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

+ CRL.M.C. 2568/2013
JAIDEEP BOLA Petitioner
Through: Ms. Sima Gulati, Advocate

versus

BRIDGESTONE INDIA PVT LTD Respondent

+ CRL.M.C. 2571/2013
JAIDEEP BOLA Petitioner
Through: Ms. Sima Gulati, Advocate

versus

BRIDGESTONE INDIA PVT LTD Respondent

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
% **08.07.2013**

Crl.M.A.No. 9913/2013 (Exemption) in Crl.M.C.No. 2568/2013
Crl.M.A.No. 9923/2013 (Exemption) in Crl.M.C.No. 2571/2013

Allowed subject to all just exceptions.

Crl.M.C.No. 2568/2013 & Crl.M.A.No. 9912/2013
Crl.M.C.No. 2571/2013 & Crl.M.A.No. 9922/2013

In the above-captioned two petitions, the challenge is to the order of 16th May, 2012 vide which petitioner has been summoned as an accused for the offence under Section 138 of Negotiable Instruments Act.

CrI.M.C.No.2568/2013 relates to dishonour of cheques of ₹45 lac whereas CrI.M.C.No.2571/2013 pertains to dishonour of cheques amounting to ₹59,62,500/-.

With the consent of petitioner's counsel, the above-captioned petitions were heard together and are being disposed of together by this common order as the facts in these two petitions are quite similar and the grounds of challenge to the impugned order are identical.

Petitioner has been arrayed as accused No.3 in the two complaints under Section 138 of Negotiable Instruments Act. At the hearing, learned counsel for petitioner drew attention of this Court to termination notice of 27th July, 2011 as well as e-mail of 12th August, 2011 (*Annexure C colly*) and communication of 2nd August, 2011 (*Annexure D*) written by petitioner's co-accused Sandeep Bola to respondent-complainant and submitted that there was no whisper of any role of petitioner in the conduct of business of accused company in the aforesaid documents. It was pointed out by petitioner's counsel that even FIR for the offence under Section 406/420 IPC lodged by respondent-complainant is qua co-accused Sandeep Bola and is silent about the role played by petitioner in respect of transaction, which is subject matter of the complaints under Section 138 of Negotiable Instruments Act. Reliance was placed upon decisions in *Girdhari Lal v. D.H.Mehta & Anr.* 1971(3) SCC 189 and *Sham Sunder & Ors. v. State of Haryana* (1989) 4 SCC 630 to contend that prosecution has to be of a person in-charge and responsible for the conduct of the affairs of the company, which includes partner of a firm who is in-charge of the business. It is vehemently contended by petitioner's counsel that a person in-charge of the accused company is co-accused Sandeep Bola and not the

petitioner and so impugned order as well as proceedings emanating therefrom deserve to be quashed qua petitioner.

After having heard learned counsel for petitioner and upon perusal of the impugned order, material on record and the decisions cited, I find that it is specifically averred in complaints under section 138 of Negotiable Instruments Act that petitioner and his co-accused Sandeep Bola are in-charge and responsible to the conduct of the business of the firm and they are having overall control of day-to-day business of the accused firm. It is pertinent to note that petitioner had sent a legal notice of 23rd August, 2011 (*Annexure E*) to respondent-complainant which though has not been responded to but in this notice (*Annexure E*) petitioner has invoked arbitration clause which *prima facie* justifies summoning of petitioner as an accused in the complaints under Section 138 of Negotiable Instruments Act. Two decisions relied by petitioner's counsel pertain to proceedings under Essential Commodities Act, 1955 and Foreign Exchange Regulation Act, 1947, which have no direct bearing on the instant proceedings under the Negotiable Instruments Act. Apex Court in *Ramrajsingh v. State of M.P. & Anr.* (2009) 6 SCC 729 has reiterated that there should be clear and unambiguous allegations about accused being in-charge and responsible for conduct of the business of company and if such allegations are not there, then such complaints under Section 138 of Negotiable Instruments Act would not be entertainable. In the instant case, there are specific allegations of petitioner and his co-accused Sandeep Bola being in-charge and responsible for the work and conduct of the business of the accused firm. Since the clear cut allegations in the criminal complaint under Section 138 of Negotiable Instruments Act coupled with petitioner's legal notice,

provides sufficient grounds for proceeding against petitioner as an accused, therefore, no case for quashing of complaints No. 87/1/12 & 88/1/12 is made out. Impugned order of 16th May, 2012 does not suffer from any palpable error. Thus, finding no substance in these two petitions, they are hereby dismissed while not commenting upon merits of the case.

The above-mentioned petitions as well as applications stand disposed of accordingly.

(SUNIL GAUR)
Judge

JULY 08, 2013
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