

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

+ **Crl.M.C. 3004/2008**

% Date of reserve: 03.09.2009

Date of decision: 14.09.2009

VINOD ZAVERI & ORS. ...PETITIONERS

! Through: Mr. Uday Gupta, adv.

Versus

\$ M/s. METALLICA INDUSTRIES LTD. ...RESPONDENT

^ Through: Mr. Anuj Aggarwal, adv.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

: **MOOL CHAND GARG, J.**

1. This order shall dispose of the petition filed under section 482 Cr.P.C. by the petitioners, who have been arrayed as accused nos. 3,5&6 in a complaint filed by the respondent under Section 138 read with Section 142 of the Negotiable Instruments Act. The dispute raised in the present petition is as to whether the petitioners could have been summoned as accused despite they being neither partners of the firm M/s. Steel Mac nor signatories of the cheque.

2. Briefly stated, the facts of the case are that on 2.2.2005 an

agreement was entered into between M/s. Steel Mac & M/s. Metallica Industries Ltd., respondent herein, pursuant to which a cheque was issued to the complainant-respondent under the signatures of accused no. 2, Dilip N. Shah, which cheque was later on dishonoured on presentation. On the dishonor of cheque, a notice was served upon the drawer of the cheque, the company as well as on the present petitioners. Despite service of the notice, payment was not made and thereafter, the respondent herein has filed the present complaint bearing no. 1382/1/2007.

3. It is submitted by the petitioners that the learned Magistrate on the basis of the averments made in the complaint and the affidavit annexed thereto without caring for the fact that there is no document to show that the petitioners are the partners of the firm M/s Steel Mac ordered them to appear in the Court to face trial vide orders dated 23.5.2007. The said order for the sake of reference is reproduced hereunder:

23.05.2007

Present: AR of the complainant with counsel

Fresh complaint received by assignment from Ld. ACMM, New Delhi. It be checked and registered. Evidence by way of affidavit filed. Tendered in evidence. Pre-summoning evidence of the complainant's closed.

Heard. File Perused. From the perusal of the

complainant's affidavit and documents placed on record. I am of the view that there are sufficient grounds to proceed further against the accused under Section 138 N.I. Act. Hence, issue summons to the accused on PF, speed post and through approved courier for 2.1.08. PF be filed with 15 days.

Sd/-
(Sanjeev Kumar)
MM/ND

4. The petitioners filed the present petition making a specific averment that the petitioners are neither drawer of the cheque nor the partners of the firm M/s Steel Mac, on whose behalf the cheque in question was issued.

5. A perusal of the record goes to show that no document which may support the plea of the complainant that the present petitioners were partners in the firm M/s. Steel Mac is available on record.

6. The petitioners have filed written submissions in support of their contention that in view of the averments made by the complainant in the complaint and there being no evidence to support that the petitioners are the partners of the firm M/s. Steel Mac and as to how they are responsible for the issuance of the cheque or the dishonour thereof, the order summoning them passed by the learned Magistrate is unjustified and is liable to be quashed.

7. On the other hand, respondents have filed written synopsis, wherein they have stated that accused no. 1 is a registered

partnership firm and accused no.2 to 6 are the partners of accused no.1 and are responsible for day-to-day affairs of the partnership firm jointly and severally. It is submitted by them that notices were duly served upon the petitioners, but no reply was received from them. It is also submitted by them that whether the present petitioners are partners or not is a matter of trial and will be decided after both the parties will lead their evidence. Regarding the two partnership deeds placed on record by petitioners, it is submitted by the respondents that the alleged partnership deeds are unregistered documents, which are yet to be proved. The respondents besides their submissions have also placed on record the following judgments:

- i. N. Rangachari Vs. BSNL AIR 2007 SC 1682
- ii. Amarnath Baijnath Gupta & Anr. Vs. M/s. Mohini Organics Pvt. Ltd. AIR 2009 NOC (Bom) 950
- iii. Nipam Kotwal & Ors. Vs. Dominos Printech India Pvt. Ltd. 146 (2008) DLT 747
- iv. Pankaj Narang Vs. State & Ors 2006 (87) DRJ 446
- v. Vijay Chandela Vs. Cable Sales & Services Ltd. 2005 (79) DRJ 550

8. I have perused the written submissions and the judgments filed by the respondents and find that they are not of any assistance in the facts and circumstances of the present case.

9. In view of the aforesaid, the submission made on behalf of the petitioners that they are neither the directors/partners of the firm M/s Steel Mac nor the signatory of the cheque becomes relevant. Despite specific averments made in the petition by the petitioners, the respondent-complainant has not placed any document on record to show that the petitioners are the partners of the firm M/s Steel Mac. In this regard, reference can be made to the provisions contained in the Indian Partnership Act, 1932 which provides for appointment of the Registrar of Firms and keeping of register of partners in the case of registered firm, which is available for inspection to the public under Section 67 of the Partnership Act and of which copies can also be given. The relevant provisions of the Indian Partnership Act are reproduced hereunder:

67. Grant of copies: The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

10. It would also be appropriate to take note of Sections 58, 59 and 66 of the Indian Partnership Act, 1932, which read as under:

58 - Application for registration :-(1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating,-

- (a) the firm name,
- (b) the place or principal place of business of the

firm,(c) the names of any other places where the firm carries on business,
(d) the date when each partner joined the firm,
(e) the names in full and permanent addresses of the partners, and
(f) the duration of the firm.The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.(3) A firm name shall not contain any of the following words, namely:-

"Crown", "Emperor", "Empress", "Empire", "Imperial", "King", "Queen", "Royal", or words expressing or implying the sanction, approval or patronage of [Government], except [when the State Government] signifies [its] consent to the use of such words as part of the firm name by order in writing .-

59 - Registration:-When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

66 - Inspection of Register and filed documents:(1)
The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

11. Despite the aforesaid provisions, the respondent-complainant has not cared even now to place on record the relevant extract to show that the petitioners were either partners of the firm in question at the time of filing of the complaint or at the time of dishonor of cheque nor have made any allegations against them as to how they are incharge and responsible for the affairs of M/s Steel Mac.

12. It may, therefore, be observed that the following conclusions

can be drawn in the present petition:

- i. That non-filing of partnership deed along with the complaint is a lacuna in the case of complainant. Even now the complainant has not filed any copy of the partnership deed nor the certificate showing that the petitioners are/were the partners of the firm.
- ii Even if, for the sake of arguments it is presumed that they may have such an evidence with them and may file it later, it would be of no consequence in the light of the judgment delivered in the case of Monaben Ketanbhai Shah & Anr., 2004 (7) SCC 15, wherein it was held:

6. From the above, it is evident that in the complaint there are no averments against the appellants except stating in the title that they are partners of the firm. Learned counsel for the respondent complainants contended that a copy of the partnership deed was also filed which would show that the appellants were active in the business. No such document was filed with the complaint or made part thereof. The filing of the partnership deed later is of no consequence for determining the point in issue. Section 141 does not make all partners liable for the offence. The criminal liability has been fastened on those who, at the time of the commission of the offence, were in charge of and were responsible to the firm for the conduct of the business of the firm. These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in

charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint.

7. In *K.P.G. Nair v. Jindal Menthol India Ltd.* 2001(10) SCC 218 this Court held that the substance of allegations read as a whole should answer and fulfil the requirements of the ingredients of Section 141. The criminal complaint was quashed in *Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd* (2002) 7 SCC 655 since in the complaint it was not stated that the accused was in charge of the business and was responsible for the conduct of the business of the firm nor was there any other allegation that she had connived with any other partner in the matter of issue of cheque.

8. Under the aforesaid circumstances, we set aside the impugned judgment of the High Court and restore the order of the Magistrate discharging the appellants. The appeal is allowed accordingly.

- iii. Merely because phraseology used in the complaint says that accused persons were in-charge and responsible for the day-to-day affairs of the firm is not sufficient and something more is to be alleged which has to be supported by the documents in the light of the judgment delivered by this Court in *T.N. Bhatia & Ors Vs. State & Anr.* 139 (2007) DLT 361., wherein it has been held:

1. All these cases relate to complaints under Sections 138 and 142 of the Negotiable Instruments Act (in short the 'NI Act') based on dishonour of cheques. Further, in all these cases, the cheques are issued by and on behalf of a company incorporated under the Indian Companies Act or a partnership firm. The complainants, in addition to making the said

companies/firms as principal accused, have also impleaded certain other persons in the capacity of their being Directors or partners, as the case may be. Again, in all these cases, some of those Directors or partners have come up and have filed these petitions under Section 482 of the Code of Criminal Procedure seeking quashing of summoning orders against them. Plea is also common in these cases. It is either contended that they ceased to be the Directors/partners before the cheque(s) was/were presented which got dishonoured and, therefore, since they had no concern with the company/firm as on the date of dishonour of the cheque(s), they could not be arraigned as accused persons. Or else, their contention is that they are not the persons who were incharge and responsible for the business of the company or the firm and, therefore, could not have been implicated in the complaint case(s) in view of the provisions of Section 141 of the NI Act.

14. However, difficulty arises when the complainant states that the concerned accused was Director and also makes averment that he was in charge of and responsible for the conduct of its day-to-day business, but does not make any further elaboration as to how he was in charge of and responsible for the day-to-day conduct of the business. The question would be as to whether making this averment, namely, reproducing the language of Sub-section (1) of Section 141 would be sufficient or something more is required to be done, *i.e.* is it necessary to make averment in the complaint elaborating the role of such a Director in respect of his working in the company from which one could come to a *prima facie* conclusion that he was responsible for the conduct of the business of the company.

21. Thus, what follows is that mere bald allegation that a particular person (or a Director) was responsible for the conduct of the business of the company would not be sufficient. That would be reproduction of the language of Sub-section (1) of Section 141 and would be without any consequence and it is also necessary for the complainant to satisfy how the petitioner was so responsible and on what basis such an allegation is made in the complaint.

28. It can, therefore, be safely concluded that the view, which is now accepted by the Supreme Court, is that mere repetition of the phraseology contained in Section 141 of the NI Act, *i.e.* "the accused is in charge of and responsible for the conduct of the day-to-day affairs of the company", may not be sufficient and something more is to be alleged to show as to how he was so responsible.

13. The aforesaid conclusions support the case of the petitioners and require interference of this Court by directing setting aside of the complaint qua the petitioners. Accordingly, the complaint qua the present petitioners is quashed.

14. The petition filed by the petitioners is allowed with the costs of Rs.10,000/-. It is, however, made clear that if during the course of the trial any evidence is led on behalf of the respondent/complainant that the petitioners were the partners or in-charge and responsible for the conduct of business of firm M/s. Steel Mac at the relevant time, then the Magistrate can exercise powers under Section 319 Cr.P.C. in accordance with law.

Crl.M.A.11075/2008 (Stay)

In view of the orders passed above, this application is disposed of as having become infructuous. Interim order, if any, stands vacated.

MOOL CHAND GARG, J.
SEPTEMBER 14, 2009/ag