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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-40946-2023 (O&M)
Date of decision: 31.08.2023**

Jagdish Talukdar ….Petitioner

Versus

M/s Skylark Hatcheries Pvt. Ltd. ….Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Aayush Gupta, Advocate
for the petitioner.

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PANKAJ JAIN, J. (ORAL)

Petitioner has invoked Section 482 Cr.P.C. seeking quashing of Complaint bearing No.NACT-649/2018 dated 10.09.2018 (Annexure P-1) filed under Section 138 of Negotiable Instruments Act, 1881, summoning order dated 24.09.2018 (Annexure P-2), order dated 04.08.2022 (Annexure P-3), whereby the petitioner has been charge-sheeted, as well as order dated 10.07.2023 (Annexure P-5), whereby his application seeking discharge stands dismissed.

2. Petitioner is facing complaint under Section 138 of Negotiable Instruments Act for dishonour of cheque issued by him and has been summoned to face trial vide impugned order.

3. Counsel for the petitioner has raised two-fold arguments to assail the complaint as well as the summoning order and further proceedings which

have arisen therefrom. It has been contended by him that the complaint is premature.

3.1. Cheque was dated 05.04.2018 and as per the averments made in the complaint the same was dishonoured for the reason 'Funds Insufficient' vide Memo dated 04.07.2018. Respondent/Claimant claimed to have served legal notice on 30.07.2018 calling the petitioner/accused to make the payment good within 15 days of the receipt of the said legal notice. Neither original notice nor AD is claimed to have returned. The complainant under presumption claiming that since the notice was dispatched at the correct address it is deemed to have been served. Complaint was filed on 10.09.2018.

3.2. It has been contended by counsel for the petitioner that once the complainant is himself specific to the extent that the legal notice was dispatched on 30.07.2018 and presumption is being raised claiming deemed service, the same will be deemed to have been served by 30.08.2018. Thereafter, 15 days statutory period shall expire on 15.09.2018 and it is only thereafter that the cause of action will arise in favour of the complainant to maintain the complaint. The other contentions raised by counsel for the petitioner is to the extent that the firm M/s J.M. Enterprises has not been impleaded as party and thus present complaint against the petitioner alone would not be maintainable. In support of his contentions he would rely upon observations made by the Supreme Court in the matters titled as ***Subodh S. Salaskar vs. Jayprakash M. Shah and another,*** reported as ***2008(3) R.C.R. (Civil) 904; Yogendra Pratap Singh vs. Savitri Pandey and another,*** reported as ***(2014)10Supreme Court Cases 713; Dilip Hariramani vs. Bank***

of Baroda, *reported as* ***2022 AIR (Supreme Court) 2258*** and the judgment passed by Coordinate Bench of this Court in ***Sardar Bhupinder Singh vs. M/s Green Feeds Through its Partner Vipin Kumar, passed in CRM-M-54111 of 2021, decided on 26.08.2022,*** in order to hammer forth his submissions.

4. I have heard counsel for the parties and have gone through records of the case as well as precedents cited.

5. Before adverting to the facts of the present case it would be apposite to peruse the necessary provisions of law which are reproduced herein below:-

> *"**138. Dishonour of cheque for insufficiency, etc., of funds in the account.**—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 provision 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—*
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> *(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

(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.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

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:

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.

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:

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.

(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.

27. (1) "Where any Central Act or Regulation made after the commencement of this Act or any statutory instrument made thereunder authorises or requires any document to be served by post, whether the expression "serve" or either of the expression "give" or "send" or any other expression is used, then, unless a different intention appears, and unless the contrary is proved, the service shall be deemed-

(a) to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and

(b) to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(2) Nothing in sub-section (1) shall apply to a letter, which the addressee has refused to accept but in such cases it shall be open to the Court to draw or not to draw any such presumption as it may think fit to draw under section 114 of the Indian Evidence Act, 1872, having regard to the circumstances of the case."

6. So far as the factual aspect is concerned there is no dispute. The question is that, where neither the original notice nor A.D has been returned and the notice is claimed to have been dispatched at the correct address and thus deemed to have been served, then what is the time frame in which the service can be presumed to have been effected. Section 27 of the General Clauses Act, 1897 serves as guide thereto. In the absence of any statutory period, this Court can well imagine that in today's era where the postal department is competing with the courier service, two weeks' time is sufficient to presume service. Meaning thereby, the petitioner can be safely presumed to have been served by 14.08.2018. Thus, it cannot be stated that the complaint preferred on 10.09.2018 was premature in any respect. So far as the law laid down in Subodh S. Salaskar's case is concerned, wherein the question was as to whether 30 days was sufficient to presume service. It is while answering the said question that the Supreme Court observed that there was no reason to extend that period beyond 30 days. Thus, the reliance placed upon Subodh S. Salaskar's case is misconceived.

7. Coming to the second limb of argument raised by counsel for the petitioner, a bare perusal of Section 141 of the Negotiable Instruments Act would reveal that the concept of vicarious liability has been read into offences punishable under Section 138 of the Negotiable Instruments Act. For the organisations/firms which are in fact association of persons i.e. more than one person. Trite it is that the proprietorship firm has no independent existence and is not a juristic person and the same has its status one with the proprietor or in other words it has no existence separate from that of its proprietor.

Thus, the question of there being vicarious liability and Section 141 of the Negotiable Instruments Act to be invoked in the case of proprietorship firm cannot be accepted. Consequently, impleadment of petitioner as proprietor of the firm is sufficient. There is no requirement to implead proprietorship firm in addition to proprietor. In the explanation appended to Section 141 company is said to include 'body corporate' and firm or association of individuals. Word 'association of individuals' is the '*ejusdem generis'* i.e. there has to be more than one individual. Proprietorship concern and proprietor being the same person, the proprietorship concern will not be included in Section 141 and thus the firm need not be impleaded separately.

8. In view of above, I record my respectful disagreement with law laid down by the Coordinate Bench of this Court in Sardar Bhupinder Singh's case (supra).

9. Resultantly, the petition is dismissed being devoid of merit. Needless to say that observations made herein above are only for the purpose of adjudicating present petition under Section 482 Cr.P.C. and shall have no bearing on the case in case the Trial Court after analyzing the evidence on record comes to the conclusion otherwise.

10. Pending application(s), if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

August 31, 2023
ashish

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