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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 681 of 2015**

Ratan Singh Bhamara S/o Prem Singh Bhamara Aged About 38 Years
R/o Kabir Chowk, Ram Nagar, Tah. And District Raipur Chhattisgarh.

---- Petitioner**Versus**

1. Kingsway Elevator Private Limited And Ors. Near Agrasen Hospital, Samta Colony, Raipur, District Raipur Chhattisgarh.
2. Ajit Kumar Jha, Director Kingsway Elevator Private Limited, Near Agrasen Hospital, Samta Colony, Raipur, District Raipur Chhattisgarh.
Other Address : Ajit Kumar Jha, Aged 46 Years, S/o Udit Narayan Jha, Director Kingsway Elevator Private Limited, R/o Park Street No. 1, Near Dashhara Ground, Choubey Colony, Raipur, District Raipur Chhattisgarh.
3. Priyanka Jha, Director Kingsway Elevator Private Limited, Near Agrasen Hospital, Samta Colony, Raipur, District Raipur Chhattisgarh.
Other Address : Ajit Kumar Jha, Aged 46 Years, S/o Udit Narayan Jha, Director Kingsway Elevator Private Limited, R/o Park Street No. 1, Near Dashhara Ground, Choubey Colony, Raipur, District Raipur Chhattisgarh.
4. State Of Chhattisgarh Through The District Magistrate Raipur Chhattisgarh.

---- Respondents

For the Petitioner	: Shri Raghvendra Pradhan, Advocate.
For the Respondent/State	: Shri Vivek Singhal, PL for the State.
For respondents No.1 to 3.	: Shri Vivek Kumar Tripathi, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****21.09.2017**

Heard.

Admit

1. This petition under Section of 482 of Cr.P.C has been brought with prayer to quash the impugned order passed by the First Additional Sessions Judge, Raipur affirming the order passed by the trial Court

discharging respondent No.3 from the complaint case.

2. Petitioner has filed a complaint case against respondents No. 1,2 and 3 in which the respondent No.1 is a company namely Kingsway Elevator Private Limited Company, and respondents No.2 and 3 are Directors of the said company. The trial Court after taking cognizance of offence under Section 138 of the Negotiable Instruments Act, 1881 issued notices, on which respondents appeared before the Court below. At the stage of reading out substance of accusation, the trial Court relying on the Judgment of Supreme Court in case of **Aparna A. Shah v. Sheth Developers (P) Ltd., (2013) 8 SCC 71** passed the order dated 16.04.2014 discharged respondent No.3. This order was challenged before the Sessions Court in Criminal Case No.144/2014 and the First Additional Sessions Judge by order dated 31.01.2015 dismissed the revision, hence this petition.
3. It is submitted by learned counsel for the petitioner that the trial Court and the Revisional Court below have erroneously passed the orders Judgment of Supreme Court in case of **Aparna A. Shah v. Sheth Developers (P) Ltd., (2013) 8 SCC 71** has not laid down any guidelines to be followed in this case. It is submitted that a judgment is precedent of its own facts hence, factual situation of this backgrounds of this case had been different to other principles laid down in **Aparna A. Shah** (supra) case. It is prayed that the petition be allowed and the order passed by the Court below be set aside.
4. Learned counsel for the respondent No.3 submits that the ratio laid down in **Aparna A. Shah** (supra) is applicable in this case as respondent No.3 was not in-charge of the business and nor was responsible for the business conducted by the company. Reliance has

been also placed on the Judgment of Supreme Court in **N.K. Wahi vs Shekhar Singh And Ors 2007 2 SCC 658 SC** in which Hon'ble Supreme Court relying on the judgment of **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr., [2005] 8 SCC 89**, held that it is necessary for the complainant to make averment in complaint that when the offence was committed the person being a Director of the company was in-charge and responsible for the conduct of the business of the company. Hence, prayed that this petition being sans merit is liable to be dismissed.

5. Learned counsel for respondent No.4/State is a formal party.
6. I have heard the learned counsel for the parties and perused all the document placed on record.
7. On perusal of the copy of the complaint it is clear that in paragraph 2 of the complaint it is averred that respondent No.1 is a private limited company and respondent No. 2 and 3 are its Directors and used to conduct the business of company jointly. This averment itself cannot be regarded as sufficient for the purpose of Section 141 of Negotiable Instrument Act. In *Aparna A. Shah's case* (supra) the Supreme court has held in paragraph 28 of the judgment that in case of issuance of the cheque from the joint account, the joint account holder cannot be prosecuted unless the cheque has been signed by each persons who is holding account jointly.
8. Apart from that the petitioner in *Aparna A Shah* (supra), in capacity of accused in case under Section 138 of Negotiable Instrument Act, was not a office bearer of the company. On the contrary the company was complainant in that case. Hence the issue in *Aparna A. Shah's case* (supra) was regarding the issuance of cheque by one of the joint

account holders. Thus, the ratio laid down in that case has no application in the present case. The trial Court has mis-conceived in following the ratio of this judgment while discharging respondent No.3 from the complaint case.

9. On the basis of the reasons aforementioned, judgment in **N.K. Wahi vs Shekhar Singh** (supra) does not give any support to the case of respondent No.3.
10. Consequently, on the basis of the aforementioned reason, this petition deserves to be allowed and it is accordingly, allowed at the motion stage itself. The order passed by the trial Court and the order passed by the Revisional Court are hereby quashed.
11. Respondent No.3 is directed to give her appearance before the trial Court on **06.12.2017**.

Sd /-

(Rajendra Chandra Singh Samant)

Judge