2023:PHHC:083832

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

130

CRM-M-29975-2023
Date of decision : 03.07.2023

Vivek Gaur and another ...... **Petitioners**

versus

State of Haryana and another ...... **Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Anant Malik, Advocate with
Mr. Mukul Gupta, Advocate
for the petitioners.

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PANKAJ JAIN, J. (Oral)

Present petition has been filed under Section 482 Cr.P.C. seeking quashing of complaint and the summoning order dated 10.03.2022 and all proceedings subsequent thereto vide which the petitioners have been ordered to be summoned to face trial for offence punishable under Section 138 of the Negotiable Instruments Act (in short ‘the Act’).

2. Impugned complaint was filed after the cheque admittedly issued by respondent No.1 was dishonoured for ‘funds insufficient’. It is not disputed, rather the petitioner himself relies upon company master data pertaining to respondent No.1 which shows that the petitioners herein that are accused No.2 and 3 in the complaint are the Directors in Vas Data Services Pvt. Ltd.

3. Counsel for the petitioners submits that from bare perusal of the complaint itself it is evident that the liability, if any, is attributable to M/s. Growthways Trading Pvt. Ltd. and it was the aforesaid company in which the petitioners made investment and as per the averments made in

para No.7 of the complaint, it was M/s. Growthways Trading Pvt. Ltd. only who was required to pay back the complainant. He thus submits that there being no averments w.r.t. legal liability of Vas Data Services Pvt. Ltd., the petitioners ought not have been summoned. He further submits that in fact Vas Data Services Pvt. Ltd. has given cheque to M/s. Growthways Trading Pvt. Ltd. which has been misused.

4. I have heard counsel for the petitioners and have gone through the records of the case.

5. In the considered opinion of this Court, the argument raised by counsel for the petitioners cannot be looked into at this stage. Section 118 of the Act reads as under:-

> "**118 Presumptions as to negotiable instruments.** —Until the contrary is proved, the following presumptions shall be made:—
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> (a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
>
> (b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;
>
> (c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
>
> (d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;
>
> (e) as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
>
> (f) as to stamps —that a lost promissory note, bill

of exchange or cheque was duly stamped;

(g) that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

6. Further presumption in favour of the holder is provided under Section 139 of the Act which reads as under:-

"139. **Presumption in favour of holder**. —It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

7. The pre-requisites for taking cognizance of the offence punishable under Section 138 the Act have been provided under Section 142 of the Act as under:-

142 Cognizance of offences. —[1] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[3][Provided that the cognizance of a

complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]

[4][(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated, or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation. For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]"

8. Counsel for the petitioners is not in a position to dispute that the cheque which forms subject matter of the complaint was issued by accused No.1. Thus, accused No.1 is the drawer. The petitioners being Directors of accused No.1 have a liability under Section 141 of the Act and thus they have been rightly arraigned as accused being Directors of accused No.1 i.e. Vas Data Services Pvt. Ltd. At the stage of summoning, there being statutory presumptions in favour of the complainant i.e. the holder in

due course, this Court does not find any infirmity in summoning of the petitioners to face trial.

9. The issue whether the cheque given by Vas Data Services Pvt. Ltd. to M/s. Growthways Trading Pvt. Ltd. Company has been misused or not will be a question of evidence and cannot be looked into at this stage while exercising jurisdiction under Section 482 Cr.P.C. So far as the question w.r.t. the liability is concerned in view of statutory presumption as contained in Sections 139 and 118 of N.I. Act, this Court does not find it a fit case to quash the proceedings at this stage.

10. This Court is further guided by the observations made by Apex Court in the case of '***Rallies India Ltd. vs. Poduru Vidya Bhusan & Ors., (2011) 13 SCC 88'***, wherein it was observed as under:-

> "The world of commercial transactions contains numerous unique intricacies, many of which are yet to be statutorily regulated. More particularly, the principle laid down in Section 141 of the NI Act (which is pari materia with identical sections in other Acts like the Food Safety and Standards Act, 2006; the erstwhile Prevention of Food Adulteration Act, 1954; etct.) is susceptible to abuse by unscrupulous companies to the detriment of unsuspecting third parties."

11. Consequently, the present petition is dismissed.

(PANKAJ JAIN)
JUDGE

03.07.2023
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No