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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 06th September, 2018

\+ CRL.M.C. 4630/2015 and Crl. M.A.16590/2015

JITENDRA KUMAR SINHA ..... Petitioner

Through: Mr. Siddarth Aggarwal and Mr. Ravi Kapoor, Advocates

versus

STATE (NCT) OF DELHI & ANR ..... Respondents

Through: Mr. Ravi Nayak, APP for the State
Mr. Dayan Krishnan, Sr. Advocate with Mr. Rajiv Bhatnagar and Mr. Ratnil Chauhan, Advocates for R-2

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

ORDER (ORAL)

1. On the criminal complaint (no.85/08/2012) of the second respondent, the Metropolitan Magistrate, after holding preliminary inquiry, issued process, *inter alia*, against the petitioner, by order dated 27.08.2015, calling him upon to face the prosecution on the accusations of offence under Section 138 of the Negotiable Instruments Act, 1881. The case concerns non-payment, pursuant to notice of demand issued after dishonor of cheque no.621000 dated 01.04.2008 for Rs.12,62,55,724/- drawn on account held with CITI Bank N.A., New Delhi of a company described as Dear Investment Pvt. Ltd. The cheque was concededly issued under the signatures of

Muralidhar Vyas, who is also one of the persons summoned as accused, they including the said company. The petitioner shown in the array was described as director of the said company, his liability sought to be attributed with reference to Section 141 of the Negotiable Instruments Act, 1881 on the averments (as appearing in 5th para of the complaint) that he was "*incharge of and responsible for the day-to-day business of the company*". Further (in para 10 of the complaint), it was alleged that inspite of service of the demand notice, the petitioner, besides others, had failed or neglected to make the payment.

2. The petitioner herein relies on rulings of the Supreme Court in *SMS Pharmaceuticals Pvt. Ltd. vs. Neeta Bhalla, (2005) 8 SCC 89, Gunmala Sales (P) Ltd. vs. Anu Mehta, (2015) 1 SCC 103* and *Standard Chartered Bank vs. State of Maharashtra, (2016) 6 SCC 62*, to contend that the basic requisite specific averments are missing and, therefore, no case for the petitioner to be held accountable or liable is made out. The prayer by the petition under Section 482 of the Code of the Criminal Procedure, 1973 (Cr. PC) is that this court quash the summoning order and the proceedings arising therefrom against the petitioner, the same being in the nature of abuse of the process of law.

3. The counsel for the complainant, while resisting the prayer, argued *inter alia*, that the complaint has been wrongly presented in the court of the Magistrate at Delhi, it being intended to seek its transfer to the criminal court at Mumbai for the reason the bank of the complainant is situate there. This submission, as pointed out by the

counsel for the complainant, cannot be accepted for two reasons. In the complaint, it has been clearly alleged that the cheque in question was drawn against a bank account held in Delhi and further the cheque was presented by the complainant to its banker at Delhi. Also, no formal request for transfer has been made till date.

4. Taking note of the penal clause contained in Section 138 of the Negotiable Instruments Act, 1881, this court in a decision reported as *Jwala Devi Enterprises P. Ltd. Vs. Fadi El Jaouni, 2018 SCC Online Del 10030* had observed thus :-

> *"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."*

5. On the issue of liability of persons connected with a company with reference to the provision contained in Section 141 of the Negotiable Instruments Act, 1881, this court examined the rulings of the Supreme Court in cases of *SMS Pharmaceuticals Pvt. Ltd.* (supra), *Gunmala Sales (P) Ltd.* (supra) and *Standard Chartered Bank* (supra) and culled out the guidelines in the ruling in *Jwala Devi Enterprises P. Ltd.* (supra) 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."

6. Upon perusal of the criminal complaint from which the present proceedings arise, this court finds that there is not even a whisper of allegation that the petitioner was a person, who was in charge of or responsible to the company accused for the conduct of its business "*at the time the offence was committed*". He concededly was not signatory to the cheque in question. He also concededly was not either the Managing Director or the Executive Director of the company. Merely holding the position of a director cannot suffice.

7. In above view, the petition is allowed. The proceedings against the petitioner pursuant to the summoning order dated 15.09.2015 are quashed. This disposes of the pending application as well.

R.K.GAUBA, J.

SEPTEMBER 06, 2018
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