IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2024:PHHC:007865
CRM-M-24742-2017 (O&M)
Reserved on: January 18, 2024
Date of Decision: January 20, 2024

Mrs. Megha Goyal and another ...Petitioners

Versus

Raj Kumar Tayal ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Kunal Dawar, Advocate with
Mr. Mayank Aggarwal, Advocate for the petitioners.

Mr. Akshay Jindal, Advocate for the respondent.

DEEPAK GUPTA, J.

CRM-28523-2023

This is an application filed on behalf of the respondent to place on record short reply by way of affidavit of the respondent.

Allowed.

Reply of the respondent is taken on record.

Main Case

By way of this petition filed under Section 482 Cr.P.C., petitioners pray to quash criminal complaint No.04 of 2017 (Annexure P-3) titled as *"Raj Kumar Tayal v. UFL Port Folia Limited and Ors."*, under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred as 'the N.I. Act') qua the petitioners as pending in the Court of learned Judicial Magistrate 1st Class, Palwal, alongwith all the subsequent proceedings arising therefrom including summoning order dated 18.04.2017 (Annexure P-4).

2. Complaint (Annexure P-3) was filed by respondent-complainant Raj Kumar Tayal to prosecute the company - M/s UFL Port Folio Limited and 05 of its Directors, who include two petitioners,

namely Megha Goyal and Monika Goyal, under Sections 138 and 142 of the N.I. Act. It was alleged that respondent Nos.2 to 6 are family members, who had incorporated company in the name of accused No.1, i.e. M/s. UFL Port Folio Limited. In January, 2016 accused No.2 to 6 (including petitioners) were facing hardships and wanted to sell their House No.692, Sector 8, Faridabad. They agreed to sell the same to the complainant for ₹95 lacs. The amount of ₹36 lacs was paid by the complainant to the accused in January, 2016, but formal agreement to sell was not executed. As it was disclosed to the complainant that some loan had been taken on the property and that 'No Objection Certificate' was required to be issued by the bank and that they were unable to pay the same, they demanded another amount of ₹35 lacs to get the NOC from the bank. The amount of ₹35 lacs was paid in May, 2016. Accused still failed to execute the sale deed. Compelled by the circumstances, complainant requested to return his original sum of ₹71 lacs. Accused issued a post-dated cheque bearing No.009294 dated 30.09.2016 for ₹71 lacs of the accused No.1-company favouring the complainant. However, on presentation, the cheque was dishonoured with the remarks 'insufficient funds'. Legal notice dated 25.01.2017 (Annexure P-2) was issued calling upon the accused to make payment of the cheque amount within 15 days from the receipt of the notice. Despite service of notice, amount was not paid and so, complaint was filed on 09.03.2017.

3. Learned counsel for the petitioners has raised two fold contentions. His first contention is that the petitioners are not signatory to the cheque and that much prior to the issuance of the cheque by the

accused-company in favour of the complainant, the petitioners had ceased to be the Directors of the Company w.e.f. 05.05.2016, which fact was also disclosed by the petitioners in the reply to the legal notice sent to the complainant-respondent and so, petitioners cannot be prosecuted. Another contention raised by learned counsel is that in the entire complaint (Annexure P-3), complainant has not disclosed that petitioners were in-charge of or responsible to the conduct of the business of the company and that in the absence of any such allegations, no liability can be fastened upon the petitioners.

4. Learned counsel for the respondent-complainant does not dispute the fact that prior to the cheque dated 30.09.2016, the two petitioners had ceased to be the Directors, as per DIR-12 Form (Annexure P-1). However, contention of learned counsel is that liability of the petitioners had arisen prior to the date of the cheque and that as the cheque given to the complainant was post-dated, so it is a disputed question of fact, as to whether the cheque was handed over to the complainant prior to the petitioners having ceased to be the Directors or thereafter. Learned counsel for the respondent further contends that petitioners being the Directors of the Company at the relevant time, so they cannot be escape from the liability. Prayer is made for dismissal of the petition.

5. I have considered submissions of both the sides and appraised the record.

6. In *"Ajay Aggarwal v.s M/s Integrated Finance Company Limited"* {Criminal Appeal No.586-594 of 2018, arising out of SLP

(Crl.) Nos.7122-7130 of 2017}, a similar issue was raised before the Hon'ble Supreme Court. In that case, appellant was impleaded as one of the accused on the ground that he was Director of the accused-company, which had issued the cheque. The case set up by the appellant was that he had resigned as Director of the Company much before the cheque was dishonoured and that factum of resignation was approved by filing certified copies of Form No.32, which was submitted before the Registrar of the Company on a date before the cheque was presented and dishonoured.

7. The Hon'ble Supreme Court in ***Ajay Aggarwal (supra)*** referred to an earlier judgment rendered in ***"Mrs. Anita Malhotra v. Apparel Export Promotion Council and another"*** *2012(1) SCC 520,* wherein it was held that annual return alongwith Form No.32, which is filed before the Registrar of the Company is a public document and that certified copies thereof are admissible in evidence and so the said documents were required to be looked into and acted upon by the Trial Court. The Hon'ble Supreme Court then allowed the appeal and directed deletion of the name of the appellant from the array of accused.

8. Similarly, in ***"Ashok Mal Bafna v. M/s. Upper India Steel Mfg. & Engg. Co. Ltd."*** *2017(4) Crimes 346*, prosecution of the company and its Director was sought for dishonour of the cheque. Appellant was one of the Directors of the company, when the cheque was issued. However, during his directorship, the cheque was not presented for realization. Cheque bounced due to insufficient funds after the appellant had resigned. Cheque was neither issued by the appellant nor the

appellant was involved in day to day affairs. The Hon'ble Supreme Court quashed the proceedings qua the appellant. The same view has been taken in *Mrs. Anita Malhotra's case (Supra)* and *"Harshendra Kumar D. v. Rebatilata Koley etc."* 2011(3) SCC 351.

9. In the present case, as the complaint (Annexure P-3) would reveal that the amount of ₹36 lacs was paid by the complainant in January 2016 and another amount of ₹35 lacs was paid in May, 2016. Without specifying as to when the post-dated cheque was handed over to the complainant, he simply pleaded that when the sale deed was not executed in his favour, he requested the accused to return the amount of ₹71 lacs and then, they issued post-dated cheque dated 30.09.2016. Obviously, the cheque was issued during May, 2016 to September, 2016. Both of the petitioners had ceased to be the Directors on 05.05.2016, as per DIR-12 Form (Annexure P-1). The cheque in question is dated 30.09.2016 and so, obviously it must have been presented after this date, i.e. much later than the date, when the petitioners had ceased to be the Directors. It is also not disputed that the petitioners are not signatory to the cheque.

10. By applying the legal position as discussed above to the factual matrix of this case, it is held that the petitioners cannot be prosecuted for dishonour of the cheque in question, as they had already ceased to be the Directors on 05.05.2016, i.e. much prior to the presentation of the cheque dated 30.9.2016 or dishonour thereof.

11. As such, the present petition is allowed. Criminal Complaint No.04 of 2017 (Annexure P-3), titled as *"Raj Kumar Tayal v. UFL Port*

Folia Limited and Ors.”, under Sections 138 and 142 of the Negotiable Instruments Act, 1881 qua the petitioners alongwith all the subsequent proceedings arising therefrom including summoning order dated 18.04.2017 (Annexure P-4) qua the petitioners, stand quashed.

January 20, 2024 (DEEPAK GUPTA)
sarita JUDGE

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