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

\+ CRL.M.C. 448/2017

KIRTI GYANCHANDANEY ..... Petitioner

Through Mr. Alok Bachawat, Adv

versus

M/S VINISHMSA INFRASTRUCTURE PVT LTD & ORS ..... Respondents

Through Mr. Saryagya Sharma, Adv
Mr. Alok Bhachawat, Adv for complainant

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

O R D E R

% 12.09.2018

Petitioner filed a complaint under section 138 NI Act, 1881 ("the Act", in short) against M/s Vinishmsa Infrastructure Pvt Ltd, (Respondent no.1). Respondent nos. 3 to 5 were impleaded as accused nos. 3 to 5, being Directors of respondent no.1. Managing Director of respondent no.1 namely Shri Jai Kishan Pahlajrai Jethra was impleaded as accused no.2. However, he expired during the pendency of trial.

After recording pre-summoning evidence vide order dated 4th March, 2016, learned Metropolitan Magistrate had summoned the respondents under sections 138 of the Act. Respondents filed a Revision Petition before the Sessions Court which has been disposed of by the learned Addl. Sessions Judge-04, South East District, Saket, New Delhi vide order dated 17th December, 2016. Summoning order qua respondent nos. 3 to 5 has been set aside. Learned Addl. Sessions Judge has held that the cheque liability pertained to the Managing Directors' personal liability and for that purpose, even if a cheque was issued by him from the account of the company, that ipso facto was not sufficient enough for binding or fixing any such liability or responsibility upon the other Directors of the Company in as much as their roles had not been described or explained in detail to fix their responsibility.

That is how petitioner is before this Court by way of present petition under section 482 CrPC. A perusal of the dishonoured cheque, makes it amply clear that the same has been issued by the respondent no.1 company. There is nothing to indicate that the cheque was issued by the Managing Directors in his personal capacity or to clear his personal liability. Even otherwise, this finding could not have been returned without trial.

In paragraph no 3 of complaint (petitioner) has categorically stated that the Managing Director of accused no.1 (respondent no.1) approached the petitioner for financial assistance of ₹45 lakhs as money was required to pay to some vendor and also to pay off his daughter and son-in-law. In paragraph no. 4 it has been categorically stated that petitioner agreed to extend financial help on repeated requests of respondent nos. 2 to 5. It has also been stated in paragraph no.4 that respondent no.2 (since deceased) along with respondent nos. 3 to 5 again approached the petitioner for immediate financial assistance of ₹15 lakhs out of ₹45 lakhs, as promised by the petitioner. Accordingly, this amount was paid in cash. Post Dated Cheque no.275502 dated 12.04.2015 for ₹15 lakhs drawn on Syndicate Bank, Defence Colony, Lajpat Nagar, New Delhi was issued by the respondent no.1. On 7th March, 2015, petitioner gave ₹29 lakhs to respondents. This amount was paid partly through RTGS of ₹20 lakhs from the savings account of the petitioner and balance ₹ 9 lakhs was paid in cash. To repay this amount cheques bearing no.275505 and 275506 for ₹20 lakhs and ₹9 lakhs respectively were issued by the respondent no.1. It is further stated that on 2nd June, 2015, ₹15 lakhs given on 12th February, 2015, was repaid through RTGS. However, respondent nos. 2 to 5 requested the petitioner to hold the aforesaid cheques, till the last week of July, 2015, which was agreed by the petitioner. It is stated that, cheques were presented on 29th July, 2015 but were returned dishonoured with the remarks 'insufficient funds' on 31st July, 2015. Petitioner contacted the respondent nos. 2 to 5 after dishonour of said cheques at which they apologised and sought time till first week of September, 2015 for repayment alongwith interest. On 3rd August, 2015 original cheque nos. 275505 & 275506 were returned against receipt and post dated cheque no.275512 dated 10th September, 2015 for ₹31 lakhs was issued in lieu of dishonoured cheques along with interest. At the time of issuing the cheque, respondent nos. 2 to 5, on behalf of respondent no.1 company gave assurance that cheque would be honoured and encahsed on presentation. However, cheque was returned dishonoured on 7th October, 2015 with the remarks 'Stop Payment'. On request of complainant, respondents herein paid ₹10 lakhs through RTGS on 21st November, 2015 and 1st December, 2015 and promised to pay the balance ₹21 lakhs. Since the amount was not paid, complainant presented the aforesaid cheque for encashment only for ₹21 lakhs, however the cheque was returned unpaid.

It is thus clear that specific averments have been made against the respondents including respondent nos. 3 to 5 and it has been specifically averred in the complaint that respondent nos. 2 to 5 had been looking after the day-to-day affairs of respondent no.1 company.

Whether respondent nos. 3 to 5 were looking after the day-to-day affairs of respondent no.1 or not, is subject matter of trial. Whether any such assurances were extended by respondents is also a matter of trial.

For the foregoing reasons, in my view order passed by the learned Additional Sessions Judge is perverse and has resulted in miscarriage of justice to petitioner. Accordingly, impugned order is set aside.

Respondent nos. 3 to 5 to appear before the Trial Court on 31st October, 2018, the date already fixed.

A.K. PATHAK, J

SEPTEMBER 12, 2018
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