
(2008) 07 P&H CK 0056
In the Punjab And Haryana At Chandigarh

Smt. Manju Joon

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Citation : (2009) 1 CivCC 425 : (2009) 153 PLR 94 : (2008) 4 RCR(Civil) 914 :
(2009) 1 RCR(Criminal) 363

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This petition u/s 482 of the Code of Criminal Procedure (for short "the Code") has been moved for quashing of complaint and summoning order passed by the learned Addl. Chief Judicial Magistrate, Faridabad in the complaint filed under Sections 138/142 read with Section 141 of the Negotiable Instruments Act (for short "the Act").

2. The petitioner has been summoned to face trial for an offence u/s 138 of the Act being partner of M/s Satyam Urja Udyog i.e. accused No. I in the complaint. The allegations against the petitioner in the complaint read as under:

The complainant is a partnership firm duly registered under the Partnership Act of which Sh. Naresh Goel is the partner and in this capacity, he is capable of instituting the present complaint and pursuing the same till its logical goal.

a. That based upon the assurances and undertaking given primarily by Accused Nos.2 and 3 on behalf of Accused No. I, a loan was advanced to Accused No. I. the books of Accounts of the complainant which are maintained in the normal course of business reflects the transactions and all other related transactions thereto.

b. That towards the partial repayment of the loan, the accused Nos.2 and 3

issued Cheque No. 206613 dated 7.6.2007 for a sum of Rs. 50,00,000/- (rupees Fifty Lacs Only) from account No. 30030111644 of Accused No. 1 at State Bank of India, Daryaganj Branch, New Delhi with the assurance that upon presentation the effects of the cheque would be cleared and the amount shall be realized by the complainant.

c. That on presentation of the above mentioned cheques for realization through bankers of the complainant, HDFC Bank Ltd., Sector 16, Faridabad the same was returned back unpaid by the bankers of the Accused vide Cheque Return Advice dated 12.6.2007 detailing the reasons of the returned cheque as "Funds Insufficient".

d. That upon cheque being returned unpaid, the complainant got issued a statutory notice u/s 138(B) of the Negotiable Instruments Act on 4.7.2007 addressed to the accused which was dispatched by registered post and by UPC.

e. That on receipt of the above notice u/s 138(b) of Negotiable Instruments Act, the accused No. 3 sent a reply dated 15.7.2007 through their counsel Shri Rajesh Chugh, Advocates on totally false, frivolous and flimsy grounds but and not make any payment of the cheque amount to the complainant. Similarly, Accused No. 4 Hari Kishan Goel sent a reply through his counsel Sh. R.K. Gaur, advocate and he also stating various grounds did not make the payment. Thus the accused who are collectively bound to make the payment of the cheque amount to the complainant have failed to do so despite lapse of statutory period of the notice.

f. That since the loan was advanced to the Firm primarily on the asking of the accused Nos. 2 and 3 and utilized by the Firm, therefore, the accused are collectively liable and answerable to the present complainant.

g. That the bankers of the complainant are situated at Faridabad, where the debt has to be discharged. The firm of the accused is also at Faridabad where the accused also reside. The notice of demand was issued from Faridabad within the jurisdiction of this Hon'ble Court. Therefore, the complaint is maintained in present manner and form before this Hon'ble Court.

h. That the Cheque dated 7.6.2007 was returned back unpaid by the bankers of the accused vide Cheque return memo dated 12.6.2007 and intimation was received by the complainant vide cheque return advise dated 12.6.2007. Notice u/s 138(b) of the Negotiable Instruments Act dated 4.7.2007 has been responded to by the accused vide communication dated 15.7.2007 and 17.7.2007. The statutory period of notice expired on 19.7.2007, and therefore, the complaint is well within time.

3. The complainant by way of preliminary evidence reiterated the facts stated in the complaint and also produced on record the cheque issued by the firm which was dishonoured for want of sufficient funds in the accounts of the accused. The complainant also produced on record notice and the reply submitted to the

statutory notice issued.

4. Mr. Sunil Chadha, learned Counsel for the petitioner contends that the present complaint has been filed by Naresh Goyal as Satbir Singh Joon accused No. 2 i.e. the husband of the petitioner has fallen apart from Hari Kishan Goyal accused No. 4 the brother of the complainant Naresh Goyal. It is also the case of the petitioner that the petitioner has been implicated in the present case being the wife of Satbir Singh Joon accused No. 2. Learned Counsel for the petitioner contends that it has been wrongly mentioned in the complaint mat cheque was issued by accused Nos. 2 and 3, husband of the petitioner and petitioner. The contention of the learned Counsel for the petitioner is that she is not incharge and responsible for the conduct of business of the firm nor there are any allegations in this regard.

5. The stand of the petitioner is that Hari Kishan Goyal accused No. 4 has been impleaded as party to show bona fide, otherwise the present complaint is only against accused Nos. 2 and 3 i.e. the petitioner and her husband.

6. Mr. Sunil Chadha, learned Counsel appearing on behalf of the petitioner contended that the complaint deserves to be quashed as the ingredients of Section 141 of the Act have not been pleaded in the complaint and therefore, the petitioner qua her deserves to be quashed.

7. Learned Counsel for the petitioner in support of this contention placed reliance on the judgment of Hon'ble Supreme Court in the case of Saroj Kumar Poddar v. State (NCT of Delhi) and Anr. 2007 (1) R.C.R. (Cri) 741. He made special reference to paras Nos. 11, 12 and 13 of the cited judgment which read as under:

11. The purported averments which have been made in the complaint petitions so as to make the appellant vicariously liable for the offence committed by the Company read as under:

That the accused No. 1 is a public limited company incorporated and registered under the Companies Act, 1956, and the accused 2 to 8 are/were its Directors at the relevant time and the said company is managed by the Board of Directors and they are responsible for the incharge of the conduct and business of the company Accused No. 1. However, cheques referred to in the complaint have been signed by the Accused Nos. 3 and 8 i.e. Shri K.K. Pilia and Shri N.K. Munjal of and on behalf of the Accused Company No. 1.

12. Apart from the Company and the appellant, as noticed hereinbefore, the Managing Director and all other Directors were also made accused. The appellant did not issue anycheque. He, as noticed hereinbefore, had resigned from the Directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not

issued any cheque. How he is responsible for dishonour of the cheque has not been stand. The allegations made in paragraph 4, thus, in our opinion do not satisfy the requirements of Section 141 of the Act.

13. Our attention, however, has been drawn to the averments made in paragraphs 7 and 10 of the complaint petition, but on a perusal thereof, it would appear that therein merely allegations have been made that the cheques in question were presented before the bank and they have been dishonoured. Allegations to satisfy the requirements of Section 138 of the Act might have been made in the complaint petition but the same principally relate to the purported offence made by the Company. With a view to make a Director of a Company vicariously liable of the acts of the Company, it was obligatory on the part of the Complainant to make specific allegations as are required in law.

8. Learned Counsel for the petitioner thereafter placed reliance on the judgment of Hon''ble Supreme Court in the case of SMS. Pharmaceuticals Ltd v. Neeta Bhalla and Anr. 2005 (4) R.C.R. (Cri) 141. Hon''ble Supreme Court in the said case has been pleased to lay down as under:

A. Negotiable Instruments Act, 1881, Sections , 138, 141 - Vicarious liability Dishonour of cheque issued by Company - Complaint u/s 138 of Negotiable Instruments Act against Directory of company - It is necessary to specifically aver in the complaint that Directors were in charge of, or responsible for conduct of business of company - This averment is essential requirement of Section 141 of Negotiable Instrument Act - Further held:

(i) A Director of Company would not deemed to be incharge of and responsible to the company for conduct of business of Company - in the complaint against Director, the fact that he was incharge of and responsible to the Company for conduct of business has to be stated as a fact. There is no deemed liability of a Director.

(ii) Merely being described as a Director in a company is not sufficient to satisfy the requirement of Section 141 - Even a non-director can be liable u/s 141 of the Act.

(iii) In the case of Managing Director or Joint Managing Director, these persons by virtue of office are Incharge of and responsible to the company for conduct of business.

(iv) Signatory of dishonoured cheque is responsible for the incriminating act and will be converted u/s 141(2) of Negotiable Instruments Act. 2002 (4) R.C.R. (Cri.) 502 (S.C.), 2004 (3) R.C.R. (Cri.) 800 (S.C.). relied.

9. Learned Counsel for the petitioner also placed reliance on the judgment of Hon''ble Supreme Court in the case of Sabitha Ramamurly and Anr. v. R.B.S. Channabasa varadhya 2006 (4) R.C.R. (Cri) 296 : 2006 (3) A C 282 (S.C.), wherein Hon''ble Supreme Court has been pleased to lay down as under:

8. A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the Courts to arrive at a prima facie opinion that the accused are vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted. Not only the averments made in paragraph 7 of the complaint petitions does not meet the said statutory requirements, the sworn statement of the witness made by the son of respondent herein, does not contain any statement that appellants were in-charge of the business of the company. In a case where the Court is required to issue against the complainant for mala fide prosecution of the accused. The accused would also be entitled to file a suit for damages. The relevant provisions of the Code of Criminal Procedure are required to be construed from the aforementioned point of view.

10. Finally-reliance was placed on the judgment, of Hon''ble Supreme Court in the case of Monaben Ketanbhai Shah and Anr. v. State of Gujarat and Ors. 2004 (3) R.C.R. (Cri) 800 : 2004 (3) AC 344 (S.C.).

11. The contention of the learned Counsel for the petitioner, therefore, was that in the complaint it has not been stated that she was incharge of the business and was responsible for the conduct of business of the firm in terms of Section 141 of the Act. Thus, in view of the law referred to above present petition deserves to be quashed. Learned Counsel for the petitioner also contends that in the present case there are three partners i.e. the petitioner, her husband and Hari Kishan Goyal who is brother of the complainant. The said cheque on behalf of the firm is issued by Hari Kishan Goyal and thus, the proceedings have been initiated with mala fide intention.

12. However, on consideration of the matter I find no force in the contention raised by the learned Counsel for the petitioner. It may be noticed that Hon''ble Supreme Court in the case of Sabitha Ramamurty and Anr. v. R.B.S. Channabasavaradhya (supra) and Saroj Kumar Poddar v. State (NCT of Delhi) and Anr. was dealing with the case of Director of company and it was in the said situation that it was held that in the absence of specific allegations that the accused was responsible for conduct of business the Director could not be prosecuted u/s 138 of the Act. The view was taken as the company has a separate independent legal identity from that of its Directors/share holders and

therefore, in order to prosecute a Director or any other person provisions of Section 141 of the Act are required to be complied with. The situation in the case of partnership firm would be different as the firm is in other names of other partners and the liability of the firm is coextensive with that of its partners as firm has no independent legal identity.

13. In the case of *Monaben Ketanbhai Shah and Anr. v. State of Gujarat and Ors.* (supra) the Hon''ble Supreme Court was dealing with the firm and was pleased to lay down as under:

3. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole. If the substance of the allegations made in the complaint fulfill the requirements of Section 141, the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hyper-technical approach should not be adopted so as to quash the same. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind. These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within statutory period even after issue of notice. It is also true that the power of quashing is required to be exercised very sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. All the same," it is also to be remembered that it is the duty of the Court to discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking. The present case falls in this category as would be evident from the facts noticed hereinafter.

14. In the present case, it may be noticed that specific allegations have been made against the petitioner in Para No. 2 of the complaint as well as para Nos. 3, 7 and 8 of the complaint showing that the petitioner was active in the business of the firm and therefore, it cannot be said that the ingredients of Section 141 of the Act are lacking in view of the observations and of the Hon''ble Supreme Court in the case of *Monaben Ketanbhai Shah and Anr. v. State of Gujarat and Ors.* (supra).

15. Other contention of the learned Counsel for the petitioner that the present proceedings are mala fide exercise of powers also cannot be accepted at this stage as the complainant Hari Kishan Goyal has also been arrayed as an accused. It cannot be said that in case there is ultimate conviction Hari Kishan Goyal would be acquitted while the petitioner and her husband would be convicted as sought to be projected.

All the partners who are responsible for the conduct of business would be responsible for the offence, if any, ultimately proved. The petitioner would be at liberty to prove before the Court that she was not responsible for conduct of

business of the firm and therefore, not liable.

16. However, at this stage once specific allegations have been leveled in the complaint, it can not be said that no offence u/s 138 of the Act is disclosed against the petitioner nor it can be said at this stage that the action is mala fide or that the complaint and proceedings against the petitioner are the misuse of the process of the Court as contended. No merit. Dismissed.