

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

+ CRL.M.C. 5479/2014

Date of Decision : July 29th, 2016

VIJAY MALLYA

..... Petitioner

Through: Mr. Ramesh Gupta, Senior Advocate
with Mr. Ajay Bhargava, Mr. Rajiv
Bhatnagar, Mr. Aseem Chaturvedi, Mr.
Vipul Joshi, Advocates

versus

DELHI INTERNATIONAL AIRPORT PRIVATE LIMITED

..... Respondent

Through: Ms. Geeta Luthra, Senior Advocate
with Mr. L.K. Singh, Mr. S.K. Singh,
Mr. Aayush Chandra, Advocates for
respondent.

WITH

+ CRL.M.C. 5480/2014

VIJAY MALLYA

..... Petitioner

Through: Mr. Ramesh Gupta, Senior Advocate
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Bhatnagar, Mr. Aseem Chaturvedi, Mr.
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WITH

+ CRL.M.C. 5481/2014

VIJAY MALLYA

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Mr. Aayush Chandra, Advocates for
respondent

AND

+ CRL.M.C. 5482/2014

VIJAY MALLYA

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Through: Mr. Ramesh Gupta, Senior Advocate
with Mr. Ajay Bhargava, Mr. Rajiv
Bhatnagar, Mr. Aseem Chaturvedi, Mr.
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Mr. Aayush Chandra, Advocates for
respondent

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. These four petitions have been filed by the petitioner under Section 482 & 483 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the “Cr.P.C.”) for quashing of order dated 02.09.2014, passed by the learned Sessions Judge, Patiala House Courts, New Delhi whereby the revision petition moved by the petitioner was dismissed, which was filed against the order dated 13.01.2014 passed by the learned Metropolitan Magistrate summoning the petitioner as an accused under Section 319 of the Cr.P.C. Since the present petitions have been preferred against common impugned orders dated 13.01.2014 and 02.09.2014, all the petitions are being decided together.

2. The factual matrix, as per record, is that the respondent/complainant had filed four complaints under Section 138, 139, 141 and 142 of the Negotiable Instruments Act, 1881 read with Sections 406, 415 and 420 of the IPC against the accused persons, namely, M/s Kingfisher Airlines Limited, Mr.Sanjay Aggarwal (Chief Executive Officer), Mr.A. Raghunathan (Chief Financial Officer), Mr.Inder Singh (Authorized Signatory) and Mr.G. Visweswaran (Authorized Signatory). The Court below had taken the cognizance on 22.06.2012. The complainant had adduced pre-summoning evidence. Summons against the above accused persons were issued on 22.06.2012. On 12.08.2015, notice under

Section 251 of the Cr.P.C. was framed against the accused persons.

3. During the pendency of the complaints, application under Section 319 Cr.P.C. was filed by the complainant for summoning the petitioner as an accused. The learned Magistrate vide common order dated 13.01.2014, allowed the said application and summoned the petitioner as accused. Thereafter, the petitioner filed four revision petitions which were dismissed by the Court of Session vide common order dated 02.09.2014. Feeling aggrieved by the same, the present petitions have been preferred by the petitioner.

4. Arguments advanced by Mr.Ramesh Gupta, Senior Advocate for the petitioner as well as of Ms.Geeta Luthra, Senior Advocate for the respondent were heard.

5. Arguments advanced by the learned Senior Counsel for the petitioner that power to summon an accused under Section 319 Cr.P.C. can be exercised only once some additional evidence has been recorded before the Court, but in the present case there was nothing against the petitioner in the pre-summoning evidence and the Court below has proceeded only on the basis of averments made in the application. It was further argued that both the Courts below have overlooked the applicability of Sections 138(1)(b), 141 and 142(1) of the Negotiable Instruments Act. It was further argued that issuance of legal notice under Section 138(1)(b) of the Act is a mandatory requirement, but in the present case no such notice was ever issued to the petitioner. The complainant deliberately chose to exclude the petitioner from the array of

parties as an accused as the complainant was well aware that the petitioner was not involved in day to day operations of Kingfisher Airlines. It was further argued that the application under Section 319 Cr.P.C. filed by the complainant was barred by limitation as it was moved after 18 months of issuance of legal notice.

6. On the other hand, learned Senior Counsel for the respondent argued that it is not in dispute that the petitioner was the Chairman and Managing Director of the Kingfisher Airlines and thus was fully responsible for the day to day affairs of the company and thus was liable to be prosecuted. It was further argued that as per Section 141 of the Negotiable Instruments Act, every person who at the time of commission of offence was the incharge or was responsible for the conduct of the business of the company, shall be liable to be proceeded against. Initially due to inadvertence, the petitioner could not be impleaded but the same cannot absolve the responsibility of the petitioner who being C&MD of the company had failed to comply with the requirement of the legal notice.

7. The contention of the petitioner is that there was no evidence against the petitioner in the pre-summoning evidence led by the complainant and thus, there was no question to summon the petitioner under Section 319 Cr.P.C. It has been contended that the term 'evidence' referred in Section 319 includes cross-examination of witness and in the present case only examination in chief was recorded. In the absence of cross-examination of the complainant witness, it cannot be construed as evidence and therefore, there

was no stage to summon the petitioner under Section 319 Cr.P.C.

8. In similar situation, the Hon'ble Apex Court in the case of *Hardeep Singh v. State of Punjab & Ors. (ILC-2014-SC-CRL-Jan-5)* observed that :

“Thus, in view of the above, we hold that power under Section 319 Cr.P.C. can be exercised at the stage of completion of examination in chief and court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.”

9. In view of the above law laid down by the Hon'ble Apex Court in the case of *Hardeep Singh* (supra), the examination in chief of a witness is sufficient to term it as an 'evidence', as mentioned in Section 319 Cr.P.C. to summon accused. In the present case, it is matter of record that the pre-summoning evidence by the witness of the complainant was tendered by way of affidavit. Tendering of evidence by way of affidavit was the examination in chief of the witness and as the accused persons were not summoned till then, there was no question of any cross-examination of said witness. Adducing evidence during pre-summoning evidence clearly covers the case of the complainant for summoning the petitioner as an accused under Section 319 Cr.P.C.

10. The other contention on behalf of the petitioner is that his

name was not mentioned in the complaint, therefore, he could not have been impleaded as accused in the complaint case. The Hon'ble Apex Court in the case of ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr.*** MANU/SC/0622/2005 held that :

“The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of an responsible for the conduct of business of the company. Therefore, they get covered under Section 141.”

In ***Kirshna Texport & Capital markets Ltd. v. Ila A. Agrawal & Ors.*** (Criminal Appeal No.1220 of 2009), the Hon'ble Apex Court held that :

“15. If the requirement that such individual notices to the directors must additionally be given is read into the concerned provisions, it will not only be against the plain meaning and construction of the provision but will make the remedy under Section 138 wholly cumbersome. In a given case the ordinary lapse or negligence on part of the Company could easily be rectified and amends could be made upon receipt of a notice under Section 138 by the Company. It would be unnecessary at that point to issue notices to

all the directors, whose names the payee may not even be aware of at that stage. Under Second proviso to Section 138, the notice of demand has to be made within 30 days of the dishonour of cheque and the third proviso gives 15 days time to the drawer to make the payment of the amount and escape the penal consequences. Under clause (a) of Section 142, the complaint must be filed within one month of the date on which the cause of action arises under the third proviso to Section 138. Thus a complaint can be filed within the aggregate period of seventy five days from the dishonour, by which time a complainant can gather requisite information as regards names and other details as to who were in charge of and how they were responsible for the affairs of the Company. But if we accept the logic that has weighed with the High Court in the present case, such period gets reduced to 30 days only. Furthermore, unlike proviso to clause (b) of Section 142 of the Act, such period is non-extendable. The summary remedy created for the benefit of a drawee of a dishonoured cheque will thus be rendered completely cumbersome and capable of getting frustrated.

16. In our view, Section 138 of the Act does not admit of any necessity or scope for reading into it the requirement that the directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by

the Company under Section 138. Therefore neither on literal construction nor on the touch stone of purposive construction such requirement could or ought to be read into Section 138 of the Act....”

In *National Small Industries Corp. Ltd. v. Harmeet Singh Paintal and Anr.* MANU/SC/0112/2010, the Hon’ble Apex Court observed that as per Section 141 of the Negotiable Instruments Act what is required is that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, at the time the offence was committed, in-charge of and responsible for the conduct of the business of the company. Only those persons who were incharge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action. The liability arises from being in-charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed.

11. It is not in dispute that the petitioner was the Chairman and Managing Director of Kingfisher Airlines Limited and thus was the incharge and fully responsible for the day to day business of the said company. It is also not in dispute that the cheques in question were issued by the said company and the petitioner being its Chairman and Managing Director was responsible for the conduct of the business of the company. Therefore, mere non-mentioning of the name of the petitioner in the complaint cannot absolve him of the responsibility of the company which issued the

cheques in question. Thus, there was no need to issue notice by the complainant in the name of the petitioner as the cheques in question were issued by the company and the petitioner being its incharge was equally liable to be prosecuted.

12. Undisputedly, the petitioner was the Chairman and Managing Director of the company and as per the judgment in the case of *S.M.S. Pharmaceuticals* (supra), the Managing Director would be responsible for day to day affairs of the company. The argument advanced by the learned Senior Counsel for the petitioner that the petitioner was not intervening in the day to day proceedings of the company, is of no consequence when the cheques in question were issued during the course of day to day business transactions for the benefit of the company. More the reason that in the complaint filed before the Trial Court the company had already been impleaded as one of the respondents.

13. The only part left is that the name of Mr.Vijay Mallya as Chairman and Managing Director of the company was not added in the original complaint filed under Section 138 of the Negotiable Instruments Act. Adding the name of Mr.Vijay Mallya during the proceedings brought forth before the Court below that he was the Chairman and Managing Director of the company which is guilty for dishonouring the cheques in question, would be covered under Section 141 of the Negotiable Instruments Act and cannot be termed as abuse to the process of law as envisaged in Section 482 Cr.P.C.

14. In view of the above facts and circumstances, this Court is

of the considered opinion that the order passed by the learned Trial Judge cannot be termed as unsustainable or illegal or abuse to the process of law and no ground is made out to set aside the same.

15. Consequently, all the four petitions and applications, if any, are hereby dismissed.

(P.S.TEJI)
JUDGE

JULY 29, 2016
dd

