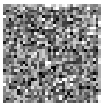


2024:PHHC:163056



IN THE PUNJAB AND HARYANA HIGH COURT
CHANDIGARH

CRR-1718-2024
Date of Decision: 09.09.2024

NEERAJ KUMAR
.....PETITIONER

VERSUS

ANUP PARASHAR AND ANR
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Tejas Beniwal, Advocate and
Mr. Sanjiv Kumar Aggarwal, Advocate
for the petitioner.

Mr. J.S.Rattu, DAG, Punjab

SANDEEP MOUDGIL, J

1. This petition has been preferred against the order dated 17.08.2024 of the learned Judicial Magistrate Ist Class, Palwal, dismissing the application of the petitioner for impleading respondent No.2 as an accused in the complaint bearing No. NI ACT-472-2017 titled “Neeraj Kumar Vs. Anoop Parashar” filed under Section 138/142 of the Negotiable Instruments Act, 1881, against respondent No.1.
2. Factual matrix of the case unfolds that the petitioner instituted a complaint under section 138 of the Negotiable Instruments Act, 1881 against the accused no.1 who in discharge of his existing legal liability presented a cheque bearing no. 124788 dated 18.03.2017 for Rs. 2,00,000/- drawn on IDBI Bank, Branch Palwal, which was dishonoured due to the reason

“ACCOUNT CLOSED” as per bank memo 18.05.2017. Thereafter, Respondent no.1- accused was summoned vide order dated 11.07.2017(Annexure P-2). Thereafter, it came to the notice of the petitioner that the dishonoured cheque no. 124788 dated 18.03.2017 was drawn on account of Respondent no.2- proprietary concern which prompted the petitioner to move an application dated 10.07.2024 (Annexure P-3) for impleading respondent no.2 as an additional accused.

3. It is contended by the learned counsel for the petitioner that the learned Judicial Magistrate Ist Class, Palwal, (hereinafter referred as – ‘trial Court’) has illegally and erroneously dismissed the application seeking impleadment of respondent No.2 in the complaint without appreciating the fact that the said respondent is a necessary party in the complaint, as such, the application was required to be allowed because it is after the filing of complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short – ‘NI Act’) it came to the knowledge of the petitioner that the dishonoured cheque No.124788 dated 18.03.2017 was drawn on the account of respondent No.2 – proprietary concern.

4. He further contends that the trial court has completely omitted to discuss and consider Section 141 of NI Act which provides that if the person committing an offence under Section 138 is a company then the company shall be deemed to be guilty of the offence. The respondent No.1 had represented himself as the account holder of the account on which the cheque was drawn but in fact, it is respondent no.2 which is the account holder, therefore, respondent No.2 becomes necessary party, but the learned trial Court has completely failed to look into this aspect of the matter. Therefore, the order dated 17.08.2024 passed by the learned trial Court is liable to be set

aside and the application for impleadment of respondent No.2 is liable to be allowed.

5. Heard and case file also perused.

6. This Court after going through the case file in hand has reached to the conclusion that the trial Court has not committed any error on fact or in law to dismiss the application of the complainant for impleadment of respondent No.2 as a necessary party in the complaint. Needless to mention here that the trial Court has very aptly observed that the name of the company Soalni Healthcare Pvt. Ltd. was clearly typed on the impugned cheque, as such, it cannot be said by the complainant that he later became aware that the cheque was of the company Soalni Healthcare Pvt. Ltd. whereas the petitioner-complainant from the very first day was aware that the cheque in question is of the said company. Further, Company and its Directors and authorized signatories are different legal entities and all legal entities have to be arrayed as separate accused whereas in the present case, respondent – Anoop Parashar was made as an accused in his individual capacity and he was summoned by the Court.

7. Furthermore, offence under Section 138 of NI Act is technical in nature and, thus, certain steps are to be taken care of before filing the complaint. The mandatory legal notice under Section 138 of NI Act is required to be issued to all the accused before filing the complaint under this Section of the NI Act, however, no such mandatory legal notice has been issued to the proposed respondent No.2 and the one mandatory legal notice was issued to accused-respondent no.1 Anoop Kumar.

8. As far as treating the application for impleadment to have been filed as summoning an accused under Section 319 Cr.P.C., no such plea was

taken by the counsel on behalf of the petitioner either in the application for impleadment not argued this point before the trial Court, therefore, such a plea cannot be considered and entertained by this Court. Moreover, the learned counsel for the petitioner has failed to support his plea that any settled law exists on this point that application for impleadment of a party under Section 138 of NI Act can be treated as application filed under Section 319 Cr.P.C. to summon as an additional accused.

9. Consequently, the present petition sans merits and, thus, fails. Resultantly, the petition in hand seeking setting aside the order dated 17.08.2024 of the learned Judicial Magistrate Ist Class, Palwal, dismissing the application of the petitioner for impleading respondent No.2 as an accused in the complaint bearing No. NI ACT-472-2017 titled “Neeraj Kumar Vs. Anoop Parashar” filed under Section 138/142 of the Negotiable Instruments Act, 1881, is dismissed and the order of the learned trial Court is hereby maintained.

09.09.2024

(SANDEEP MOUDGIL)
JUDGE

Poonam Negi

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