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

Date of decision: 26.11.2019

+ CRL.M.C. 1249/2017 & CRL.M.A. 5138/2017

COL RAM KISHAN BUDHWAR Petitioner

Through Ms. Pooja B Soni, Adv.

versus

M/S SWIFT SECURITIES Respondent

Through Ms. Prabha Mishra

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

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

1. By way of the instant petition, petitioner seeks directions thereby to set aside the order dated 10.03.2016 passed by the Id. Metropolitan Magistrate, North-West, Rohini- Delhi in Criminal Complaint no. CC 389/1/16.

2. The present case has been filed on the ground that the learned Trial Court has failed to appreciate the fact that neither any specific averment has been made in the complaint that at the time when offence was committed the

petitioner was either in charge of the respondent no. 4 or responsible for the conduct of the business of the accused no.4 which is the company nor any material is adduced on record on the basis of which the petitioner could have been summoned in the complaint initiated by the respondent no.1.

3. Learned counsel for the petitioner submits that in para 12 of the complaint, in order to implicate the petitioner, the respondent no.1 /complainant has only made an averment that the accused no. 1 is a company incorporated under Indian Companies Act and accused no. 2 and 4 are its Directors and are responsible as well as authorized to incur the liability of dishonouring of the cheque, therefore, also liable as per Section 141 of the Negotiable Instrument Act. Beyond this, no role, much less any specific role, has been assigned in the entire complaint and the entire complaint is completely conspicuously silent about any role being played by the petitioner in the alleged transactions.

4. Learned counsel for the petitioner further submits that the learned Trial Court has failed to appreciate the fact that neither the petitioner has played any role in the transaction in question nor any averments to this effect has been made by the respondent no.1/ complainant in the complaint. Neither the petitioner signed/executed any document with the respondent

no.1 nor the petitioner ever dealt with the respondent no. 1 company. The cheque in question is also not signed/ issued by the petitioner. As per the documents produced by the respondent no.1 company, it was the respondent no.2 who apparently entered into the transaction with the respondent no.1 company and signed the documents/agreement pertaining to the transaction which is reflecting in the complaint filed by the respondent no.1. Further, the agreement in question pertains to the year 2008 and the petitioner resigned as Director of respondent no.4 Company in the month of June, 2015. To this effect, a resolution has been passed, copy whereof has been annexed with this petition at page 132, which substantiates that the resignation of petitioner was accepted by the respondent no.4 company with effect from 09.06.2015.

5. On the other hand, learned counsel for the respondent no.1 company submits that on 01.10.2011 a loan agreement was signed between respondent no.1 and respondent no.4 companies and the petitioner was one of the Directors in respondent no.4 Company but he resigned on 09.06.2015, however, there was no notice to this effect and thus, the respondents had no knowledge about resignation of the petitioner. Therefore, he has been impleaded in the complaint.

6. The fact remains that the agreement was entered between respondent no.1 and respondent no.4 companies in the year 2011 to provide finances and thereafter a cheque for an amount of ₹92,89,243/- was issued on 01.10.2015 whereas, as per the facts noted above, the petitioner had already resigned on 09.06.2015, which was much before the issuance of cheque in question, which is also evident from the resolution of respondent no.4 company.

7. In view of the above stated facts, this Court is of the considered view that the petitioner is not guilty of the offence punishable under Section 138 NI Act. Therefore, I hereby set aside the impugned order dated 10.03.2016 passed by the Trial Court and proceedings pending before it qua the petitioner only.

8. The petition stands disposed of accordingly.

Order *dasti*.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 26, 2019

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