IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-55404-2022
Date of Decision: April 27, 2023

GURMEET KAUR .... Petitioner

Versus

STATE BANK OF INDIA .... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Suvir Tandon, Advocate and
Mr. Sandeep Wadhawan, Advocate for petitioner.
Mr. Rakesh Gupta, Advocate for respondent.

****

HARKESH MANUJA, J. (ORAL)

1. By way of present petition filed under Section 482 CrPC, prayer has been made for seeking quashing of complaint No. COMP/10342/17 dated 29.08.2017 filed under Section 138 of Negotiable Instruments Act pending in the Court of Ld. Judicial Magistrate First Class, Ludhiana as well as summoning order dated 26.07.2018 passed therein against the petitioner.

2. In the present case, the petitioner stood as guarantor to a loan transaction availed by one company **"M/s. Amco Industrial Enterprises Pvt. Ltd."** (herein-after referred to as Company) from the complainant/respondent-Bank. On account of default, the Company issued Cheque No.000104 dated 22.06.2017 amounting to Rs.35,00,000/- in favour of complainant towards the discharge of loan amount. The aforesaid cheque on its presentation got dishonoured for want of sufficient funds, resulting into filing of complaint in question. The petitioner though not being a Director of the Company was still arrayed as an accused being guarantor to the aforesaid loan transaction. Vide

order dated 26.07.2019, the trial Court summoned the petitioner as an accused under Section 138 of Negotiable Instruments Act. Aggrieved thereof, challenging the complaint as well as all subsequent proceedings, the present petition has been filed.

3. Learned counsel for the petitioner submits that the petitioner neither happens to be the Director of company nor is responsible for day to day functioning of the same could not have been summoned for offence under Section 138 of the Negotiable Instruments Act. Relying upon the judgment passed by Hon'ble the Supreme Court in case of **"Pooja Ravinder Devidasani Vs. State of Maharashtra",** reported as **2015 AIR(SC) 275**, learned counsel for the petitioner submits that petitioner merely being guarantor to the loan transaction cannot be held vicariously liable under Section 138 of the Negotiable Instruments Act by invoking Section 141 thereof. Relevant Paragraphs No.29 and 30 of the said Judgment are reproduced hereunder for reference:-

> "29. So far as the Letter of Guarantee is concerned, it gives way for a civil liability which the respondent No. 2-complainant can always pursue the remedy before the appropriate Court. So, the contention that the cheques in question were issued by virtue of such Letter of Guarantee and hence the appellant is liable under Section 138 read with Section 141 of the N.I. Act, cannot also be accepted in these proceedings.
>
> 30. Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and Courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Section 138/141 of the N.I. Act, making a person vicariously liable has to ensure strict compliance of the statutory requirements. The Superior

> Courts should maintain purity in the administration of Justice and should not allow abuse of the process of the Court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law."

4. On the other hand, learned counsel representing respondent No.2 vehemently opposes the prayer made in the present petition while submitting that the petitioner being guarantor of aforesaid loan transaction owes the liability towards respondent-Bank in a co-extensive manner and thus can very well be summoned under Section 138 read with Section 141 of Negotiable Instruments Act.

5. I have heard learned counsel for parties and have gone through the paper-book. I find substance in the submissions made on behalf of petitioner.

6. In the present case, the petitioner admittedly stood as a guarantor to the loan facility availed by the Company from respondent-Bank. The petitioner is neither a Director nor in any manner in-charge of or responsible for the day to day functioning of the Company. Besides making a bald averment regarding the petitioner being in-charge of or responsible towards the Company, no such material or document has been provided in the entire complaint to support this averment. The status of petitioner being a guarantor can at best create a civil liability against him as regards the respondent-complainant, however, the same in any manner cannot make him vicariously liable under Section 138 read with Section 141 of Negotiable Instruments Act on account of dishonour of a cheque having been issued by the Director of the company towards the discharge of its loan amount due towards the respondent-Bank. The aforesaid view

has even been derived from the law laid down by Hon'ble the Supreme Court in "**Pooja Ravinder Devidasani's" case (supra).**

7. In view of the aforesaid discussion, the present petition is allowed, the complaint bearing No. COMP/10342/17 filed under Section 138 of Negotiable Instruments Act as well as the summoning order dated 26.07.2019 passed by Court of Ld. JMIC First Class, Ludhiana are hereby quashed qua the petitioners.

27.04.2023 **(HARKESH MANUJA)**
tejwinder **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*