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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 20th August, 2018

\+ CRL. M.C. 1655/2015 & Crl.M.A. 11097/2015

ECL FINANCE LTD. ..... Petitioner

Through: Mr. Sunil K. Mittal, Mr. Gurpreet Singh, Mr. Raveesh Thukral & Mr. Kshitij Mittal, Advs.

versus

MS. SUKHMANI BEDI & ANR. ..... Respondents

Through: Mr. Ashim Vachher, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had instituted a criminal complaint (CC No. 541/2013) in the court of Metropolitan Magistrate on 03.04.2013 involving offence punishable under Section 138 of Negotiable Instruments Act, 1881. The respondents herein were impleaded in the said criminal complaint as third and fifth prospective accused, this in addition to M/s Cedar Infonet Private Ltd. (accused no.1), Lt. Col. H.S. Bedi (accused no.2) and Ms. Maninder Bedi (accused no.4). The allegations in the case concerned a cheque bearing no. 933743 dated 28.02.2013 for Rs. 52,64,384/- which had been issued under the signatures of Lt. Col. H.S. Bedi (second accused) against the account of M/s Cedar Infonet Pvt. Ltd. (first accused) which, upon presentation by the petitioner, was dishonoured. It was alleged that a

notice of demand was issued to all the five persons, arrayed as accused on 05.03.2013, to which there was no response, nor any payment received and consequently the offence under Section 138 of Negotiable Instruments Act, 1881 had been committed.

2. The Metropolitan Magistrate, after preliminary inquiry, issued summons, by order dated 04.06.2013, against all the five persons shown in the array of accused, they including the respondents herein.

3. The respondents and Ms. Maninder Bedi (fourth accused) approached the court of Sessions by petition (Crl.Rev. 25/2014) impugning the summoning order. The revisional court, by order dated 13.10.2014, rejected the prayer of the fourth accused but accepted the contention of the respondents that no case was made out for they to be summoned only because they were alleged to be directors of the concerned company (first accused). Thus, by order dated 13.10.2014 of the revisional court, the proceedings in the criminal case against the respondents were closed. It is the aforesaid order which is challenged by the petition at hand invoking the inherent power of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

4. The petitioner has placed reliance on judgments reported as *Standard Chartered Bank vs. State of Maharashtra & Ors. (2016) 6 SCC 62; Tamil Nadu News Print & Papers Ltd. vs. Dr. Karunakar & Ors. 2015 SCC online SC 741; Shashi Jindal vs. Govt. of NCT 2015 SCC Online Del 13066; Gunmala Sales (P) Ltd. vs. Anu Mehta (2015) 1 SCC 103; Ashesh Devendrabhai Vyas v. The State of Delhi & Anr. 2015 (220) DLT 101; Paresh P. Rajda vs. State of Maharashtra AIR 2008 SC 2357 and Rajesh Kumar Gulati vs. National Agricultural*

Cooperative Marketing Federation of India Ltd. & Anr. (2008) SCC Online Delhi 2, to argue that a case has been properly made out for criminal prosecution also of the respondents herein and consequently the view taken by the revisional court is not correct.

5. *Per contra*, the respondents through counsel, referring to the decisions of the Supreme Court in *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr. (2007) 4 SCC 70; National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal & Anr. (2010) 3 SCC 330; Central Bank of India vs. Asian Global Limited & Ors. (2010) 11 SCC 203; N.K. Wahi vs. Shekhar Singh & Ors. (2007) 9 SCC 481* and *Saroj Kumar Poddar vs. State (NCT of Delhi) & Anr. (2007) 3 SCC 693* and of the learned single Judge of this Court in *Chintan Arvind Kapadia & Anr. Vs. State & Anr. ILR (2013) III Delhi 2135,* have submitted that the view taken by the revisional court is correct in the given facts and circumstances and that there is no case made out for the same to be interfered with.

6. The case involves the application of the penal clause contained in Section 138 of Negotiable Instruments Act, 1881, the liability of the respondents requiring to be examined also in light of the provision contained in Section 141 thereof. Similar questions had arisen before this Court in *Jwala Devi Enterprises P. Ltd. Vs. Fadi El Jaouni 2018 SCC Online Del 10030*. In the context of the penal clause under Section 138 of Negotiable Instruments Act, 1881, this Court in *Jwala Devi Enterprises P. Ltd* (supra) had observed :-

> "6. *It is clear from the plain reading of the above quoted provision and is now also well settled that the offence*

under Section 138 of the Negotiable Instruments Act does not stand constituted merely upon dishonor of a cheque. The dishonor of a cheque which had been issued by the person (who is sought to be prosecuted) in favour of the complainant must be followed by a notice of demand within the stipulated period. It is the non-payment of the amount of the cheque within the statutory period after service of the notice of demand which constitutes the offence that is punishable under the aforementioned provision of law".

7. The questions relating to Section 141 of Negotiable Instruments Act, 1881 were answered in the decision in *Jwala Devi Enterprises P. Ltd* (supra) with reference, *inter alia,* to the decisions of the Supreme Court in *S.M.S. Pharmaceuticals* (supra) and *Gunmala Sales (P) Ltd.* (supra) and *Standard Chartered Bank* (supra). The law on the subject, as declared in the authoritative pronouncement referred to above was culled out in *Jwala Devi Enterprises P. Ltd* (supra) thus :

"The guiding principles with reference to Section 141 of the Negotiable Instruments Act, 1881, which are now well settled by judicial pronouncements, some of which have been noted above, may be summarised thus :-

(i) *It is only those persons who are in charge of or responsible for the conduct of the business of the company at the time of commission of the offence under Section 138 of the Negotiable Instruments Act, 1881 who can be subjected to criminal action with reference to Section 141;*

(ii). If the person committing an offence under Section 138 of the Negotiable Instruments Act, 1881 is a company, the person who was signatory to the cheque which is dishonoured is clearly responsible for the

incriminating act and would be liable to be proceeded against under Section 141 (2);

(iii). By virtue of the office they hold, the persons working in the capacity of the Managing Director or Joint Managing Director are deemed to be in charge of, and responsible for the conduct of the business of, the company and, therefore, can be proceeded against in terms of Section 141;

(iv). Merely because a person is a director of the company is not sufficient to make him liable under Section 141, there being no deeming that by holding such position he is in charge of, or responsible for the conduct of the business of, the company within the meaning of Section 141;

(v). It is necessary for the complainant to specifically aver in the complaint that at the time the offence was committed, the person sought to be prosecuted was in charge of, or responsible for the conduct of the business of, the company in terms of Section 141, there being no need for further particulars to be given in the complaint about his role, this being subject to proof at the trial;

(vi). The person who has been summoned as an accused for offence under Section 138 of the Negotiable Instruments Act, 1881 on the basis of averment that he was director of the company accused, he being in charge of or responsible for the conduct of its business cannot get the complaint quashed by the High Court by filing a petition under Section 482 of the Code of Criminal Procedure, 1973 merely on the ground that no particulars as to his role have been set out in the complaint; and

> *(vii). The person who has been summoned as an accused for offence under Section 138 of the Negotiable Instruments Act, 1881 by invoking the provision contained in Section 141 may persuade the High Court to quash the process in exercise of its inherent power under Section 482 of the Code of Criminal Procedure, 1973 by furnishing "some sterling incontrovertible material or acceptable circumstances" substantiating his contention that he was not in charge of nor responsible for the conduct of the business of the company "at the time the offence was committed" and thereby showing a case that making him stand the trial would be an abuse of the process of court, but not otherwise".*

8. In the criminal complaint from which the present proceedings arise, the allegations against the respondents were set out as under:-

> "*That the accused no.1 is a company duly incorporated under the Companies Act, 1956 and is engaged in the trade of computer hardware and networking equipment. It is submitted that the <u>Accused No. 2 to 5 are the directors of the company and are in-charge and responsible for the day to day affairs</u> of the Accused no.1. It is submitted that accused no.2 is signatory to the cheque, accused no.4 is whole time director of the company and is also responsible for the day to day affairs of the company, <u>accused no.3 & 5 are directors of accused no.1 are active participants in the management and day-to-day affairs of the company</u>. Computer generated copy of list of directors taken from the official website of Ministry of corporate affairs is annexed herwith as AnnexureA-2".*

(emphasis supplied)

9. Mere allegations that these respondents were directors or "active participants" in the management or day to day affairs of the

company are not sufficient. There is no averment, not even remotely made, that they were incharge of or responsible for affairs of the company "*at the time of commission of the offence*". The opinion leading to the revisional court's order, thus, cannot be faulted.

10. The petition and the pending application are dismissed.

R.K.GAUBA, J.

AUGUST 20, 2018
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