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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 634/2015 & CRL.M.A. 2436/2015, 2438/2015**

RUBI MEHRA

..... Petitioner

Through: Mr. Rana S. Biswas with Ms. Vijeta
Mukherjee & Mr. Upender Singh,
Advocates.

versus

O.P.KAPOOR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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09.10.2018

1. On the basis of the criminal complaint dated 09.01.2014 (CC No.123/01/2013) of the respondent, the Metropolitan Magistrate, after preliminary inquiry, issued summons, *inter alia*, against the petitioner, she having been described in the array of accused as Director of M/s Divine Automobiles Pvt. Ltd., which itself was impleaded as seventh accused, the offence alleged being under Section 138 of Negotiable Instruments Act, 1881 (N.I. Act), the liability of the petitioner and some of the other accused, aside from the company accused, being invoked with reference to Sections 141/142 of N.I. Act.

2. The allegations in the complaint case which is pending on the file of the Metropolitan Magistrate, primarily are that two cheques bearing nos. 633286 and 633287 for Rs.9 lakhs each, they bearing dates 10.10.2013 and 10.11.2013, were issued by the company accused to discharge its liability,

the same upon presentation having been returned unpaid, no payment having been made in respect of issuance of notice of demand in wake of such dishonour of cheques, the petitioner and others similarly placed, being persons who were looking after the day to day affairs of the said company in the conduct of its business during the relevant period.

3. The petitioner has filed the present petition under Section 482 of Code of Criminal Procedure, 1973 (Cr.P.C.) with the submission that she had been appointed as the Director of the company with effect from 24.02.2011 and further that she had resigned from the said position with effect from 19.10.2011, reliance being placed on forms no.32 which were submitted online with the Registrar of Companies on both occasions by the company. The petitioner thus contends that it has been wrongly alleged in the complaint that she was one of the Directors of the company or further that she was involved or responsible for the conduct of the affairs of the company during the relevant period.

4. The respondent was duly served and entered appearance through counsel. On 21.03.2016, his counsel submitted that he did not wish to file any reply to the petition. Thus, there is no contest to the averments of the petitioner and the documents filed in support thereof that her connection with the company accused was only during the period 24.02.2011 till 19.10.2011.

5. The petition remained pending even after it had been made clear by the respondent (complainant) through counsel that he was not filing any response to the petition. During the subsequent period, the respondent passed away. This fact came on record at the instance of the counsel

representing him on 01.08.2017. This issue came to the fore even on the last date i.e. 30.07.2018. The counsel submitted that he was not aware of the present status. Today, when the matter is taken up, there is no appearance on that side. The counsel for the petitioner submitted that an application has been moved by the legal heirs of the complainant which application is expected to be allowed by the Metropolitan Magistrate for which the matter is listed on 12.10.2018.

6. Be that as it may, the complainant having not resisted the prayer in the petition, there is no reason why this petition should have remained pending.

7. Given the above facts indicating the petitioner didn't have any concern with the company accused after her resignation with effect from 19.10.2011, she cannot be held accountable with reference to Section 141 of N.I. Act respecting cheques which were issued in October and November, 2013. Thus, the impugned order to the extent thereby the petitioner was summoned as accused in the afore-mentioned case is set aside. The proceedings against her in the afore-mentioned case are quashed. This disposes of the pending applications.

8. *Dasti* under the signatures of Court Master.

R.K.GAUBA, J

OCTOBER 09, 2018

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