HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-28353-2022

Date of Decision: 09.02.2023

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Lokesh Kasat & Ors. ... Petitioners

VS.

Sabsons Fastners P.Ltd. ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Gaurav Sethi, Advocate for the petitioners

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Sandeep Moudgil, J.

This order shall dispose of CRM-M-28353-2022, CRM-M-28802-2022, CRM-M-28808-2022, CRM-M-28876-2022, CRM-M-28900-2022, CRM-M-28916-2022, CRM-M-28931-2022 as common issues are involved. For the purpose of order, CRM-M-28353-2022 is treated as the lead case.

The petitioners seek quashing of the criminal complaint No.NACT/642 of 2020 dated 17.08.2020 pending in the Court of JMIC, Panchkula as well as for quashing of the summoning order dated 18.03.2021 (Annexure P2) whereby the petitioners have been summoned to face trial for offence under Section 138 of Negotiable Instruments Act, along with all subsequent proceedings.

Learned counsel for the petitioners submits that in total 7 complaints under Section 138 of the Negotiable Instruments Act (in short, 'the NI Act') were filed by the respondent-company against the petitioner with similar allegations relating to different cheques which were allegedly dishonoured.

It is further averred that the petitioner is in the business of manufacturing of auto industry parts including lighting, headlamps etc. The petitioners were appointed as independent directors and were not related to monetary affairs of the company. Allegedly, the respondent-company had a credit balance towards the directors and petitioners of Rs.40,19,484 on the date of sending legal notice and as on date as per ledger maintained, Rs.3631809.40 is lying as credit.

Learned counsel further urged that the petitioners were neither the signatories/drawer of the cheques in question nor are connected with the day-to-day affairs of the alleged company at any point of time. The complaint is silent as nothing has been specified as to the role of the directors and in what manner the petitioners are in charge of the affairs of the company in the conduct of its business.

Reliance has been placed on ***National Small Industries Corp. Ltd. vs. Harmeet Singh Painthal & Anr. (2010) 3 SCC 330***; ***Mrs. Aparna A Shah vs. M/s Sheth Developers P.Ltd. & Anr. 2013(3) RCR (Crl.) 686***; and ***Pooja Ravinder Devidasani vs. State of Maharashtra & Anr. (2015) 3 SCC 384*** to contend that it is only the drawer of the cheque who can be fastened the criminal liability and not the one who is not the signatory of the cheque and as such no vicarious liability can be fastened on a non-executive director.

Heard learned counsel for the petitioners and gone through the record.

The trial court vide impugned order has specifically observed that though petitioners are resident of Jaipur, however, in an enquiry held as per amended Section 202(1) CrPC, the complainant was examined and after going through the evidence and documents placed on record before the court below, the trial court held that there are enough grounds for proceedings against the petitioners.

It is specifically averred in the complaint that the petitioners are the directors of the company Autolite India Ltd. and are responsible for the management, conduct and day to day financial affairs and decisions of the company as such the petitioners are jointly and severely liable for the dishonor of the cheques in question. In this context, it is imperative to note that where an offence under the Negotiable Instruments Act has been committed by a company, every person who was in charge of and was responsible to the company for the conduct of its business is also equally guilty of the offence by the statutory creation. Any Director, Manager or other officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence. This is clearly discernible from Section 141 of the NI Act, which reads as under:-

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

That apart, the reliance placed on the ***National Small Industries Corp.Ltd.*** case (supra) and other citations, referred to above, are wholly distinguishable as in that case, the petitioner therein were not the directors at the time of issuance of cheque and as such the question of vicarious liability does not arise therein, in those particular cases.

However, in the case in hand accused-petitioners have been clearly shown as Directors of the Company who are running business being actively involved in the name and style of Autolite India Ltd. and are responsible for its day to day affairs. As a matter of record before initiation of process by summoning the accused-petitioners, the trial Court had duly conducted an enquiry as enshrined under Section 202 Cr.P.C. and only thereafter being satisfied as summoned the accused-petitioners to face trial.

This Court, after having mechanically examined the complaint dated 17.08.2020 (Annexure P-1), this Court has found that the complainant had been regularly requesting the accused-petitioners to clear the amount and in discharge of the same accused-petitioners have issued various cheques, details of which is available in Para 6 of the complaint itself, which is reproduced hereinbelow in a tabulated forum.

Sr. No	Name	Bank	Cheque No.	Amount	Date	Dishonor Memo Dated
1.	Sabsons Fastners (p) Ltd.	Andhra Bank	027170	1,00,000.00	20.04.2020	30.06.2020
2.	Sabsons Fastners (p) Ltd.	Andhra Bank	027171	86,950.00	21.04.2020	30.06.2020
3.	Sabsons Fastners (p) Ltd.	Andhra Bank	027172	1,00,000.00	22.04.2020	30.06.2020
4.	Sabsons Fastners (p) Ltd.	Andhra Bank	027173	89,144.00	23.04.2020	30.06.2020

However, Para 8 of the complaint lodges a specific averment that the accused and are responsible for the management, conduct and day to day financial affairs and decision of the company, who are also signatory of the cheques in questions who failed to make payments against those cheques despite issuance of legal notice dated 03.07.2020 (Annexure C-11) which are on record supported by the postal receipts dated 06.07.2020(Annexures C-12 and C-20).

As far as the contention with regard to non-mentioning of reasons to summon the accused-petitioner is concerned, Section 204 Cr.P.C. would be relevant provision to be discussed herein, before returning a finding on this issue, which reads as under:-

Section 202 in The Code Of Criminal Procedure, 1973

202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process

against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.

A bare reading of the aforesaid provision makes it ample clear that the Magistrate has to form an opinion that there was a sufficient ground to proceed ***Kanti Bhadra Shah And Anr vs State Of West Bengal,2000(1) SCC 722*** has held that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. However, no such legal requirement has been mandated on a Magistrate to pass a detailed order while issuing summons, as is evident from the following observations in the aforesaid case law.

"If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should

> *the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial."*

Every person who was in charge of and was responsible to the company for the conduct of the business of the company is also made guilty of the offence by the statutory creation under the Negotiable Instruments Act. This Court before drawing any conclusion deems it appropriate look at the stage of issuing the process as to whether there are any allegation in the complaint by which the Magistrate or Director of the Company can also be proceeded against, when company is alleged to be guilty of offence. In the instant case as has been discussed hereinabove in para 8 there are specific averment qua the accused-petitioners being responsible and even signatory to the cheque and such view also gets strength from the judgment of the Apex Court rendered in the case of ***U.P. Pollution Control Board Versus M/s Mohadn Meakins Ltd. 2000(3) SCC 745***

This Court now convincingly reaches to the conclusion in the light of aforesaid case laws and also having taken into consideration the facts and circumstances of the case that the order dated 18.03.2021 passed by the trial Court is just and legal wherein the petitioners have failed to show any infirmity or perversity to invite interference of this Court.

Accordingly, all the petitions being devoid merits is hereby dismissed.

09.02.2023
V.Vishal

(Sandeep Moudgil)
Judge

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