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

+ **CRL.M.C. No. 482/2011**

% *Judgment delivered on: 9th January, 2012*

ANSHIKA PANDEY & ORS. Petitioner

Through : Mr.Vineet Aggarwal, Adv.

versus

RAVE SCANS P.LTD. Respondent

Through : Mr.Naveen Kr.Chaudhary and
Mr.Shiv B. Chetra, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the instant petition, the petitioner has sought quashing of the order dated 08.12.2011 passed by the Metropolitan Magistrate in Complaint Case No.147/2008 under Section 138 r/w Sections 141 and 142 of the Negotiable Instrument Act, 1881.

2. The issue raised by the petitioner is that the petitioners had resigned way back on 01.11.2007 whereas the cheques in question were issued and dishonoured thereafter on 31.07.2008.

3. In support of his submissions, the ld. Counsel for the petitioner has produced a certified copy of Form-32 whereby this fact has been verified that the petitioners resigned w.e.f.01.11.2007.

4. Ld. Counsel for the respondent on the other hand submits that the company namely M/s Yashi Media Works Pvt. Ltd. is a one family company therefore the respondent/accused No.4 and 5 (petitioners herein) are mother and wife of respondent/accused No.2 and the said payment in question is from 2003 onwards when they were all a part of the said company. Ld. Counsel further submits being the running account the details of the petitioner's four cheques for a sum of ₹5,48,562/- are as under:

(i) Cheque bearing No.592174 dated July 31, 2008 for a sum of ₹1,37,104/- (Rupees one lakh thirty seven thousand one hundred four only) drawn on Corporation Bank, Sarita Vihar, New Delhi-110044;

(ii) Cheque bearing No.592175 dated July 31, 2008 for a sum of 55,776/- (Rupees fifty five thousand seven hundred seventy six only) drawn on Corporation Bank, Sarita Vihar, New Delhi-110044;

(iii) Cheque bearing No.592176 dated July 31, 2008 for a sum of ₹1,15,000/- (Rupees one lakh fifteen thousand only) drawn on Corporation Bank, Sarita Vihar, New Delhi-110044;

(iv) Cheque bearing No.592177 dated July 31, 2008 for a sum of ₹1,15,000/- (Rupees one lakh fifteen thousand only) drawn on Corporation Bank, Sarita Vihar, New Delhi-110044;

Therefore the amount which claimed in the complaint, the petitioners are also liable under Section 138 of Negotiable Instrument Act.

5. Ld. Counsel has relied upon a case of the Supreme Court decided on 13.04.2011 “*Rallis India Ltd. Vs. Poduru Vidya Bhusan & Ors.*” and the relevant portion is reproduced as under:

“8. At the outset, learned counsel appearing for Appellant contended that in the light of the aforesaid averments having been made categorically in the original complaints, no case was made out for discharge of the Respondents. It was also contended that Respondents have denied their vicarious liability for the offences under Section 138/141 of the Act, on the ground that they had retired from the partnership firm in 2001/2002, i.e., much prior to the issuance of the cheques in question in 2004. It is further contended by the learned counsel for the Appellant that the said denial cannot be accepted as it would be a matter of evidence to be considered by the Trial Court. Even the question whether or not they would be responsible for the impugned liabilities would be required to be answered only after the parties go to trial as it is disputed question as to when the Respondents had actually retired from the partnership firm, before the issuance of dishonoured cheques.

11. Thus, in the light of the aforesaid averments as found by us in the Criminal Complaint, we are of the considered opinion that sufficient averments have been made against the Respondents that they were the partners of the firm, at the relevant point of time and were looking after day to day affairs of the partnership firm. This averment has been specifically mentioned by the Appellant in the complaint even though denied by the Respondents but the burden of proof that at the relevant

point of time they were not the partners, lies specifically on them. This onus is required to be discharged by them by leading evidence and unless it is so proved, in accordance with law, in our opinion, they cannot be discharged of their liability. Consequently, High Court committed an error in discharging them. Also, at the cost of repetition, by virtue of their own submissions before the High Court (reproduced in Para 6 above), the Respondents have admitted the fact that the Appellant had referred to them in their capacity as partners who were incharge of the affairs of the firm in the initial complaints. The question as to whether or not they were partners in the firm as on 31.03.2004, is one of fact, which has to be established in trial. The initial burden by way of averment in the complaint has been made by the Appellant.

13. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless parties are given opportunity to lead evidence, it is not possible to come to definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the Respondents ceased to be the partners of the firm.

16. On account of foregoing discussion, we are of the considered opinion that the impugned judgment and order passed by learned Single Judge exercising the jurisdiction conferred on him under Section 482 of the Cr.P.C. cannot be sustained in law. The same are hereby set aside and quashed. The trial court is directed to dispose of the Criminal complaints filed by Appellant at an early date, after giving opportunity of hearing to both sides, in accordance with law. However, the Trial Court would not be influenced by any of the observations made hereinabove and would decide the matters in accordance

with law. The appeals are allowed. Parties to bear their respective costs.

6. After hearing the Id. Counsel for both the parties, I note that the petitioners resigned from the company way back on 01.11.2007 and the cheques were issued subsequently and dishonoured on 13.07.2008.

7. The case referred by the Id. Counsel for the respondent “*Rallis India Ltd. Vs. Poduru Vidya Bhusan & Ors.(supra)*” is not relevant to the effect that in the said case the accused/respondents were partners in the firm whereas in the instant case the company is a legal entity and the other accused are there to join the trial before the trial court, therefore if the petitioners are discharged from the complaint there would be no irreparable loss therefore, I am of the view there is no cause of action against the petitioners.

8. The order dated 08.12.2008 passed by Id. MM in Complaint Case No.147/2008 is set aside qua the petitioners namely Ms. Anshika Pandey W/o Shri Uttkarsh Pandey and Ms. Anita Pandey W/o Shri Ashok Kumar Pandey.

9. Criminal M.C. No.482/2011 is disposed of.

M.A. No.1859/2011

M.A. No.1859/2011 dismissed as infructuous.

SURESH KAIT, J

JANUARY 09, 2012

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