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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : March 12, 2009

Judgment delivered on : March 25, 2009

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**Crl. M.C. No. 2701/2007 &
Crl. M.A. No. 9548/2007 (Stay)**

% Sanjay Aggarwal ... Petitioner
Through: Mr. Ateev Mathur & Mr. Manish
Paliwal, Advocate

versus

M/s. J.K. Iron & Steel Manufacturing Co. ... Respondent
Through: Ms. Anita Abraham, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. What is being sought in this petition, is quashing of criminal complaint No.15/2005 (New No.3413/07, titled *M/s. J.K. Iron & Steel Manufacturing vs. M/s. Sanjay Steel Tube Co.*) under Section 138 read with section 141 of Negotiable Instruments Act,

1881.

2. In the aforesaid complaint, Petitioner in the capacity of one of the partners of M/s. Sanjay Steel Tube Co. was summoned as an accused vide order of 15th January 2005 by the trial court and the said order is also impugned in this petition.

3. M/s. Sanjay Steel Tube Co., (hereinafter referred to as accused firm) is a partnership firm consisting of two partners only and Petitioner is one of the partners of the accused firm. Petitioner's challenge in this petition, is based upon section 141 of the Negotiable Instruments Act, 1881 as it has been contended on behalf of the Petitioner that there are no averments in the complaint that the Petitioner was in charge of or was responsible to the accused firm for the conduct of the business of the accused firm and therefore, Petitioner cannot be deemed to be guilty in respect of dishonoring of a cheque of Rupees three lacs, issued by another partner of the accused firm.

4. Learned counsel for Petitioner relies upon decisions reported in **AIR 2006 SC 3086; (2004) 7 SCC 15; 2005 (4) SCALE 354; (2005) 8 SCC 89**, to contend that in the absence of any averment of Petitioner being in charge of or responsible for the business of

the accused firm, Petitioner cannot be made an accused by the Respondent in the complaint in question. Nothing else is urged on behalf of the Petitioner.

5. On behalf of the Respondent, attention has been drawn to sections 19, 20, 25 and 26 of the Indian Partnership Act, 1932, to point out that the liability is of the firm for the wrongful act of the partner of the said firm and on the implied authority of a partner, another partner acts on behalf of the firm and the said implied authority binds the firm. Reliance has been placed upon decision of the Apex Court reported in **(2007) 5 SCC 108**, to contend that the question whether the accused at the relevant time was not incharge or responsible for the business of the accused company/firm, is a matter which is required to be considered at trial.

6. After having heard both the sides and upon perusal of the decisions cited before me, I find that the latest decision on the subject by the Apex Court, is the case of "*N. Rangachari vs. Bharat Sanchar Nigam Ltd.*, **(2007) 5 SCC 108**, which takes note of decisions cited by petitioner and it provides the latest interpretation of section 141 of the Negotiable Instruments Act,

1881 in the following words:-

“In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the company and were incharge of the affairs of the company. It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons incharge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant.

We think that, in the circumstances, the High Court has rightly come to the conclusion that it is not a fit case for exercise of jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the complaint. In fact, an advertence to Sections 138 and 141 of the Negotiable Instruments Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors

or the Officers incharge of the affairs of the company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not incharge of the affairs of the company. Reading the complaint as a whole, we are satisfied that it is a case where the contentions sought to be raised by the appellant can only be dealt with at the conclusion of the trial.”

7. In the aforesaid latest pronouncement of the Apex Court, the clinching observations made are as under:-

“It appears to us that an allegation in the complaint that the named accused are the directors of the company itself would usher in the element of their acting for and on behalf of the company and of their being in-charge of the company.”

8. Above said clinching observations squarely applies to the facts of the instant case as the accused-firm has been made a party in the criminal complaint in question, through its both partners, i.e., Petitioner and the other partner is Ajay Aggarwal. Petitioner’s firm has been arrayed as an accused through both its partners and the Petitioner has averred in this petition that the

other partner of the accused firm is his brother and the Petitioner is not aware of the whereabouts of his brother/co-partner.

9. To claim the protection of the first proviso to sub-section (1) of section 141 of Negotiable Instruments Act, 1881, Petitioner has to aver in the present petition that the issuance of the dishonored cheque in question by his co-partner was without his knowledge. There is no such averment in the present petition.

10. In view of the latest pronouncement of the Apex Court, in the case of N. Rangachari (*supra*), the claim of the Petitioner to the protection of section 141 of Negotiable Instruments Act, 1881, is left open, to be claimed by the Petitioner at trial.

11. In the light of the aforesaid, this court is not inclined to exercise its extra-ordinary inherent jurisdiction under Section 482 of Cr. P.C. to quash the criminal complaint in question, as this power has to be exercised sparingly and in appropriate cases. It is so said, as the Apex Court in the case of *Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Others*, **AIR 2008 SC 251**, has opined as under:-

“Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”

12. Thus, this petition is liable to be dismissed and is accordingly dismissed with the observation that anything stated herein shall have no bearing on merits at trial.

13. This petition as well as pending application are accordingly disposed of.

Sunil Gaur, J.

March 25, 2009
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