

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

+ Crl. M.C. No. 388/2010 & Crl. M. A. No. 1333/2010 (Stay)

% Decided on: 23rd March, 2010

LALIT JAIN & ORS. Petitioners

Through: Mr. Dalip K. Sharma, Adv.

Versus

STATE & ORS. Respondents

Through: Mr. M.P. Singh, APP for the State

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

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

A.K. PATHAK, J. (ORAL)

1. Petitioner seeks quashing of the summoning order dated 17th February, 2005 passed by the learned Metropolitan Magistrate, Rohini and the complaint case number 06/2001 titled Shri Piara Singh Vs. M/s Nokia Hot Press and others, qua the petitioners.

2. Respondent no. 2 has been served but has not put in appearance.

3. Short question involved in this case is as to whether the petitioner being partners of the firm are vicariously liable for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as N.I. Act) with regard to cheques, issued by one of the partner in his individual capacity from his personal account.

4. In brief, facts of the case are that the respondent no. 2 filed a complaint under Section 138 Negotiable Instruments Act 1881 against M/s Nokia Hot Press and its partners. Petitioners were arrayed as accused Nos. 3 and 4. It was alleged that accused no. 2 Pradeep Jain had taken loan of Rs.2,65,000/- from respondent no.2 and in order to clear the loan issued seven post dated cheques totaling to Rs.2,65,000/-. Accused No.2 signed the cheques but without mentioning the name of the firm. On presentation, cheques were returned dishonoured. Cheque amount was not paid despite notice hence, the complaint.

5. Learned counsel for the petitioner has contended that petitioners were not the partners of M/s Nokia Hot Press; no such firm existed. Even if it is presumed that petitioners are partners of the firm, they cannot be held responsible since the cheques were issued by accused P. K. Jain from his personal account in his

individual capacity. It is further contended that since drawer of the cheque (accused No.2) had drawn the cheques in his individual capacity from his individual account, neither the partnership firm nor its partners can be held vicariously liable by taking aid of Section 141 of the N.I. Act. Reliance has been placed on M/s Gujarat Oleo Chem. Vs. State & Anr., reported in 2010 (1) JCC (NI) 84 and Srikant Somani & Ors. Vs. Sharad Gupta & Anr., reported in 2005 (2) JCC (NI) 138.

6. Perusal of cheques show that same have been signed by the accused No.2 P.K.Jain. No rubber stamp of the firm has been affixed nor name of the firm has been mentioned below the signatures of accused No.2. Only name of the accused No.2 is printed on the cheque. As per the complaint also loan was taken by the accused No. 2. It is thus clear that the cheques were signed and issued by the accused No. 2 in his individual capacity. There is nothing to show that same were issued by the firm.

7. **Section 138** of the Negotiable Instruments Act, 1881 reads as under:-

Dishonor of cheque for insufficiency, etc, of funds in the account-

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that

account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for (a term which may be extended to two years) or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

- (a) XXXXXXXXXXXXXXXXXXXX
- (b) XXXXXXXXXXXXXXXXXXXX
- (c) XXXXXXXXXXXXXXXXXXXX

8. Section 141 of the Negotiable Instruments Act, 1881 reads as under:-

Offences by Companies

(1) If the person committing an offence under Section 138 is a company, every persons “who, at the time the offence was committed, was in charge of , and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to the guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Provided XXXXXXXXX

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly,”

Explanation – For the purposes of this Section –

(a) ‘Company’ means anybody corporate and includes a firm or other association of individuals; and

(b) XXXXXXXXXXXXXXXX

(emphasis supplied)

9. Section 7 of the said Act provides that maker of a bill of exchange or cheque is called the “drawer” ; the person thereby directed to pay is called the “drawee”.

10. A conjoint reading of Section 7 and 138 of N.I. Act clearly shows that it is only the drawer of the cheque who can be held responsible for the offence under Section 138 of the said Act. However, Section 141 of the NI Act envisages that if drawer is a company or firm or association of individuals, all such persons who at the time when the offence was committed, were in charge or responsible for the conduct of the business of such company or firm or association of individuals one deemed to be guilty for the

offence under Section 138 NI Act. But before Section 141 is invoked complainant has to demonstrate that cheque had been issued by a company/firm.

11. In the instant case it appears that the cheques were signed and issued by the accused P. K. Jain from his individual account. There is nothing to suggest that cheques were issued for and on behalf of the firm. Merely because accused No. 2 is alleged to be partner of accused No. 1 (firm), by itself, will not fasten criminal liability of the offence under Section 138 of NI Act on the other partners, for the individual act of accused No. 2. Accordingly, in my view Section 141 is not attracted in the facts of this case.

12. In Gujarat Oleo Chem case (supra), it was held that it is only the signatory of cheque i.e. drawer of the cheque, who had drawn the cheque in his individual capacity and from his individual account, would be liable for prosecution under Section 138 of the said Act and not the directors of the company.

13. In Srikant Somani's case, (supra), this Court held as under:-

Section 138 makes it very clear that only the person who draws the cheque is liable for the offence. Vicarious liability is available only in respect of those offences committed by a company as provided in Section 141 of the N.I. Act. The petitioners other than petitioner No. 1 are neither the persons who drew the cheques

nor the persons who can become liable by virtue of Section 141 of the NI Act. Thus only the petitioner No. 1 becomes liable for the offence and he alone can be summoned. The petitioners, other than petitioner No. 1 could not have been summoned by the trial court.

14. In the backdrop of above legal position, petitioners cannot be held liable for an individual act of one of the partners in issuing cheque under his signature from his individual account.

15. Accordingly, impugned order dated 17th February, 2005 as also the complaint case under Section 138 of NI Act are quashed qua the petitioners only.

16. Petition disposed of in the above terms.

A.K. PATHAK, J

March 23, 2010

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