2024:PHHC:111044

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-M-35618-2023
Reserved on: 18.05.2024
Date of Pronouncement: 22.08.2024

SURINDER KUMAR JAIN …..PETITIONER

VERSUS

SOURABH BERI …...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Apoorva Arya, Advocate for
Mr. Himanshu Puri, Advocate for the petitioner.

Ms. Jainika Jain, Advocate for the respondent.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 482 Cr.P.C. for quashing of complaint bearing no. NACT 1731 of 2021 dated 05.02.2021 under section 138 of Negotiable Instruments Act, 1881(Annexure P-1) titled as Sourabh Beri vs Surinder Kumar Jain pending before the court of JMIC, Chandigarh as well as summoning order dated 10.03.2021(Annexure P-2) whereby the petitioner has been wrongly summoned u/s 138 of Negotiable Instruments Act, 1881.

2. Briefly put forth, the facts of the case are that the respondent-complainant filed the complaint against the petitioner under section 138 of Negotiable Instruments Act on the ground that from the year 2012-17, petitioner had taken friendly loan from respondent-complainant to the tune of Rs. 15,00,000/- for setting up Ice Factory out of which the petitioner returned Rs. 6,50,000/- with remaining liability of Rs. 8,50,000/-. Thereafter, it is

alleged that the petitioner issued part payment cheque bearing no. 113603 dated 19.11.2020 in favour of respondent-accused for a sum of Rs. 6,70,000/- from account no. 650069302935 maintained at State Bank of Patiala, Gidderbaha, Punjab which was dishonoured with the remarks "AT PAR CC" vide memo dated 21.11.2020 which compelled the respondent-complainant to file a complaint dated 04.02.2020.

3. Counsel for the petitioner contends that the trial court without considering the relevant facts has proceeded to summon the petitioner vide order dated 10.03.2021(Annexure P-2) as the dishonoured cheque bearing no. 113603 pertains to account of 'M.R. Trading Co' wherein neither the notice u/s 138 of Negotiable Instruments Act, 1881 nor complaint has been filed against the above stated company which makes its a clear cut case for allowing the prayer stated herein above.

4. On the other hand, counsel for the respondent contends that the petitioner had borrowed a total sum of Rs. 15,00,000/- in his *'personal capacity'* during the period 2012-17 for setting up ICE factory and out of the total amount, the petitioner had returned Rs. 6,50,000/- and also issued three post dated cheques bearing no. 113603, 000031, 000034 amounting to Rs. 6,70,000/-, 90,000/-, 90,000/- respectively which got dishonoured. Thereafter, legal notice was sent to the petitioner and two complaints were filed u/s 138 of Negotiable Instruments Act, 1881 bearing NACT/608/2021 and NACT/1731/2021.

5. He further contends that, since the issuance of the cheques, the petitioner had mala fide intention to defraud the respondent-company wherein he has specifically declared that three cheques were given by the petitioner himself to the respondent-company in regard to its legal liability and therefore

by his act and conduct, had fraudulent and dishonest intention to deceive the respondent-company.

6. It is vehemently argued that the said M. R. Trading Co. is a sole proprietorship firm which has no separate legal identity wherein Surinder Kumar Jain is the sole proprietor and therefore it is only the proprietor who can be held liable u/s 138 of Negotiable Instruments Act, 1881 on account of the fact that the proprietorship firm has no separate legal identity. He further argues while relying upon ***'Raghu Lakshminarayanan vs M/s. Fine Tubes(2007) 5 SCC 103'*** wherein it has been held that in case of proprietorship concern, it is only the proprietor who can be held liable under section 138 of Negotiable Instruments Act on account of the fact that proprietorship concern has no separate legal identity.

7. Heard learned counsel for the parties at length.

8. The present case in hand pertains to quashing of complaint under section 138 of Negotiable Instruments Act, 1881 wherein the petitioner has been alleged to have defraud the respondent-company whereas it has been alleged by the respondent-company that the petitioner has clearly admitted the cheques in question to have been signed by him in discharge of his legal liability. Before going into the merits of the case, it is pertinent to have a look at the provisions of section 138 of Negotiable Instruments Act, 1881 which reads as follows:-

> *"138. Dishonour of cheque for insufficiency. etc., of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt*

or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to [two] years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless:-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

9. Some of the ingredients, which emerge on perusal of section 138 of the Negotiable Instruments Act are as follows:-

(i) Cheque is drawn by a person on an account maintained by him with a banker;

(ii) The cheque is drawn for payment of any amount of money to another person from out of that account for discharge, in whole or in part of any debt or other liability;

(iii) The cheque drawn is returned by the bank unpaid.

10. Before proceeding further, it will be relevant to have a look on the provisions of section 141 of the Negotiable Instruments Act, 1881, which related to offences by company or a firm, which reads as follows:-

"141 Offences by companies.- (1) If the person committing an offence was committed, under Section 138 is a company, every person who, at the time the was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any secretary or other officer of the company such director, manager, director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section,-

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

11. From the perusal of the above provisions and the record in hand, it is crystal clear that the present petitioner had signed the cheque in question bearing no. 113603 (Annexure P-3) as an authorized signatory of M.R.Trading co. Indeed it is not the case of the respondent that he was not aware of the said fact. Moreover, even the statutory notice, before filing the complaint was issued only to the present petitioner and not to the company wherein M.R.Trading Co was required to be arrayed as an accused and in view of the settled law in the case of ***“Aneeta Hada Vs. M/s Godfather Travels and Tours Pvt Ltd.” , 2012(2) RCR (Criminal) 854*** wherein it has been held that for maintaining the prosecution under section 141 of the Negotiable Instruments Act, 1881 arraigning of a company as an accused is imperative. Relevant para is reproduced herein below:-

> *42. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the*

provisions regard being had to the legislative intendment because it deals with Penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as' in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context. In ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others, (1987)1 SCC 424*** *it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle 'has been reiterated in* ***Deewan Singh and others v. Rajendra Prasad Ardevi and others, (2007)10 SCC 528 and Sarabjit Rick Singh v. Union of India, (2008)2 SCC 417.*** *Applying the doctrine of of the considered opinion that strict construction, we are commission of offence by the company is an express condition precedent to attract the vicarious liability of others, Thus, the words "as well as the company appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted,then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is*

> *juristic person and it has its own respectability. I a finding is recorded against it, it D would create a concavity in its reputation. There can be situations when the corporate reputation is affected when Q director is indicted.*
>
> *43. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three- Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove."*

12. A company being an artificial person acting through its management has a separate legal entity wherein it owns its assets and is liable for debts. To attract section 138 of NI Act, it is necessary to understand the essence of the section 141 of NI Act in true sense which unmistakably on a plain reading itself makes clear the importance of impleading the company in cases involving cheques issued on its behalf.

13. As a sequal of the above discussion and the law laid down by the Apex court in Aneeta Hada(supra), this court while finding merit in this case strongly holds that the petitioner in his official capacity cannot be prosecuted in the absence of the company. Even otherwise, it is crystal clear that the petitioner had signed the cheque in his capacity of an authorized signatory

however, the trial court while passing summoning order had not looked into this legal aspect.

14. The complaint dated 04.02.2021 (Annexure P-1) and the summoning order dated 10.03.2021 (Annexure P-2) passed by the trial court, Chandigarh suffer from serious legal infirmity and are ordered to be quashed.

15. Ordered accordingly.

22.08.2024 **(SANDEEP MOUDGIL)**
Poonam Negi **JUDGE**

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