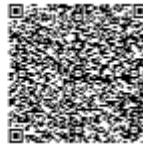


2025:PHHC:114885



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

234

CRM-50987-2023 in/and CRM-A-1681-2023
CRM-51079-2023 in/and CRM-A-1685-2023
DECIDED ON: 19.05.2025

M/s Khushi Nets and Fabs

...APPELLANT

VERSUS

Rajiv Aggarwal

....RESPONDENT

AND

CRM-51079-2023 in/and CRM-A-1685-2023

M/s Khushi Nets and Fabs

...APPELLANT

VERSUS

Sangeeta Aggarwal

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kushagra Mahajan, Advocate
for the applicant(s)

SANDEEP MOUDGIL, J

CRM-50987-2023

Prayer in the present application is for condonation of delay of 120 days in filing the present appeal.

In view of the averments made in the application, the same is allowed and the delay of 120 days in filing the present appeal is condoned.

CRM-51079-2023

Prayer in the present application is for condonation of delay of 107 days in filing the present appeal.

In view of the averments made in the application, the same is allowed and the delay of 107 days in filing the present appeal is condoned.

CRM-A-1681-2023 & CRM-A-1685-2023

By way of this common order, this Court intends to dispose off both the applications together, as common question of law is involved therein.

Just to avoid repetition the facts are being taken from CRM-A-1681-2023.

Learned Counsel for the applicant submits that the trial court without hearing the matter on merits has dismissed the complaint of the applicant, stating that the applicant has not impleaded the firm as the accused person and therefore the accused/respondent cannot be made liable in his personal capacity without arraying the firm, however, the counsel for the applicant has submitted that the person arrayed as an accused was the partner/proprietor of the firm in whose name the cheque was issued, and subsequently dishonored. Moreover, it is further argued that it was the accused who had signed the cheque himself, and that once the signatures on the cheque and the legally recoverable debt are proved, the respondent must be held personally liable for the same and thus the complaint filed by the complainant/applicant shall sustain.

Furthermore, it is asserted that the applicant has suffered financial loss and shall be allowed to appeal against the impugned order of dismissal of the complaint passed by the trial court which was based only on a minor technicality.

Heard Counsel for the applicant.

This court finds it imperative to reject the argument raised by the applicant wherein it was contended that even without the arraignment of the

firm, the partner/proprietor could be individually rendered an accused as the legal position as provided under Section 141 of Negotiable Instruments Act(hereinafter referred as NI Act) makes it clear as the noon of the day that vicarious liability to proprietor can only be imposed once the company is arraigned as an accused and made criminally liable in the complaint.

This court cannot ignore the fact that 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 and liability under Section 141 of the NI Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. Having regard to this aspect of law, the court is of the view that the criminal liability for dishonour of cheque primarily rests upon the drawee company and is thereafter extended to the officers of the company, inasmuch as there exists a specific statutory provision to that effect as incorporated in Section 141 of NI Act. Support may be drawn from the Apex Court judgement in ***Aneeta Hada v. M/s. Godfather Travels and Tours Pvt. Ltd.*** 2012 (5) SCC 661, whereby it was held as follows:

The same principle has been reiterated in Deewan Singh and others v. Rajendra Prasad Ardevi and others, (2007)10 SCC 528 and Sarabjit Rick Singh v. Union of India, (2008)2 SCC 417. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the

other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

43. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three- Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.

Furthermore, reaffirming the authoritative dictum laid down in ***Aneeta Hada.(supra)***, the Supreme Court, in the recent judgment of ***Bijoy Kumar Moni v. Paresh Manna 2024 INSC 1024***, reiterated the same legal position that no prosecution could have proceeded against the accused in his personal capacity and the only way by which the accused could be held liable was under Section 141 of NI Act, however the same could not have been done in the absence of the company being arraigned as an accused.

Relevant paragraph of the judgement is as follows:

72. Section 138 of the Act exposes the person who has drawn the cheque and which has been returned for insufficiency of funds to criminal liability. The provision, therefore, must be construed strictly. However, such a strict construction should not result in defeating the very purpose for which the provision has been enacted as held by this Court in the case of NEPC Micon Limited and Others v. Magma Leasing Limited reported in (1999) 4 SCC 253. At the same time, the statutory provisions creating penal liability cannot be stretched too far to embrace the persons and situations patently excluded from its purview as discernible from clear and unequivocal language used in the provision.

Although it is undisputed that the accused signed the cheque in question, yet as the cheque was drawn not on an account maintained by him but was issued on an account maintained by the firm, the requirement of Section 138 of NI Act cannot be said to have been complied with. The cheque drawn by him on an account maintained by the Company would have satisfied the requirement of Section 138 of NI Act but as the accused has been proceeded against for an offence under Section 138 of NI Act in his individual capacity and inasmuch as the cheque dishonoured for insufficiency of funds was drawn on the account maintained by the firm, namely, A.B. Shawls, and not by the accused herein, no offence could be said to have been committed under Section 138 of NI Act.

In view of the discussions made hereinabove, this court is of the considered opinion that the Trial Court has rightly dismissed the complaint *in limine* holding that in the absence of the principal offender i.e. the firm,

having been arraigned as an accused, prosecution for the commission of an offence under Section 138 of the NI Act could not have proceeded against the accused/respondent.

Accordingly, both the application seeking leave to appeal are hereby dismissed.

No order as to costs.

A copy of this order be placed on the file of another connected appeal.

19.05.2025
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(SANDEEP MOUDGIL)
JUDGE

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