

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C.1532/2007

% Judgment decided on: 3rd December, 2010

VINAY KUMAR @ VINAY KUMAR KEDIA PETITIONER

Through: Mr. R.N. Mittal, Sr. Adv. with
Ms. Suman Roni and Mr.
Manoj Kumar, Advs.

Versus

STATE (NCT OF DELHI) & ANR. RESPONDENTS

Through: Mr. Arvind Gupta, APP for the
State-Respondent no.1.
Mr. Girdhari Govind and Ms.
Noorum Nahar Firdausi, Adv.
for Respondent no. 2.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

A.K. PATHAK, J. (Oral)

1. Petitioner seeks quashing of complaint case no. 4346/01/04 under Section 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as "the Act") titled as Sagar Suri Estates & Finance Ltd. Vs. Kedia Castle Dellon Industries Ltd. & Ors. pending in the court of Metropolitan Magistrate, New Delhi.

2. Briefly stated, facts of the case are that respondent no.2

has filed a complaint under Section 138 of the Act against M/s Kedia Castle Dellon Industries Ltd. (for short hereinafter referred to as “the Company”). Amongst others, petitioner has been impleaded in the complaint as accused no. 3, being its Vice Chairman.

3. It has been alleged in the complaint that respondent no. 2 had provided financial assistance of Rs. 45 lakhs to the Company. A lease agreement was executed between the company and respondent no. 2 on 29th January, 1996. The financed amount was to be repaid in installments. Thirty six post dated cheques were issued by the Company towards the installments. Cheques bearing nos. 676577 to 676582 dated 9th of May, June, July, August, September and October, 1997 respectively, for Rs. 1,70,000/- each, all drawn on The Bank of Rajasthan Ltd., Panchsheel Park, New Delhi, issued towards some of the installments, had been returned dishonored on presentation for the reason “insufficient funds”. Despite receipt of demand notice, the company failed to pay the amount involved in the cheques, within the prescribed period of limitation, hence it had committed an offence under Section 138 of the Act. Accused nos. 2 to 5 were controlling and managing the affairs of the Company, thus, were liable to be prosecuted, in view of Section 141 of the Act.

4. After recording pre-summoning evidence Metropolitan

Magistrate summoned the accused including the petitioner. That is how petitioner is before this Court.

5. Learned senior counsel for the petitioner has contended that initially petitioner was one of the Directors of the Company but had resigned on 12th January, 1995 i.e. much prior to issuance of the cheques. Cheques were dishonored in the year 1997; since the amount involved in the cheques had not been paid, offence can be said to have been committed in the year 1997. Petitioner was not holding any office in the Company at that time, therefore, petitioner is not liable for prosecution under Section 141 of the Act. To indicate that petitioner had resigned from the Directorship on 12th January, 1995, reliance has been placed on the certified copy of Form-32 issued by Registrar of Companies, West Bengal.

6. Per contra learned counsel for the respondent no.2 has vehemently contended that the main accused is a private limited company which was being managed by the family members of the petitioner. No document had been placed on record to show that intimation regarding resignation of the petitioner had been filed with the Registrar of Companies in the month of October, 1995 itself. In order to escape from the prosecution, to which such officers and/or Directors are amenable in view of Section 141 of the Act, such documents are easily manipulated in such like cases. It is contended that the

petitioner was very much a Director of the Company in the year 1996 when cheques had been issued. He has further argued that evidence is required to be led on the point as to whether petitioner had actually resigned from the Company or this pretext had been created to escape from punishment, after cheques had been dishonored. In nutshell, his contention is that the complaint cannot be quashed qua the petitioner at this preliminary stage.

7. I have considered the rival contentions of both the parties in the facts of this case and I find arguments of Senior Counsel for the petitioner more convincing. Certified copy of Form-32 issued by the Registrar of Companies, cannot be doubted, inasmuch as its authenticity cannot be disputed. In my view, such a document is conclusive of the fact that petitioner had resigned from the date mentioned in Form-32. It is not the case of respondent no. 2 that the aforesaid certified copy is forged and fabricated one, therefore, there is no point in putting the petitioner to face trial on this point. In my view, certified copy of Form-32 issued by Registrar of Companies, West Bengal has to be accepted, as it is. Perusal of the same clearly shows that petitioner had resigned from the Company much prior to the issuance of the cheque, what to say of date when the cheques were actually dishonored and offence had been committed.

8. In **Sarla Kumar Vs. Sri International Finance Ltd. 2006**

(132) DLT 363, a Single Judge of this Court, in similar facts, has held as under:-

“In the present case as the petitioner has filed the certified copy issued by the ROC itself, authenticity thereof cannot be disputed Such a document is conclusive of the fact that the petitioner had resigned w.e.f. 20.8.1994. Therefore, she was not incharge or responsible for day-to-day affairs of company and could not be so.”

9. It may be pertinent to mention that this very Form-32 has been accepted by a Single Judge of this Court in Crl. M.C. No. 1054/2007 and complaint involved in the said case had been quashed qua the petitioner. In the said case also cheques issued by the company on 9th October, 1996 had been dishonored on 5th April, 1997. Petitioner claimed that he was not Vice Chairman of the company as on the said date, having resigned on 12th October, 1995. This plea was accepted. There is no reason to take a different view in this case.

10. Since the petitioner had resigned from the office of Director of the Company much prior to the date when the offence had been committed, I am of the view that provisions of Section 141 of the Act would not be attracted in this case so as to make petitioner liable for prosecution for the offence under Section 138 of the Act allegedly committed by the Company. Thus, summoning of the petitioner is bad in law and cannot be sustained.

11. For the foregoing reasons, order of Metropolitan Magistrate summoning the petitioner, as well as the complaint qua the petitioner is quashed.

12. Petition is disposed of in the above terms.

A.K. PATHAK, J.

DECEMBER 03, 2010

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