

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

+ **CRL.M.C.No.2531/2008**

% **Date of decision : 06.08.2008**

M/s.Mark Air Services Pvt Ltd Petitioner
Through: Mr.Dipak Kumarjena &
Mr.Humayun Sahoo, Advocates.

Versus

Col.H.L.Kapoor (Retd) Respondent
Through : Nemo.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has impugned the order dated 15th May, 2006 and 26th February, 2008 of the Metropolitan Magistrate and quashing of complaint case No.114/1/2002 filed by the respondent under Section 138 of the Negotiable Instrument Act, 1981.

The respondent has filed the complaint under Section 138 of the Negotiable Instrument Act, 1981 read with Section 420 and 406 of the Indian Penal Code contending inter-alia that the respondent's son had business relations with Mr.Atul Bansal, Director of the petitioner who

approached the complainant for financial assistance of Rs.2 lakhs for one week only. The respondent gave Rs.2 lakhs and in return a post dated cheque in favour of the respondent was given. The said cheque was issued by Sh.Atul Bansal as director of the petitioner company which was on presentation dishonoured on account of insufficient funds.

The respondent, therefore, filed a petition against Sh.Atul Bansal, Sh.Shyam Lal and Ms.Sneha Bansal, Directors of M/s.Mark Air Services Pvt Ltd.

An application was filed by Sh.Shyam Lal and Ms.Sneha Bansal contending inter-alia that they have been falsely implicated and they are not the directors of M/s.Mark Air Services Pvt Ltd. The applications of Sh.Shyam Lal and Ms.Sneha Bansal was allowed for discharging them as no specific averments were made against them.

After Ms.Sneha Bansal and Sh.Shyam Lal were discharged the respondent filed an application for impleadment of M/s.Mark Air Services Pvt Ltd whose Director is Sh.Atul Bansal who had issued the cheque and who had been given the notice under section 138 of the Negotiable Instruments Act. On the application of the respondent M/s.Mark Air Services Pvt Ltd, present petitioner had been impleaded as a party by order dated 15th May, 2006.

The petitioner, thereafter, challenged impleadment of M/s.Mark Air Services Pvt Ltd, present petitioner as a party on the ground that no notice was given to the petitioner/company. The learned Magistrate has held whether the notice to Sh.Atul Bansal who was a Director of the petitioner would constitute a sufficient notice to the petitioner as contemplated under Section 138 of the Negotiable Instrument Act cannot be decided at this stage as it will affect the final outcome of the case and the said question raised shall be decided only at the end of the trial and has adjourned the matter for complainant's evidence.

The learned counsel has emphatically contended that the notice to one of the Directors of the company cannot be constituted as a notice to the company. He has relied on (2008) 2 SCC 321, Rahul Builders Vs Arihant Fertilizers & Chemicals and Anr. Rahul Builders (Supra) relied on by the petitioner is distinguishable as in that case the complainant had demanded a sum of Rs.8,72,409/- as against the cheque which was for a sum of Rs.1 lakh only and it was contended that the notice was vague and did not serve the statutory requirements of provisos (b) and (c) of Section 138 of the Act. It was held by the Apex Court that it is one thing to say that the demand may not only represent the unpaid amount under cheque but also other incidental expenses like costs and interests but that would not mean that the notice would be vague and capable of two interpretations. An omnibus notice without specifying as

to what was the amount due under the dishonoured cheque would not subserve the requirement of law.

In the case of the petitioner a notice has been given to its Director, Sh.Atul Bansal demanding the amount of the cheque. The cheque is signed by Sh.Atul Bansal one of the Directors and in the circumstances impleadment of petitioner cannot be faulted. In any case it has been held by the Magistrate that whether the notice given to the Director of the petitioner company will be notice to the company or not will be adjudicated at the final stage of the case.

The order of the Magistrate in the facts and circumstances cannot be faulted on the grounds as has been raised by the petitioner. There is no such manifest error or illegality which shall entail interference by this Court under Section 482 of the Criminal Procedure Code at this stage. The petition is, therefore, without any merit and it is dismissed.

August 06, 2008
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ANIL KUMAR, J.