2023: PHHC: 071903
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M No.46917 of 2017 (O&M)

M/s Realtech Developments & Infrastructure (India) Pvt. Ltd. & another

… Petitioners

Versus

Vishal Jyani

… Respondent

2. CRM-M No.6733 of 2018 (O&M)

M/s Realtech Developments & Infrastructure (India) Pvt. Ltd. & another

… Petitioners

Versus

Parveen Aggarwal

… Respondent

Date of decision: 16th May, 2023

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. S.K. Garg Narwana, Senior Advocate with Mr. Mukesh Rao, Advocate for the petitioners.

Mr. Sudhir Sharma, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

1. The above detailed two petitions are being taken up together for disposal by way of this common order.

2. The petitioners are seeking quashing of complaint No.24540 dated 01.08.2016 (Annexure P-1) under Sections 138, 141, 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act') along with the summoning order dated 01.09.2016

(Annexure P-2) and notice of accusation dated 02.06.2017 (Annexure P-3) which was served upon them.

3. Learned senior counsel appearing for the petitioners submits that the impugned order (Annexure P-2) as well as notice of accusation (Annexure P-3) are patently erroneous and in the teeth of settled law.

Learned senior counsel has asserted that the Company being a juristic person, would have a separate identity. Petitioner No.2 had merely been acting on behalf of the Company in his professional capacity.

4. While drawing the attention of this Court to the impugned order and notice of accusation (Annexures P-2 and P-3 respectively), learned senior counsel has submitted that neither petitioner No.1 Company had been summoned under Section 138 of the Act, nor the notice of accusation had been served upon it. Hence, it was argued that once the Company itself, on whose behalf the cheque in question had been issued by petitioner No.2-Director, had not been called upon to face trial, petitioner No.2-Director could not be held vicariously liable under Section 141 of the Act.

5. Learned senior counsel has vehemently argued that the Court below had clearly erred in overlooking the fact that the liability of petitioner No.2, if any, would arise only under Section 141 of the Act. Still further, as per the provisions of Section 141 of the Act, only

in the eventuality of the Company being held liable under Section 138 of the Act, the vicarious liability of the petitioner No.2-Director would arise. Learned senior counsel has placed reliance upon **'Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd.' 2012(2) RCR (Criminal) 854,** to urge that it had been held in unequivocal terms that it is only when the Company is prosecuted, that the persons mentioned in other categories, e.g. the petitioner in this case, who was a Director of the Company, could be held vicariously liable. Learned senior counsel, has thus asserted that in view of the settled law in **Aneeta Hada's case (supra)**, the petitioner No.2 could not have been called upon to face trial sans the Company.

6. Per contra, learned counsel for the complainant has submitted that as per the law laid down in **Aneeta Hada's case (supra)**, arraying the Company as an accused is sine qua non for prosecution of its directors and he had duly complied with requirement of law by arraying the Company as well as its Director/authorised signatory i.e. the petitioner No.2 as accused No.1 and 2 respectively.

7. In support, learned counsel has drawn the attention of this Court to the headnote of the complaint in question (Annexure P-1). He has further submitted that even if the Company is summoned, it would be represented through its authorized person and since petitioner No.2, apart from being a Director of the Company, was also the authorized

person/signatory of the cheque in question and he was duly authorized to represent the Company.

8. Learned counsel for the respondent has urged that the liability of the petitioner No.2 would arise at the first instance itself by virtue of he being a signatory to the cheque in question.

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

10. As per the settled law, when a Company is the drawer of the cheque in question, as in the case at hand, then the Company would be the principal offender under Section 138 of the Act. The natural person would be liable only under Section 141 of the Act by virtue of the principle of vicarious liability. In case the principal offender i.e. the Company has not been called upon to face trial, the question of prosecuting and convicting the natural persons of an offence under Section 138 of the Act by holding them vicariously liable under Section 141 of the Act would not arise. The Hon'ble Supreme Court in **Aneeta Hada's case (ibid)**, has held as under:

> *"42. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute*

in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context. In 'Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others' (1987)1 SCC 424, it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in 'Deewan Singh and others v. Rajendra Prasad Ardevi and others' (2007) 10 SCC 528 and 'Sarabjit Rick Singh v. Union of India' (2008) 2 SCC 417. 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.*

43. 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. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove."

11. However, at the same time, this Court does not find any merit in the submissions made by the learned senior counsel for the petitioners that since the Company has not been summoned by the trial Court, the complaint in question deserves to be quashed. A perusal of the Complaint (Annexure P-1) reveals that the respondent/complainant had exercised due diligence by arraying the Company as an accused. However, a perusal of the summoning order (Annexure P-2) and the notice of accusation (Annexure P-3) reveals that it is the trial Court which had erred in not summoning the Company. This Court, in the above facts and circumstances, thus deems it fit to quash the

summoning order (Annexure P-2) and notice of accusation (Annexure P-3) and remand the matter back to the trial Court for deciding it afresh on the point of summoning and thereafter, proceeding in accordance with law. The trial Court is directed to decide on the point of summoning of the accused within 6 weeks from the date of this order.

Disposed of accordingly.

(MANJARI NEHRU KAUL)
JUDGE

May 16, 2023
rps

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