

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

Date of decision: 24th January, 2013

+ **CRL. M.C. 1443/2012**

P.D. GUPTA & ANR. Petitioners
Through: Ms. Amrita Sharma, Adv.

versus

ECE INDUSTRIES LTD. Respondent
Through: Mr. Dilraj Kumar, Adv.

+ **CRL. M.C. 1444/2012**

P.D. GUPTA & ANR. Petitioners
Through: Ms. Amrita Sharma, Adv.

versus

ECE INDUSTRIES LTD. Respondent
Through: Mr. Dilraj Kumar, Adv

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. By virtue of these two Petitions, the Petitioners who have been prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1882 (the Act) invokes inherent powers of the Court under Section 482 of the Code of Criminal Procedure (Cr.P.C.) for quashing of the complaint dated 23.06.2011 mainly on the premise that they had ceased to be Directors of M/s. Twilight Litaka Pharma Limited, who according to the Respondent was guilty of committing an offence

under Section 138 of the Act and the Petitioners were vicariously liable as Directors thereof being and in charge of and responsible for the conduct of its business to the company.

2. The Petitioners' plea is that since they ceased to be the Directors much before the issuance of the cheques, which according to the complainant were dishonoured, they cannot be fastened with the liability as Directors of the company.
3. As per the averments made in the complaint an inter corporate loan of ₹2,25,00,000/- was granted in favour of M/s. Twilight Litaka Pharma Limited. A cheque bearing No.191060 dated 21.04.2011 for ₹1 crore and another cheque No.191062 dated 28.04.2011 for ₹1.25 crores both drawn on the State Bank of India, Empire House Branch, Fort Mumbai were issued by the said M/s.Twilight Litaka Pharma Limited towards discharge of the liability. In addition, two cheques towards payment of interest were also given which were admittedly honoured on presentation.
4. According to the Respondent, when the cheques were presented for encashment, the same were dishonoured on the ground of '*funds insufficient*'. A legal notice under Section 138 of the Act was served upon the borrower company and on failure to make the payment within the statutory period, two separate complaints in respect of two cheques were instituted in the Court of learned Metropolitan Magistrate ('MM').
5. The learned counsel for the Petitioners relies on Form 32 in respect of two Petitioners to contend that Petitioner No.1 ceased to be the Director w.e.f. 25.09.2010 whereas Petitioner No.2 (Sanjeev D. Tole) ceased to be the Director w.e.f.12.01.2011. In MAC APP.1443/2012, the cheques in

question were issued on 21.04.2011 and were dishonoured on 02.05.2011. In MAC APP.1444/2012 the cheque was issued on 28.04.2011 and was dishonoured on 02.05.2011. Thus, it is urged that since the Petitioners were not the Directors on the date of dishonour of the cheques, rather, they were not a Director even on the date of issuance of the cheques, they cannot be fastened with the liability under Section 138 of the Act as on ceasing to be Director of the Company, they cannot be said to be in charge of and responsible for the conduct of its business.

6. On the other hand, learned counsel for the Respondent urges that all these are triable issues. It will be seen only during the trial of the complaint whether the Petitioners had ceased to be the Directors of the company on the date the cheques were dishonoured.
7. This question directly came up before the Supreme Court in *Harshendra Kumar D. v. Rebatilata Koley & Ors. (2011) 3 SCC 351*. In the said case, the Appellant resigned from the company w.e.f. 02.03.2001. As per Form 32, information regarding resignation was received by the Registrar of Companies (ROC) on 04.03.2004. A contention was raised before the Supreme Court that merely on issuance of the summons, the High Court should not look into the matter placed on record by the accused which is essential to be gone into only at the time of the trial. The Supreme court while agreeing with the general proposition of law that the defence of an accused cannot be seen in a proceeding under Section 482 Cr.P.C. held that where the material relied upon by an accused is in the nature of a public document or the material which is beyond suspicion or doubt, the same can very well be looked into in exercise of the inherent jurisdiction under Section 482 Cr.P.C. Thus, relying on Form 32, the complaint was

quashed on the ground that the proceeding with the criminal complaint would tantamount to abuse of the process of the Court. Paras 20,21,24,25,26 & 27 of the report are extracted hereunder:-

“20. On 4-3-2004, the Company informed the Registrar of Companies in the prescribed form (Form 32) about the resignation of the appellant from the post of Director of the Company and, thus, the change among Directors.

21. The above documents placed on record by the appellant have not been disputed nor controverted by the complainants. As a matter of fact, it was not even the case of the complainants before the High Court that the change among Directors of the Company, on resignation of the appellant with effect from 2-3-2004, has not taken place. The argument on behalf of the complainants before the High Court was that it was not permissible for the High Court to look into the papers and documents relating to the appellant's resignation since these are the matters of defence of the accused person and defence is a matter for consideration at the trial on the basis of evidence which cannot be decided by the High Court. The complainants in this regard relied upon a decision of the Single Judge of that Court in Fateh Chand Bhansali (2005) 4 ICC 117 (Cal).

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24. In Awadh Kishore Gupta [(2004) 1 SCC 691 this Court while dealing with the scope of power under Section 482 of the Code observed:

“13. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the court to act as if it was a trial Judge.”

25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance,

materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents — which are beyond suspicion or doubt — placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

26. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company.

27. As noticed above, the appellant resigned from the post of Director on 2-3-2004. The dishonoured cheques were issued by the Company on 30-4-2004 i.e. much after the appellant had resigned from the post of Director of the Company. The acceptance of the appellant's resignation is duly reflected in the Resolution dated 2-3-2004. Then in the prescribed form (Form 32), the Company informed to the Registrar of Companies on 4-3-2004 about the appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of

the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court.”

8. Turning to the facts of the instant case, as per Form 32 which document is available in public domain, and which has not been disputed by the Respondent by filing reply to the Petition, in spite of opportunities being granted to it, there is no gainsaying that the Petitioners were not the Directors of the company on the date of the dishonour of the cheque, that is, on 02.05.2011, they having resigned much earlier, that is, 25.09.2010 and 12.01.2011 respectively.
9. A reference in this connection may also be made to a judgment of this Court in *M.L. Gupta v. DCM Financial Services Limited* 167 (2010) DLT 428. In similar circumstances, the complaints were quashed by the Delhi High Court in Criminal MC Nos.1317/2009, 1318/2009, 1319/2009, 1320/2009, 1321/2009 & 1322/2009.
10. Since it is apparent from Form 32 that the Petitioners ceased to be the Directors of the Company much before the date of dishonour of the cheques, it would be an abuse of the process of the Court to proceed with the complaint as against the Petitioners.
11. Both the complaints qua the Petitioners are quashed.
12. The Petitions are allowed in above terms.
13. Pending Applicants also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 24, 2013

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