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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 6033/2022 & CRL.M.A. 23652/2022**

BALKAR SINGH

.....Petitioner

Through: Mr. Rakesh Verma, Mr. Priyank
Sharma and Mr. Manish Verma,
Advocates.

Ms. Pragya Naiwa, Ms. Puspanjali
Kushwah, Mr. Ramesh Kattar, Ms.
Anchal Khanna and Mr. Prem
Khanna, Advocates.

versus

M/S AGRICO ORGANICS LTD.

.....Respondent

Through: Mr. Amandeep Singh, Mr. Pawan
Kant Singh and Mr. Onkar
Manchanda, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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19.09.2024

1. The Petitioner has approached this Court for quashing the Complaint Case bearing Ct. Case No.4974/2018 titled as M/s Agrico Organics Ltd. v. M/s Vikas Organic Industrial Corporations, pending before the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi as well as the Summoning Order dated 14.08.2019 passed by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi.
2. The instant petition arises out of proceedings under Section 138 of the Negotiable Instruments Act, 1881. It is stated that the Respondent/Complainant is engaged in the business of manufacturing and



trading of insecticides, pesticides and agro-chemicals.

3. It is stated that the accused is carrying his proprietorship business under the name and style M/s Vikas Organic Industrial Corporation and is managing its day-to-day affairs. The complaint has been filed against M/s Vikas Organic Industrial Corporation through its proprietor Balkar Singh Gill, who is the Petitioner in the present petition.

4. The complaint states that the accused approached the Respondent/Complainant for purchase of material, i.e., insecticide, pesticides etc. It is stated that the Complainant supplied the material to the accused against invoice/bill prepared at mutually agreed prices/rates. It is stated that the material was duly accepted by the Accused and the bills were accepted for payment. The payments were agreed to be made at Delhi. It is stated that the statement of account of Accused showed a debit balance of Rs. 2,60,45,776 payable by the Accused to the Complainant as on 24.05.2018.

5. It is stated that a cheque bearing No.270854 dated 24.05.2018 for the sum of Rs. 2,60,45,776/- drawn on Oriental Bank of Commerce, Satta Bazar, Kotakpura, Punjab was issued towards outstanding dues. It is stated that the cheque had been deposited by the Complainant in its account bearing account No. 01442320001948 with the HDFC Bank, East Patel Nagar, Delhi on 04.06.2018 but the same had been dishonoured and returned by the bank with the remark “payment stopped by the drawer”.

6. It is stated that *vide* notice dated 27.06.2018, the Complainant had called upon the Accused to make the payment of the dishonoured cheque. It is stated that the said notice was sent to the Accused by registered AD post which was served on the accused on 06.07.2018 and the Accused refused to



receive the same. It is stated that since the amount had not been paid under the time stipulated under Section 138 of the NI Act, the instant complaint had been filed against the Petitioner.

7. Summons have been issued on the said complaint dated 14.08.2018. The Petitioner/accused has challenged the complaint and the summons dated 14.08.2018 primarily contending that the complaint has been filed against the proprietorship concern, namely, M/s Vikas Organic Industrial Corporation of which Mr. Sohan Singh Gill is the Proprietor and not the Petitioner/Balkar Singh Gill. The cheque had been signed by Sohan Singh Gill whereas the complaint has been filed against M/s Vikas Organic Industrial Corporation through its proprietor Balkar Singh Gill, i.e., the Petitioner herein. It is stated that since Balkar Singh Gill is neither the proprietor and nor the signatory of the cheque, the complaint itself is not maintainable.

8. *Per contra*, learned Counsel for the Respondent, contends that an application for amendment of the complaint has been filed before the concerned Court for changing of the name of the Proprietor from Balkar Singh Gill to Sohan Singh Gill and therefore at best the summoning order can be quashed but the complaint itself cannot be quashed. He also states that the amendment which is being sought for before the Trial Court will not cause any prejudice to the Petitioner since what is being sought to be maintained is only the name of the Proprietor.

9. Heard learned Counsel for the parties and perused the material on record.

10. The facts of the case reveal that a cheque had been issued by the sole proprietorship firm, namely, M/s Vikas Organic Industrial Corporation of



which Mr. Sohan Singh Gill is the Proprietor. The Petitioner herein is not the sole proprietor of the accused proprietorship concern. He is also not the signatory of the cheque. Clearly, the offence under Section 138 of the NI Act cannot be made out against the Petitioner herein.

11. It is pertinent to mention that even the legal notice has been issued in the name of M/s Vikas Organic Industrial Corporation through its Proprietor Balkar Singh Gill and therefore the notice had also not has been addressed to the sole proprietor. Therefore the complaint made against the Petitioner herein is not maintainable.

12. The sole proprietorship firm is not a company or a partnership firm and it is therefore not covered under Section 141 of the NI Act. A proprietorship concern unlike a company or a partnership firm stands on a different footing. A person may carry on business in the name of a business concern but the proprietor alone is solely responsible for the conduct of the affairs of the proprietor of the firm and he alone can be held liable under Section 138 of the NI Act. The complaint therefore as framed against the sole proprietorship firm showing the Petitioner herein as sole proprietor is therefore not maintainable. The argument of the Respondent that an amendment application has been filed to change the name of the sole proprietor cannot be countenanced because the complaint against the accused who is proposed to be added would be barred under Section 138 of the NI Act. The amendment wherein the Complainant now chooses to amend the complaint by changing the accused cannot be permitted. Even the legal notice has not been given to the person who is proposed to be impleaded as an accused. The amended complaint would suffer from basic deficiency that notice had not been given to Mr. Sohan Singh Gill, who had



signed the cheque and is the proprietor. An amendment to the complaint by changing the name of the sole proprietor would mean that now a fresh complaint would be filed against a person to whom no notice has been sent, meaning thereby, ingredient of Section 138 of the NI Act would not be made against the person who is now sought to be made as an accused. Resultantly, the complaint and the summoning order are hereby quashed.

13. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 19, 2024

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