

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

Judgment reserved on: November 22, 2010
Judgment delivered on: November 24, 2010

+ **CRL.M.C. 1333/2010 & CRL.M.A. 5398/2010**
+ **CRL.M.C. 1334/2010 & CRL.M.A. 5396/2010**

ANIRUDH AGARWAL & ANOTHER**PETITIONERS**

Through: Mr.Ramesh Gupta, Senior Advocate with
Mr.A.Singhal, Advocate.

Versus

STATE OF N.C.T. OF DELHI & ANOTHER**RESPONDENTS**

Through: Mr.R.N.Vats and Mr.Pawan Bahl, APPs for
the State.

Mr.Ranjan Sabharwal, Advocate for
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. Anirudh Agarwal and Anup Kumar Agarwal, the petitioners herein are seeking the quashing of complaint case titled as "M/s Shubhakaran Chaudhary & Associates Pvt. Ltd. Vs. M/s Sonal Garments (India) Pvt. Ltd. and Others" being CC No.4165/N/09 and CC No.4167/N/09 pending in the

Court of Metropolitan Magistrate, Delhi and the consequential proceedings arising out of the same.

2. Briefly stated, facts relevant for the disposal of this petition are that respondent No.2 M/s. Shubhakaran Chaudhary & Associates Pvt. Ltd. filed a complaint case under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act') against the petitioners and others claiming that respondent No.2 supplied goods to M/s Sonal Garments (India) Pvt. Ltd. and as against the consideration amount of those goods, said Company issued post-dated cheques to the complainant/respondent No.2. The aforesaid cheques, when presented for encashment, were dishonoured by the drawee bank. Respondent No.2 served the petitioners as well as the Company with requisite notice of demand but the petitioners or M/s Sonal Garments (India) Pvt. Ltd. failed to make the payment within the requisite period, which led to filing of the complaint under Sections 138 to 142 of the N.I. Act.

3. Learned Shri Ramesh Gupta, Senior Advocate appearing for the petitioners submits that the impugned orders of summoning in the respective complaints are bad in law and liable to be set aside for the reason that petitioners were merely non-executive Directors of the company and they were not concerned with the day-to-day business affairs of the company. He further contended that the complaints in question are bereft of any specific allegations against the petitioners to bring them within the purview of Section 141(1) of the N.I. Act in order to foist vicarious liability for the offence punishable under Section 138 of the

N.I. Act upon them. In support of this contention, he has relied upon the judgment of Supreme Court in the matter of ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr., (2005) 8 SCC 89*** as also the judgment of Supreme Court in *SLP(Crl.) No.5093/2008* in the matter of ***Central Bank of India Vs. M/s Asian Global Ltd. & Ors.***

4. Learned counsel for the respondents, on the contrary, has drawn my attention to the copies of the complaints filed against the petitioners and others and submitted that the respondents, in Para 2 of the respective complaints, had made a specific allegation that as per the record of the Registrar of Companies, all the Directors of the company M/s Sonal Garments (India) Pvt. Ltd., including the petitioners herein, are also the authorised signatories of the company. Learned counsel submitted that once a person is authorised by the company to operate a bank account, by implication he is concerned with the day-to-day affairs of the company. Thus, it is contended that the petitioners have been rightly summoned to withstand trial under Section 138 of the N.I. Act.

5. Vide order dated 17th August 2010 of this court, petitioners were directed to file affidavits disclosing whether or not they were authorised signatories of M/s Sonal Garments(India) Pvt. Ltd. Pursuant to said directions, the petitioners have filed their respective affidavits wherein they have admitted that they are authorised signatories of the aforesaid company but they have come out with a defence that in October 2008, some differences arose between the Directors and it was orally agreed between the petitioners and other Directors that the operation of the

business at Mumbai will be exclusively handled by Shri Naveen Kumar Agarwal whereas petitioner no.1 Anirudh Agarwal will exclusively look after the business affairs of the company at Delhi and petitioner No.2 Anup Kumar Agarwal will exclusively look after and carry on the business affairs of the company at Bangalore. It was also decided that none of the Directors, including the petitioners, shall interfere in the business affairs being handled by the other Directors in the respective cities and each of them will be responsible for affairs of the business relating to their cities only and shall not be responsible for the business affairs of the other city.

6. From the affidavits of the petitioners, it is obvious that they are authorised signatories of M/s Sonal Garments (India) Pvt. Ltd. The explanation given by them about the distribution of the business affairs pertaining to respective cities is a question of evidence which can be determined only during trial. From the affidavits of the petitioners, it is clear that they are authorised signatories of the company, as such, they are prime facie concerned with the day-to-day business affairs of the company. Thus, prima facie, a case under Section 138 read with Section 141 of the N.I. Act is made out against the petitioners.

7. In view of the above, I do not find any merit in the contention of the petitioners and find no reason to interfere with the impugned orders of summoning in the respective complaints.

8. Petitions, as well as the pending applications, are accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

NOVEMBER 24, 2010
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