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

+ CRL.M.C. 2715/2017 & Crl. M.A. Nos. 11221-22/2017

KANARATH PAYATTIYATH BALARAJ Petitioner
Through Mr. Siddharth Agarwal, Mr. A. Jha,
Mr. A.R. Dharma, Mr. N. Pillai and
Mr. Amogh, Advs.

versus

PVR LIMITED Respondent
Through Mr. Sandeep Sharma, Proxy counsel

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

ORDER
% **13.11.2017**

Learned counsel for the petitioner submits that vide judgment dated 23rd February, 2017, passed in a batch of petitions, lead case being Crl. M.C. No. 3303/2016 titled Kanarath Payattiyath Balraj vs. Raja Arora, a learned Single Judge of this Court has quashed the summoning order against the petitioner in the similar facts. By following the said judgment, vide order dated 3rd August, 2017 passed in Crl. M.C. No. 2656/2016 titled Kanarath Payattiyah Balraj vs. Ashok Arora I have also quashed the Complaint Case no. 25/1/16 qua the petitioner.

It is noted that several criminal complaints under Section 138 of the

Negotiable Instruments Act, 1881 ('the Act', for short) have been filed in the similar facts in respect of different cheques, wherein petitioner has been impleaded as Director of Vasan Health Care Pvt. Ltd., by taking aid of Section 141 of the Act.

It is contended that petitioner was an independent non-executive nominee director in the year 2009. He subsequently, resigned from the company in the year 2015. Thus, he cannot be held liable vicariously for the offence committed by the company, by taking aid of Section 141 of the Act. This plea of petitioner has been accepted in the aforesaid cases.

The learned Single Judge, in paras 14 and 15, of the above-referred judgment has held as under:-

“14. As has been noted above, the Petitioner was appointed as an independent non executive nominee director in 2009 and he subsequently resigned from the company in the year 2015. In terms of Section 149(12) of the Companies Act, 2013 he shall be held liable, only in respect of such acts of omission or commission by the company which had occurred with his knowledge or consent or connivance or where he had not acted diligently attributable through Board processes. Thus specific averments are required to

be made in the complaint to show that the offence was committed with the knowledge/ consent/ connivance of the Petitioner.

15. Merely because the petitioner is the Director of Sequoia India Investment Holding which finances Vasana Health Care and by virtue thereof is a nominee independent director of Vasana Health Care, he cannot be held to be responsible for the day-to-day affairs of Vasana Health Care. Even otherwise the contentions now raised during the course of arguments and in the reply affidavits are not part of the complaints. In the complaints it is merely stated that accused No.2 to 8 are the directors of the company and have been actively participating in day-to-day affairs of the company and take all the decisions for the company. Admittedly, the petitioner is not the Managing Director of Vasana Health Care nor the signatory to the cheque. He is also not the person responsible for day-to-day functioning of Vasana Health Care. No vicarious liability can be fastened on the petitioner in the absence of specific role being attributed to the petitioner.”

This case arises from the Criminal Complaint Case No.153/1/16 wherein petitioner has been impleaded on the allegations that he was a

Director of the concerned company and have been participating in day-to-day affairs of the company. He has taken a plea that he was a nominee independent Director and was not responsible. This plea has already been accepted in the above referred cases.

For the foregoing reasons, Complaint Case No. 573/1/15 titled PVR Limited vs. Vasan Health Care Pvt. Ltd. is also quashed qua the petitioner.

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

A.K. PATHAK, J.

NOVEMBER 13, 2017
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