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

Date of decision: 04.12.2019

+ CRL.M.C. 5005/2019

BHAGAYSHREE DIGAMBAR MUNGRE & ANR.

..... Petitioners

Through Mr.Vidhan Vyas, Adv. with
Ms.Harshita Dhingra, Adv.

versus

SMALL FARMERS CONSORTIUM & ANR. Respondents

Through Mr.Ravi Kumar, Adv. with Mr.Punit
Gaur, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioners pray as under:

*(a) Quash the complaint case no. 18015/2018 under section 138
and 142 of the N.I. Act, 1881 with respect to the Petitioners
presently pending before the Hon'ble Metropolitan
Magistrate-3/South at the District Court of Saket, Delhi.*

*(b) Set-aside the impugned order dated 11.01.2019 in
Complaint Case No. 18015/2018 of the Hon'ble*

Metropolitan Magistrate-3/South directing the summoning of the Petitioners.

(c) Quash the proceedings pending against Petitioner no. 1 and 2 before the Hon'ble Metropolitan Magistrate-3/South in Complaint Case No. 18015/2018.

(d) Release the PR Bond of Rs. 75,000/- each as submitted on 04.04.2019 and 19.07.2019 by the Petitioners before the Hon'ble Metropolitan Magistrate-3/South at the District Court of Saket, Delhi.

2. Counsel appearing on behalf of the petitioner submits that petitioner no.1 was the director of the company M/s Omkar Nath Foods Processing Pvt. Ltd. and issued cheque in question under her signatures. However, though the petitioner no.2 was director in the aforesaid company, he resigned on 01.02.2016, whereas, the cheque in question is dated 31.08.2018. Thus, only petitioner no.1 was responsible for the day to day affairs of the company, as on that date. Accordingly, the complaint under section 138 of the NI Act is not maintainable against petitioner no.2.

3. Counsel for the respondent submits that respondent no.2 was the director on the date of MOU i.e. 18.07.2011, thus, he is also responsible for

the day to day affairs of the company and accordingly, in the complaint, the allegations against respondent no.2 is that he was responsible for the day to day affairs of the company, thus, respondent no.2 comes under the purview of Section 138 of the NI Act.

4. It is not in dispute that respondent no.2 resigned from the company on 01.09.2016 and cheque in question was issued on 31.08.2018. The same is evident from the resolution of the company dated 01.09.2016 that resignation of petitioner no.1 was accepted on the said date. Thus, the role of respondent no.2 does not come under the purview of section 138 of the NI Act.

5. Accordingly, the petition is dismissed qua petitioner no.1, however, allowed qua petitioner no.2.

6. Consequently, the proceedings before the Trial Court against petitioner no.2 are hereby set aside.

7. In view of above directions, the petition stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 04, 2019
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