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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 29th January, 2019

+ CRL. M.C. 2150/2018

BHARDWAJ THIRVENKATA VENKATAVARAGHAVAN

..... Petitioner

Through: Mr. Sushil Bajaj & Mr. Shalin
Arthwan, Advs.

versus

M/S PVR LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint case (573/1/2015 – new number 35421/2016) of the respondent, the petitioner along with certain others, were summoned as accused by the Metropolitan Magistrate, by order dated 11.04.2016, to answer the accusations of offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act), the gravamen thereof being that no payment was made inspite of notice of demand after dishonor of certain cheques, which had been issued against the account of Vasani Health Care Pvt. Ltd., a company in which the petitioner and some of the other accused shown in the array were described as directors at the relevant point of time.
2. The petitioner, feeling aggrieved, has come up to this Court by the petition at hand invoking the inherent power and jurisdiction under

Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) contending that the proceedings taken out against him in the criminal court are an abuse of the process of law, his position in the said company i.e. Vasan Health Care Pvt. Ltd. (the company accused) at the relevant point of time being that of “*non-executive nominee director*”, who had no role to play in the day-to-day affairs or business of the company.

3. Notice of the petition was served on the respondent in terms of the order dated 25.04.2018 for 13.07.2018 on which day the matter was adjourned giving liberty to the respondent to file a reply. No reply has been filed till date. On the matter being called out, no one has appeared for the respondent. It was kept in wait. In spite of the matter being passed over there is no appearance on behalf of the respondent till 3.00 p.m. It is clear that the respondent does not seek to put in any contest to the averments in the petition. In these circumstances, the documents filed by the petitioner (to be specific form no. 32) confirming his position to be that of “*non-executive nominee director*” in the company accused, will have to be accepted as indisputable.

4. In *Pooja Ravinder Devidasani vs. State of Maharashtra & Anr.*(2014) 16 SCC 1, the Supreme Court ruled thus:-

“17. ...Non-executive Director is no doubt a custodian of the governance of the company but is not involved in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is

particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the NI Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14)

“13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141.”

5. In a similarly placed fact-situation in a batch of matters led by CrI.M.C. 3729/2017 titled *Chanakya Bhupen Chakravarti & Anr.vs. Mrs. Rajeshri Karwa*, 2018 SCC Online Del 12968, criminal

prosecution with reference to Section 141 of NI Act against similarly placed individuals who were also non-executive directors and had been arraigned as accused in those proceedings were set aside. It may be added that on similar contentions raised by the petitioner in *Kanarath Payattiyath Balaraj vs. PVR Ltd.*, Crl.M.C. 2715/2017, the said matter also having arisen out of the same case at hand, the prosecution against him was set aside and quashed by a coordinate bench, by its order dated 13.11.2017.

6. On parity, the petitioner herein deserves similar relief. Thus, the impugned order insofar as thereby the petitioner was summoned as accused in the aforementioned criminal complaint case of the respondent is hereby quashed and set aside.

7. The petition and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J.

JANUARY 29, 2019

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