

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

+ **CrI. M.C. No. 1525/2008**

Reserved on : 23.09.2009
Date of Decision : 21.10.2009

Mrs. Arti Mittal

.....Petitioner

Through: Mr. Gurpreet Singh, Adv.

Versus

State & Anr.

..... Respondents

Through: Mr. Pawan Bahl, APP

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers can be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J.

1. This is a petition filed by the petitioner under Section 482 Cr.P.C. for quashing of the complaint case no. 1240/2007 titled "Shri Roop Lal Vs. Mr. Amit Mittal and Others" presently pending in the Court of Mr. R.L. Meena, the learned Metropolitan Magistrate, Karkardooma Courts, Delhi. Alternatively, it has been prayed that the summoning order dated 28th September, 2007 passed by the said learned Metropolitan Magistrate may be set aside.

2. Briefly stated the facts of the case are that a complaint under Section 138 read with Section 141 of the Negotiable Instrument Act was filed by the respondent Roop Lal against Sh.

Amit Mittal, Managing Director and Smt. Arti Mittal, Director, the present petitioner alleging that he had advanced a loan of Rs. 6,00,000/- from his hard earned money to Amit Mittal and Arti Mittal for helping their company M/s Dooars Transport Ltd. which was running in losses. It was alleged that Amit Mittal the Managing Director had issued two post dated cheques dated 1st January, 2007 and 13th July, 2007 respectively for a sum of Rs. 5,00,000/- and 1,00,000/- drawn on Punjab & Sind Bank, Roshanara Road, Delhi for the repayment of the said loan. Both these cheques on presentation were dishonoured and whereupon the respondent no. 1 Roop Lal gave a statutory notice calling upon the present petitioner and the other two accused persons to clear the cheque amount failing which he threatened them with legal action. Since the amount was not paid a complaint under Section 138 read with section 141 of the Negotiable Instruments Act was filed against the company, Managing Director and the present petitioner as the Director. It was alleged in the complaint that the present petitioner Arti Mittal being the Director and in-charge responsible for the conduct of the business of the accused firm M/s Dooars Transport Ltd. had committed an offence under Section 138 read with section 141 of the Negotiable Instruments Act. After recording of preliminary evidence the petitioner along with the other co-accused have been summoned.

3. The summoning order and the filing of the complaint has been challenged by virtue of the present petition.

4. I have heard the learned counsel for the petitioner and perused the record. The main contention of the learned counsel for the petitioner for setting aside the order of summoning and the quashing of the complaint is to the effect that at the time when the two cheques in question are purported to have been issued that is on 1st January, 2007 and 13th July, 2007 which are alleged to have been dishonoured, the present petitioner was not the Director of the accused M/s. Dooars Transport Ltd. For the purpose of canvassing the said argument, the present petitioner has filed true copies of the annual return filed on behalf of Dooars Transport Ltd. for the year 2006, 2007 and 2008 before the Registrar of Companies.

5. The learned counsel for the petitioner has drawn my attention to certain pages of the said documents purported to have been issued by the office of the Registrar of Companies to canvass the point that the annual return filed by the company does not show the present petitioner Arti Mittal as one of the Directors of the Company in question at the relevant time, and therefore, she could not be made responsible for an offence under the doctrine of vicarious liability. The learned counsel for the petitioner in support of his contention has also relied upon the case titled **Dr. (Mrs.) Sarla Kumar Vs. Srei International Finance Ltd.** 132 (2006) DLT 363 and **Smt. Bina Sharma Vs. HDFC Bank Ltd.** CrI. M.C. No. 194/2008 dated 10th August, 2009 wherein this Court has relied upon the form No. 32 which did not show the said petitioner Sarla Kumar as the Director at

the relevant time was taken to be as a conclusive proof that the petitioner had resigned nine years prior from the date of issuance of cheque, and therefore, quashed the complaint in the said case. Similar was the order passed in case title **Chandran Ratnaswami bearing** CrI. M.C. No. 941/2005 by this Court. While as in **Bina Sharma's case** (supra) the fact were slightly different in as much as in the said case, the summoning order passed by the learned Magistrate was held to be not sustainable on account of the fact because although there was an averment in the complaint that the petitioner was in-charge and responsible for the conduct of the business of the firm but there was not an iota of evidence adduced at the pre summoning stage so as to show she was in-charge and responsible for the conduct of the business of the firm so as to make the summoning order under Section 138 of the Negotiable Instruments Act sustainable against her.

6. I have carefully considered all the three authorities. So far as the Bina Sharma's case (supra) is concerned, the facts of the said case are totally different than the facts of the present case. In Bina Sharma's case (supra) the summoning order was set aside on the ground that in a case under Section 138 Negotiable Instruments Act not only there must be an averment that the accused in question in the capacity of a Director is in-charge and responsible for the day to day conduct of the business of the firm but that averment in itself is not enough to warrant the issuance of summoning order against the said Director unless and until

there is some evidence either by way of documents or way or oral testimony in this regard. The Apex Court has also observed that it is not mere reproduction of the ingredient under Section 141 or 142 of the Negotiable Instruments Act that would meet the requirement of law but the complainant must also specify as to how the given person is in-charge and responsible for conduct of business of the firm in question.

7. In the present case this is not the submission of the learned counsel for the petitioner, and therefore, Bina Sharma's case is distinguishable. So far as the other two cases are concerned, in the said cases certified copy of the form No. 32 was purported to be taken as a conclusive proof for quashing of the complaint or the order of summoning on the assumption that at the relevant time the person in question was not the Director while as in the instant case what is sought to be relied upon is not the Form No. 32 but an annual return which is filed by the Company in question in terms of statutory requirement under Companies Act. It is on the basis of the annual return it is sought to be urged that the petitioner was not the Director of the Company in question.

8. First of all these annual returns are in the nature of self-serving documents in as much as they are filed by the party or the Company Secretary or any other official of the company. One of the fundamental principles of evidence as enunciated under Section 21 of the Evidence Act is that although a self-

harming admission is relevant because no person would make an admission against his own interest unless and until it happens to be true but as a self- favouring admission on the basis of the same analogy is held to be not admissible and not relevant. If that is permitted to be done then a party can manufacture as much of evidence in his favour as is possible within his means to save him or her from the clutches of law. Therefore, on this analogy the annual return cannot be a basis for quashing the complaint or the summoning order. Further, in one of the annual returns there is a detail of the share holding in respect of the present petitioner and her husband Amit Mittal which is given apart from holdings of the other persons. These holdings are shown as under:

Folio Nos.	Name and address of the shareholders	Father's/husb and's name	Number of equity chares held	Amoun t per share in Rs.
27	Mittal Arti W-13/8 Western Avenue, Sainik Farm, New Delhi-62	Sh. Amit Mittal	1,90,090	10
28	Mittal Amit W-13/8 Western Avenue, Sainik Farm, New Delhi-62	Sh. Mauji Ram Mittal	1,98,410	10
37	Mittal Anskush W-13/8 Western Avenue, Sainik Farm, New Delhi-62	Sh. Amit Mittal	400	10
39	Mittal Akriti	Sh. Amit Mittal	400	10

	W-13/8 Western Avenue, Sainik Farm, New Delhi-62			
41	Amit Mittal & Sons-HUF 3A, Auckland Place, 8 th Floor Kolkatta-700017 (W.B.)	Sh. Amit Mittal (Karta)	400	10
55	Balsaria Holdings Pvt. Ltd. 32, Ezra Street, 7 th Floor, Room No. 701, Kolkatta-700017, W.B.	N.A.	10000	10
56	Dooars Infotech Pvt. Ltd. 9062/3 Ram Bagh Road, Azad Market, Delhi-110006.	N.A.	100	10
57	Dooars Software Ltd. 3A, Auckland Place, 8 th Floor, Kolkatta-700017 (W.B.)	N.A.	100	10
58	Mittal O.P. Mittal House, Sevoke Road, Siliguri District, Jalpaiguri, 734 401 (W.B)	Late Sh. R. S. Mittal	100	10

9. A perusal of the aforesaid holding would clearly show that 1,90,090 shares were held by the present petitioner and almost similar was the holding of her husband in the said company. The remaining shareholders were having only paltry shares in the company. If this be the situation, it clearly makes out

prima facie the case what respondent no.2 is alleging in the complaint that Ms.Arati Mittal was the Director of the company in question at the relevant point of time when the cheques were purported to have been issued with her knowledge as she was in-charge and responsible at the relevant time. However, the questions as to the date on which the annual return has been filed or the factum of her being Director of the said company on the relevant date are all disputed questions of fact which can be decided only after the parties have adduced their respective evidence. The criminal trial cannot be cut short by invoking section 482 Cr.P.C. and raising disputed questions of fact.

10. For these reasons, I feel that the present petition essentially raises a disputed questions of fact as to whether the petitioner was a Director at the relevant time or not and the annual return which has been filed by the petitioner to canvass the point that she was not the Director at the relevant time is a question to be decided only after parties have adduced their evidence, and therefore, the present complaint or the summoning order dated 28th September, 2009 cannot be quashed.

1. Accordingly, the petition is dismissed. The expression of any opinion hereinabove shall not be treated as an expression on the merits of the case.

V.K. SHALI, J.

October 21, 2009
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