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

+ CRL.M.C. 2386/2011

% Judgment delivered on: 2nd February, 2012

SHIV KUMAR GOEL & ORS Petitioner
Through : Mr. Harish Khanna, Adv

versus

STATE & ANR Respondent
Through : Ms.Rajdipa Behura, APP for
State/R-1.
Mr.D.C. Sharma, Adv R-2 in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1 Learned counsel for the petitioners submits that initially respondent No.2 filed the complaint before the Court of Learned CMM; Delhi wherein learned Metropolitan Magistrate, Central District, Delhi passed the order dated 25.11.2010 as under:-

“4. Written arguments were filed on behalf of the complainant. From the above facts and circumstances and evidence, it appears that the complainant had entrusted the money to the accused No.7 & 8 which they have misappropriated by not transferring the same to the d-mat account of the complainant as per his instructions. Therefore, both the accused i.e. accused No.7 and 8 are summoned u/s 406 IPC.

5. The allegation of threatening the complainant is not substantiated as no evidence has produced on record for the same. Therefore, complaint is dismissed with regard to the allegation of threat of life. From the facts and evidence on record, no offence against any of other accused is made out."

2 Vide the aforesaid order dated 25.11.2010, learned Metropolitan Magistrate summoned accused Nos.7 & 8 under Section 406 Indian Penal Code, 1860. Further observed that allegation of threatening the complainant is not substantiated as the complainant has not produced any evidence on record for the same. Thus, the complaint was dismissed with regards to the allegation of threat of life, as no offence against any other alleged accused was made out.

3 Learned counsel for the petitioners submits that complainant in the aforesaid complaint case, challenged the aforementioned order dated 25.11.2011 passed by the learned Metropolitan Magistrate, Central District, Delhi by way of filing Criminal Revision No.70/2010 before the Sessions Court and same is pending for disposal.

4 Learned counsel for the petitioners has drawn the attention of this Court that the respondent No.2 filed the aforesaid complaint dated 07.08.2008 mentioning the jurisdiction of police station Darya Ganj. Thereafter, respondent No.2 after the gap of about 12 days filed another complaint case bearing C.C. No.2046/1/2008 before the learned Metropolitan Magistrate exercising jurisdiction over Police Station Kamla Market.

5 Learned counsel for the petitioners has submitted that respondent No.2 has concealed the factum of filing the earlier complaint case qua the same cause of action and its pendency before the learned Metropolitan Magistrate having the jurisdiction over police station Darya Ganj.

6 Since the aforesaid facts were not before the learned Metropolitan Magistrate having the jurisdiction over the police station Kamla Market, vide order dated 06.04.2011 passed in criminal complaint case bearing C.C.No.2086/1/2008, summoned petitioner Nos.1 to 8 and the fixed the matter for 21.05.2011.

7 Learned counsel for the petitioners submits that since qua the same cause of action, the earlier complaint filed by the respondent No.2 was dismissed against petitioner Nos.1 to 6, which is still pending before the Court of learned Metropolitan Magistrate having jurisdiction over the police station Darya Ganj and respondent No.2 filed a subsequent complaint after a gap of 12 days, wherein the learned Metropolitan Magistrate having jurisdiction over police station Kamla Market vide order dated 06.04.2011 has issued summons against the petitioner Nos.1-- 8.

8 I note that the complaint case No. 120/1 filed by complainant/respondent No.2 on 07.08.2008 was dismissed vide order dated 25.11.2010 by learned MM-VIII, Central District, Delhi finding no evidence on record.

9 Being aggrieved, the respondent No.2 challenged the order dated 25.11.2010 passed by learned MM in Sessions court in revision and the same was dismissed on 28.01.2012, had attained the finality.

10 I, therefore, note that in the second complaint vide CCNo. 2086/1 having jurisdiction of P.S. Kamla Market filed on 19.08.2008, however same allegations were made as were there in the first complaint.

11 I also note that while filing the second complaint, the complainant/respondent No.2 did not disclose that the first CCNo. 120/1 which was dismissed by the first court and Revisional court.

12 Learned counsel for respondent has referred to Sections 27 & 32 of SEBI, the same are reproduced below :-

“Offences by companies.

27.(1) Where an offence under this Act has been committed by 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 such person liable to any punishment provided in this Act, 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.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-

For the purposes of this section, -

(a) "company" means any body corporate and includes a firm or other

association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

Application of other laws not barred.

32. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

13 In the judgment passed by learned Additional Sessions Judge, FTC (Central) : Delhi, vide its order dated 28.01.2012, the following order was passed:-

“7 I have considered rival submissions in the light of evidence on record and relevant case law. It is settled law that the Director of the company cannot be held vicariously liable for the offences allegedly committed by the Company. In the present case, the complainant/petitioner has examined three witness including himself at the pre-summoning stage. It is pertinent to mention that CW-1 Sh. Vinod Kurnar and CW-2 Sh.Ravi Grover have also been arrayed as accused Nos. 9 & 8 by the complainant/petitioner in the complaint case pending before the learned Trial Court and accused No.8 has also been summoned as aforesaid. However, I refrain myself from making any observation in this regard, as it is not the subject matter of the present revision petition.

8 The learned trial court after appreciating the evidence on record observed that on the basis of material on record, it prima facie appears that the money was entrusted to accused Nos. 7 & 8 who were misappropriated by not transferring the same to the Demat account of the petitioner/complainant.

9 It is well settled law that the Directors of the company cannot be held vicariously liable in the absence of the company

having been arrayed as an accused. Thus, I find that the impugned order suffers from no illegality or infirmity”

14 I am of the considered opinion that since both the cases pertain to same cause of action, the first complaint filed by respondent No.2 was dismissed and had attained finality, therefore, the consequent complaint being filed by respondent No.2 on the same cause of action, is not maintainable.

15 In the circumstances, I quash the CCNo. 2086/1 of P.S. Kamla Market titled as Dayachand Sharma, Vs. Shiv Kumar Goel and all the proceedings emanating therefrom. Consequently, the order dated 06.04.2011 passed by learned MM is set aside.

16 Criminal M.C. 2386/2011 is allowed.

17 No order as to costs.

SURESH KAIT,J

FEBRUARY 02, 2012

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