

CRM-A-895-MA-2017 (O & M)
Date of decision: 21.02.2024

...APPLICANT

V/S

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naresh Kaushik, Advocate
for the applicant.

Mr. Anand Kaushal, Advocate
for Mr. D.S. Gandhi, Adocater
for respondent no.1.

HARPREET SINGH BRAR J. (ORAL)

CRM-14359-2017

The present application has been filed under Section 482 seeking to prosecute and implead M/s 8AM Anand Mandi Store Pvt. Ltd. as accused/respondent No.3 in the appeal as well as the main complainant by way of amendment.

Learned counsel for the applicant submits that the cheque in question were issued by respondent No.1 on behalf of the aforementioned firm. Respondent Nos.1 and 2 were impleaded as directors of M/s 8AM Anand Mandi Store Pvt. Ltd. and not in their individual capacity. The directors and the firm are jointly and severally liable and the firm is a necessary party so it can be prosecuted through its directors. However, the said firm being a legal person, inadvertently, could not be arrayed as an accused.

Per contra, learned counsel for respondent no. 1 submits that the present application is totally misconceived. There is no provision in the Code

of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') that allows for amendment of the complaint, especially before this Court. The amendment prayed is not formal in nature and therefore cannot be allowed.

Having heard learned counsel for the parties and after perusing the record, this Court finds no force in the arguments advanced by learned counsel for the applicant, as the Cr.P.C. does not provide any provisions for such an amendment. Since only formal and curable defects can be allowed to be amended, present application stands dismissed.

CRM-A-895-MA-2017

The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 14.12.2016 passed by learned Judicial Magistrate Ist Class, Amritsar in criminal complaint no. 2031 of 2014 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').

2. Briefly, the facts are that the respondents-accused were purchasing Dabur goods on credit basis from the petitioner, who is a distributor of the same. To discharge their legal liability, the respondents issued a cheque bearing no.063490 dated 12.03.2014, for an amount of Rs. 1,78,751/-. On presentation for encashment, the said cheque was dishonoured vide memo dated 27.03.2014 with remarks- 'payment stopped by drawer.' Thereafter, a legal notice dated 01.04.2014 was served upon the respondents, calling upon them to make the payment. However, despite service, the respondents failed to make the requisite payment within the stipulated time and the present complaint was filed.

3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the purchase of Dabur goods was made by the respondents on behalf of M/s 8 AM Anaj

Mandi Stores Pvt. Ltd. (hereinafter ‘the firm’), which is admitted by the applicant himself, who stepped into the witness box as CW1. However, the firm has not been arrayed as an accused in the instant complaint, which is necessary to maintain prosecution under Section 141 of the NI Act. Reliance in this regard can be placed on the judgment rendered by a three Judge bench of the Hon’ble Supreme Court in **Aneeta Hada v. M/s. Godfather Travels and Tours Pvt. Ltd. 2012(2) R.C.R.(Criminal) 854**, wherein speaking through Justice Dipak Misra, the following was observed:

“43. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three- Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

4. In view of the above ratio of law and the facts and circumstances of the present case, the complaint filed by the applicant against the directors without impleading the firm as party is not maintainable.

5. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution

witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

6. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

February 21, 2024

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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |