

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

Judgment delivered on: August 09, 2011

+ **CRIMINAL M.C. NO. 645/2008 & CRL.M.A. 2389/2008**

ANJU AGGARWAL **....PETITIONER**

Through: Mr.Jai Gupta, Advocate.

Versus

POONAM GANDOTRA & ORS. **....RESPONDENTS**

Through: Nemo.

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.(ORAL)

1. Anju Aggarwal, the petitioner herein has filed instant petition under Section 482 CrPC is seeking quashing of complaint case No. 91/1/05 titled Poonam Gandotra Vs. Divus Laboratories Ltd. under Section 138 read with Section 141 of the Negotiable Instruments Act (N.I.Act) qua the petitioner.

2. Briefly stated, facts relevant for disposal of this petition are that the respondent No. 1 Poonam Gandotra filed the above referred complaint under Section 138/141 N.I.Act against M/s. Divus

Laboratories Limited and Others including the petitioner claiming that the aforesaid company had issued a cheque for ₹ 42 lakhs being cheque No. 453798 dated 31st December, 2004 drawn on Indian Overseas Bank in discharge of its liability towards the dues of her husband outstanding at the time of his resigning from the directorship of the accused company. The cheque was presented for encashment through the complainant's bank, which was received dishonoured with the remarks "payment stopped by the drawer" vide return memo dated 07th January, 2005. A demand notice under Section 138 N.I.Act was served upon the accused persons, including the petitioner, calling upon them to pay the cheque amount within 15 days from the receipt of demand notice. The company as well as the other accused persons including the petitioner however, failed to comply with the demand notice. This led to filing of complaint under Section 138 read with Section 142 N.I.Act as well as under Sections 406/420 IPC.

3. On consideration of the complaint and the preliminary evidence led by way of affidavit, learned M.M. summoned the accused persons including the petitioner to undergo trial for the offence punishable under Section 138 read with Section 141 N.I.Act.

4. Though the petitioner, in her petition under Section 482 CrPC sought quashing of the complaint qua her on various grounds but during the course of arguments, learned counsel for the petitioner has pressed for only one ground, that the petitioner is neither the signatory

to the cheque nor she was director of the accused company at the time of commission of offence, therefore, she cannot be held responsible for the offence allegedly committed by the company vicariously with the aid of Section 141 N.I.Act. In support of this contention, learned counsel for the petitioner has referred to an agreement dated 25th August, 2004 purported to have been executed between various directors of the company and Atul Gandotra, husband of the complainant, which reflects that the petitioner Anju Aggarwal had resigned from the directorship of the company on 06th April, 2004 and in her place, one Sanjeev Aggarwal had joined as Director, Finance, who is also named as an accused in the complaint. Learned counsel for the petitioner has also referred to the Form 32-A submitted by the company to the Registrar of Companies informing about the resignation of the petitioner Anju Aggarwal with effect from 06th April, 2004. From this, learned counsel for the petitioner urged that the petitioner was not a director of the company at the time of issue of impugned cheque, as such she cannot be held vicariously liable for the offence committed by the company. In support of this contention, learned counsel for the petitioner has relied upon the judgment of Supreme Court in the matter of **Harshendra Kumar D. Vs. Rebatilata Koley etc.**, 2011 (1) JCC (NI) 42.

5. In order to appreciate the contention of the learned counsel for the petitioner, it would be useful to have a look on Section 141 (1) of

the Negotiable Instruments Act, which deals with the offences by the company. Relevant portion of Section 141 N.I.Act reads thus:

“141.Offences by companies.---(1)If the person committing an offence under Section 138 is a company, every person 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 be 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”.

6. On bare reading of the above provision of law, it is apparent that if a company is accused of an offence under Section 138 N.I.Act, every person who at the time of commission of offence was incharge of and was responsible to the company for the conduct of the business of the company shall be vicariously liable for the offence committed by the company.

7. I have gone through the judgment relied upon by the petitioner. The judgment relied upon by the petitioner is based on its peculiar facts and not applicable to the facts of this case. In the instant case, perusal of the copy of the complaint annexed to the petition would show that allegations against the petitioner, who is termed as accused No. 6 in the complaint are in Para 10 of the complaint, which reads thus:

“That all the accused No. 1 to 6 are jointly and severally liable to pay the amount of dishonoured cheque to the complainant as they all are involved and engaged in day to day activities of the accused No. 1/company and dealt with the complainant jointly”.

8. From the above allegations, it is apparent that the petitioner is sought to be held vicariously liable for the offence under Section 138 N.I.Act committed by the company on the ground that she was involved and engaged in day-to-day affairs of the accused company and she, jointly with other accused persons, dealt with the complainant. Petitioner has also placed on record copy of an agreement dated 25th August, 2004 pursuant to which the cheque which is subject matter of this case was issued by the company in favour of the complainant. The agreement at Annexure P-2, inter alia, recites thus:

“All the Directors and Shareholders were running jointly the business of the company since the date of its incorporation. Now, it has been mutually decided among all the Directors and Shareholders of the company that Sh. Narender Kumar Saxena, Sh. Rajeev Aggarwal, Sh. Sanjeev Aggarwal and Sh. Bharat Bhushan Aggarwal along with Mrs. Anju Aggarwal (Shareholder) shall take over the company, its business along with all its assets & liabilities and all other infrastructure of the company including the debtors and creditors and the remaining two Directors and Shareholders namely, Sh. Atul Gandotra and Sh. Rakesh Gupta shall resign from the Directorship of the Company with immediate effect..”

9. Reading of the aforesaid recital clearly shows that the petitioner Anju Aggarwal was jointly running the business of the company along

with others since the date of incorporation of the company and that after the agreement, it was agreed that the petitioner, along with Narender Kumar Saxena, Rajeev Aggarwal, Sanjeev Aggarwal and Bharat Bhushan Aggarwal shall take over the company and its business along with all its assets and liabilities. From this also, it is prima facie clear that the petitioner, even at the time of issue of cheque was concerned with the management of business of and responsible to the company. Thus, the petitioner is prima facie, vicariously liable for the offence committed by the company under Section 138 N.I.Act in view of Section 141 of the Act. It may also be noted that the complaint arraying the petitioner as an accused was filed way back in the year 2005. The petitioner, however filed, the present petition for quashing of complaint qua her after a long delay of three years in the year 2008. This circumstance in itself shows that the motive behind this petition is to somehow delay the proceedings of trial. Thus, in my view, the petition is nothing but abuse of process of law.

10. In view of the discussion above, I do not find any merit in the petition. It is accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

AUGUST 09, 2011

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