

2024:PHHC:118352



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CRM M-52054 of 2019  
Date of Decision: 03.09.2024

Harsimran Singh Brar and another ...Petitioners  
Versus  
Jaap Enterprises ... Respondent

**CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Mr. Ankush Thakral, Advocate for  
Mr. Abhishek Batta, Advocate, for the petitioners.  
  
Mr. Deepak Sahni, Advocate, for the respondent.

**N.S.SHEKHAWAT, J. (Oral)**

1. The petitioners have filed the present petition under Section 482 Cr.P.C. with a prayer to quash the complaint No. NACT/15879/2019 dated 26.09.2019 titled as **“Jaap Enterprises Vs. Rembrandt Fashion Hospitality Private Limited and others”**, which was filed under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') read with Section 420 IPC pending in the Court of Judicial Magistrate 1<sup>st</sup> Class, Chandigarh.
2. Learned counsel for the petitioners contends that a criminal complaint No. NACT/15879/2019 titled as **“Jaap Enterprises Vs. Rembrandt Fashion Hospitality Private Limited and others”**, was filed by the complainant through its proprietor Jaswinder Singh Kochhar. In the present case, both the petitioners

were mentioned as directors/authorized signatories of the accused-company and were arrayed as accused in the complaint (Annexure P-1). Learned counsel further contends that the petitioners were neither the directors nor authorized signatories of the company and had no concern with the accused company at all. Further, from the bare reading of the complaint, it is established that it is pleaded nowhere that the petitioners/accused were incharge and responsible for the conduct of the business of the company. Thus, there was no averment in the entire complaint that the petitioners had any role to play in the conduct of business of the company and were liable to be discharged by the Court. Learned counsel for the petitioners has referred to annexure P-2, i.e., the list of directors, downloaded from the official site of Ministry of Corporate Affairs which clearly shows that the petitioners were not the directors of the accused-company.

3. On the other hand, learned counsel for the respondents submits that the petitioners have raised several disputed questions of fact and it would be inappropriate to quash the FIR at this stage. However, learned counsel appearing on behalf of the respondent could not controvert the factual submissions made by the learned counsel for the petitioners.

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

5. In the present case, the petitioners were tried for commission of the offence under Section 138 of the Act. Section 138

of the Act clearly provided that the drawer of the cheque was liable for an offence under Section 138 of the Act and the same is reproduced below:-

***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 provision 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*

*order 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 30 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 receipt of the said notice.*

*Explanation:- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability".*

6. The Hon'ble Supreme Court has held in the matter of ***National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and another, 2010(3) SCC 330: 2010(2) R.C.R. (Criminal) 122*** has held as under:-

*"8. Section 138 of the Act refers about penalty in case of dishonour of cheque for insufficiency of funds in the account. We are more concerned about Section 141 dealing with offences by Companies which reads as under:-*

*"141. Offences by companies.--(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, 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 director, manager, secretary or other officer of the company, such 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."*

*It is very clear from the above provision that what is required is that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. Only those persons who were in-charge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action. It follows from the fact that if a Director of a Company who was not in- charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for a criminal offence under the provisions. The liability arises from being in-charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company.*

*10) Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent No.1 was in-charge of or was responsible to the accused company for the*

*conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in-charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141”.*

7. In the present case also, it is apparent from (Annexure P-2) that the petitioners were not the directors of the accused-company. Apart from that, the petitioners were neither the authorized signatories nor had any concern with the accused-company. Consequently, it cannot be stated that at the time, when the offence was committed, the petitioners were incharge of and were responsible to the company for the conduct of the business of the accused-company.

8. In view of the above discussion, the petition is allowed and the complaint No. NACT/15879/2019 dated 26.09.2019 titled as **“Jaap Enterprises Vs. Rembrandt Fashion Hospitality Private Limited and others”** and all subsequent proceedings arising therefrom are ordered to be quashed qua the petitioners only.

03.09.2024  
amit rana

(N.S.SHEKHAWAT)  
JUDGE

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