HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CRM-M-45751-2017
Date of Decision: 23.07.2024
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Karan Mahesh Hadwani & Anr. ... Petitioners

VS.

M/s Panchkula Finvest P.Ltd. & Anr. ... Respondents
****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
****

Present: Mr. Vishal Sharma, Advocate for the petitioners

Ms. Seema Pasricha, Advocte for the respondents
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Sandeep Moudgil, J. (Oral)

(1). This petition under Sections 482 CrPC has been filed by the petitioners seeking quashing of the complaint No.7867 of 10.11.2016 under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) pending in the Court of JMIC, Chandigarh, as well as for quashing the order dated 21.12.2016 (Annexure P2) summoning the petitioners.

(2). Learned counsel for the petitioners contends that the allegations in the complaint are that cheque, which was issued on behalf of M/s Konark Enterprises by its authorised signatory Mahesh Kumar Hadvani, was stated to have been dishonoured. He also contends that the petitioners are not connected with M/s Konark Enterprisers and they have been arraigned as accused because they are son and daughter of Mahesh Kumar Hadvani, who is also the proprietor of M/s Konark Enterprises.

(3). It is further contended that in terms of the copy of a partnership deed (Annexure P-2), it is mentioned that Mahesh Kumar Hadvani will have 95% share in the profits and Gautambhai S. Vaghasiya will have 5% share in the profits and as such, the petitioners have nothing to do with the cheques in question as the transaction by M/s Konark Enterprises with the complainant-respondents are different to the present one and the trial court has illegally summoned the petitioners.

(4). On the other hand, learned counsel for the respondents contends that the assertion made on behalf of the petitioners are baseless inasmuch as the money was transferred in the account of the petitioners, as per the copy of the statement, and the said money transaction is in the same series of the transaction which is subject matter in the present petition. She also urged that being non-signatory to the cheques does not *ipso facto* absolve them of criminal liability under Section 138 of NI Act and it is a matter of record and also asserted in the complaint that 2 lakhs shares of Shilpi Cable Tech. Ltd. were transferred to the present petitioners on 31.12.2015. That apart, the contentions raised by the petitioners can only be ascertained after leading evidence before the trial court.

(5). Heard learned counsel for the parties.

(6). A perusal of the complaint would show that there are no allegations, let alone any specific allegation, against the petitioners except that they are children of Mahesh Hadvani. It was thus legally incumbent upon respondents to specifically spell out as to how and in what manner the petitioners were in-charge of, or were responsible for the day-to-day affairs and/or conduct of the business of the accused-Company, especially when the petitioners 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. No criminal liability for facing trial can be fastened upon the petitioner. 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.

(7). Admittedly, the cheque in question was issued by one Mahesh Hadvani who is partner in Konark Enterprises proprietorship and the petitioners have got no concern with the said firm. The said proprietorship is between the father of the petitioners Mahesh Hadvani and one Gautam Bhai as is evident from the partnership deed (Annexure P2). Evidently, the petitioners have been sought to be summoned only for the reason that they are sons of Mahesh Hadvani and to put pressure on their father in the complaint. The trial court thus erred in law in accepting the bald assertions made by the respondents inasmuch as it failed to even enquire if the petitioners were partners to the firm before issuing the process.

(8). In view of the above discussion, this petition is allowed and the complaint No.7867 of 10.11.2016 under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) pending in the Court of JMIC, Chandigarh, as well as for quashing the order dated 21.12.2016 (Annexure P2) qua the petitioners are quashed.

23.07.2024
V.Vishal

(Sandeep Moudgil)
Judge

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