IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27440 of 2014

Arising Out of PS.Case No. -2203 Year- 2012 Thana -BEGUSARAI COMPLAINT CSAE District-BEGUSARAI

==

1. Chhatar Singh Dugar, S/o Late Mr. C.R. Duggar, C/o Vikash Metal & Power Ltd., Flat 3 C, 5, S.R. Das Road, P.S. - Tollygunge, Kolkata- 700026.
2. Rakesh Kumar Jain S/o Bhag Chandra Jain C/o Vikash Metal & Power Ltd., 14, Vijay Kumar Mukherjee Road, 16, Golabari, Howrah - 711106.

.... Petitioners.

Versus

1. The State of Bihar
2. Subhash Chandra Bose S/o Late Shailendra Nath Bose, Manager, Neo Carbons Pvt. Ltd., Hajipur Pokhar, P.O. - Pipra Debas, P.S. - Barauni, District – Begusarai. .... Opposite Parties.

==

Appearance :

For the Petitioners : Mr. Gautam Kejriwal, Advocate.
Mr. Mohit Agrawal, Advocate.
Ms. Ashwariya Riti, Advocate.

For the Opposite Party No.2 : Mr. Chandan Kumar Kashyap, Advocate.

For the State : Mr. Nazir Ansari, A.P.P.

==

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 12-07-2017

Heard learned counsels for the petitioners, opposite party no.2 and learned A.P.P. for the State.

2. This application under Section 482 of the Code of Criminal Procedure Code has been preferred against the order dated 08.04.2013 passed by the learned Chief Judicial Magistrate, Begusarai in Complaint Case No.2203 (C) of 2012, whereby finding prima facie case against the petitioners under Section 138 of the Negotiable Instrument Act, the learned Magistrate has directed to issue summons against all the accused persons named in the complaint petition including the petitioners.

3. It has been submitted by learned counsel for the petitioners that it is the accused no.6 – Mr. Vikash Patni who had issued cheque, in question, in favour of the complainant. The said accused happens to be the Managing Director of the Company, as evident from Annexure-3 annexed with this application of the petitioners. So the said accused is solely accountable for the consequences of bouncing of the cheque and not the petitioners who were simply Directors of the Company and are not vicariously liable for the act of the said accused.

4. On the other hand, it has been submitted by learned counsel for the opposite party no.2 that the complainant has filed the complaint petition against the Company and its Directors, and if the petitioners are exempted from their liabilities and said Vikash Patni leaves the Company and becomes fugitive how the amount could be recovered? So he has impleaded all the Directors of the Company in the case and the petitioners who happen to be the Directors of the Company, are also liable for the offence committed as alleged in the complaint petition.

5. The complaint case has been filed under Sections 406 and 420/34 of the Indian Penal Code and Sections 138 and 141 of the Negotiable Instrument Act against the petitioners and others claiming the accused nos.1 and 2 a Private Limited Company and accused nos.3 to 8 its Directors who are jointly and severely liable for the affairs of the said Company, with the allegation in succinct that regarding some commercial dues and share money, a cheque of Rs.1,50,000.00 was issued by the accused no.6, Vikash Patni, one of the Directors of the said Company in favour of the complainant. On presentation of the said cheque before the bank, the same was dishonoured with remarks that the funds insufficient. A legal notice was given to the accused persons for payment of the cheque amount, but in vain.

6. During the course of enquiry, the complainant examined himself on solemn affirmation and also examined one witness, namely, Vinod Kumar Singh in support of his case. The learned Magistrate, after perusing the complaint petition and solemn affirmation of the complainant and evidence of his witness, finding prima facie case under Section 138 of the Negotiable Instruments Act, ordered for issuance of summons against all the accused persons vide impugned order.

7. It is the admitted case of the parties that the cheque in question was issued by accused no.6 -Vikash Patni, said to be Director of the said Company, to the complainant. All petitioners happen to be Directors of the said Company. But from perusal of Annexures-2 & 3, it appears that the said Vikash Patni is not the Director rather the Managing Director of the Company. Hon’ble Supreme Court in the case of **S.M.S. Pharmaceuticals**

Ltd. Vs. Neeta Bhalla and another reported in **2005 (4) PLJR 148 (SC)** in paragraph-20 has been pleased to observe as follows:

> 20. In view of the above discussion, our answers to the questions posed in the Reference are as under:
>
> (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.
>
> (b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as

> there is no deemed liability of a director in such cases.
>
> (c) The answer to question (c) has to be in 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 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 and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque, which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.

8. Admittedly, the petitioners happen to be the Directors of the Company and cheque was issued by Mr. Vikash Patni, who happens to be the Managing Director of the said Company. Hence, it is the Vikash Patni who is liable for the consequence of bouncing of the said cheque and not the petitioners.

9. The apprehension of learned counsel for the opposite party no.2 that he would be deprived to recover his amount if the petitioners are exempted from their liabilities and Mr. Vikas Patni leaves the Company and becomes fugitive, does not appear to be plausible as the Company M/s Vikash Metal and Power Ltd. has been made accused in the case as accused nos.1 and 2 and the Company is always represented through its Director or Managing Director, so merely escaping of Mr. Vikash Patni would have no bearing on the claim of the opposite party no.2.

10. The learned lower Court appears to have not applied his mind on the aforesaid aspect of the case and has taken cognizance against the petitioners in a mechanical and slipshod manner. Hence, the impugned order is quashed regarding the petitioners only and this application is allowed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.07.2017
Transmission Date	17.07.2017