(2001) 10 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Case No : Criminal Rev. No. 899 of 1999

Punjab State Coop. Supply and Marketing Federation Ltd. APPELLANT

Vs

Malerkotla Rice Mills RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2002) 133 PLR 32

Hon'ble Judges : K.S. Garewal, J

Bench : Single Bench

Advocate : P.S. Thiara, for the Appellant; Amarjeet Markan, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Garewal, J.—The Punjab State Cooperative Supply and Marketing Federation (P) Ltd. has filed this petition to challenge the order of learned Chief Judicial Magistrate, Sangrur dated October 15, 1998 whereby the learned Magistrate had framed charges u/s 138 of the Negotiable Instruments Act only against M/s. Malerkotla Rice Mills (respondent No. 1) and Kewal Krishnan (respondent 2) but had discharged Surinder Kumar and Aman Jindal (respondents 3 and 4).

2. Learned Counsel contends that the complainant had a milling agreement with respondent 1 and in order to discharge liability cheque No. 151333 dated November 6,1995 drawn on State Bank of India, Malerkotla had been issued in favour of the petitioner but the same was dishonoured leading to the filing of the complaint. The learned Magistrate summoned all the four accused but on October 15, 1998 vide the impugned order decided to proceed against respondents 1 and 2 and discharged respondents 3 and 4. The learned Magistrate had come to this conclusion because the cheque had been issued on behalf of the Malerkotla Rice Mills by one of its partners Kewal Krishan although Surinder Kumar and Aman Jindal were also partners of the firm but were not in charge of running of the firm. Learned Counsel contends that in the case of a firm the liability of all the partners was joint, therefore, respondents 3 and 4 should also be proceeded as

accused.

3. The argument of the learned Counsel is clearly misplaced because Section 141 of the Negotiable Instruments Act specifically provides that if the offence has been committed by a company then every person who at the relevant time was incharge of and responsible to the company for the conduct of the business of the company as well as the company shall he deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The Act further provides in the explanation to Section 141(2) that a company included a firm and a director in relation to a firm means a partner in the firm. Reference may be made to KPG Nair v. Jindal Menthol India Ltd. (2000) 7 SLT 189: (2001) 2 BC 243 : (2000) 4 CCR 100 : 2000(4) RCR 298.

4. In the present case the cheque was issued on behalf of the respondent 1 by respondent 2. Therefore, respondents 3 and 4 could not be held liable. There was nothing on record to suggest that they were actually incharge of the firm and were responsible for the conduct of its business. In the absence of any such evidence, respondents 3 and 4 cannot be proceeded against.

5. In view of the above, this revision is without merit and the same is here dismissed.

