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

+ CRL.M.C. 3127/2017

KUNAL KHANNA Petitioner

Through: Mr. Kuljeet Rawat, Adv.

versus

SUMAN SAHAI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **10.08.2017**

It is not in dispute that petitioner is one of the directors of M/s Ashoka Machine Tools International Pvt. Ltd. (accused no.1) in the complaint case No.473462/2016 under Section 138 of the Negotiable Instruments Act, 1881 (the Act, for short). Petitioner has been impleaded as accused no. 3 in the complaint by invoking Section 141 of the Act.

Section 141 of the Act envisages that if the person committing an offence under section 138 of the Act 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.

By placing reliance on SMS Pharmaceuticals Ltd. vs. Neeta Bhalla &

Anr., 2005 (8) SCC 89, learned counsel for the petitioner has contended that each and every director is not liable under Section 141 of the Act. It is only the director, who is wholly responsible for the affairs and conduct of the accused company, is vicariously liable to be prosecuted under Section 141 of the Act. It is further submitted that a specific averment has to be made in the complaint as to in what manner the person, who has been impleaded as an accused under Section 141 of the Act, is responsible for the day to day affairs of the company. It is further contended that no such averment was made in the complaint, even then the Magistrate chose to summon the petitioner as an accused. Petitioner preferred a revision petition before the Sessions Judge which has been dismissed by the order dated 3rd July, 2017, which is impugned in this petition under Section 482 Cr.P.C. Sessions Judge has noted in para 10 of the order as under:-

“In terms of record of the instant matter, complainant/respondent before Ld. Trial Court placed on record the information, in pursuance to the directions of Hon’ble High Court in Sudip Jain vs. ECE Industries 2001 (203) Delhi Law Times 461 which reflects the status of petitioner as one Director out of two Directors of the company as on the date of issuance of cheque. The extract of company’s master data pertaining to accused company was also brought on record confirming the status of the petitioner being one of the two Directors/Signatories of accused company as on the date of issuance of cheque.”

I have perused the master data, which clearly indicates that petitioner along with the other Director Ashwani Kumar is one of the signatory, on behalf of the company.

In my view, petitioner being one of the signatory, on behalf of the company, can safely be, prima facie, presumed to be in the helm of the affairs of the company. This shows his active participation in the day to day affairs of the company. This fact, coupled with the statement in the complaint that petitioner was director and responsible for the affairs of the company, is sufficient to summon the petitioner. There are two concurrent findings of the courts below in this regard, which in my view, need not to be interfered by this Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C.

Petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

AUGUST 10, 2017

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