

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

+ **Crl. M.C. No. 2307/2008**

Date of Decision : 18.8.2009

SH. R.K. SINHA

.....Petitioner

Through: Mr. P.R.Chopra, Advocate

Versus

STATE & ANR.

..... Respondents

Through: Mr. Pawan Bahl, APP for
the State.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | NO |
| 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. (oral)

1. The petitioner by virtue of the present petition has prayed for quashing of the complaint case bearing No.929/02 under Section 138, 141, 142 of Negotiable Instruments Act r/w Section 420/34 IPC pending in the Court of Shri Ashutosh Kumar, learned MM, Delhi.
2. Briefly stated the facts of the case are that respondent no.2 M/s Moon times-SPMS filed a complaint under Section 138 read with Section 141 of the Negotiable Instruments Act against M/s Anchor Beverages Ltd. a company duly incorporated under the Companies Act and Sh.P.N.Das, Sh.S.D.Tomar, Sh.Ajay Pal Singh Tomar, Bibha Das, Sh.R.K.Sinha, Sh.H.K.Karna and Sh.Shyam Sunder Sarogi

stating them to be the promoter Directors of the aforesaid company. It was alleged that all these promoter Directors were incharge and responsible for the day to day business of the aforesaid company. It is alleged that the company M/s Anchor Beverages Ltd. had issued a cheque bearing No.446583 dated 12.10.2000 for a sum of Rs.1,74,938.40/- drawn on Indian Overseas Bank, Darya Ganj, New Delhi in favour of the respondent no.2/complainant for discharge of its legal debt/liability. However, the said cheque got dishonoured on account of insufficiency of funds. As a consequence of this, the respondent no.2 is purported to have issued a notice both under postal certificate as well as by registered AD on 24.11.2000 to the company M/s Anchor Beverages Ltd. Since the payment was not made despite the notice having been sent, the aforesaid complaint came to be filed not only against the company but all its so called promoter Directors.

3. The learned Magistrate after obtaining the statement of Mr.Yatinder Seth, proprietor of M/s Moon Times respondent no.2 herein by way of an affidavit issued summons against M/s Anchor Beverages Ltd. and its Directors including the petitioner Sh.R.K.Sinha herein. The averments made in the affidavit is nothing but the reproduction of the averments made in the complaint.

4. The petitioner who was referred to as accused no.6 in the complaint feeling aggrieved by the aforesaid summoning order has chosen to file the present complaint for quashing of complaint and the summoning order against him.
5. I have heard the learned counsel for the petitioner yesterday as well as today. The learned counsel for respondent no.2 Ms.Seema Gulati had argued the matter partially yesterday and requested for an adjournment for today but today she has not appeared despite the case being passed over twice.
6. The contention of the learned counsel for the petitioner is to the effect that the entire case of the respondent no.2 hinges on the question of vicarious liability under Section 141 of Negotiable Instruments Act. It is urged that before enroping the person under the concept of vicarious liability, there should not only be the averments made in the petition /complaint with regard to the Director in question being incharge and responsible for the conduct of the business, but it must also be established prima facie by evidence or by documents on record.
7. On the contrary, it is stated that the allegations made in the complaint qua the petitioner that he is incharge and responsible in the capacity of the promoter and Director is not fortified from the record inasmuch as the petitioner has placed on record the certified copy of the documents

purported to have been issued by the Registrar of Companies which shows that on 21.9.1995, the petitioner had only 500 shares in the company M/s Anchor Beverages Ltd. in the capacity of only a promoter. A certificate purported to have been issued by the Registrar of Companies on 15.10.2003 is also placed on record which is not disputed and shows that there were only three Directors of the said company namely Sh. P.N.Das, Sh.Ajay Pal Singh Tomer and Smt.Sanjana D.Tomer. On the strength of these two documents, it has been contended by the learned counsel for the petitioner that the petitioner was only a promoter of the company and not the Director and therefore, he could not be prosecuted for having committed an offence under Section 138 of the Negotiable Instruments Act under the concept of vicarious liability. It has also been contended by the learned counsel for the petitioner that no notice under Section 138 of the Negotiable Instruments Act was sent to any of the Directors including the petitioner and thus the statutory requirement was also not complied with qua him.

8. The learned counsel in support of his contention has cited a judgment of this Court in case titled **Jayshree Khemka & Anr. Vs. Prema Kanodia** 2008 (106) DRJ 809, wherein it has been observed that the person who is neither the signatory to the cheque nor responsible in any manner

whatsoever in respect of the transaction and also did not hold post of a Director in a company at the time of issuance of the cheque cannot be saddled with the liability of having committed an offence under Section 138 of the Negotiable Instruments Act.

9. I have carefully considered the submissions made by the learned counsel for the petitioner and gone through the record. I have also gone through the judgment cited by the learned counsel for the petitioner.
10. The position of law is very well settled in **SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla** (2007) 4 SCC 70 and **Sabitha Ramamurthy Vs. R.B.S. Channabasavaradhya** (2006) 10 SCC 581 and number of other cases with regard to the liability of a Director. The complainant before enroping a person under vicarious liability of Section 141 of Negotiable Instruments Act being the Director of a company has not only to make an averment in the complaint that the said Director was incharge and responsible for the conduct of the business of the company but he must also establish the said fact by prima facie evidence either by way of his own affidavit or by way of the documents placed on record. Mere repetition of the words stated in the Section 141 of the Negotiable Instruments Act have been held to be not necessary but what must be shown is the fact that the person who is

sought to be brought within the concept of vicarious liability was actually incharge and responsible for the day to day conduct of the business of the company or the firm and thus he was in the knowledge of the cheque having been issued on behalf of the company for discharge of its debt or liability.

11. In the present complaint except that it reproduces the language given u/S 141 of Negotiable Instruments Act both in the complaint as well as in the affidavit, there is nothing on record to show as to how the petitioner was incharge and responsible for the conduct of the company in question. On the contrary, the petitioner has placed on record the two vital documents purported to have been issued by the Registrar of Companies. The veracity or the correctness of these two documents has not been disputed by the learned counsel for the respondent no.2 during the course of oral submissions.
12. One document shows that so far as the petitioner is concerned, he was only a promoter and he had been allotted 500 shares initially. This document does not show that he was a Director. There is no document which shows that he was Director of the Company in question at the time when the cheque in question was issued. On the contrary, there is a document which is issued by the Registrar of Companies which shows that there were three

Directors at the relevant time but the name of the petitioner does not appear in the list of the said three Directors. Therefore, the respondent no.2 has not been able to discharge the initial burden of proving the fact that the petitioner was incharge and responsible for the conduct of the business of the firm in the capacity of the Director but on the contrary the petitioner has been able to place on record the documents to the contrary in this regard.

13. For the reasons mentioned above, I, therefore, deem it a fit case where the complaint against the petitioner deserves to be quashed. Ordered accordingly.
14. Copy of the order be sent to the Court concerned.

AUGUST 18, 2009
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V.K.SHALI, J.