

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

+ **Crl. M.C. No. 1216/2011 & Crl.M.A. 4445/2010 (stay)**

% Reserved on: 3rd October, 2011

Decided on: 1st November, 2011

RAJESH SHARMA

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Nitin Sangra, Adv.

versus

MADHU SEHGAL

..... Respondents

Through: Mr. Kirti Uppal, Sr. Adv. with Mr.
Rohit Sharma, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

1. By the present petition the Petitioner seeks quashing of criminal proceedings emanating from criminal complaint case No. 1609/1/09 titled as Mrs. Madhu Sehgal Vs. Mr. Rajesh Sharma for offence punishable under Section 138 Negotiable Instruments Act (in short N.I. Act). The issue raised

by the Petitioner in the present petition is that in the absence of the company having been arrayed as an accused the Petitioner who had signed the cheque as authorized signatory of the company could not have been summoned, since the cheque was not drawn in his individual capacity on an account maintained by him.

2. Learned counsel for the Petitioner contends that the company M/S. Ramji Dass Motors Pvt. Ltd. and the Respondent Smt. Madhu Sehgal entered into an agreement whereby Smt. Madhu Sehgal let out the premises to the company on the basis of an agreement executed between the parties. The Respondent assured that the necessary repairs etc. would be carried out and thus the lease agreement was signed by M/S. Ramji Dass Motors Pvt. Ltd. through its Director Shri Rajesh Sharma, the Petitioner herein. According to the Petitioner, the tenant M/S. Ramji Dass Motors Pvt. Ltd. gave a demand draft of Rs. 7 lakhs. Since the Respondent needed some assurance that the rent would be paid pursuant to an understanding, two cheques bearing No. 926717 and 926716 dated 21st June, 2009 for a sum of Rs. 1,75,000/- each were handed over on behalf of M/S. Ramji Dass Motors Pvt. Ltd. signed by its authorized signatory the Petitioner herein to the Respondent. It is stated that in the past also the cheques were got signed by two authorized signatories and thus the signature of one authorized signatory were invalid. The cheques got

dishonoured and the Respondent sent the legal notice to the Petitioner. Even the complaint was filed against the Petitioner in the individual capacity though he had signed the cheques in the capacity of Director/ authorized signatory of the company M/S. Ramji Dass Motors Pvt. Ltd. According to the Petitioner no summons could have been issued as the necessary ingredients of Section 138 N.I. Act are not made out. The cheque was neither issued by the Petitioner on his behalf nor was it drawn on the bank account maintained by him. It was issued on behalf of the company and on an account maintained by the company. Vicarious liability of the Petitioner was attracted under Section 141 of the N.I. Act only if the company was made a party. In the absence of the company being made a party, no summons could have been issued to the Petitioner. Reliance is placed on *P.J. Agro Tech Limited & Ors. Vs. Water Base Limited (2010) 12 SCC 146*.

3. Replying to the contention of the Learned Counsel for the Respondent that the Petitioner was the tenant and cheque had been issued by him in discharge of his individual liability, it is contended that even in this fact situation the Petitioner could not be prosecuted as the cheques were not drawn on the bank account maintained by the Petitioner but by the company.

4. Learned counsel for the Respondent on the other hand contends that the Petitioner is trying to mislead. He acted as a sole authority and issued the

cheques drawn on the account maintained by him. In such a situation it cannot be said that in the absence of the company, the Petitioner cannot be prosecuted. Reliance is placed on *Aneeta Hada Vs. Godfather Travels and Tours Private Limited (2008) 13 SCC 703*. Relying on the said judgment it is contended that this is an issue which requires appreciation of evidence and cannot be decided in proceedings under Section 482 Cr.P.C. It is contended that even if it is presumed that the account was meant to be maintained by the company, since the Petitioner was the authorized signatory it will have to be presumed that the Petitioner had the authority to operate the account. Further the trial is at the fag end and in view thereof this Court will not interfere in exercise of its power under Section 482 Cr.P.C.

5. Heard learned counsels for the parties. The necessary ingredients for an offence under Section 138 N.I. Act are that (i) a cheque is drawn by a person on an account maintained by him, (ii) the said cheque has been issued in discharge in whole or in part of any debt or any other liability, and (iii) the same is returned by the bank unpaid due to insufficiency of funds or that it exceeds the amount arranged to be paid.

6. According to the learned counsel for the Petitioner in the present case the first two ingredients are missing as neither the cheques have been issued by the Petitioner nor have they been drawn on an account maintained by him.

According to him, a perusal of the cheques show that they were signed by the Petitioner as authorized signatory of Ramji Dass Motors Pvt. Ltd. and not in his individual capacity on a bank account maintained by the said company and thus neither Petitioner had issued the cheque nor it has been drawn on his individual bank's account. According to Section 141 N.I. Act, the vicarious liability in a case where an offence under Section 138 N.I. Act is committed by a company is of every person who at the time the offence was committed was in charge of and responsible to the company for the conduct of the business of the company. Thus, the vicarious liability of the Petitioner would arise being person incharge and responsible to the company for the conduct of the business of the company. However, in the present case neither any notice has been sent to the company nor it has been arrayed as an accused. In *Aneeta Hada* (supra) this issue came up before the Hon'ble Supreme Court. Their Lordships differed in the views expressed. The matter has been referred to a three Judge Bench. According to Sinha, J. the company in such a situation is the principal offender and must be included in the category of accused and in the absence thereof the Directors cannot be held responsible as accused. It was held that a lead distinction must be borne in mind between cases where a company had not been made an accused, and the one where despite making it an accused it cannot be proceeded against because of a legal bar. However, as

per the view expressed by Sirpurkar, J. it was opined that in the case in hand it was yet to be decided whether the liability was that of the company or the Appellant. It could be a case of personal liability where the Appellant therein was discharging her debts for which she might have misused the cheque of the company. According to the said view whether it was the liability of the company and she was merely vicariously liable would therefore be a premature finding in view of the facts of the case.

7. In *P.J. Agro Tech Limited* (supra) their Lordships held that a complaint under Section 138 of the N.I. Act would not be maintainable against the person who was not the drawer of the cheque from an account maintained by him. It was held that an action in respect of a criminal or quasi-criminal provision has to be strictly construed keeping in view the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence.

8. In view of the contention raised by the learned counsel for the Respondent, the issue raised by the learned counsel for the Petitioner takes a back seat. A perusal of complaint shows that the same has been filed against the Petitioner in his individual capacity and not in his capacity as a Director or authorized signatory of M/s. Ramji Dass Motors Pvt. Ltd. A perusal of the

documents filed by the Respondent shows that the Petitioner had filed a suit against the Respondent before the Learned Senior Civil Judge being CS (OS) No. 826/2009 inter alia seeking permanent injunction for dispossession and not to interfere in the peaceful living. The contention of the Petitioner in the said suit was that the premises was rented out to him by the Respondent for the purposes of residence. Thus the contention of the Petitioner that the premises was leased out to the company is an issue which is required to be adjudicated in trial. The issue that even if the complaint has been filed against the Petitioner in his individual capacity, he cannot be proceeded against as the cheques were drawn on an account held by the company, is also required to be dealt by the Learned Trial Court and not in the present proceedings. The fact whether the Petitioner had the authority to operate the account and the account was maintained by him or not is a finding of fact to be dealt during trial.

9. Thus, I find no reason to quash the complaint in the present petition under Section 482 Cr.P.C. Petition and application are dismissed. However, nothing stated hereinabove will be treated as an expression of opinion on the merits of the case.

(MUKTA GUPTA)
JUDGE

NOVEMBER 01, 2011
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