

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

CRM-M-51446-2019

RESERVED ON:- April 12, 2023

DATE OF PRONOUNCEMENT:-July 12, 2023

Nikhil Goyal & Others

...Petitioners.

Vs.

Harish Gaba & Others

...Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sukesh K. Jindal, Advocate for the petitioners.

Mr. R.K. Ambavta, AAG, Haryana.

HARKESH MANUJA, J.

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of complaint dated 26.03.2018 bearing case CIS No. NACT-705 of 2018, titled as "**Harish Gaba vs. M/s Atul Goyal & sons HUF and others**" as well as order of learned JMJC, Panipat, passed on 20.07.2018 whereby the petitioners have been summoned under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act").

2. As per the complaint, facts of the case are that respondent No.3 is a Hindu Undivided Family (for short 'HUF') of the petitioners and respondent No.4 is Karta, indulged in the business of Handloom & Textile and looking after its day-to-day affairs; whereas petitioner No.3 is wife and petitioner Nos.1 & 2 are sons of respondent No.4. It

has been stated in the complaint that on account of family relations, respondent No.1/complainant was approached by accused persons and requested to pay Rs.10,00,000/- for personal necessities of their business who accordingly transferred Rs. 10,00,000/- on 18.05.2017 vide RTGS. In the month of January 2018, respondent No.1 approached respondent No.4 and requested to return the borrowed amount. Thereafter, he issued a cheque bearing No.000174 dated 20.01.2018 for an amount of Rs. 10,00,000/- and on its presentation by respondent No.1 on 22.01.2018, it was dishonoured vide memo dated 23.01.2018 with remarks "FUNDS INSUFFICIENT". However, accused persons requested complainant/respondent No.1 to present the said cheque again on 01.02.2018 as they were facing financial crises. When the complainant/ respondent No 1 again presented the said cheque, it was again dishonoured vide memo dated 03.02.2018 with remarks "FUNDS INSUFFICIENT". Subsequently, complainant/ respondent No.1 through his counsel served a demand notice dated 17.02.2018 under section 138/142 of the Act and on receiving no response, a complaint dated 26.03.2018 was filed under Section 138 of the Act not only against the HUF/respondent No.3 and its Karta/respondent No.4, but also against petitioner Nos. 1 to 3 who were the members of the HUF. In pursuance of this complaint, summoning order dated 20.07.2018 was passed by learned Chief Judicial Magistrate, Panipat.

3. By way of present petition, the aforesaid complaint as well as summoning order have been impugned by the petitioners.

4. At the outset, it has been pointed out by learned counsel for the petitioners that respondent No.4/ Atul Goyal is missing since 03.11.2017 and a suicide note in this regard was found upon which an FIR was registered; but after investigation, the police filed untrace report.

5. Learned counsel for the petitioners contends that as per the averments in the complaint, the business of said HUF was being looked after by Atul Goyal being the Karta and he was responsible for day-to-day business and conduct of the affairs of the same; whereas the petitioners were member of the HUF by birth and not by Will. He places reliance on a judgment of Madras High Court in “**Arpit Jhanwar vs. Kamlesh Jain rep. By its Power of Attorney Agent and Manager D. Lalit Kumar**”, reported as 2013 (5) RCR (Civil) 414, to contend that in case of issuance of cheque by the karta of any HUF in discharge of liability of the HUF, only the karta can be held liable and other members cannot be held to be vicariously liable. He further contends that the summoning order is also not speaking one as no ground is made out to summon the petitioners when they were merely members of the HUF. In support of this contention, he also places reliance upon:

- i. **"Central Bank of India v. Asian Global Ltd."** reported as 2010 AIR (SC) 2835
- ii. **"Ramanlal Bhailal Patel v. State of Gujarat"** reported as 20108 AIR (SC) 1246
- iii. **"Dr. G. Ramakrishna Reddy v. State of Andhra Pradesh"**

reported as 2018(3) Crimes 591

iv. **"Ram Gulam Chaudhury v. State of Bihar"** reported as 2001(4) Crimes 16

6. On the other hand, learned State counsel submits that no relief has been prayed for against the State in the present petition, however he confirms the factum regarding the FIR filed on account of responder number 4/ Mr. Atul Sharma being missing and the subsequent proceedings thereof.

7. I have heard learned counsel for the petitioner and gone through the paper book, I am unable to find substance in the submissions made on behalf of the petitioners.

8. At the outset, it needs to be pointed out that judgment in **Arpit's** case (supra) was in the teeth of judgment of Hon'ble Andhra Pradesh High Court in **"Jagdish Rai Agarwal and others v. State of Andhra Pradesh and other"**, reported as 2005 (2) BC 497 as well as judgment of Hon'ble Bombay High Court in **"The Dadasaheb Rawal Co-op v. Ramesh"** reported as 2009(5) RCR (Criminal) 282 : 2009(2) Mh. L.J. 558, wherein relying upon the inclusive definition of Section 141 of the Act, it was held that even members of HUF, like Directors of a Company, can be made liable for the offence under section 138 of the Act.

9. However, without delving into the legality whether members of HUF can be made liable for the offence under Section 138 of the Act or not, I find that the ratio of **Arpit's case** (supra) cannot be applied in the present case, as "Karta" of the HUF in the present case is

supposedly no more. Therefore, in view of the peculiar facts and circumstances of the case, when cheque was issued by “karta” in the name of HUF and liability of the HUF is not disputed, in the absence of “Karta”, it cannot be denied that liability of HUF on account of cheque issued in its name still remains, which will obviously devolve on its members or upon the one who shall become “Karta”. Hon'ble Delhi High Court in **"Vinod Kumar Arora & Ors. vs M/S. Rohit Advertising Service"** bearing No (CrI.M.C. 2290/2008 & CrI.M.A.8531-32/2008) decided on 15.09.2008, in similar circumstances after the death of director of company, held the new Director liable for prosecution along with the company. Relevant para of the same are reproduced hereunder:

“10. In the present case, Petitioner No.1 has not been arrayed as co-accused with the company being the Director of the company and personally liable for the conducting the business of the company. It is the accused company which has been sued by the complainant through its Managing Director. The order of the trial court clearly indicate that Petitioner No.1 was not summoned in his individual capacity by name as director of the company. It was the company who was summoned through its present Managing Director after the death of Shri Kishan Kumar Arora.”

10. In this particular case, it is not on record what has been the course of action of the HUF, if it has continued; which person has assumed responsibility to which extent; and if it has been dissolved, what is the accountability of each individual, which would thus, be

required to be established and can be determined only during trial after leading evidence and only after that determination, liability can be imposed. Different possibilities with respect to HUF has been vividly specified by Hon'ble Supreme Court in "**Tribhovan Das Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors.**", reported as AIR 1991 Supreme Court 1538, relevant portion of which is reproduced hereinunder:

"The managership of the Joint Family Property goes to a person by birth and is regulated by seniority and the Karta or the Manager occupies a position superior to that of the other members. A junior member cannot, therefore, deal with the joint family property as Manager so long as the Karta is available except where the Karta relinquishes his right expressly or by necessary implication or in the absence of the Manager in exceptional and extra-ordinary circumstances such as distress or calamity effecting the whole family and for supporting the family or in the absence of the father whose whereabouts were not known or who was away in remote place due to compelling circumstances and that is return within the reasonable time was unlikely or not anticipated."

11. In view of the undisputed liability of the HUF and its uncertain course of action at this stage, pending proceedings before the trial Court cannot be quashed, specifically in view of settled preposition of law that power under Section 482 Cr.P.C. has to be exercised in exceptional cases only. It also requires consideration that quashing of the proceedings at this stage would also make respondent No.1 remediless, which would be against the purpose of the Act.

that no specific role has been assigned to the petitioners does not hold substance, as in para 3 of the complaint it has been specifically stated by the complainant that all the three petitioners along with respondent No.4/ Atul Goyal-Karta approached the complainant and requested to pay the amount for personal necessity of their business, therefore on this count as well, no interference is warranted.

13. In view of the discussion made hereinabove, no ground is made out to interfere in the well reasoned order passed by learned JMJC, Panipat, summoning the petitioners as accused. Consequently, the present petition is dismissed.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 12, 2023
sanjay

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No