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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-60185-2023
Date of Decision:- 25.11.2024

Smt. Mithlesh and others ....Petitioners

Versus

M/s Frontier Agrotech Private Limited ....Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Sunil K. Chaudhary, Advocate for the petitioners.

Mr. Alok Jagga, Advocate for the respondent.

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AMARJOT BHATTI, J.

1. Petitioners Smt. Mithlesh, Ashish Gupta and Smt. Chavvi Gupta filed petition under Section 482 of Cr.P.C. for quashing of criminal complaint No. NACT/1691/2021 dated 03.02.2021, under Section 138 of Negotiable Instruments Act, 1881, titled "M/s Frontier Agrotech Pvt. Ltd. Vs. M/s Hanuman Beej Bhandar & Others" (Annexure P-4) as well as summoning order dated 03.02.2021 (Annexure P-5) alongwith all consequential proceedings arising thereof and also setting aside order dated 13.10.2023 (Annexure P-11), whereby learned trial Court refused to discharge/drop the proceedings qua present petitioners in aforesaid complaint.

2. Brief facts of the case are M/s Frontier Agrotech Pvt. Ltd., through its director Sailendra Verma, filed petition under Section 138 of

Negotiable Instruments Act, 1881 read with Sections 406 and 420 of the IPC against M/s Hanuman Beej Bhandar and its partners Paragdeen Gupta, Goverdhan Dass Gupta, Smt. Mithilesh, Anurag Gupta, Ashish Gupta and Smt. Chavvi Gupta with the allegations that complainant company was selling pesticides to accused as per their requirement from time to time. Regarding pesticides purchased by accused, sale invoice was issued and accused were making part payments. Ledger was maintained by complainant company, according to which an amount of ₹6,79,71,375.62/- was due towards accused. In discharge of part liability, accused issued cheque dated 23.11.2020 bearing number 000916, drawn on HDFC Bank Ltd. in favour of complainant company which was dishonored vide memo dated 07.12.2020 with remarks "Funds Insufficient". No payment was made despite issuance of legal notice dated 26.12.2020 and ultimately complaint (Annexure P-4) was filed. On said complaint, impugned summoning order dated 03.02.2021 (Annexure P-5) was passed vide which present petitioners alongwith other co-accused were ordered to be summoned under Section 138 of Negotiable Instruments Act, 1881.

3. Learned counsel for petitioners argued that M/s Hanuman Beej Bhandar is a partnership firm appointed as a distributor by respondent company for selling of pesticides since the year 2017, as per terms and conditions mutually settled between the parties. Partnership Deed is Annexure P-1. Present petitioners were arrayed as accused Nos. 4, 6 and 7 as partners of accused No. 1 in complaint, Annexure P-4. There is no specific recital to fulfill the requirement of Section 141 of Negotiable

Instruments Act, 1881 as to the person who was Incharge of and responsible for the conduct of business of partnership firm-accused No. 1. Apart from this, petitioners retired from partnership firm long before the issuance of cheque in question. Retirement Deed dated 01.11.2019 is Annexure P-2. As per this Retirement Deed, accused Nos. 2 and 3 namely Paragdeen Gupta and Goverdhan Dass Gupta remained as continuing partners of firm-accused No. 1. Present petitioners were neither partners of accused No. 1 nor they are signatories to cheque in question (Annexure P-3). Therefore, they had no concern with the business of partnership firm-accused No. 1. They have no liability to make any payment towards respondent M/s Frontier Agrotech Pvt. Ltd. Learned counsel for petitioners has referred to the judgment of **Supreme Court of India** cited in ***2023 All SCR (Crl.) 2016,*** case titled "**Siby Thomas Versus M/s Somany Ceramics Ltd.**", where in that case, it was observed in para No. 16 as under :-

> *"16. Thus, in the light of the dictum laid down in Ashok Shewakramani's case (supra), it is evident that a vicarious liability would be attracted only when the ingredients of section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of section 141(1) of the NI Act, would reveal that only that 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 alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. In such*

circumstances, paragraph 20 in Ashok Shewakramani's case (supra) is also relevant.....”

Impugned summoning order dated 03.02.2021 (Annexure P-5) has been passed without proper appreciation of the facts of case. There was new Partnership Deed dated 01.04.2021, Annexure P-6, in which accused Nos. 2, 3 and 6 were partners. Paragdeen Gupta (accused No. 2) expired on 28.04.2021, and his Death Certificate is Annexure P-7. Anurag Gupta (accused No. 5) also expired on 05.05.2021 and his Death Certificate is Annexure P-8, although he retired on 01.11.2019. Thereafter, new Partnership Deed was executed on 08.09.2021 (Annexure P-9) in which accused Nos. 3 and 6 namely Goverdhan Dass Gupta and Ashish Gupta were named as partners. Earlier petitioners approached High Court by filing CRM No. M-29419 of 2023 for quashing of complaint and summoning order and said case was disposed of vide order dated 12.07.2023 (Annexure P-10) with liberty to petitioners to raise said objections before trial Court. Petitioners filed application to drop proceedings to discharge petitioners but same was declined vide order dated 13.10.2023 (Annexure P-11) by holding that trial Court had no power to review or recall summoning order in complaint case. Ultimately, present petition has been filed. It is argued that present petitioners retired on 01.11.2019 vide Retirement Deed (Annexure P-2), much prior to the issuance of cheque in question dated 23.11.2020 (Annexure P-3). Therefore, present petitioners cannot be held responsible for any liability of M/s Hanuman Beej Bhandar towards M/s Frontier Agrotech Pvt. Ltd., respondent No. 1/complainant. Summoning order dated 03.02.2021, Annexure P-5 is passed in a routine manner without proper appreciation of the facts. Therefore, petition filed by petitioners for quashing of complaint under Section 138 of Negotiable Instruments Act, 1881 (Annexure P-4) and summoning order dated 03.02.2021 (Annexure P-5) along with subsequent proceedings thereunder, be quashed qua petitioners.

4. On the other hand, learned counsel representing respondent opposed the petition, taking the stand that as per Partnership Deed dated 01.04.2013, Annexure P-1, present petitioners are named as partners along with others. It is argued that present petitioners retired vide Retirement Deed dated 01.11.2019, Annexure P-2, with effect from 31.10.2019, therefore, they are not liable under Section 138 of the Negotiable Instruments Act, 1881. Learned counsel for respondent company/complainant has relied upon the provisions of Section 32 of Partnership Act, 1932, dealing with the retirement of partner and Section 72 of the Act, which explains the manner in which public notice is required to be given at the time of retirement or expulsion of a partner from a registered firm or dissolution of registered firm. It is argued that disputed questions of facts are involved in present case. Petitioners have relied upon the documents i.e. Partnership Deeds as well as Retirement Deed, as referred above. In fact, said documents are fabricated and self-created at a later stage in their defence. Said documents can be proved only during trial and same cannot be considered on their face value in present petition. In support of this argument, learned counsel for respondent referred to the

judgment of **Supreme Court of India** cited in ***2023(3) Apex Court Judgments (SC) 94***, case titled "**Riya Bawri Etc. Versus Mark Alexander Davidson & Ors.**", where in that case, it was observed in paras No. 19 and 20 as under :-

"19. The High Court had accepted the argument raised by the respondent no.1 and quashed the summoning order as well as the complaints against him, accepting the plea that he had retired from the partnership firm for which a Retirement Deed was already executed on 01.04.2018. In our opinion, the plea taken by the respondent no.1 seeking quashing of the summoning order and the complaints filed against him was not tenable, for the reason that, it would be a matter of evidence to be proved before the trial Court, as to whether any Retirement Deed was issued and a public notice concerning the same was issued, before the complaints were filed. The fact remains that, a public notice regarding retirement by the respondent no.1 from the firm was issued on 09.02.2022 i.e., much after the complaints had been filed and the summoning order had been issued by the trial Court on 05.02.2020. Even the quashing petitions were filed by the respondent no.1 in October 2021. The public notice was issued few days before the High Court decided the quashing petition on 14.03.2022. It is not the case set up by the respondent no.1 that in the Partnership Deed it is mentioned that he was a sleeping partner in the firm. Under such circumstances, the Retirement Deed dated 01.04.2018 sought to be produced by the respondent no.1 for quashing of the summoning order and the complaints could not be taken on its face value, and treated as clinching evidence to quash the complaints. It would be a matter of evidence to be led before the trial Court.

20. It is well settled that the final judgment of the trial Court will depend on the evidence adduced before it. As there are specific allegations against the respondent no.1 in the complaint and he was admittedly a partner in the partnership firm when the rent *deed was executed, he is liable to face prosecution. Powers under Section 482 of the Code can be exercised by the High Court in case when it comes across unimpeachable and incontrovertible evidence to indicate that the partner of the firm did not have any concern with the issuance of cheques. The case in hand is not of that kind."*

On this point, learned counsel for respondent has also referred to the judgment of **Supreme Court of India**, cited in ***2011(4) R.C.R. (Criminal) 723***, case titled "**Rallis India Ltd. Vs. Poduru Vidya Bhusan and others**". Therefore, there is no sufficient ground to quash complaint (Annexure P-4) or summoning order dated 03.02.2021 (Annexure P-5) qua present petitioners.

5. I have considered the arguments advanced by learned counsel for both parties and have examined the documents annexed with petition. Present petition has been filed for quashing of complaint filed by M/s Frontier Agrotech Pvt. Ltd. through its Director under Section 138 of Negotiable Instruments Act, 1881, against M/s Hanuman Beej Bhandar and its partners, including present petitioners. Copy of complaint under Section 138 of Negotiable Instruments Act, 1881 is Annexure P-4 and summoning order dated 03.02.2021 is Annexure P-5. Cheque in dispute bearing No. 000916 drawn on HDFC Bank Ltd. for a sum of ₹2 crores dated 23.11.2020 is Annexure P-3. As per the facts narrated in complaint, cheque in question was issued in discharge of part liability of accused firm towards respondent/complainant. Said cheque was dishonored on account of "Funds Insufficient" vide memo dated 07.12.2020. After the issuance of a legal notice dated 26.12.2020, complaint was filed on 02.02.2021. Learned

counsel for petitioners raised arguments that in complaint under Section 138 of Negotiable Instruments Act, 1881, Annexure P-4, there is no specific averment as to the persons who were Incharge of and responsible for the conduct of business of partnership firm-accused No. 1 and secondly, emphasis was on Retirement Deed dated 01.11.2019, Annexure P-2, according to which present petitioners Smt. Mithilesh, Ashish Gupta and Smt. Chhavi Gupta retired with effect from 31.10.2019, while continuing partners remained Goverdhan Dass Gupta and Paragdeen Gupta. Out of them, Paragdeen Gupta expired on 28.04.2021 and copy of his Death Certificate is Annexure P-7. Anurag Gupta also expired on 05.05.2021 and copy of his Death Certificate is Annexure P-8. There is reference of subsequent Partnership Deeds dated 01.04.2021 (Annexure P-6) and 08.09.2021 (Annexure P-9). However, cheque in dispute dated 23.11.2020 (Annexure P-3) was issued prior to the aforementioned Partnership Deeds, Annexures P-6 and P-9. Learned counsel for respondent/complainant rightly pointed out that veracity of aforesaid documents can be seen during trial. At this stage, by relying upon these documents, it will not be appropriate to hold that present petitioners had retired vide Retirement Deed dated 01.11.2019, Annexure P-2. Aforesaid stand taken by petitioners is matter of defence during trial. Moreover, the trial Court had no occasion to consider and appreciate these documents. Therefore, by relying on the judgment "**Riya Bawri Etc. Versus Mark Alexander Davidson & Ors.**" (supra), at this stage, I do not find merits in petition filed by present petitioners for quashing criminal complaint (Annexure P-4), summoning order dated 03.02.2021 (Annexure P-5) and order dated 13.10.2023 (Annexure P-11) alongwith all consequential proceedings arising thereof and same is accordingly dismissed.

6. Pending miscellaneous application(s), if any, shall stands disposed of accordingly.

25.11.2024 **(AMARJOT BHATTI)**
lalit **JUDGE**

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