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

% ***Judgment delivered on: 6th September,2019***

\+ CRL. M.C. 2076/2013

M.C. JAIN
S/o S.L. JAIN ...Petitioners

Through: Mr. Ramesh Gupta, Senior Advocate with Mr. Hrishikesh Baruah & Mr. Siddhant Kaushik, Advocates.

Versus

1. THE STATE
2. APOLLO FINANCE LIMITED ...Respondents

Through: Mr. Kamal Kr. Ghei, APP for State. Mr. Avinash Lakhanpal, Rahul Kumar Singh, Advocate with Mr. Kamla Prasad Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant petition under Section 482 Cr.P.C. is preferred by the present petitioner against Summoning Order dated 26.04.2003 passed by the Ld. MM-02, South District, Saket District Court, Delhi in C.C. No. 69A/1 under Section 420/34 IPC.

2. The brief facts stated are that Complainant (Respondent No.2) Apollo Finance Limited through its Constituted Attorney Mr. Navneet

Prabhakar filed a complaint on 17.02.2002 under Section 420 read with Section 34, 120 B IPC against Accused No.1 M/s GSL (India) Ltd., Accused No.2 Sh. R.C. Bagrodia, Managing Director, Accused No.3 Sh. B.K. Ametha, Joint Managing Director and Accused No.4 (present petitioner) Sh. M.C. Jain, Director on the ground of concealing of the material fact before obtaining loan amounting to Rs. 25,00,000/- at 31% p.a. on 8th June 1996 from the complainant.

3. Present petitioner (Accused No.4) alongwith Accused No.2 and 3 in the month of June, 1996 approached the complainant at its registered office at New Delhi and requested the complainant for inter-corporate deposit loan of Rs. 25,00,000/- and accused persons expressly agreed to pay interest at the rate of 31% per annum and promised to pay the said loan after 90 days from the date of payment. For availing the said facility, the accused executed various documents recording the said loan transaction and also executed a promissory note of the said amount with interest in favour of the complainant. The Accused No.2 stood guarantor for repayment of the said amount. Thereafter, the inter corporate deposit agreement cum pledge deed was executed between Complainant and Accused No.1 Company on June 8, 1996 at New Delhi and the sum was repayable by the accused persons to the complainant at New Delhi. Moreover, accused persons informed the complainant that their financial position is sound and the post dated cheque bearing no. 884068 dated 08.09.1996 of sum of Rs. 25,00,000/- issued by them as security for repayment of loan will be honoured on due date. After default, same was dishonoured with remarks "payment stopped by the drawer".

4. The Accused persons while availing the inter corporate loan failed to disclose the material fact, to the complainant, that, winding up proceedings are already initiated against the accused company in 1995. This fact was dishonestly and willfully concealed from the complainant and complainant was induced to part with the huge sum and thus accused persons played fraud upon the complainant and succeeded in cheating the complainant.

5. Subsequently, a Complaint was filed against the Accused persons and on 26.04.2003 Accused Persons were summoned as sufficient grounds were made to proceed against them under Section 420 read with Section 34 IPC.

6. Petitioner being aggrieved from the said Summoning Order filed the present petition on 17.05.2013.

7. Learned Senior Counsel Mr. Ramesh Gupta on behalf of the petitioner has submitted that the present petitioner was made Director of the accused Company on 30.12.1997 and he resigned from the said position on 31.12.2000. Therefore, petitioner was not a Director of the Accused Company on the date when the loan was taken or on the date when the cheque was given or on the date when the cheque was deposited or on the date when the cheque was dishonored and not on the date of issuance of the legal notice under Section 138 of N.I. Act. However, the present petitioner was unnecessarily dragged and was made an accused in the present complaint.

8. Learned Senior Counsel further submitted that the complaint has been made as if there is vicarious liability for an offence punishable under Section 420 IPC. He further submitted that the

complainant has not furnished any document as to show the involvement of the present petitioner in grant of loan. He further submitted that the Summoning Order is vague and without any material and thus is bad in Law and without application of mind. Learned Senior Counsel relied on Supreme Court Judgment in ***Harshendra Kumar v. Rebatilata Koley and Ors.*** (2011) 3 SCC 351, ***M/s GHCL Employees Stock Option Trust v. M/s India Infoline Ltd.*** (2013) 4 SCC 505, ***Thermax Limited v. K.M. Johny*** (2011) 13 SCC 412, ***Maksud Saiyed v. State of Gujarat*** (2008) 5 SCC 668 and on this Court judgment in ***Colgate Palmolive (India) Ltd. & Ors. v. Anchor Health and Beauty Care Pvt. Ltd.*** 2019 SCC OnLine Del 8770.

9. On the other hand Learned Counsel for Respondent No. 2 (Complainant) submits that Accused No.4 Mr. M.C. Jain (petitioner) was President of the accused company and has misrepresented the financial status of the company, thus concealing material fact of being in liquidation. Therefore, Summoning Order is right and the present petition is liable to be dismissed.

10. The complaint filed by the complainant Apollo Finance Limited on 17.02.2002 is under Section 420 read with 34 and 120B IPC on the ground that accused persons i.e. Accused No.1 M/s GSL (India) Ltd., Accused No.2 Sh. R.C. Bagrodia, Managing Director, Accused No.3 Sh. B.K. Ametha, Joint Managing Director and Accused No.4 (present petitioner) Sh. M.C. Jain, Director while approaching Complainant for inter-corporate loan of Rs. 25 Lakh did not disclose that Accused Company is already undergoing winding up proceedings. Said fact was dishonestly and willfully concealed from complainant and

complainant was induced to part with his huge sum of money, thus Accused Persons played fraud on the complainant by cheating it.

11. The essential ingredients of cheating under Section 420 of IPC is as under:

(i) There must be Deception.

(ii) Accused must induce a person by said deception.

(iii) That the accused did so Dishonestly.

12. In the instant case, the petitioner was the President of M/s GSL (India) Ltd. and his letter dated 12.06.1996 to the complainant is reproduced as under:

"***GSL (INDIA) LIMITED***

REGD. OFFICE & WORKS:
Village: AMLETHA
Taluka: NANDOD
Dist.: BHARUCH
Phone: Rajpipla (02640)20232

GSL House, Plot No. 56
Road No. 17 MIDC
Andheri(E), Bombay-400093
Tel.: 8215936/37/39/40
Fax: (022) 8215944
Tix.: 011-79434 GSL IN

Ret No. *Date:*

(By DHL)

June 12, 1996

M/s Apollo Finance Ltd.
5th Floor, Hemkunt Tower
98, Nehru Place
New Delhi- 110019
Kind Attn. : Mr. Sanjeev Varma
Dear Sir,
Sub: ***ICD Facility for Rs. 25.00 lacs.***

Please find enclosed herewith the following documents:
1. Demand Draft No. 583624 dated 11.06.96 for Rs. 1,46,923/- towards interest.
2. The details of shares registered in the name of Earth Prapti Investments Pvt. Ltd.

We hope you would have received all the other documents through our Delhi Office.

Kindly arrange to send the Demand Draft for Rs. 25.00 at the earliest payable at Bombay.

Thanking you,

Yours faithfully,
For GSL (INDIA) LIMITED
Sd/-
M.C. Jain
PRESIDENT
Encl.as above "

13. As per para 5 of the complaint, petitioner alongwith R.C. Bagrodia and B.K. Ametha represented Accused Company and approached the complainant in June 1996 at Complainant's Registered Office in New Delhi and requested the complainant for inter-corporate deposit of Rs. 25 Lakhs and did not disclose the fact that the Accused Company has already undergone into winding up proceedings. However, they misrepresented the fact that the Accused Company is financially sound and the post dated cheque issued to the Complainant in lieu of the Loan amount will be honoured in the due course.

14. The complainant in support of its complaint examined CW1 Navneet Prabhakar (AR of the Complainant Company) on 30.11.2002 who specifically stated in his statement that Accused Company through Accused Persons i.e. Accused No.2 Sh. R.C. Bagrodia, Managing Director, M/s GSL (India) Ltd., Accused No.3 Sh. B.K. Ametha, Joint Managing Director, M/s GSL (India) Ltd. and Accused No.4 (present petitioner) Sh. M.C. Jain, Director, M/s GSL (India) Ltd. approached complainant in month of June 1996 and requested for inter-corporate loan of Rs. 25 Lakhs at 31% interest and promised to repay the loan amount within 90 days. The accused persons while obtaining aforesaid loan dishonestly concealed the factum of winding

up proceeding of Accused Company and induced complainant to part with his huge amount.

15. On the basis of the evidence on the record, complaint by the Complainant and statement of CW1 Navneet Prabhakar (AR of the Complainant Company) the Court below took cognizance under Section 420/34 IPC and summoned the Accused persons. The Summoning Order in C.C. No. 69A/1 dated 26.04.2003 is reproduced as under: -

> *" 26/4/2003*
> *Pt: Comptt. in person with cl.*
> *I have heard arg. I have perused, the record carefully. I have also gone through the statement of CW1. In my considered view, there are sufficient grounds to proceed against the accused U/s 420/34 IPC. Accordingly, accused be summoned on filing of Pf/RC etc for 14/1/04 & be given dasti.*
> *Sd/-*
> *MM*
> *26/4"*

16. The contention of the Ld. Senior Counsel on behalf of the Petitioner that at the relevant point of time, the petitioner was neither a Director nor held a responsible position in the accused company for conducting day to day affairs of the accused company loses its significance as the petitioner was in fact President of the Accused Company and had written the aforesaid letter to the Complainant just 4 days after the alleged meeting happened. The Court below after going through evidence supported by direct evidence of CW1 took cognizance of offence under Section 420/34 IPC.

17. As such, reliance placed by the Petitioner in ***Prakash Chand***

(Supra), ***Harshendra Kumar*** (supra), ***GHCL Employees Stock Option Trust*** (supra), ***Thermax Limited*** (supra), ***Maksud Saiyed*** (supra) and ***Colgate Palmolive*** (supra) is misplaced.

18. As discussed above, this Court find no ground to interfere with Summoning Order dated 26.04.2003 passed by Ld. MM in CC No. 69A/1. Present petition is accordingly dismissed. Applications, if any, are accordingly disposed of.

19. LCR be sent back with one copy of this judgment. Parties are directed to appear before the concerned or successive Court on 09.10.2019. No orders as to cost.

I.S.MEHTA

(JUDGE)

SEPTEMBER 06, 2019