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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 11th January, 2019

\+ CRL.M.C. 674/2016 and Crl.M.A.2921/2016

ANUBHAV DHAM & ANR. ..... Petitioners

Through: Mr. Ranvir Singh, Advocate with Mr. Sanjiv Chaudhary, & Mr. Nausheen Momani, Advocates

versus

THE NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for the State
Mr. Punya Garg, Adv. with Mr. Abhishek Jain, Adv. for R-2.

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

ORDER (ORAL)

1. On the criminal complaint (CC No.219/01/2015), originally presented in 2012, by order dated 16.09.2015, the petitioners along with five others have been summoned as accused to face criminal prosecution on the accusations of having committed offence punishable under Section 138 of the Negotiable Instruments Act, 1881 qua certain cheques which were issued in favour of the second respondent (the complainant) against the account of M/s. Amtek Rail Car Industries Pvt. Ltd., the role of the petitioners, impleaded in the array as third and fourth accused, having been described as that of

directors in the said company which has also been summoned as accused by the same order.

2. The petitioners, feeling aggrieved, have approached this court by the petition at hand under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking quashing of the said criminal proceedings primarily on the ground that the averments in the complaint and the documents filed therewith do not make out a case for they to be held vicariously accountable under the criminal law particularly with reference to the provision contained in Section 141 of the Negotiable Instruments Act, 1881.

3. The petition has been resisted by the second respondent (the complainant) and the prime argument raised is that a similar challenge earlier brought vide Crl.M.C.3788/2012 was repelled by decision dated 31.07.2015. The submissions of the learned counsel on both sides indisputably bring out that the said decision dated 31.07.2015 was rendered against order dated 07.07.2012, which had been earlier passed, *albeit* on the same criminal complaint, by a court of metropolitan magistrate, which order became *non est*, after the complaint had been returned for want of jurisdiction in view of the ruling of the Supreme Court reported as *Dashrath Rupsingh Rathor vs. State of Maharashtra (2014) 9 SCC 129.* The complaint, after return, has been represented and the order which is impugned here is a fresh order dated 16.09.2015 and so gives a fresh cause of action to the petitioners to raise their submissions. At any rate, the objections now raised against the subsequent order were not agitated nor adjudicated

upon in the earlier proceedings. Therefore, there is no inhibition in the present challenge being entertained.

4. The cheques in question were undoubtedly issued against the account of M/s. Amtek Rail Car Industries Pvt. Ltd. which has been summoned as a company accused, it being shown as first accused in the array. The petitioners are admittedly not the signatories to the said cheques. After the said cheques had been returned unpaid, the complainant had issued demand notice dated 13.02.2012 in which he had described the role of the petitioners, as indeed certain others, as *"the responsible directors"* of the company accused. The said demand notice was responded to by a reply dated 09.03.2012 for and on behalf of the persons shown in the array as accused including the petitioners and admittedly in the said reply the petitioners had taken the position that they were *"not in anyway connected with the transactions and/or the dispute arising therefrom"* and further that *"they were not involved in any way with management and day to day affairs of the company"*.

5. In the complaint, the petitioners have been described as *"the directors"* of the company and also alleged to be "*looking after business affairs of accused no.1 company and are responsible to the accused no.1 company for the conduct of its business"*. Though acknowledging that reply dated 09.03.2012 had been received in answer to the demand notice, the complainant would allege in the complaint that it was based on *"fabricated and vague allegations"*.

6. The petitioners place reliance*, inter alia,* on the decisions of the Supreme Court reported as *SMS Pharmaceuticals Pvt. Ltd. vs. Neeta Bhalla, (2005) 8 SCC 89; Gunmala Sales (Pvt.) Ltd. vs. Anu Mehta, (2015) 1 SCC 103;* and *Standard Chartered Bank vs. State of Maharashtra, (2016) 6 SCC 62*, to contend that a case for summoning cannot be made out with reference to Section 141 of the Negotiable Instruments Act, 1881 against the petitioners on the above mentioned facts and circumstances.

7. Per contra, the respondent places reliance on *N.Rangachari vs. Bharat Sanchar Nigam Limited, (2007) 5 SCC 108; Aneeta Hada vs. Godfather Travels & Tours Pvt. Ltd., (2012) 5 SCC 661;* and *National Small Industries Corporation Limited vs. Harmeet Singh Paintal & Anr., (2010) 3 SCC 330.*

8. It is the submission of the complainant that the petitioners raise, at best, factual controversy which cannot be addressed effectively in the jurisdiction under Section 482 Cr.P.C., and, therefore, this court ought not to interfere.

9. This court considered more or less similar issues in the context of a batch of similar prosecutions for offence under Section 138 of the Negotiable Instruments Act, 1881 in decision reported as *Jwala Devi Enterprises Pvt. Ltd. vs. Fadi El Jaouni, 2018 SCC Online Del 10030.* While construing the penal clause under Section 138 of the N.I.Act, this court 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."

10. The decisions of the Supreme Court in *SMS Pharmaceuticals Pvt. Ltd.* (supra); *Gunmala Sales (P) Ltd.* (supra); and *Standard Chartered Bank* (supra) were examined in *Jwala Devi Enterprises Pvt. Ltd.* (supra) and the guiding principles were culled out, thus:-

"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."

11. Going by the averments in the complaint at hand, it not being a case of the complainant that the petitioners were the signatories to the cheques in question, the order summoning them as accused merely on the allegations that they were *"the directors"* in the company accused at the relevant point of time is bad in law. The decisions quoted at bar by the complainant do not make out a case for taking a view different from the one taken in *Jwala Devi Enterprises Pvt. Ltd.* (supra).

12. In above view, the petition is allowed. The proceedings against the petitioners pursuant to the summoning order dated 16.09.2015 passed in Criminal Complaint No.219/1/15 are quashed.

13. This disposes of the pending application as well.

R.K.GAUBA, J.

JANUARY 11, 2019
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