$~13 to 15 *(common order)*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 30th November, 2018

\+ CRL.M.C. 4213/2016 and Crl.M.A.17541-17542/2016

SONIA MITTAL ..... Petitioner

Through: Mr. Tanmaya Mehta, Advocate with Mr. Rajeev Aggarwal, Mr. Sidhant Kr. Singh & Mr. Raghav Wadhwa, Advocates

versus

YOGSHRI CHEMICALS PVT LTD ..... Respondents

Through: Mr. Manoj Sharma, Advocate with Mr. Kapil Kaushik, Mr. Alok Singh & Mr. Deepak Shukla, Advocates

\+ CRL.M.C. 4214/2016 and Crl.M.A.17544-17545/2016

ANIL KUMAR ..... Petitioner

Through: Mr. Tanmaya Mehta, Advocate with Mr. Rajeev Aggarwal, Mr. Sidhant Kr. Singh & Mr. Raghav Wadhwa, Advocates

versus

YOGESHRI CHEMICALS PVT LTD ..... Respondent

Through: Mr. Manoj Sharma, Advocate with Mr. Kapil Kaushik, Mr. Alok Singh & Mr. Deepak Shukla, Advocates

\+ CRL.M.C. 4216/2016 and Crl.M.A.17562-17563/2016

DARSHAN KUMAR ..... Petitioner

Through: Mr. Tanmaya Mehta, Advocate with Mr. Rajeev Aggarwal, Mr. Sidhant Kr. Singh & Mr. Raghav Wadhwa, Advocates

versus

YOGESHRI CHEMICALS PVT LTD ..... Respondent

Through: Mr. Manoj Sharma, Advocate with Mr. Kapil Kaushik, Mr. Alok Singh & Mr. Deepak Shukla, Advocates

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

ORDER (ORAL)

1. On the criminal complaint instituted by the respondent on 07.11.2014. The petitioners and certain others were summoned by the Metropolitan Magistrate, vide order dated 17.01.2015, on the accusations of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I.Act') having been committed qua a cheque drawn against the account of company M/s. Vision Pipes Pvt. Ltd. in which these petitioners along with one Pradeep Mittal were described as the Directors, their liability in respect of said offence having been alleged on the basis of vicarious liability under Section 141 of the Negotiable Instruments Act, 1881. The petitioners were shown in the said criminal complaint case as accused nos. 3,4 and 5, the cheque indisputably having been issued against the account of the said company (also an accused) under the signature of co-accused Pradeep Mittal (arrayed as second accused in the criminal complaint).

2. The petitioner had earlier approached the court of sessions by Criminal Revision Petition No.10-12/2016 stating, *inter alia,* that the order summoning them as accused was bad in law since under the settled principles, criminal vicarious liability could not have been imputed against them, there being nothing shown to the effect that they were responsible for the day-to-day affairs of the company or conduct of its business at the time of commission of offence. The revisional court, however, did not grant relief and dismissed the revision petitions by common order dated 06.09.2016 which is assailed by the petitions at hand.

3. Reliance is placed by the petitioners on the decisions of the Supreme Court in *SMS Pharmaceuticals Pvt. Ltd. vs. Neeta Bhalla, (2005) 8 SCC 89; Gunmala Sales (P) Ltd. vs. Anu Mehta and Ors, (2015) 1 SCC 103; Standard Chartered Bank vs. State of Maharashtra and Ors., (2016) 6 SCC 62;* and a ruling of this Court reported as *Jwala Devi Enterprises P. Ltd. vs. Fadi EL Jaouni, 2018 SCC OnLine Del 10030.*

4. The petitioners point out, and the counsel for the respondent fairly conceded that the allegations as to the status, role and connection of the petitioners with the company accused M/s. Vision Pipes Pvt. Ltd. were set out in (paras 4 and 18 of) the criminal complaint to the following effect:-

> *"4. That the accused No.2 to 5 are directors of the accused No.1 and in charge of and responsible for the day-to-day affairs and conduct of the business of the accused No.1.*
>
> …

> *18. The above mentioned cheque was issued by the accused No.1 in partial discharge of the above mentioned liability towards the complainant. The accused Nos.2,3,4 and 5 being directors of the accused No.1, are accountable and responsible for the day-to-day affairs of the accused No.1. Thus, all the accused are fully liable and responsible for the said action of failure to discharge the liability and hence committed office(sic) offence under the Negotiable Instrument Act."*

5. It is also fairly stated that other than the above, there are no averments in the criminal complaint *vis-à-vis* the petitioners, nor any documents relied upon would show any participation of the petitioners in the conduct of the affairs or the business of the company on the relevant date.

6. *Per contra*, the respondent through counsel submitted before the court, at the hearing, a copy of the communication dated 23.01.2018 received by the Chairman-cum-Director of the complainant company from the Deputy Superintendent of Police of Central Bureau of Investigation (CBI) in the context of CBI case No.RC2202017E0008 against M/s. Vision Pipes Pvt. Ltd. & Ors. It was submitted that this communication would show that the petitioners are also active participants in the affairs of the aforementioned company accused. It was argued that the case has already entered the stage of trial, notice under Section 251 Cr.P.C. having already been issued and served, trial being underway. It was argued that against this backdrop this court should not interdict in the proceedings of the criminal case at this stage in exercise of power under Section 482 Cr.P.C., leaving the questions to be answered by the trial court.

7. In *Jwala Devi Enterprises (Pvt.) Ltd.* (supra) the provision of penal clause contained in under Section 138 of the Negotiable Instruments Act, 1881 was construed as under:-

> *"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."*

8. In the context of Section 141 of the Negotiable Instruments Act, 1881, this court having noticed the rulings of the Supreme Court in *SMS Pharmaceuticals Pvt. Ltd.* (supra); *Gunmala Sales (P) Ltd. (supra)* and *Standard Chartered Bank* (supra) culled out the principles as under:-

> *"14. 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."*

9. The facts of the ongoing investigation by CBI into the aforementioned case registered by it *vis-à-vis* the affairs of the company M/s. Vision Pipes Pvt. Ltd, by themselves, cannot mean that the petitioners were active participants in the affairs of the company on the date of commission of the offence arising out of the dishonor of the cheque and non-payment of the amount in favour of the complainant. The petitioners are not stated to be signatories of the cheque in question. They cannot be roped in merely because they have been directors of the company. The general averments about they being responsible for the business dealings of the company do not suffice as there is nothing shown that they were in charge of or responsible to the company accused for the conduct of its business "*at the time the offence was committed*".

10. In the result the petitions are allowed. The orders dated 06.09.2016 passed in Criminal Revision Petition Nos.10-12/2016 and order dated 04.04.2016 passed in CC No.461/2016 are hereby set

aside. The proceedings in the criminal case referred to above against the petitioners are quashed.

11. Petitions and the applications filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 30, 2018
vk