IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.32460 of 2017
Date of decision: 11th March, 2024

Anil Chanana

… Petitioner

Versus

Parveen Kumar

… Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Aashish Chopra, Senior Advocate with Mr. Kunal Dawar, Ms. Rupa Pathania & Mr. Gaurav Arora, Advocates for the petitioner.

Mr. Rajesh Gaur, Advocate Amicus Curiae for the respondent.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking quashing of summoning order dated 10.07.2017 (Annexure P-3) passed by learned Chief Judicial Magistrate, Kaithal as well as complaint No.1132 of 2016 (Annexure P-1) instituted on 13.12.2016 by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act').

2. Brief facts of the case may be noticed as thus:

The respondent-complainant company (hereinafter referred to as 'complainant') was engaged in business of commission agency, sale and purchase of food grains. The respondent-complainant company (hereinafter referred to as 'complainant') was engaged in business of commission agency, sale and purchase of food grains in Anaj Mandi Pundri. The accused company through its directors purchased paddy on credit for a total sum of ₹17,06,294/-, and after several inter se transactions between the parties, a sum to the tune of ₹5,01,734/- was due towards the complainant by the accused Company as per account books maintained by the complainant. In order to discharge its legal liability towards the due amount, the accused company issued cheques bearing No.348643 dated 23.07.2016 and No. 348770 dated 22.08.2016 in the sum of ₹3,63,134/- and ₹1,38,600/- respectively drawn on Punjab National Bank, Minto Road, Delhi in favour of the complainant as part payment of dues. On presentation of the cheques, they were returned with remarks "**Funds Insufficient"** by the banker of the accused to the banker of complainant. Subsequently on 18.10.2016, at the request of the accused company, the complainant again presented the cheques in question with his bank H.D.F.C Bank, Pundri which again were dishonored vide memo dated 18.10.2016 with the remarks **"Account Freeze"**. After serving the requisite legal notice, dated 28.10.2016, to the accused within the statutory period, the complaint in question came to be instituted on 13.12.2016. The learned Judicial Magistrate 1st Class, Kaithal upon perusal of the preliminary evidence summoned the accused company and its directors including the present petitioner vide impugned order dated 10.07.2017.

3. On the last date of hearing, it had been made clear that in case there is no representation on behalf of the respondent(s) on the adjourned date, the respondent(s) shall be proceeded against ex-parte and this Court shall proceed to decide the instant petition on merits. Mr.Rajesh Gaur, Advocate who is presented in the court today is appointed as Amicus Curiae to assist the Court on behalf of respondents today itself. Copy of the paperbook has been supplied.

4. Learned senior counsel is impugning the aforementioned summoning order on the following grounds:

(i) That a bare perusal of Form No.DIR-32 (Annexure P-4) reveals that the resignation of the petitioner as Director of M/s Amira Foods India Ltd. (hereinafter referred to as 'the Company') had been accepted with effect from 10.02.2006 whereas it was a matter of record that the cheques in question was issued much later i.e. on 23.07.2016 and 22.08.2016. Still further, the said cheques were dishonoured on 18.10.2016. Learned senior counsel for the petitioner has thus vehemently argued that since he had resigned as a Director of the Company on 02.02.2006, more than a decade prior to the commission of the offences in question, he had severed all ties with the Company and could not be held vicariously liable for the Company's actions thereafter, much less liable for an offence under Section 138 of the Act. It was thus, evident that the petitioner was neither incharge nor responsible for the day to day affairs of the company.

(ii) That even otherwise, a perusal of the complaint in question reveals that therein no specific averment qua the petitioner being incharge of the day to day affairs of the company has been made. In support of his submissions, reliance has been placed upon ***Pooja Ravinder Devidasani Vs. State of Maharashtra and another : (2014) 16 Supreme Court Cases 1,*** wherein it was held that there must be specific averments against the Director showing as to how and in what manner he/she was responsible for the conduct of the business of the company. Thus, it has been vehemently asserted that in the absence of any such specific averments, coupled with the procedural irregularities such as improper service of legal notice, the continuation of the complaint would be a travesty of law and untenable.

(iii) That Hon'ble the Supreme Court in **'Pepsi Foods Ltd. Vs.** v. **Special Judicial**. **Magistrate' 1998 5**

SCC 749, held that summoning an accused in a criminal case is a serious matter and hence, an accused should be summoned only upon a careful scrutiny of the allegations and the evidence presented.

5. Per contra, learned Amicus Curiae on behalf of the respondent, has reiterated the allegations levelled in the complaint in question, which has been annexed as Annexure P-1, and prayed for dismissal of the instant petition. It has been further asserted that all the accused were running the business together and had failed to pay for the paddy, which had been purchased from the complainant on credit, and thus, it resulted in outstanding debts. Despite several attempts by the complainant to collect the payment from the accused, it proved to be in vain, rather the cheques issued by the Company were dishonoured on account of insufficient funds. It has been asserted by the learned Amicus Curiae that as far as resignation of the petitioner from the Company is concerned, it is a matter of trial and cannot be delved into at this stage and hence, the present petition does not deserve to be allowed.

6. I have heard learned counsel for the parties and perused the relevant material on record including form No.DIR-32, which has been annexed as Annexure P-4.

7. A perusal of form No.DIR-32 (Annexure P-4) reveals that the petitioner had indeed resigned as Director and Chairman of the

Company on 10.02.2006. Consequently, at the time when the cheques in question were issued and subsequently dishonoured, evidently the petitioner had already severed ties with the Company. The argument put forth by the learned Amicus Curiae for the respondent questioning the validity/authenticity of the petitioner's resignation from the Company and its acceptance lacks merit. Documents like form No.DIR-32 are public documents, free from suspicion, and can be relied upon even at the prima facie stage. Given the aforementioned facts and circumstances, and in the light of the settled law, the criminal proceedings initiated under Section 138 of the Act in the instant case, deserve to be quashed along with all subsequent proceedings arising therefrom.

8. The petition stands allowed in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

March 11, 2024
rps

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