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

\+ CRL.M.C. 920/2016 & CRL.M.A. 3825/2016

VED PRAKASH VIJAY KUMAR UPADHYAYA ..... Petitioner
Through Mr. Vikas Agarwal and Mr. Sujit Gupta, Advs.

versus

STATE OF NCT & ORS. ..... Respondents
Through Ms. Meenakshi Chauhan, APP for the State
Ms. Savita Malhotra, Adv. for respondent no. 2

AND

\+ CRL.M.C. 1811/2016 & CRL.M.A. 7680/2016

VED PRAKASH VIJAY KUMAR UPADHYAYA .... Petitioner
Through Mr. Vikas Agarwal and Mr. Sujit Gupta, Advs.

Versus

STATE OF NCT & ORS. ..... Respondents
Through Ms. Meenakshi Chauhan, APP for the State
Ms. Savita Malhotra, Adv. for respondent no. 2

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

7

ORDER

% **01.08.2017**

Petitioner has been arrayed as accused no. 3 in the complaint under Sections 138/142 of the Negotiable Instruments Act, 1881 ("the Act", for short) filed by the respondent no. 2 before the trial court; wherein, he has been summoned under Section 138 of the Act.

That is how petitioner is before this court by this petition under Section 482 Cr.PC, for quashing of the complaint qua him.

Learned counsel for the petitioner submits that, no specific role of the petitioner has been specified in the complaint to show that petitioner was responsible for the day-to-day affairs of M/s. Zaira Diamonds India Pvt. Ltd. (respondent no. 3). Petitioner was not even Director of the respondent no. 3 when the business transactions took place between the respondent nos. 2 and 3 in the year 2014 pursuant whereof the cheques were initially issued. Petitioner joined as a Director of respondent no. 3 on 17^{th} June, 2015, thus, he could not have been summoned by taking aid of Section 141 of the Act. Reliance has been placed on Pooja Ravinder Devidasani vs. State of Maharashtra and Anr. (2014) 16 Supreme Court Cases 1, to contend that

8

each and every Director is not liable under Section 141 of the Act for the offence committed by the company under Section 138 of the Act. Specific averments against the Director, showing as to how and in what manner he/she was responsible for conduct of business of the company as to be averred in the complaint.

I find the judgment relied upon by the learned counsel for the petitioner to be in the context of different facts and the same is of no help to the petitioner. In this case, the complainant specifically states that petitioner is the current Director and was involved in day-to-day running business of the company as on the date of presentation of the cheques. It has been specifically stated that accused no. 2 (respondent no. 4) had issued seven fresh cheques between 5th August, 2015 to 25th August, 2015 (details of the cheques have been given in para 6 of the complaint). All the cheques were presented as per the instructions of the accused and upon presentation, the same were dishonoured. In para 8 of the complaint, it is specifically mentioned that petitioner and respondent no. 4, in the last week of September, 2015, instructed the complainant (respondent no. 2) to present the cheques under reference for encashment.

From a perusal of the complaint it is clear that, as on the date of issuance of the fresh cheques, which are the subject matter of the complaint, petitioner was very much the Director of the company. Specific allegations have been levelled against the petitioner that he, along with the co-accused, had asked for presentation of the cheques.

It is noted that petitioner had also filed Crl. M.C. No. 1810/2016 in the similar facts for quashing of the complaint case on the same grounds which has been dismissed by a Bench of co-ordinate jurisdiction vide order dated 9th February, 2017. In the said case also, petitioner has alleged that when the transaction took place and invoices were raised between 23rd September, 2014 to 28th March, 2015, he was not a Director, inasmuch as, his role was not specified in the complaint. The Learned Single Judge has observed thus:-

> 4. As noted above, the cheque were issued from 5th August to 28th September, 2015 and the petitioner was appointed a Director of company on 17th June, 2015. Thus, on the date when the cheques in question were issued, the petitioner was the Director of the company M/s. Zaira Diamond India Pvt. Ltd. In the complaint it is specifically stated that on the assurance and instructions of the petitioner and co-accused Manoj Jain the cheques were presented which were dishonoured. Whether

10

> the petitioner can be fastened with the liability of the dishonour of cheques would be an issue which can be considered only during trial and at this stage it cannot be said that no prima facie case for issuing summons against the petitioner is made out."

For the foregoing reasons, both the above petitions are dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

AUGUST 01, 2017
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