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

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Judgment delivered on: 26.02.2018

+ CRL.M.C. 4281/2017

MAHENDRA KHANDELWAL

..... Petitioner

versus

GAURISH GARG & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Prateek Mehta, Mr. Himanshu Kaushik and Mr. Harish Kaushik, Advs.

For the Respondents : Mr. Govind Rishi, Adv. for R-1
Mr. Sanjay Manchanda, Adv. For R-2 & 3

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

26.02.2018

SANJEEV SACHDEVA, J. (ORAL)

1. Consequent to the production warrants issued on 24.10.2017, respondent no. 3 and 4 have been produced from jail.

2. The petitioner impugns order dated 28.08.2017 whereby the Revisional Court has set aside the order dated 22.05.2017 passed by the court of Metropolitan Magistrate.

3. The Metropolitan Magistrate had rejected the application of

respondent no. 1 - Mr. Gaurish Garg for dropping the proceedings qua him. It was contended in the said application that he was employed as a Company Secretary with the accused company. Apart from being arrayed as an accused being the Company Secretary, no specific role was attributed to him in the complaint.

4. The trial court had referred to the averments in the complaint and rejected the application holding that there were specific averments that the respondent no. 1 (accused no. 5 before the trial court) was the Company Secretary of the subject company and actively managing the day-to-day business and the conduct of accused no. 1. Company. Learned Metropolitan Magistrate observed that there were specific averment that accused no. 1 to 5 had issued several cheques towards part payment and the outstanding liability of the accused company. Keeping in view the said averment, the trial court was of the view that a prima facie case was made out against accused no. 1 and accordingly the application was rejected.

5. The revisional court by the impugned order noticed that the proceedings against respondent no. 1 had been initiated solely on the ground that he was the company secretary. The revisional court further noticed that it was not a case where respondent no. 1 had issued any of the cheques on which the complaint was based or had written any letter or document to place any order for supply of the goods or had entered into any transaction with the complainant in

respect of the subject cheques.

6. It is an admitted position that respondent no. 1 did not sign any of the cheques either as a Company Secretary or as an authorized representative on behalf of the company. The revisional court has also noticed that the complainant had failed to produce any document before the trial court to suggest that respondent no. 1 participated in the day-to-day affairs of the company in respect of the transactions to which cheque pertained.

7. Keeping in view the above facts, the revisional court was of the view that there was merit in the contention of respondent no. 1 that he had been arrayed as an accused solely because he was a Company Secretary and there was no legal liability on him to discharge in respect of the cheques issued by the company where he was employed.

8. Before this Court also, it is admitted by learned counsel for petitioner that none of the cheques have been issued by respondent no. 1 either as a Company Secretary or as an authorised representative. The petitioner has not been able to point out any document, transaction or averment in the complaint to show that respondent no. 1, the Company Secretary had any role to play in the placing of the orders or transaction to which the subject cheques relate. It is not the contention of the petitioner that being the Company Secretary, the petitioner had any role to play in the financial management or the

operation of the bank account from which the subject cheques had been issued.

9. Perusal of the complaint shows that the respondent no. 1 has been arrayed as an accused solely on the ground that he is employed as a Company Secretary by the accused company. There is general averment that respondent no. 1 is actively managing the day-to-day conduct and affairs of the accused company. Apart from the bald averment, there is nothing to show that respondent no. 1 had any role to play qua the subject transaction or had any liability in respect of the subject cheques.

10. Reliance placed by learned counsel for petitioner on the judgment of the Supreme Court in '*Standard Chartered Bank Vs. State of Maharashtra & Ors.*' (2016) 6 SCC 62, is misplaced. It is sought to contend that an averment that the accused was incharge or responsible for conduct of the business of the company is sufficient and nothing more needs to be shown.

11. On the contrary it is specifically laid down in the said judgment that there has to be specific averment regarding the accused persons for conduct of the business of the company at the time of commission of offence and the liability depends on the role one plays in the affairs of a company and not on the designation or status.

12. In the present case, respondent no. 1 has been roped in solely

on the ground that he is a Company Secretary. As noticed above, the petitioner has not placed on record any material to show that respondent no. 1 conducted day-to-day affairs or had any role to play in respect of the transaction for which the subject cheques have been issued. Mere bald averments are not sufficient to fasten liability on Respondent No. 1.

13. I find no infirmity in the view taken by the revisional court and the impugned order dated 28.08.2017.

14. In view of the above, I find no merit in the petition. The petition is accordingly dismissed.

FEBRUARY 26, 2018
'rs'

SANJEEV SACHDEVA, J

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