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2024:PHHC:020172

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-33437 of 2018

Date of Decision:- 13.02.2024

Jaskirat Singh

...Petitioner

Versus

M/s A B Motions Pvt. Ltd.

...Respondent

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CRM-M-28075 of 2019

Jaskirat Singh

...Petitioner

Versus

M/s A B Motions Pvt. Ltd.

...Respondent

CORAM:- HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr.Viren Jain, Advocate for the petitioner(s).

Mr.Namit Gautam, Advocate for the respondent(s).

KULDEEP TIWARI, J. (Oral)

1. Both these petitions are taken up together for disposal by a common order, as the law point(s) involved therein, is similar in nature. For brevity, the facts are being extracted from CRM-M-33437 of 2018.
2. The respondent-company, which is the owner of M/s The Wave (Westend) Malls, Ferozepur Road, Ludhiana, leases out space(s) in the said Mall for hoardings to different parties.
3. The respondent-company, provided some space in its Mall to one M/s Ultimate Signages for consideration on credit basis. To discharge its liability, M/s Ultimate Signages issued a cheque bearing No. 697305 dated 7.12.2016 amounting to ₹2,50,000/-, drawn at erstwhile State Bank of Patiala (now State Bank of India), Model Town, Ludhiana, however, upon its being presented for encashment, it was dishonoured and returned with the remarks “Funds Insufficient” vide memo dated 9.12.2016. Hence, the present complaint (Annexure P-1) under Section 138 of the Negotiable Instruments

Act, 1881 (hereinafter referred to as '**the NI Act**') has been filed against the petitioner, being proprietor of M/s Ultimate Signages.

4. Consequent upon filing of the present complaint (Annexure P-1), the petitioner has been summoned by the learned Judicial Magistrate, 1st Class, Ludhiana vide order dated 21.03.2017 in a complaint bearing No.COMA-3495/17.02.2017, titled as “**A.B. Motions Pvt. Ltd. Vs. Ultimate Signages and another**”, to face the trial under Section 138 of the NI Act.

5. Having been aggrieved by the summoning order (Annexure P-2) as well as the criminal complaint (Annexure P-1), the instant petition under Section 482 Cr.P.C. has been filed, on the ground that the criminal complaint is not maintainable against the present petitioner inasmuch as he has no concern, whatsoever, with the sole proprietorship firm M/s Ultimate Signages, which has been arrayed as accused No.1, in the criminal complaint (Annexure P-1).

6. Learned counsel for the petitioner submits that neither the petitioner is the authorized signatory, nor the proprietor of the accused firm, therefore, the impugned summoning order, vide which the petitioner has been summoned to face the trial in criminal complaint (Annexure P-1) is totally illegal.

7. In support of his arguments, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in case titled as “**Raghu Lakshminarayanan Vs. M/s Fine Tubes**”, 2007(5) SCC 103, wherein the Hon'ble Supreme Court has held that the proprietary concern would not fall within the description of either a Company incorporated under the Indian Companies Act or a firm within the meaning of the provisions of Section 4 of the Indian Partnership Act. Therefore, the petitioner having no concern with

the proprietary firm cannot be prosecuted with the aid of Section 141 of the NI Act. The relevant extract of the same reads as under:-

“13. The distinction between partnership firm and a proprietary concern is well known. It is evident from Order XXX Rule 1 and Order XXX Rule 10 of the Code of Civil Procedure. The question came up for consideration also before this Court in M/s. Ashok Transport Agency v. Awadhesh Kumar and another [(1998) 5 SCC 567] wherein this Court stated the law in the following terms:-

"6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order XXX, Rule 1, CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 Order XXX, which make applicable the provisions of Order XXX to a proprietary concern enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 Order XXX have no application to such a suit as by virtue of Order XXX, Rule 10 the other provisions of Order XXX are applicable to a suit against the proprietor of proprietary business "in so far as the nature of such case permits." This means that only those provisions of Order XXX can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

14. We, keeping in view the allegations made in the complaint petition, need not dilate in regard to the definition of a 'Company' or a 'Partnership Firm' as envisaged under Section 34 of the Companies Act, 1956 and Section 4 of the Indian Partnership Act, 1932 respectively, but, we may only note that it is trite that a proprietary concern would not answer the description of either a Company incorporated under the Indian Companies Act or a firm within the meaning of the provisions of the Section 4 of the Indian Partnership Act."

He has also relied upon the judgment passed by the Hon'ble High Court of Andhra Pradesh in the case of **I. Parveen Kumar and another Vs. Sri Balaji Onion Co., rep by its partner M. Prabhakar Rao and others, 2005(3) R.C.R. (Criminal) 38**, wherein, the following observations have been made:-

“6. As per Section 138 of the Act, if a cheque drawn by a person on an account maintained by him with a banker, towards discharge, in whole or in part, of any debt or other liability, is returned unpaid by the bank such drawer shall be deemed to have committed an offence under that section. As per Section 141 of the Act if the person that committed the offence under Section 138 of the Act is a company, every person in charge of, and responsible to the company for the conduct of its business, as well as the company, shall be liable for punishment. Thus, from a close reading of Sections 138 and 141 of the Act, it is clear that the drawer of the dishonoured cheque, and if the drawer is a company, the drawer company and the persons who run the day-to-day administration of that company alone would be liable for the offence under Section 138 of the Act.

7. In this case, A-1 is described as M/s. Vijaya Traders, a proprietary concern, represented by its proprietor Mrs. I. Vijayalaxmi. So, A-1 is neither an association of individuals nor a partnership nor a company. So, question of any person other than the person that drew the dishonoured cheque--another person mentioned in Section 141 of the Act--being made liable for the offence under Section 138 of the Act does not arise. Therefore, even assuming that the petitioners stood surety for the amount due and payable by A-1 to the first respondent, that liability can be enforced only in a civil court as there is no vicarious liability for a surety for an offence under Section 138 of the Act, except in cases covered by Section 141 of the Act. So even assuming that all the allegations in the complaint are true, the petitioners cannot be said to have committed an offence under Section 138 of the Act and so continuance of the proceedings against the petitioners would but be an abuse of process of law and, hence, the proceedings in C. C. Nos. 256 and 258 of 2001 against the petitioners are liable to be and hence are quashed.”

8. On the other hand, learned counsel for the respondent/complainant has raised legal objections with regard to the maintainability of the present petition on the ground that since the summoning

order, as passed by the learned Judicial Magistrate, 1st Class, Ludhiana, is in fact, a revisable order, therefore, the petitioner has an alternate statutory remedy, whereas, without availing the said statutory remedy, the instant petition has straightway been filed before this Court. He has further submitted that the complainant-respondent was not aware as to who is the proprietor of the accused-firm, as the present petitioner in fact, used to deal with the complainant-company, under the guise of his being proprietor of the accused-company, therefore present complaint has been filed against the present petitioner, being proprietor of the accused-company. He has further submitted that it is purely a question of defence, which at this stage, cannot be appreciated.

9. This Court has with the able assistance of both the learned counsel representing the contesting litigants, examined the complaint (Annexure P-1) as well as the summoning order (Annexure P-2) and is of the view that the present complaint against the petitioner is not maintainable, for the reasons recorded hereinafter.

10. A perusal of the criminal complaint (Annexure P-1) reflects that the present petitioner has been arrayed as accused No.2 in the capacity of the proprietor of the accused firm, with the allegation that he used to look after the day-to-day business of accused No.1 i.e. M/s Ultimate Signages. The relevant extract of the complaint reads as under:-

“That the accused No.1 is a proprietorship concern and the accused No.2 is the proprietor of the accused No.1, who carry on the day to day business of accused no.1 and is incharge and responsible for the affairs of accused No.1. The accused No.2 had also been personally dealing with the complainant company, in day to day business dealings.”

11. Having placed reliance upon the averments made by the complainant-company, the petitioner has been summoned to face the trial. This Court has also examined the cheque No. 697305 dated 07.12.2016 (Annexure P-3), as well as the Memos (Annexures P-4 and P-5), issued by the State Bank of India, which are not under dispute. A perusal of the memos issued by the bank concerned makes it very clear that the sole proprietor of accused No.1, i.e. Ultimate Signages, is one Jatinder Pal Singh, who is the authorized signatory, as per the bank record. Further-more the bank made remarks that "Funds Insufficient". It is not under dispute that since these documents are admitted documents, therefore, this Court can safely infer that the petitioner is not the proprietor of accused No.1-company, therefore, he cannot be held liable for the day-to-day business of the accused-company and cannot be subjected to face the trial in the impugned complaint in view of the law laid down by the Hon'ble Supreme Court in **Raghu Lakshminarayana's** case (supra) and **Parveen Kumar's** case (supra).

12. Accordingly, the instant complaint is not maintainable *qua* the petitioner. Therefore, this Court deems it appropriate to set-aside the impugned summoning order (Annexure P-2) and to quash the complaint (Annexure P-1) *qua* the petitioner.

13. Insofar as the second argument raised by the learned counsel for the complainant-respondent that the summoning order is a revisable order, is concerned, there is no dispute that it carries legal strength, however, since this Court has opined that the complaint itself is not maintainable against the present petitioner, therefore, this Court does not accept the argument (supra).

14. Now, insofar as the next argument raised by the learned counsel for the complainant-respondent, is concerned, the documents which are not

disputed, are very much open to be evaluated by this Court while exercising the powers under Section 482 Cr.P.C.

15. For this, this Court places reliance upon the judgment of the Hon'ble Apex Court in case **Mrs.Anita Malhotra Vs. Apparel Export Promotion Council and another, 2011(4) R.C.R.(Civil) 930**, decided on 08.11.2021, wherein it was held that if the documents *prima facie* are beyond suspicion or doubt as placed on record, the acquisition against the petitioner does not stand then it would be travesty of justice if the accused is relegated to the trial and he is asked to prove his defence. The relevant extract of the same reads as under:-

“13) In Harshendra Kumar D. vs. Rebatilata Koley and Others, (2011) 3 SCC 351, while considering the very same provisions coupled with the power of the High Court under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') for quashing of the criminal proceedings, this Court held:

"25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents -- which are beyond suspicion or doubt -- placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage."

As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merit of the accusation, but if on the face of the document which is beyond suspicion or doubt placed by the accused and if it is considered the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code.”

16. Further reliance can be placed upon the judgment of the Hon’ble Apex Court in case **Harshendra Kumar D Vs. Rebatilata Koley etc., 2011 (3) SCC 351**, decided on 08.02.2011 in which it has been observed as under:-

“19. The above documents placed on record by the appellant have not been disputed nor controverted by the complainants. As a matter of fact, it was not even the case of the complainants before the High Court that the change among Directors of the Company, on resignation of the appellant with effect from March 2, 2004, has not taken place. The argument on behalf of the complainants before the High Court was that it was not permissible for the High Court to look into the papers and documents relating to the appellant's resignation since these are the matters of defence of the accused person and defence is a matter for consideration at the trial on the basis of evidence which cannot be decided by the High Court. The complainants in this regard relied upon a decision of Single Judge of that Court in the case of Fateh Chand Bhansali¹. The counsel for the present appellant (revision petitioner therein) on the other hand referred to a later decision of a Single Judge of the Calcutta High Court in the case of Saroj Kumar Jhunjunwala v. State of West Bengal and Anr. (2007) 1 C Cr. LR (Cal) 793 wherein it was held that if before the issuance of cheques, the accused had resigned from the directorship, then he cannot be held liable for the offence. Confronted with two Single Bench decisions of that Court in Fateh Chand Bhansali¹ and Saroj Kumar Jhunjunwala⁶, the Single Judge held that the judicial discipline demanded that he

should go by the earlier decision, namely, Fateh Chand Bhansali and, accordingly, refused to take into consideration the documents relating to the appellant's resignation as Director from the Company with effect from March 2, 2004. While relying upon Fateh Chand Bhansali, the Single Judge referred to a decision of this Court in State of Madhya Pradesh v. Awadh Kishore Gupta and Others which was referred in Fateh Chand Bhansali .”

17. On the touchstone of the legal proposition, as discussed above, the documents, which are not under dispute, this Court can safely conclude that the petitioner has no concern whatsoever with the proprietorship firm M/s Ultimate Signages and there is no allegation that he is the authorized signatory of the said firm. It appears that the documents, as placed on record by the accused-petitioner, are *prima facie* beyond suspicion and have not disputed, which clearly give inference of innocence of accused. In these circumstances, it would be a travesty of justice to relegate him to face the trial and prove the same at the time of defence.

18. For all the reasons (supra), both the present petitions are **allowed** and the impugned summoning orders are set-aside and the impugned complaints are ordered to be quashed *qua* the present petitioner.

19. **Ordered** accordingly.

(KULDEEP TIWARI)
JUDGE

13.02.2024
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Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No.