

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

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Reserved on: 18th January, 2017

Decided on: 3rd February, 2017

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CRL.M.C. 3744/2012

GOPAL GUPTA

..... Petitioner

**Represented by: Mr. P.D. Gupta, Sr. Adv. with
Mr. Abhishek Gupta, Adv.**

versus

SILVER LINE INCORPORATION

..... Respondent

Represented by: Mr. Vikas Tiwari, Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. A complaint case was filed by the respondent M/s Silver Line Incorporation against the petitioner Gopal Gupta C/o Vijay Polymers Pvt. Ltd. being Complaint Case No.1274/2009 under Section 138 of the Negotiable Instruments Act (in short 'NI Act') alleging that on the request of the petitioner, some goods were supplied by the complainant and in lieu of the supply, 8 cheques were issued totaling for a sum of ₹3,88,684/- drawn on Union Bank of India, Punjabi Bagh, New Delhi. When the cheques were presented, the same were returned unpaid with the endorsement 'funds insufficient' vide memos dated 18th December, 2004. The complainant sent legal notice dated 20th January, 2005 which was duly served on the petitioner/accused by way of registered AD post and UPC. Despite service of legal notice, neither any reply was received nor payment was made hence offence punishable under Section 138 NI Act had been committed.

2. Since the complaint was barred by limitation and not maintainable on other counts as well, the petitioner filed a petition being Crl.M.C. 1609/2008 before this Court which was allowed vide order dated 11th May, 2009 to the extent the order of the Metropolitan Magistrate condoning the delay was set aside and the matter was remanded back to learned Metropolitan Magistrate for passing fresh orders after hearing the accused. Thus, according to the petitioner, the issue of maintainability of the complaint itself was not decided vide order dated 11th May, 2009. Thereafter, the learned Metropolitan Magistrate dismissed the application seeking condonation of delay filed by the respondent which order was upheld in the revision petition by the learned Additional Sessions Judge. The respondent filed a petition before this Court being Crl.M.C. 3768/2010 wherein vide order dated 17th November, 2011 delay was condoned subject to payment of ₹25000/- as cost and the matter was remanded back. Learned Metropolitan Magistrate summoned the petitioner afresh vide order dated 16th January, 2012.

3. The sole ground urged before this Court seeking quashing of the criminal complaint is that the cheques have been drawn by the petitioner as Director of the Company for an account maintained by the company and not as an individual. Since no legal notice was issued to the company nor the company has been made an accused, thus no summons could be issued on the criminal complaint against the petitioner, who acted in his capacity as the Director of the company in view of the decision of the Supreme Court reported as (2012) 5 SCC 661 Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.

4. Learned counsel for the respondent on the other hand contends that the complaint was filed by the respondent in the year 2005 when the decision

was not rendered by the Supreme Court in case of Aneeta Hada (supra) and rather the legal position was that a complaint was maintainable even against the drawer of the cheque even if the company had not been impleaded as an accused. Reliance is placed on the decision of the Supreme Court reported as (1999) 5 SCC 693 Bilakchand Gyanchand Co. Vs. A. Chinnaswami.

5. In Bilakchand Gyanchand Co. (supra) the Supreme court held that summons issued to the Managing Director of the company who was the signatory of the cheque were justified and High Court erred in quashing the same in a petition under Section 482 Cr.P.C. Even in the decision reported as (2001) 1 SCC 631 Rajneesh Aggarwal Vs. Amit J. Bhalla relied upon by learned counsel for the respondent, the Supreme Court upheld the trial for an offence punishable under Section 138 NI Act where notice has been issued to the Director concerned of the drawer company who had signed the cheque. The Supreme Court relying upon its earlier decision in Bilakchand Gyanchand Co. (supra) held that the notice to the Director who had signed the cheque was sufficient notice and the complaint was not liable to be quashed.

6. However, the larger Bench of the Supreme Court in Aneeta Hada (supra) considering the issues whether the company could have been made liable for prosecution without being impleaded as an accused and whether the Directors could be prosecuted for offence punishable under Section 138 NI Act without the company being arrayed as an accused held –

“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the

company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery[(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

7. The contention of learned counsel for the respondent that the complaint is not liable to be quashed against the petitioner as the same was filed prior to the decision rendered by the larger bench of the Supreme Court in Aneeta Hada (supra) as at the time of filing of complaint the legal position as per the various pronouncements was that a complaint without arraying the company as a co-accused was maintainable, is liable to be rejected in view of the decision of the Supreme Court reported as 2015(5) SCALE 245 Anit Balse Vs. Capt. Ranga Karkere wherein it was held-

“20. Learned counsel appearing on behalf of the respondent while accepting that Adiwasi Machua Samiti, Sirsida

on whose behalf cheque was issued was not impleaded as accused before the trial court, contended that judgment in Aneeta Hada's case cannot be made applicable retrospectively in respect of cases where the conviction took place much prior to the judgment. However, such objection cannot be raised in the present case. Though judgment in Aneeta Hada's is perspective but is applicable in all pending cases, including the trial, appeal, revision and special leave petition/appeal pending before this court. The case of the appellant being covered by the decision in Aneeta Hada's case, we set aside the impugned judgment and conviction passed by the trial court as affirmed by the appellate court and impugned order dated 31.08.2012 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Revision No.365 of 2012."

8. The present petition is disposed off quashing the complaint case No.1274/2009 titled Silverline Incorporation Vs. Gopal Gupta and the proceedings pursuant thereto.

(MUKTA GUPTA)
JUDGE

FEBRUARY 03, 2017
'v mittal'