

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

+ **CrI. M.C. No. 1668/2009**

Date of Decision : 17.11.2009

Sh. Jagmohan Chawla

.....Petitioner

Through: Ms. Shobhana, Adv.

Versus

Yes Bank & Ors.

..... Respondents

Through: Mr. S. Das, Adv. for R-1.

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? | NO |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (oral)

1. This is a petition filed by the petitioner for quashing of a complaint titled **M/s Yes Bank. Vs. M/s Three Star Paper Mills Ltd & Anr.** bearing no. 723/2009 pending in the Court of Sh. Ankur Jain, the learned Metropolitan Magistrate, Dwarka, Delhi and the proceedings arising therefrom.

2. Briefly stated the facts of the case are that the respondent/complainant M/s Yes Bank filed a complaint under Section 138 read with section 142 of the Negotiable Instruments Act read with section 420 IPC against M/s Three Star Paper Mills Ltd and Jagmohan Chawla, the Director of the said paper mills.

The allegations were that the aforesaid company through its Director had availed certain loan facilities, and thereafter, issued cheques for repayment of the outstanding amount due. It is alleged that cheques no. 871063 and 871065 dated 15th August, 2008 for a sum of Rs.53,479/- each were issued in favour of the respondent/complainant M/s Yes Bank. These cheques were drawn on Bank of Baroda, Asaf Ali Road, New Delhi. On presentation both these cheques bounced on the ground that they exceeded the arrangement. The return memo dated 29th October, 2008 was issued by the banker of the accused person to the respondent no. 1 herein. The respondent/complainant issued a notice dated 4th November, 2008 to the paper mills as well as to the present petitioner Jagmohan Chawla accused through registered post requiring them to make the payment within a period of 15 days from the date of receipt of this notice. It is alleged that this notice of the petitioner was replied by the present petitioner on 25th November, 2008 wherein it was stated that the petitioner has resigned as a Director on 20th September, 2007 which was accepted by the company on 21st September, 2007 and a requisite form no. 32 was also filed with the Registrar of Companies on 5th February, 2008, and therefore, the petitioner was not responsible for the commission of any offence as the cheque got dishonoured at a later date.

3. The contention of the learned counsel for the petitioner is that the factum of reply sent by the present petitioner was not

mentioned in the complaint and as a consequence of this the learned Metropolitan Magistrate after recording preliminary evidence passed the order of summoning dated 15th January, 2009 against the petitioner. The petitioner feeling aggrieved both by filing of the complaint as well as by the summoning order has challenged the same.

4. The learned counsel for the petitioner has placed reliance on case titled **DCM Financial Services Ltd. Vs. J. N. Sareen & Anr.** 2008 VII AD (S.C.) 446 the Court held that as the person concerned had ceased to be the Director much prior to the alleged dishonour of the cheque, therefore, he could not be held liable. Similarly, it was contended that since the petitioner had ceased to be the Director much before the presentation of the cheque by the respondent, and therefore, on that ground also he could not have been summoned.

5. The learned counsel for the respondent contested the claim of the petitioner and urged that the present petitioner is raising disputed question of fact as to whether he had resigned as a Director much before the date of presentation of cheque or not, which can be decided only after the parties are permitted to adduce evidence and secondly the petitioner admittedly is the signatory of the cheque in question, and therefore, he could not escape the liability of facing the prosecution by this method. It was also contended that the judgment which is sought to be

relied upon by the petitioner is distinguishable from the facts of the present case.

6. I have carefully considered the respective submissions and gone through the record. There is no denial of the fact that the complaint is not very happily drafted. It is not the job of the Court to find the defects in the complaint and throw the complaint away, only on account of the bad drafting, if from a plain reading of the entire complaint the offence against the petitioner is made out. Admittedly, in the instant case there are two accused persons one is the paper company and the other is present petitioner Jagmohan Chawla. Sh. Jagmohan Chawla has been shown in the memo of parties both in the official capacity as well as in the individual capacity. Sh. Jagmohan Chawla is the person who has signed the offending cheque and thus he is a signatory to the cheque which was dishonoured. The other accused is a company which is admittedly a juristic person. The juristic person cannot operate a bank account of its own, the cheque has to be signed by some natural person which in the instant case has been signed by the present petitioner Sh. Jagmohan Chawla. Noticeably the complainant does not make any averment in the complaint that Jagmohan Chawla is sought to be made vicariously liable in the instant case by invoking Section 141 of the Negotiable Instruments Act. This is the point which the learned counsel for the petitioner is missing when she contends that the petitioner had resigned much prior to the date

of issuance of the offending cheque. Since the petitioner has been a signatory to the cheque, therefore, the question of resignation of the petitioner even if it is assumed to be correct pales into irrelevance because the petitioner is impleaded as a party in his capacity as a drawer of the cheque rather than as a Director.

7. The judgment of the Apex Court in DCM Financial Services (supra) which is sought to be relied upon by the petitioner in the instant case is distinguishable on facts. In the said case a person was sought to be enroled as an accused in a complaint under Section 138 of the Negotiable Instruments Act by invoking Section 141 of the Negotiable Instruments Act unlike in the present case. Further, there was no averment in the complaint regarding the role of the said Director and thirdly it was in this back ground that the resignation of the said Director before the dishonour of the cheque which was in the knowledge of the complainant was considered fatal by the Apex Court. In the instant case, the plea of the learned counsel for the petitioner that is the resignation of the Director is not a plea which can be considered as a ground for quashing of the complaint or the summoning order especially when he is summoned as an accused as drawer of the cheque and not as the Director by invoking Section 141 of the Negotiable Instruments Act.

8. For the foregoing reasons mentioned above, I am of the considered opinion that the present petition of the petitioner is totally misconceived and accordingly the same is dismissed.

V.K. SHALI, J.

November 17, 2009
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