

\$~38

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

+ **CRL.M.C. 4192/2016**

ANITA AGGARWALA

..... Petitioner

Through: Mr. Avinash Trivedi and Ms. Ritika
Trivedi, Adv.

versus

G H TEXTILES & SAREES

..... Respondent

Through: Ms. M. Theepa, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

%

27.11.2018

Reply has not been filed by the respondent despite opportunity granted to it. Opportunity of respondent to file reply if closed.

Arguments heard.

Respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) against M/s Shyam Retails (India) Pvt. Ltd. (accused no.1) wherein petitioner, being one of the directors of accused no.1, was arrayed as accused no. 4. As per the complaint, respondent supplied goods to M/s Shyam Retails (India) Pvt. Ltd. from time to time on the orders placed by M/s Shyam Retails (India) Pvt. Ltd. through accused nos. 2 to 13. A sum of ₹99,97,750/- became due and payable by the accused no.1, towards the supplies, as per the statement of accounts, maintained by the respondent. In discharge of its part liability, M/s Shyam

Retails (India) Pvt. Ltd. issued various cheques including cheque no. 942236 dated 10.12.2015 for ₹17 lacs, cheque no. 942235 dated 08.12.2015 for ₹19,50,000/- and cheque no. 942237 dated 11.12.2015 for ₹23,50,000/-, all drawn on HDFC Bank Ltd., Howrah (West Bengal). On presentation, these cheques were returned dishonoured with the remarks “payment stopped by the drawer” vide return memos dated 15.12.2015. Despite service of notice dated 29.12.2015 the amounts involved in the aforesaid cheques were not paid within the statutory period.

It was alleged that petitioner was liable for prosecution under Section 141 of the Act being director of the accused no.1, that is, M/s Shyam Retails (India) Pvt. Ltd.

Learned counsel for the petitioner (accused no.4) submits that petitioner had resigned from the post of director of accused no.1 on 11.05.2013. Petitioner was not director of accused no.1 even on the date when these cheques were issued. Petitioner was not the director of accused no.1 at the time when aforesaid cheques were presented, returned dishonoured and the amounts in the cheques were not paid by the accused no.1 within the statutory period, pursuant to alleged notice dated 29th December, 2015. Form No. 31 has been placed on record to substantiate

this plea.

Form No. 31, being a public documents, can be accepted more so when the same has not been disputed by the respondent. Admittedly, petitioner was not the director of M/s Shyam Retails (India) Pvt. Ltd. as on the date when offence under Section 138 was alleged committed, thus, in my view she cannot be prosecuted by taking aid of Section 141 of the Act.

For the foregoing reasons, complaint case no. 56329/2016 titled M/s G.H. Textiles and Sarees versus M/s Shyam Retails (India) Pvt. Ltd. & Ors. pending in the court of Metropolitan Magistrate-1(E) KKD is quashed qua the petitioner.

Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

NOVEMBER 27, 2018

ga