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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52483-2019
DATE OF DECISION: 28.11.2024

ANURADHA ..PETITIONER

Versus

TEJBIR SINGH MALIK AND ANR ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Harsh Rana, Advocate for
Mr. A.K. Rana, Advocate for the petitioner(s).

None for the respondents.

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SANDEEP MOUDGIL, J (ORAL)

This petition has been filed under Section 482 of the code of criminal procedure for quashing of impugned complaint no. 237 of of 2019 (Annexure P-1) titled as "Tejbir Singh Malik Vs. Rajesh Kumar and Another" dated 29.08.2019 under section 138 of the Negotiable Instruments Act, 1881 as amended up to the date read with Section 420 IPC which is now pending in the Court of SDJM, Kalka, Panchkula, for 17.12.2019 along with summoning order dated 31.08.2019.

2. Learned counsel for the petitioner contends that a perusal of the complaint dated 29.08.2019 (Annexure P-1) would make it clear that no specific allegation is coming forth qua the present petitioner and her involvement to carry out day to day affairs of the firm M/s Shivalik Auto Mobiles whose cheque was issued by her husband alone for an amount of Rs. 4,34,000/-. He further contends that the money

was given to a firm and in this regard there is no mentioning in the complaint that the petitioner was in any way responsible for the conduct of the business activity, therefore her summoning for the offence under Section 138 of the NI Act is illegal.

3.. Having given a thoughtful consideration to the arguments advanced by the counsel for the petitioner, the question that arises for determination is that whether the petitioner is liable for prosecution under Section 138 read with Section 141 of Negotiable Instruments Act, 1881 for the alleged offence of dishonour of cheques committed by the default company when the impugned complaint in itself attributes no role to the present petitioner.

4. There is no dispute to the fact that in the impugned complaint the name of the present petitioner is not found mentioned and there are no specific allegations against the petitioner and she is the wife of the main Director of the company i.e. Rakesh Kumar.

5. The Trial Court below has failed to take into consideration that the respondent-complainant while making a complaint under Section 138 has no where averred in the petition that the petitioner was in any manner the In-charge or was responsible for day to day affairs of the company and therefore, could not have been made liable for the act of default made by the company.

6. In "***Girdhari Lal Gupta vs. D.H. Mehta and Anr.", (1971) 3 SCC 189***, the Apex Court observed that a person "in-charge of a business" means that a person should be in overall control of the day to day business of the company.

7. In "***State of Karnataka versus Pratap Chand & others", (1981) 2 SCC 335***, the Apex Court observed that a Director of a Company is liable to be convicted for an offence committed by the Company if he/she was in charge of and was responsible to the Company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director, concerned.

8. In other words, the law laid down by the Apex Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Negotiable Instruments Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

9. In "***Pooja Ravinder Devidasani vs State of Maharashtra and another", 2015(3) SCC (Civil) 384***, the Apex Court observed that *in the entire complaint, neither the role of the petitioner in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained. From the record it appears that the trade finance facility was extended by the Respondent No. 2 to the default Company during the period from 13th April, 2008 to 14th October, 2008, against which the Cheques were issued by the Company which stood dishonored. Much before that on 17th December, 2005 the appellant resigned from the Board of Directors. Hence, we have no hesitation to hold that continuation of the criminal proceedings against the appellant under*

Section 138 read with Section 141 of the N.I. Act is a pure abuse of process of law and it has to be Interdicted at the threshold.

10. In the light of the law laid down by the Apex Court in its various dictums this Court is of the view that the petitioner was not involved in day to day affairs of the Company at the time of the alleged occurrence therefore, the trial Court below without appreciating the facts which are *prima facie* evident have wrongfully summoned the petitioner to face the trial under Section 138 of Negotiable Instruments Act.

11. Hence, the present petitions stands allowed and the present complaint titled "Tejbir Singh Malik Vs. Rajesh Kumar and Another" as is quashed qua the petitioner namely Anuradha along with summoning order dated 31.08.2019.

(SANDEEP MOUDGIL)
JUDGE

28.11.2024
anuradha

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