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**THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.34009 of 2024
Date of Decision: 18.07.2024

Amit Kalra

..... Petitioner

Versus

Rohit Khurana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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Present: Mr. Rajesh Narang, Advocate
for the petitioner.

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RAJESH BHARDWAJ, J. (ORAL)

1. Instant petition has been filed under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS) for quashing of complaint bearing No.NACT-33/2024 dated 23.01.2024 (Annexure P-6); summoning order dated 23.01.2024 (Annexure P-7) and all subsequent proceedings arising therefrom wherein the petitioner/accused has been summoned in a case under Section 138 of the Negotiable Instruments Act, 1881 on the principles of vicarious liability as partner in a partnership firm, regarding dishonoring of the cheque dated 13.12.2023 (Annexure P-4) stated to be issued by respondent No.3 from his personal account in favour of respondent No.1/complainant, which is not at all connected with the petitioner or his partnership firm. Further prayer has

been made for staying the further proceedings before the learned trial Court in the above said case during the pendency of the present petition.

2. As per the facts deciphered from the record of the case, respondent No.1 instituted a complaint under Section 138 of Negotiable Instruments Act against the accused. It was alleged in the complaint that accused No.2, namely, Suman Kalra issued a cheque bearing No.859743 dated 13.12.2023 for an amount of Rs.23,88,484/- drawn on IndusInd Bank Branch Fazilka in favour of the firm of the complainant-petitioner with an assurance of its encashment upon presentation before the Bank. This cheque was issued by accused No.2 in the capacity of partner in consultation with other partners in order to discharge the liability of the firm. However on presentation, the cheque was dishonored and returned in original to the complainant for the reason "account closed". Thus the complaint was filed by respondent No.1 against the petitioner and other respondents. After recording the preliminary evidences, the learned trial Court finding sufficient grounds to proceed against the accused, summoned the petitioner vide order dated 23.01.2024. Being aggrieved the petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely prosecuted by the respondent-complainant in the complaint. He has submitted that the petitioner and respondent No.3 are the partners of the firm i.e. respondent No.2. He submits that respondent No.3, namely, Suman Kalra was maintaining the saving account with IndusInd Bank which was opened on 18.06.2018 in

her personal capacity and the same was closed on 17.08.2021. He has submitted that the said account has nothing to do with the business transaction held by M/s S. K. Agros and the firm had a separate current account number and CC account number with PNB main Branch Fazilka. He has submitted that due to the dispute between the partners, Aarish Kalra had mischievously taken away two cheque books pertaining to the account of IndusInd Bank without knowledge and authority of Suman Kalra. Thus, he submits that the cheque in dispute is a result of fraud, forgery and cheating committed by the complainant in conspiracy with Aarish Kalra. He has submitted that on filing the complaint, the learned trial Court had summoned the petitioner, which is totally unsustainable in the eyes of law. He submits that from the perusal of the partnership deed dated 01.04.2014, it is revealed that Aarish Kalra was earlier carrying on the business of rice sheller in the name and style of 'M/s S. K. Agros' whereas the petitioner and Suman Kalra were inducted as partners by constituting a new partnership firm w.e.f. 01.04.2014 in the same name and style of 'M/s S.K. Agros'. He has submitted that perusal of the complaint would show that the entire business dealings were held between the complainant and the firm M/s S. K. Agros and as such the liability of the firm could have been discharged from the account of partnership firm only. But the cheque in dispute was allegedly issued by respondent No.3, namely, Suman Kalra from his personal account number. Thus, he submits that the petitioner cannot be arrayed as an accused by applying the principles of vicarious liability. He submits that no allegations were levelled in the complaint against the petitioner. He submits that the learned trial Court has ignored the facts and circumstances of the case and has summoned the petitioner in a casual manner. He thus submits that the impugned complaint and the summoning order being unsustainable in the eyes of law deserve to be quashed.

4. I have heard learned counsel for the petitioner and perused the record.

5. On hearing learned counsel for the petitioner and perusing the record, it is deciphered that respondent No.2 is a partnership firm whereas respondent No.3 and the petitioner are its registered partners. This partnership firm is running the business of Rice Industry. During the course of business, the firm used to purchase rice from the complainant on credit basis from time to time. As alleged in the complaint, the transactions made by the respondent-firm were duly entered. It is alleged that in the discharge of liability, respondent No.3 in the capacity of a partner of the firm issued a cheque bearing No.859743 dated 13.12.2023 for an amount of Rs.23,88,484/-. On presentation, this cheque was dishonored for the reason ‘account closed’. This is an admitted fact that the petitioner is one of its partner of the registered firm. The cheque has been allegedly issued by respondent No.3 in the capacity of partner in consultation with other partners as contended in the complaint in order to discharge the liability of the firm. The learned trial Court has recorded

the preliminary evidences. On finding a *prima facie* case, the petitioner has been summoned.

6. The Hon'ble Supreme Court in "***Ashutosh Ashok Parasrampuriya and another vs. M/s Gharrkul Industries Pvt. Ltd and others***", **SLP (Criminal) No.7573 of 2014**, decided on 08.10.2021 has held as under:

> *"In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the cheques were issued by the Company and dishonoured by the Bank, the appellants were the Directors of the Company and were responsible for its business and all the appellants were involved in the business of the Company and were responsible for all the affairs of the Company. It may not be proper to split while reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to fulfil the requirement of Section 141 of the NI Act. The complaint specifically refers to the point of time when the cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. In the given circumstances, we have no hesitation in overruling the argument made by the learned counsel for the appellants."*

7. It is evident from the contentions raised that the matter involved disputed questions of facts which can be adjudicated by the learned trial Court after appreciating the evidence produced by both the sides and the same cannot be adjudicated in the present petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS).

8. Thus, on the anvil of the law settled, this Court does not find any ground to interfere with the order impugned in the present petition

and the same is hereby dismissed. No opinion has been given on the merits of the case. The parties would be at liberty to raise all their pleas available to them before the learned trial Court which will decide the case in accordance with law.

(RAJESH BHARDWAJ)
JUDGE

18.07.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No