HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-6962-2023 (O&M)

Decided on 31.01.2024

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Radhika Chanana ... Petitioner

VS.

State of Haryana & Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Pranay, Advocate for
Mr. Shivansh Malik, Advocate for petitioner (through VC)

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Sandeep Moudgil, J.

This order shall dispose of CRM-M-6962-2023, CRM-M-6966-2023, CRM-M-6978-2023, CRM-M-7017-2023, CRM-M-7024-2023, CRM-M-7029-2023, CRM-M-7031-2023, CRM-M-7037-2023, CRM-M-7067-2023, CRM-M-7079-2023, CRM-M-7083-2023, CRM-M-7084-2023, CRM-M-7086-2023, CRM-M-7102-2023, CRM-M-7131-2023, CRM-M-7132-2023, CRM-M-7136-2023, CRM-M-7138-2023, CRM-M-7139-2023, CRM-M-7141-2023, CRM-M-19422-2023, CRM-M-19445-2023, CRM-M-19449-2023, CRM-M-19453-2023, CRM-M-19536-2023, CRM-M-19539-2023, CRM-M-19541-2023, CRM-M-19544-2023 as issues involved is identical and as such, the same are taken together for disposal. CRM-M-6962-2023 is treated as the lead case.

This petition under Section 482 CrPC has been filed seeking quashing of the summoning order dated 27.09.2017 passed by JMIC, Panipat (Annexure P1) and Complaint bearing no. NACT 2537 of 2017 titled "M/s Naveen Trading v. Amira Pure Foods Limited & Ors." instituted on 27.09.2017 (Annexure P2), filed by the Respondent No. 2 against the petitioner, under 138 of the Negotiable Instruments Act, 1881 (in short, the "NI Act").

Respondent No.2-M/s Naveen Trading Co. was a purported commissioning agent dealing with paddy etc. at Madlauda Mandi District Panipat and allegedly supplied paddy to the accused-company of the petitioner, namely, Amira Pure Foods P.Ltd. He stated that a complaint was filed on 27.09.2017 by respondent No.2 against the petitioner including the accused-company under Section 138 of NI Act and the said complaint was heard on 27.09.2017 for pre-summoning evidence. He further submitted that before the trial court in preliminary evidence, the complainant himself appeared as CW1 and tendered certain documents and in view of these evidence and documents, the trial court came to the conclusion that prima facie a case for commission of offence punishable under Section 138 of NI Act was made out against the petitioner and as such the impugned summoning order dated 27.09.2017 (Annexure P1) has been passed.

Learned counsel for the petitioner submitted that Respondent No.2-Complainant has not made any allegations, let alone any specific allegation, against the petitioner. He averred that no specific role has been attributed to the Petitioner and in these circumstances, it was legally incumbent upon respondent No. 2 to specifically spell out as to how and in what manner the petitioner was in-charge of, or was responsible for the day-to-day affairs and/or conduct of the business of the accused-Company, especially when the petitioner had never been involved in the affairs of the accused-Company as a Director, either at the time when the cheque in question was issued or when the transaction is alleged to have taken place.

It is urged that the petitioner, at the relevant time, was a non-working/house wife of one of the accused i.e., Karan Chanana and she remained an Additional Director of the Company only for 1 month from 18.06.2008 to 25.07.2008 i.e., much before any of the incidents alleged in the Complaint transpired, as is clear from the website of Ministry of Corporate Affairs (Annexure P4). He submitted that in fact the petitioner was residing in United Arab Emirates when the purported transactions took place between the accused-Company and Respondent No.2 as is evident from the copies of the Resident Identify Cards of the petitioner issued by the United Arab Emirates at the relevant time and Residence Visa between 08.12.2015 to 07.12.2018 issued by the United Arab Emirates to the petitioner (Annexure P-5 to P-7 respectively).

At this stage, learned counsel for the petitioner submits that the present bunch of cases can be disposed of in view of the order dated 21.07.2022 passed by this Court in a batch of petitions including ***CRM-M-30487-2019 (Radhika Chanana vs. State of Haryana & Anr.)*** which, in turn, was decided relying upon a Coordinate Bench judgment rendered in ***Anil Chanana vs. M/s Gyani Ram Ruliya Ram (CRM-M-36869-2018)*** decided on 30.10.2018 wherein the Coordinate Bench had allowed the petitions filed by the co-accused of the petitioner Anil Chanana and had quashed the order as well as the complaint that was the subject matter of the respective petitions along with consequential proceedings qua the petitioner. The relevant portion of the said judgment is reproduced as under:-

> *21. Reverting to the facts of this case, it is clear that the petitioner had resigned w.e.f. 10.02.2006. The cheque in dispute had been issued much later. Form No. 32 and the annual return of the Company have been placed on record and the same have not been denied. For imposing vicarious liability upon the*

petitioner, as a person responsible for the business of the company, it was necessary to make specific averments in the complaint regarding his role in the conduct of the business of the Company. No such averment having been made in this case, the Magistrate was not justified in summoning the petitioner. At the stage of summoning of an accused person, the trial Court/Magistrate must be satisfied on the basis of material produced before it that prima facie the accused persons have committed an offence. The material being referred to by the complainant by way of its reply can not be looked into at this stage because the same has not been referred to or relied upon in the complaint.

22. This case is being taken up separately as learned counsel representing the complainant has submitted that specific averments regarding the manner in which the petitioner was responsible for conducting the business of the Company have been made in the complaint.

23. The complaint is on record as Annexure P-1. The petitioner has been arrayed as accused No. 3. A perusal thereof does not support the contention of the learned counsel.

24. Faced with this situation, learned counsel for the complainant has drawn my attention to the notice issued under Section 138 of the Act, which is Annexure P-6 on the record. He submits that the said notice is a part of the complaint and necessary averments have been made therein. Thus, there is no error in the order of summoning.

25. The petitioner is noticee No. 3. The averment made regarding him is as follows:- "You address No. 3 being Chairman/Director of addressee No. 1 are also being incharge and being responsible person of address No. 1 company for conduct to the business of the Company are also liable for the punishment prescribed under the Act ibid."

26. Contention of learned counsel for the petitioner cannot be accepted because the averments made in the legal notice under Section 138 of the Act can not be construed to be averments made in the complaint. That apart, even the averments made in the legal notice, do not fulfill the requirement of law. Thus, the contention of learned counsel for the complainant, is misplaced and is rejected.

27. The petitions are, accordingly, allowed; summoning orders as well as Complaints, which are subject matter of the respective petitions alongwith consequential proceedings having arisen therefrom, are quashed qua the petitioner.

28. At this stage, it would be appropriate to refer to the judgment of the Delhi High Court in Sudip Jain (supra). Delhi High Court has held that in order to reduce litigation it would be appropriate for the concerned Magistrates to seek copies of Form No. 32 and the latest Annual Return filed by the Company so that only those persons who are Directors on the date of commission of the offence are summoned.

29. I respectfully agree with the observations made by the Delhi High Court. It is, thus, directed that in all cases where the accused is a 'Company', before issuing summons to the accused persons the trial Court/Magistrate shall direct the complainant to produce a copy of Form No. 32 and the annual Return filed by the Company in order to determine the persons, who were Directors on the date of commission of the offence. In cases where the accused–Director is the Chairman or Managing Director or Joint Managing Director or authorized signatory of the cheque, they may be summoned without any averment regarding their role in the conduct of the affairs of the Company. For summoning of any other Director or officer of the Company the necessary averment regarding their role in the conduct of the business of the Company, must be insisted upon. In respect of *whole time Directors, mere reproduction of the words of Section 141 of the Act would be sufficient.”*

In the present case, the allegation qua the petitioner is that she is the Director of the Company whereas it is factually incorrect, therefore, no criminal liability for facing trial can be fastened upon the petitioner. A perusal of the same shows that the allegations set out in the complaint are general and non-specific. Even the order of summoning passed by the Court fails to mention any specific allegation against the petitioner or to identify the role or liability of the petitioner.

In view of the above, I have no hesitation to hold that the case of the petitioner is duly covered by the judgment of this Court rendered in the matter of ***Anil Chanana Versus M/s Gyani Ram Ruliya Ram (CRM-M-36869-2018)*** decided on 30.10.2018.

Accordingly the present petitions are allowed. The respective complaints in the respective petitions along with the respective order of summoning *qua* the petitioner(s) is/are quashed along with all consequential proceeding arising therefrom.

Ordered accordingly.

31.01.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*