$~23

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

\+ CRL.M.C. 1446/2017

DHARMENDRA YADAV & ANR ..... Petitioners

Through: Mr. Sidharth Mahajan and Mr. Vivek Narayan Sharma, Advs.

versus

VIJAY LAXMI GUPTA ..... Respondent

Through: Mr. Sanjiv Joshi, Ms. Meenakshi and Mr. Kalyan, Advs. for R-1.

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

<u>O R D E R</u>

% 09.11.2017

By this petition under Section 482 of the Code of Criminal Procedure, 1908, petitioners have prayed for quashing of complaint case no. 1002/2015 titled Vijay Laxmi Gupta vs. M/s Dewa Coloniser Pvt. Ltd. & Ors. qua the petitioners.

Respondent no.1 (complainant) has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') against M/s Dewa Coloniser Pvt. Ltd. wherein petitioners have also been impleaded as accused nos. 2 and 3. Petitioners have been impleaded by taking aid of Section 141 of the Act, which reads as under :-

> "(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person

liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: [22] [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.— For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

In para 2 of the complaint, it has been alleged as under :-

"2. That the accused no.1 is private limited company working through its Authorised Signatory Shri Kulbhushan Shukla and accused nos. 2 to 5 are Managing Director and directors of the accused no.1 company. The accused no.6 is authorised signatory of accused no.1. The accused nos. 2 to 6 are equally responsible for day to day affairs of accused no.1 company."

As already noted above, petitioners have been arrayed as accused nos. 2 and 3 respectively. As per the respondent no.2 (complainant), petitioners were managing director/directors of respondent no.2 and were responsible for the day to day affairs of respondent no.2. It has not been specified as to how petitioners were responsible for day to day affairs of the company, inasmuch, as Form-32 was not placed on record along with the complaint.

As per the complaint, respondent no.1 had booked a 2 BHK flat in a residential project proposed to be developed by the respondent no.2-company. He had paid ₹6,03,889/- to respondent no.2 on two occasions, including the booking amount. Respondent no.2 did not raise construction, accordingly, respondent no.1 approached the respondent no.2 with the request for cancellation of booking of the flat to which respondent no.2 agreed. Accused no. 6 (respondent no. 5) Kulbhushan Shukla, being the authorised signatory of respondent no.2, with the consent and knowledge of accused no.2 (petitioner no.1) and accused no. 5 (respondent no. 4) issued cheque no. 723523 dated 20/03/15 for Rs.6,67,613/- drawn on Indusind Bank, Sector 18, NOIDA, U.P. from the account of respondent no.2. However, the said cheque was returned dishonoured on presentation vide Return Memo dated 16/04/2015. The cheque amount was not paid despite statutory notice, hence the complaint.

By placing reliance on Form-32, which is at pages 80 and 81 of the paper book, learned counsel for the petitioners has contended that petitioners were not even Directors when offence was committed. They were not Directors even when cheque was issued. It is submitted that petitioners had resigned as directors of respondent no.2 with effect from 17/05/13. They were neither directors nor holding any post in respondent no.2 as on the date of issuance, presentation of the cheque and when it was returned dishonoured. Accordingly, ingredients of Section 141 of the Act are not attracted against the petitioners. Petitioners were not responsible for day to day affairs of the company as on the date when the offence was allegedly committed by the respondent no.2.

In Dinesh Mohindra and Anr. vs. DCM Financial Services Ltd. and Ors. MANU/DE/1544/2009, a learned Single Judge of this Court has held that Form-32 is a statutory document evidencing the change in the status of the directors of the company. In the instant case, certified copy of Form-32 was filed before the trial court and a true copy whereof has been placed on record in these proceedings. It is not the case of respondent that form 32 is not a genuine document. A perusal of Forum-32 makes it clear that petitioners had resigned as directors of respondent no.2 way back on 17/05/13 and were not in the helm of affairs of respondent no.2-company when the offence was allegedly committed. Accordingly, in my view, offence under Section 138 of the Act, prima facie, is not made out against either of the petitioners.

For the foregoing reasons, complaint case no. 1002/2015 titled Vijay Laxmi Gupta vs. M/s Dewa Coloniser Pvt. Ltd. & Ors. is quashed qua the petitioners.

Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

NOVEMBER 09, 2017/ga