 SCC 661; **Anil Gupta vs. Star India Pvt. Ltd.**, (2014) 10 SCC 373; **Manish Jain vs. Surender Singh,**

2015 SCC OnLine P&H 4895; **N. Harihara Krishanan vs. J. Thomas,** (2018) 13 SCC 663 and **Ajit Balse vs. Capt. Ranga Karkere,** (2015) 15 SCC 748.

3. He would further submit that Hon'ble The Supreme Court in a case where even an application under Section 319 Cr.P.C. was filed for arraigning the company as co-accused, which was allowed by the High Court, set aside the same, on the ground that an initial defect in the complaint could not be cured. The present case, he would submit is on a better footing of quashing the complaint, as no such application has been filed. He further would submit that an amount of Rs.7 lakhs was paid by the complainant as security against the stocks and in discharge of the liability, the accused issued one cheque for the said amount, which on presentation got dishonoured with remarks 'funds insufficient' vide memo dated 27.11.2007, thus, the same cannot be termed as legally enforceable debt inasmuch admittedly the stocks were lying with the respondent-complainant. In this regard, a civil suit for permanent injunction as well as mandatory injunction has also been filed by the company, of which the petitioner is the Director, with mandatory injunction directing handing over of 740 pieces of the unsold stock, which is pending. Reliance is placed on **M/s Indus Airways Pvt. Ltd. vs. Magnum Aviation Pvt. Ltd.,** (2014) 12 SCC 539.

4. Learned counsel for respondent on the other hand with much vehemence contended that it was specifically averred in the complaint that the petitioner was responsible for the functioning of the company being its Director, as such the complaint is maintainable. In addition, he submitted that the 740 items that were said to be lying with the complainant-respondent were already accounted for. The cheque in question was issued in discharge of legally enforceable debt and the petitioner is trying to wriggle out of the liability on technical ground.

5. Heard learned counsel for the parties at length.

6. 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 NI Act read thus:

> "**138. Dishonour of cheque for insufficiency, etc., of funds in the account.**
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> 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
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> (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.
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> Explanation— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

> **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."

7. Bare reading of the aforesaid provisions reveals that Section 138 of NI 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 NI Act extends such criminal liability

in case of a company, to every individual; who when the offence was committed was in charge of, and was responsible for the conduct of the business of the company.

8. The offender in Section 138 of NI Act 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 of NI Act that penal liability under Section 138 in case of a company, is cast upon other persons connected with it. The company is the 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 of the company and were responsible for the conduct of its business. It is in the nature of a vicarious liability. But 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. However, 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.

9. In the case in hand, the genesis of the dispute can be traced to an agreement between the parties that had run into rough weather. Admittedly, there being a civil suit pending between the parties, filed by the company of the petitioner, it will not be appropriate to delve into the merits of the case, lest it may prejudice either party. Thus, the moot point that arises for consideration in the present case is, as to whether the complaint filed by the complainant-respondent

against the petitioner, who is a Director of the company, on the account of which, the cheque in question was drawn and dishonoured on presentation, is maintainable, in absence of arraignment of the company as an accused.

10. 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. While observing 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 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."

11. The aforesaid dictum was reiterated in the case of **Anil Gupta** (supra), 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 it related to the appellant.

12. In **N.Harihara Krishnan** (supra) also it was held that 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.

13. Indubitably, the cheque in question was drawn on the account of the company, the franchise of which was offered to the complainant-respondent regarding which, the security amount is said to have been paid. The complaint was filed on 27.03.2008, for the dishonour of cheque dated 21.11.2007 only against the petitioner, being the Director but without the principal offender-company having been arraigned as an accused therein. The provisions of Section 141 of NI Act postulate that if the person committing an offence under Section 138 of NI Act is a company, every person, who at the time when the offence was committed was in charge of or 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. In **Ajit Balse** (supra), Hon'ble The Supreme Court observed and held that the law as explicated in **Aneeta Hada** (supra) would apply to all pending cases, including the trial, appeal, revision and special leave petition/ appeal pending and the appellant was acquitted on the ground that the company was not impleaded as an accused in the trial, on whose behalf the cheque was issued by the its Managing Director, who was arraigned as an accused.

14. The law enunciated in Aneeta Hada (supra) has been reiterated in **Himanshu vs. B. Shivamurthy,** (2019) 3 SCC 797 and **Pawan Kumar Goel vs. State of U.P.,** 2022 SCC OnLine SC 1598 by Hon'ble The Supreme Court.

15. The legal position crystallized by afore-referred judgments interpreting the provision aforesaid, makes it perspicuous that the complaint and the summoning order are in teeth of the exposition of law, thus liable to be quashed.

16. The present petition is allowed and criminal complaint No.27/2 dated 27.03.2008, as well as the summoning order dated 10.02.2009 are hereby quashed.

17. It is clarified that the observations made herein above shall have no bearing on the dispute pending *inter se* the parties before the civil Court or any proceedings that may be initiated by the complainant-respondent.

(AMAN CHAUDHARY)
JUDGE

11.05.2023
S.Sharma(syr)

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No