

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-26360-2024 (O&M)

Decided on 23.05.2024

Mandeep Singh

... Petitioner

VS.

M/s Aman Feed Industries

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Suman Saharan, Advocate for the petitioner

Sandeep Moudgil, J.

(1). This petition under Section 482 CrPC has been filed by the petitioner seeking to quash the complaint No.NACT/7/2022 dated 05.01.2022 filed under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) pending before JMIC, Khanna (Annexure P1), as well as the summoning order dated 14.03.2022 (Annexure P4).

(2). Learned counsel for the petitioner contends that the petitioner is a partner in a partnership firm, namely, M/s Super Poultries, Narwana along with three other persons and since poultry feed was purchased by the respondent-firm, it issued a cheque as 'security' to it and has been misused to file the present complaint with ill-motive. He further urged that as per Ex.C-14 i.e. the account statement, it can be seen that final calculation was made on 14.12.2021 whereas as per the complainant, the cheque was presented on 08.10.2021 and dishonoured on 11.10.2021 and the date on the cheque itself is 06.10.2021, therefore, it is hard to believe that the cheque was issued for the liability which arose after the issuance of the cheque which shows that the cheque was issued 2 months prior from the date the alleged liability arose.

(3). Further argument raised on behalf of the petitioner is that the petitioner was the fourth and last partner of the firm and has no control over the day-to-day business of the firm and was not incharge or responsible for the conduct of the firm inasmuch as the cheque was never issued by the petitioner and the same was issued by Pankaj Singhal and Sanjay Kumar with whom the complainant has already entered into a compromise as is evident from the statement dated 13.07.2022 (Annexure P5) and order dated 13.07.2022 (Annexure P6).

(4). He vehemently contends that since the matter stands settled with the signatory of the cheque, in such circumstances, the petitioner, who is admittedly the non-signatory to the cheque, cannot be held liable. In any case, the non-signatory of the cheque can only be held responsible for the civil liability and the petitioner cannot be held vicariously liable under Section 138 of NI Act.

(5). It is further averred that the power of attorney, namely Shiv Charan has no personal knowledge of the transaction and as such he could not have filed the complaint inasmuch as, Shiv Charan was appointed only to lodge complaint and look after the legal proceedings and therefore, he is not competent to file the present complaint for the reason that the Power of Attorney holder is not competent to file/lodge or depose about the transaction that took place between the payee and the drawer of the cheque. She also pointed out that Section 2 of the Power of Attorney Act, 1882 cannot override the specific provisions of the Statute which require that a particular act should be done in a particular manner. In this regard, reliance has been placed on AC Narayanan *and Anr. Vs. State of Maharashtra & Ors. 2014 AIR SC 630.*

- (6). Heard learned counsel for the petitioner.
- (7). The prime contention raised on behalf of the petitioner is that the complainant, Shiv Charan has no power or authority, whatsoever to file/lodge complaint against the petitioner only on the ground that he had no personal knowledge of the business of the respondent-firm. In this regard, the petitioner has appended special power of attorney dated 11.12.2021 (Annexure P7) whereby Anil Kumar partner of respondent-firm appointed Shiv Charan – the complainant as attorney to look after, file and appear in the court cases and also to sign and verify the complaints, plaints etc. on behalf of Anil Kumar, partner of the respondent-firm.
- (8). In so far as filing of complaint by Power of Attorney for offence under Section 138 of the NI Act in terms of Section 142 of the said Act is concerned, there is unanimity in the views expressed by various High Courts and the Supreme Court that a complaint for offence under Section 138 of the said Act, can be filed by Power of Attorney in terms of Section 142 of the said Act. Keeping in mind various situations like inability as a result of sickness, old age or death or staying abroad of the payee or holder in due course to appear and depose before the Court in order to prove the complaint, it is permissible for the Power of Attorney holder or for the legal representative(s) to file a complaint and/or continue with the pending criminal complaint for and on behalf of payee or holder in due course. This view of mine is reinforced by the decision of the Supreme Court in **A.K. Roy & Anr vs State Of Punjab & Ors. AIR 1986 SC 2160.**
- (9). Secondly, the contention raised on behalf of the petitioner that since other partners have entered into compromise and since the petitioner was

not signatory to the cheque in question, therefore, the present proceedings are liable to quashed, deserves to be rejected for the reason that the cheque in question was issued by the company for the day-to-day business and transaction in relation thereto, for which one and all the partners or stakeholders would be equally responsible. The alleged compromise is not before this Court to glance as to on what terms and conditions the compromise has been arrived at and the nature and subject of compromise is also not available before this Court. The fact remains that the complainant is still aggrieved and has sought summoning of the petitioner and since the trial court has found sufficient material to summon the petitioner, this Court refrains from interfering in these proceedings moreso, when disputed questions of fact are involved.

(10). Dismissed.

23.05.2024
V.Vishal

(Sandeep Moudgil)
Judge

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