

230 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7579-2017
DECIDED ON: 17.05.2023

RAMESH KUMAR YADAV

.....PETITIONER

VERSUS

ADITYA LAKHOTIA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Abhimanyu Singh, Advocate with
Mr. Manu Sachdeva, Advocate
for the petitioner.

Mr. Sukant Gupta, Advocate
for the respondent.

VIKRAM AGGARWAL, J (ORAL)

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') for quashing of the order dated 19.12.2016 passed by the Sessions Judge, Bhiwani (Annexure P-7) vide which the revision petition filed by the respondent against the summoning order dated 08.01.2016 passed by the trial Court was allowed and the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act') was dismissed.

2. The facts, in brief, are that the present petitioner filed a complaint under Section 138 of the N.I Act. It was alleged that a sum of ₹23,65,798/- was due to be paid by the respondent-accused. In discharge of part payment of the outstanding amount, a cheque for ₹14,96,530/- had been issued which was dishonoured. Under the circumstances, the complaint was filed. Vide order dated 08.01.2016 (Annexure P-5), the respondent-accused was summoned to face trial. The summoning order was challenged by the

respondent-accused by way of a revision petition. Vide order dated 19.12.2016 (Annexure P-7), the Sessions Judge, Bhiwani set aside the summoning order and dismissed the complaint leading to the filing of the present petition.

3. I have heard learned counsel for the parties.

4. Learned counsel for the petitioner has submitted that the Sessions Judge, Bhiwani erred in allowing the revision petition, setting aside the summoning order and dismissing the complaint. It has been submitted that even if the Court had come to the conclusion that in view of the law laid down by the Hon'ble Apex Court, the complaint was not maintainable in its present form, the matter should have been remanded and an opportunity should have been granted to the petitioner-complainant to cure the defect.

5. On the other hand, learned counsel representing the respondent-accused has submitted that non-arraigning of the company as an accused was not a curable defect and the complaint itself would not be maintainable. It has been submitted that no illegality was committed by the Sessions Judge, Bhiwani, in allowing the revision petition, setting aside the summoning order and dismissing the complaint. He has placed reliance on the judgments of the Hon'ble Supreme Court in the cases of *Aneeta Hada Vs. Godfather Travels and Tours Private Limited*, (2012) 5 SCC 661, *N. Harihara Krishnan Vs. J. Thomas*, (2018) 13 SCC 663, and *Charanjit Pal Jindal Vs. L.N. Metalics*, (2015) 15 SCC 768.

6. I have considered the submissions made by learned counsel for the parties.

7. The complaint filed by the petitioner-complainant is on record as Annexure P-1. The same was filed by the present petitioner-complainant

against the respondent-accused, being an authorized signatory of M/s Balaji Polytex Industry Private Limited which admittedly is a private limited company. The question which has arisen before this Court is as to whether without arraigning the company i.e. M/s Balaji Polytex Industry Private Limited as an accused, the complaint was maintainable or not. The other question which has arisen for the consideration of this Court is as to whether the Sessions Judge, Bhiwani, should have remanded the matter and should have given an opportunity to the petitioner-complainant to remove the defect.

8. In the case of *Aneeta Hada Vs. Godfather Travels and Tours Private Limited*, (2012) 5 SCC 661, the Hon'ble Supreme Court of India, after examining the entire law on the subject came to the conclusion that for maintaining prosecution under Section 141 of the N.I. Act, arraigning of the company as an accused was imperative. The findings of the Hon'ble Supreme Court are as under:-

“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 drag-net 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 which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

9. Subsequently, the matter was also considered by the Hon'ble Apex Court in the case of *N. Harihara Krishnan Vs. J. Thomas*, (2018) 13

SCC 663. The Hon'ble Apex Court while relying upon the judgment in *Aneeta Hada's* case, also took the same view. It was held by the Hon'ble Apex Court as under:-

“20. The offence under Section 138 of the Act is capable of being committed only by the drawer of the cheque. The logic of the High Court that since the offence is already taken cognizance of, there is no need to take cognizance of the offence against Dakshin is flawed. Section 141 stipulates the liability for the offence punishable under Section 138 of the Act when the person committing such an offence happens to be a company-in other words when the drawer of the cheque happens to be a company. Relevant portion of Section 141 reads as follows:

‘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.’

21. This Court in Aneta Hada (SCC p. 668, para 1), had an occasion to examine the question “whether an authorized signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 (for brevity “the Act”) without the company being arraigned as an accused” and held as follows: (SCC p. 588, para 59)

‘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....’

Yet the High Court reached a conclusion that the revision filed by the

petitioner is not maintainable because Dakshin did not choose to challenge the trial court's order.

22. The High Court failed to appreciate that the liability of the appellant (if any in the context of the facts of the present case) is only statutory because of his legal status as the Director of Dakshin. Every person signing a cheque on behalf of a company on whose account a cheque is drawn does not become the drawer of the cheque. Such a signatory is only a person duly authorized to sign the cheque on behalf of the company/drawer of the cheque. If Dakshin/drawer of the cheque is sought to be summoned for being tried for an offence under Section 138 of the Act beyond the period of limitation prescribed under the Act, the appellant cannot be told in view of the law declared by this Court in Aneeta Hada that he can make no grievance of that fact on the ground that Dakshin did not make any grievance of such summoning. It is always open to Dakshin to raise the defence that the initiation of prosecution against it is barred by limitation. Dakshin needs not necessarily challenge the summoning order. It can raise such a defence in the course of trial.”

10. Still further, in the case of **Charanjit Pal Jindal Vs. L.N. Metalics**, (2015) 15 SCC 768, also, a similar view was taken. It was held by the Hon'ble Supreme Court as under:-

“12. In the present case, only the appellant was impleaded as an accused. In that view of the matter, we are of the view that 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. We set aside the judgment dated 17.04.2010 passed by the trial Court, the order dated 27.05.2011 passed by the appellate court and the impugned judgment dated 09.11.2012 passed by the High Court of Orissa, Cuttack in Charanjit Pal Jindal Vs. L.N. Metalics. The appellant stands acquitted.

13. However, it will be open for the complainant to move before the Court of competent jurisdiction for appropriate relief and may file a petition under Section 14 of the Limitation Act, 1963 seeking exclusion

of the period on the ground that the respondent was seeking remedy before the other forum.”

11. From a conjoint reading of the provisions of Section 141 of the N.I. Act as also the consistent view of the Hon’ble Apex Court, it is clear that the complaint filed by the petitioner-complainant without arraigning the company as an accused was not maintainable. Once the complaint itself was not maintainable, the defect would not be curable and the Revisional Court was not supposed to, therefore, remand the matter by giving an opportunity to the petitioner-complainant to cure the defect.

12. In view of the aforesaid, I do not find any illegality in the order dated 19.12.2016 passed by the Sessions Judge, Bhiwani warranting exercise of powers under Section 482 of Cr.P.C.

In view thereof, the present petition is dismissed. However, it would be open for the petitioner-complainant to avail any other remedies which may be available under law by resorting to the provisions of Section 14 of the Limitation Act, 1963 as per law.

17.05.2023
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

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