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

\+ CRL.M.C. 2213/2013 & Crl.M.A. No. 8559/2013

GUJARAT OLEO CHEM LTD. & ORS.

..... Petitioners

Through Mr. Abinash K. Mishra, Adv.

versus

STATE & ANR.

..... Respondents

Through Mr. Navin Sharma, APP for the State.
Mr. Jayant K. Sood, Mr. Vishal Dabas and Mr. Ujas KUmar, Advs. for R-2.

AND

\+ CRL.M.C. 333/2010 & Crl.M.A. Nos. 1186/10, 7855/2013

GUJARAT OLEO CHEM LTD & ORS

..... Petitioners

Through Mr. Abinash K. Mishra, Adv.

versus

STATE & ANR

..... Respondent

Through Mr. Navin Sharma, APP for the State.
Mr. Jayant K. Sood, Mr. Vishal Dabas and Mr. Ujas KUmar, Advs. for R-2.

AND

\+ CRL.M.C. 334/2010 & Crl.M.A. Nos. 7857/2013, 1188/10

GUJARAT OLEO CHEM LTD & ORS

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..... Petitioners

Through Mr. Abinash K. Mishra, Adv.

versus

STATE & ORS

..... Respondent

Through Mr. Navin Sharma, APP for the State.
Mr. Jayant K. Sood, Mr. Vishal Dabas and Mr. Ujas KUmar, Advs. for R-2.

AND

\+ CRL.M.C. 353/2011 & Crl.M.A. Nos. 7856/2013, 1387/2011

GUJARAT OLEO CHEM LTD. & ORS.

..... Petitioners

Through Mr. Abinash K. Mishra, Adv.

versus

STATE & ANR.

..... Respondent

Through Mr. Navin Sharma, APP for the State.
Mr. Jayant K. Sood, Mr. Vishal Dabas and Mr. Ujas KUmar, Advs. for R-2.

AND

\+ CRL.M.C. 4034/2011 & Crl.MA Nos. 18852/2011 and 7858/2013

GUJARAT OLEO CHEM LTD & ORS

..... Petitioners

Through Mr. Abinash K. Mishra, Adv.

versus

STATE & ANR

..... Respondent

Through Mr. Navin Sharma, APP for the State.
Mr. Jayant K. Sood, Mr. Vishal Dabas and Mr. Ujas KUmar, Advs. for R-2.

AND

\+ CRL.M.C. 4035/2011 & Crl.M.A. Nos. 7860/2013, 18855/2011
GUJARAT OLEO CHEM LTD & ORS

..... Petitioners

Through Mr. Abinash K. Mishra, Adv.

versus

STATE & ANR

..... Respondent

Through Mr. Navin Sharma, APP for the State.
Mr. Jayant K. Sood, Mr. Vishal Dabas and Mr. Ujas KUmar, Advs. for R-2.

AND

\+ CRL.M.C. 4036/2011 & Crl.M.A. Nos. 7861/2013, 18857/2011
GUJARAT OLEO CHEM LTD & ORS

..... Petitioners

Through Mr. Abinash K. Mishra, Adv.

versus

STATE & ANR

..... Respondent

Through Mr. Navin Sharma, APP for the State.
Mr. Jayant K. Sood, Mr. Vishal Dabas and Mr. Ujas KUmar, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

ORDER

% **29.05.2013**

By this order I propose to dispose of these petitions filed by the petitioners against the respondents. Mr. Abinash K. Mishra, counsel appearing for the petitioners submits that the controversy raised in these petitions is squarely covered by the judgment of this Court passed in the case of *Manish Kant Aggarwal vs National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) & Anr. Reported in 156 (2009) DLT 415* and another judgment of this Court passed in Crl.M.C. No. 3781/2009 on 16th December, 2009. Counsel also submits that the judgment of this Court passed in Crl.M.C. No. 3781/2009 was between the same parties and the said order was never challenged by the respondents. Counsel for the petitioners further submits that after the said decision of this Court, respondent No.2 had filed various other complaint cases and in those

complaint cases respondent No.2 has not impleaded the petitioners. Counsel for the petitioners has drawn attention of this Court to the details of all such cases, enumerated in para (vii) of the grounds of these petitions.

Based on the above submissions, counsel for the petitioners submits that the petitioners have no objection if the respondent No. 2 may continue with these complaint cases against Mr. Santosh Dheeraj Pathak, who has signed the cheques in question in his individual capacity.

Mr. Jayant K. Sood, counsel appearing for respondent No.2 seeks time to file reply. Counsel also submits that so far the case of Manish Kant Aggarwal is concerned, aggrieved party had already filed SLP bearing No. 18720/2009 in the Hon'ble Supreme Court.

I have heard learned counsel for the parties.

Indisputably, the cheques in question were signed by Mr. Santosh Dheeraj Pathak, who happens to be the Chairman and Managing Director of M/s Gujarat Oleo Chem Limited. On a perusal of the photocopy of the cheques placed on record, it is quite manifest that these cheques have not been signed on behalf of the said company. This Court in the case of Manish Kant Aggarwal vs N.A.C.M.F. of India, has already taken a view that the combined reading of Section 138 and Section 141 of Negotiable

Instruments Act, 1881 would clearly show that a drawer for such complaints based on the dishonoured cheques necessarily has to be a company itself and thereafter, the other question would arise as to which of the directors and other functionaries of the company were responsible for the conduct and affairs of the business of the company. It was also held that the prosecution against the Directors and other beneficiaries of the company would arise only when the company itself is the drawer of such dishonoured cheques and only then vicarious liability of the company would shift on such directors and other functionaries of the company and not otherwise. The said view taken by this Court has already been reiterated by the coordinate Bench of this Court in Crl. M.C. No. 3781/2009.

In the background of the said legal position, this Court cannot take any different view as has earlier been taken by this Court in the said two judgments. The Court is also not oblivious of the fact that the said order dated 16th December, 2009 was not challenged by the respondent and rather thereafter, respondent No. 2 had filed various complaints only against Mr. Santosh Dheeraj Pathak in his individual capacity without impleading the petitioners herein.

In the light of the above, these present petitions are allowed.

The order of summoning dated 15.12.2008, 21.7.2008, 16.10.2007, 26.9.2008, 22.10.2009, 7.1.2010 and 3.8.2009, passed against the petitioners are quashed. However, complaints filed by the respondents shall continue qua Santosh Dheeraj Pathak.

KAILASH GAMBHIR, J

MAY 29, 2013
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