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

+ **CRL.L.P. 701/2019**

MR. RAJINDER SINGH

..... Petitioner

Through: Mr Manav Gupta, Ms Esha
Dutta and Mr Sahil Garg,
Advocates.

versus

M/S BLACK GRAVEL INFRACON PVT. LTD.
& ANR.

..... Respondents

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
12.12.2019

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VIBHU BAKHRU, J

CRL.M.A. 42571/2019

1. For the reasons stated in the application, the delay in filing is condoned.
2. The application is disposed of.

CRL.M.A.42572/2019

3. Allowed, subject to all just exceptions.

CRL.L.P. 701/2019

4. The petitioner has filed the present petition, *inter alia*, seeking leave to appeal against the judgment and order dated 11.09.2019 passed by the learned MM, Patiala House Courts, New Delhi in Complaint Case No.41370/2016 to the extent the Trial Court had acquitted respondent no. 2 (Mr Sanjeev Gupta) of the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereafter 'the NI Act').

5. It is the petitioner's case that he had entered into an agreement for the purchase of a flat in a real estate project by the name of 'Leela Apartment' located in Vaishali, Delhi. He had paid a sum of ₹5 lakhs as a token amount in favour of respondent no.1 company, in cash. The balance consideration of ₹95 lakhs was to be paid on or before 03.09.2013. In compliance with the said terms, the petitioner paid a sum of ₹95 lakhs in favour of respondent no.1 company by a cheque dated 03.09.2013. It is the petitioner's case that the proposal to develop the said real estate project was dropped and the sum of ₹5 lakhs paid by the petitioner as earnest money, was returned to the petitioner. The petitioner alleges that the respondents also promised to refund the remaining amount of ₹95 lakhs, which was invested by the petitioner.

6. On 28.02.2014, the petitioner was handed a cheque of ₹95 lakhs (cheque bearing no. 662601). The said cheque was deposited by the petitioner in his bank. However, the same was dishonoured on

05.03.2014. It is stated that thereafter, the petitioner entered into an undated written agreement titled 'Receipt-cum-Acknowledgment' with the respondents. The liability to refund the sum of ₹95 lakhs was admitted and the respondents agreed to hand over a fresh cheque for the unpaid amount in lieu of the cheque bearing no.662601, which had been dishonoured.

7. On 15.03.2014, a fresh cheque (cheque bearing no.662604) for a sum of ₹95 lakhs was handed over to the petitioner. However, the same was also dishonoured. The petitioner states that the said cheque was deposited by him on two occasions and on both occasions, the said cheque was dishonoured. The petitioner alleges that on 10.06.2014, he was informed that respondent no.1 had already deposited a sum of ₹10 lakhs in his account in partial discharge of its liability to refund the sum of ₹95 lakhs. Thereafter, respondent no.1 issued a letter dated 12.06.2014, confirming its liability to pay the remaining amount of ₹85 lakhs and handed over a fresh cheque (cheque bearing no.662701) for the aforesaid amount. The said cheque was presented on 04.07.2014 and the same was again dishonoured by the bankers of respondent no.1 company.

8. Thereafter, the petitioner issued a legal notice under Section 138 read with Section 141 of the NI Act demanding a payment of ₹85 lakhs along with interest at the rate of 15% per annum.

9. It is important to note that the said legal notice was addressed to the respondents therein, namely, M/s Black Gravel Infracon Pvt. Ltd.

(respondent no.1 company), Mr Sanjeev Gupta and Mr Manoj Gupta. Mr Manoj Gupta was described as the authorised signatory of M/s Black Gravel Infracon Pvt. Ltd. and respondent no.2 was described as a Director of M/s Black Gravel Infracon Pvt. Ltd.

10. It is stated that during the course of proceedings, the petitioner dropped respondent no.3, that is, Mr Manoj Gupta, as he could not be served.

11. The petitioner was successful in establishing that an offence under Section 138 of the NI Act had been committed. By the impugned judgment, the Trial Court has convicted the company (M/s Black Gravel Infracon Pvt. Ltd.) of the offence under Section 138 of the NI Act, for which the company was charged. However, respondent no.2, who was described as a director of M/s Black Gravel Infracon Pvt. Ltd. has been acquitted.

12. During the trial, an official of the Registrar of Companies was examined for the defence. He had produced the list of directors of M/s Black Gravel Infracon Pvt. Ltd. The said evidence established that respondent no.2 was not a director of the respondent no.1 company.

13. The Trial Court held that since respondent no.2 was not a director of the said company and there was no evidence to establish that he was incharge and responsible for the affairs of the company, he could not be held liable for the offences committed by the company. He was, therefore, acquitted of the said offence.

14. The learned counsel appearing for the petitioner has referred to the decision of the Supreme Court in *K. K. Ahuja v. V. K. Vora & Anr.: (2009) 10 SCC 48* in support of his contention that even though respondent no.2 was not a director of respondent no.1 company he was, nonetheless, liable under Section 141 of the NI Act since he was the person with whom the petitioner was dealing with regard to the booking of the flat in question.

15. Section 141 of the NI Act is set out below:-

“141 Offences by companies. —

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case

may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in subsection (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

16. In *K. K. Ahuja* (*supra*), the Supreme Court has observed as under:-

“16. Having regard to Section 141, when a cheque issued by a company (incorporated under the Companies Act, 1956) is dishonoured, in addition to the company, the following persons are deemed to be guilty of the offence and shall be liable to be proceeded against and punished:

(i) every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company;

(ii) any Director, manager, secretary or other officer of the company with whose consent and connivance,

the offence under Section 138 has been committed;
and

(iii) any Director, manager, secretary or other officer of the company whose negligence resulted in the offence under Section 138 of the Act, being committed by the company.

While liability of persons in the first category arises under sub-section (1) of Section 141, the liability of persons mentioned in Categories (ii) and (iii) arises under sub-section (2). The scheme of the Act, therefore is, that a person who is responsible to the company for the conduct of the business of the company and who is in charge of business of the company is vicariously liable by reason only of his fulfilling the requirements of sub-section (1). But if the person responsible to the company for the conduct of business of the company, was not in charge of the conduct of the business of the company, then he can be made liable only if the offence was committed with his consent or connivance or as a result of his negligence.”

17. There is no dispute that every person who, at the time of committing of an offence, was responsible to the company for the conduct of its business would be liable for an offence committed by the said company. In addition, the principal officer, or any other officer of the company who had connived in the commission of an offence, would also be liable. In the present case, there is little evidence to suggest that respondent no.2 was responsible to M/s Black Gravel Infracon Pvt. Ltd. for conduct of its business. In order to establish that respondent no.2 is responsible for the conduct of the offence, the petitioner was required to produce sufficient evidence to establish that the business of the company was being directed by him.

18. Even if it is accepted that the petitioner had dealt with respondent no.2 for booking of the flat in question and for refund of the amounts invested, the same does not establish that respondent no.2 was either incharge of the affairs of respondent no.1 company, or was responsible for conduct of the said business.

19. Sub Section (1) of Section 141 of the NI Act imputes vicarious liability in respect of offences committed by a company. Such liability is imputed only on the persons who are otherwise responsible for conduct of the business of the company. Since in the present case, the evidence to establish that respondent no.2 was otherwise incharge of the affairs responsible for the conduct of the business of the company is lacking; this Court finds no infirmity with the decision of the Trial Court in acquitting respondent no.2. It was open for the petitioner to lead evidence to establish that respondent no.2 was otherwise an officer of respondent no.1 company and the offence was committed by his consent or connivance. However, there is also little evidence to establish that respondent no.2 was an officer of respondent no.1 or that the offence was committed with respondent no. 2's consent or connivance.

20. It is important to note that the cheques in question had been signed by Mr V. K. Dubey, who was a director of respondent no.1 company. The petitioner did not issue any notice to Mr V. K. Dubey. He was also not arrayed as a party in the petitioner's complaint. Although it is contended on behalf of the petitioner that he was not aware that Mr V. K. Dubey is a director of respondent no.1 company,

there is no allegation that the said information had been not concealed or placed in public domain. Information as to principal officers of an incorporated company is available in public domain and therefore, knowledge of the same ought to be imputed to any person dealing with such a company.

21. It is clear from the above that there has been lapse on the part of the petitioner in not issuing any notice to the signatories of the cheques that had been dishonoured or to the persons who are in charge of the affairs of respondent no.1 company, namely, its directors.

22. In view of the above, this Court finds no reason to interfere with the impugned judgment dated 11.09.2019. The petition seeking leave to appeal is, accordingly, dismissed.

23. Since it is contended on behalf of the petitioner that he had been deceived into entering the said transaction, it is clarified that the petitioner would not be precluded from initiating appropriate action either against respondent no.1 company or any other person, who may have deceived the petitioner. All rights and remedies of the petitioner in this regard are not foreclosed by the impugned judgment.

VIBHU BAKHRU, J

DECEMBER 12, 2019
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