

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49197-2022 (O&M)
Reserved on: 13.05.2024
Pronounced on: 28.05.2024

Anant Madaan & another
... Petitioner(s)
Versus
Surinder Kaur
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. ADS Sukhija, Advocate,
Mr. Sukhdeep Singh, Advocate
Mr. Puneet Kapoor, Advocate
for the petitioner(s).

Mr. Abhishek Sindhvani, Advocate
for the respondent.

ANOOP CHITKARA, J.

Comp.No.	Dated	Court	Sections
NACT-1302/2020	19.8.2020	Judicial Magistrate Ist Class, Panipat	138 Negotiable Instruments Act

1. Petitioners, who are directors of Madaan Medical Education and Research Hospital Pvt. Ltd., claiming that it was Dr. Tilak Raj Madaan who was the authorized signatory of the cheque in question and knowing this, the complainant has wrongly arraigned both the petitioners as accused, have come up before this Court under Section 482 CrPC, seeking quashing of the above captioned complaint as well as summoning order dated 14.6.2022 (Annexure P-7).
2. The coordinate Bench of this Court had sent the matter to the Mediation and Conciliation Centre of this Court in order to explore the chances of amicable settlement between the parties. But despite various opportunities, the parties did not reach at a settlement. The mediator was still hopeful and wanted more time. But considering the fact that this matter is of 2022, this Court is of the considered opinion that there is no need for further extension of time for mediation and as such, the matter was heard on merits.

3. The cheques in question were issued on account of lease which was entered between the complainant-respondent Surinder Kaur along with Smt. Khushboo Narang, Ms. Neelam Narang, Mr. Abhishek Narang, Smt. Yashika Narang, as landlord/lessors and Madaan Medical Education and Research Hospital Pvt. Ltd. through its Director Dr. Tilak Raj Madaan, as tenants/lessee. A perusal of the lease deed makes it clear that signatures on behalf of the tenant-company were put by Tilak Raj Madaan and not the petitioners i.e. Anant Madaan or Ms. Sushma.

4. Due to dishonour of cheque bearing No.024777 dated 19.3.2020 for an amount of Rs.91,164/- due to insufficient funds, the lessor/landlord got issued a legal notice to Madaan Medical Education and Research Hospital Pvt. Ltd., Dr. Tilak Raj Madaan, Dr. Anant Maadan, petitioner no.1 and Ms. Sushma, petitioner no.2. Subsequently, due to non-payment of cheque amount by the lessee-company, the landlord-lessor filed above-captioned complaint under Section 138 of the Negotiable Instruments Act in the Court of Judicial Magistrate Ist Class, Panipat.

5. In paragraph 2 of the said complaint, it has been explicitly mentioned that accused Nos.2 to 4 including the petitioners, were the active directors of the company and were managing the day to day affairs of the company. It has further been mentioned that the cheque in question for an amount of Rs.91,164/- (Annexure P-6), which was legally enforceable debt for payment of rent, did not honour and was returned unpaid. It has been explicitly mentioned that it was signed by Dr. Tilak Raj Madaan and was issued in favour of complainant Surinder Kaur.

6. Vide impugned order dated 14.6.2022, the concerned Judicial Magistrate Ist Class, Panipat found *prima facie* ground to proceed under Section 138 read with Section 141 of the Negotiable Instruments Act against all the accused and as such, issued summons against them. Thus, Dr. Anant Raj Madaan and Sushma Madaan, who were not signatories to the cheque in question, have approached this Court under Section 482 CrPC.

7. The complainant has also filed her reply dated 24.3.2023. In paragraph 2 of the said reply, it has been stated that it is improbable that the petitioners were unaware about non-payment of the lease amount by Dr. Tilak Raj Madaan, who is father of Dr. Anant Madaan and husband of Sushma. In reply to paragraphs 2 and 6 of the reply on merits, it has been admitted that the cheque was issued by Dr. Tilak Raj Madaan and not by petitioners.

8. A perusal of the cheque clearly points out that it was issued by Dr. Tilak Raj Madaan for and on behalf of Madaan Medical Education and Research Hospital Pvt. Ltd. and the name of the company was affixed on the cheque itself and it is clearly legible.

9. In **Rajesh Viren Shah Vs. Redington (India) Limited (2024) 4 SCC 305**, Hon'ble the Apex Court held as under:-

“3. The position of law as to the liability that can be fastened upon a Director for non-realisation of a cheque is no longer res integra. Before advertng to the judicial position, we must also take note of the statutory provision - Section 141 of the N.I. Act, which states that every person who at the time of the offence was responsible for the affairs/conduct of the business of the company, shall be held liable and proceeded against under Section 138 of the N.I. Act, with exception thereto being that such an act, if done without his knowledge or after him having taken all necessary precautions, would not be held liable. However, if it is proved that any act of a company is proved to have been done with the connivance or ‘Cr.PC’3|SLP (Crl) 6905 & 7050 of 2022 consent or may be attributable to (i) a director; (ii) a manager; (iii) a secretary; or (iv) any other officer – they shall be deemed to be guilty of that offence and shall be proceeded against accordingly.

4. Coming to the judicial position, we notice a judgment of this Court in Monaben Ketanbhai Shah v. State of Gujarat⁵ wherein it was observed that:-

“6...The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when the complainant makes necessary averments in the complaint and establishes that fact...”

5. A Bench of three learned Judges in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.⁶ observed:-

“18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. ...A clear case should be spelled out in the complaint made against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out...”

6. We also notice this Court to have observed, in regards to the exercise of the inherent powers under Section 482, CrPC, in cases involving negotiable instruments that interference would not be called for, in the absence of *“some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking*

him to stand the trial would be abuse of process of Court. This principle as held in S.M.S Pharmaceuticals⁶ was followed in Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.⁷

10. Section 141 of the Negotiable Instruments Act, 1881 defines the offences by companies and it clearly mentions that every person who at the time of offence when the offence was committed was in charge and responsible to the conduct of its business, shall be deemed to be guilty. There is no averment that how the petitioners Dr. Anant Madaan and Sushma, at the time of issuance of cheque, were the persons(s) in charge or responsible for the conduct of business of the company.

11. A perusal of the cheque clearly points out that it was issued by Dr. Tilak Raj Madaan. Even the complainant does not deny the said fact in the reply. A perusal of the impugned order vide which summons were issued, does not refer that how the petitioners were the persons in charge or responsible for the affairs of the company. Thus, the impugned order did not take into consideration the provisions of Section 141 of the Negotiable Instruments Act, 1881 and is bad.

12. Thus, the Court invokes the inherent jurisdiction under section 482 CrPC to quash the complaint and set aside the impugned summoning order *qua* the petitioners only. The bail bonds of the petitioners are accordingly discharged. All pending application(s), if any, stand closed.

Petition allowed in the terms mentioned above.

**(ANOOP CHITKARA)
JUDGE**

May 28, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No