

\$~4 & 7-11 (*common order*)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th March, 2019

- + CRL.M.C. 3791/2016 and CrI.M.A.15849/2016
- + CRL.M.C. 4405/2016 and CrI.M.A.18399/2016
- + CRL.M.C. 4415/2016 and CrI.M.A.18431/2016
- + CRL.M.C. 4416/2016 and CrI.M.A.18433/2016
- + CRL.M.C. 4417/2016 and CrI.M.A.18435/2016
- + CRL.M.C. 4418/2016 and CrI.M.A.18437/2016

KARAN A CHANANA

.....Petitioner

Through: Mr. Iggu Chittiappa, Advocate
with Mr. Karthik K.R.,
Advocate

versus

GOVT. OF NCT & ANR.

.....Respondents

Through: Mr. Amit Ahlawat, APP for the
State
Mr. Gaurav Mittal, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. These petitions arise out of six different criminal complaints (Nos. 2166/1/15, 2161/1/15, 2165/1/15, 2162/1/15, 2163/1/15 and 2164/1/15) instituted by the second respondent in the court of Metropolitan Magistrate, each alleging offence under section 138 of the Negotiable Instruments Act, 1881 on the averments, *inter alia*, of there being no payment tendered or made in spite of notices of

demand issued by the complainant upon dishonor of certain cheques which had been issued in his favour against the account of a company Amira Pure Foods Pvt. Ltd., also an accused in the said cases, vicarious liability having been attributed to the petitioner on the allegations of he being in charge of, and responsible for, the day-to-day affairs of the said company, he also having statedly participated in certain acts of commission or omission. It may be mentioned here that besides the petitioner, and the said company accused, a number of other persons connected to the said company have also been similarly impleaded in the array of accused, the cases in all involving twenty-six cheques of the total value of Rs. 6 crores and 30 lacs, they, as per the complainant's case, having been issued and handed over for payment of consideration due on account of sale of rice grains.

2. The Metropolitan Magistrate, on the basis of preliminary inquiry, found sufficient grounds to proceed, *inter alia*, against the petitioner and thereby having issued process through orders which are impugned herein.

3. The prime contention raised by the petitioner has been that he is a non-resident Indian (NRI) who has been a director of the company accused but has not been participating in its affairs, other individual accused (particularly, Ms. Anita Dhang) being the person in charge of and responsible for the conduct of the day-to-day affairs of the said company. It is his contention that since he is not a signatory to any of the cheques, he could not have been roped in on the principle of

vicarious liability under Section 141 of the Negotiable Instruments Act, 1881. In support of this contention, he places reliance on an assessment order passed by the Deputy Commissioner of Income Tax, Central Circle-I, Faridabad for the assessment year 2014-2015, wherein his claim of being an NRI was accepted. He also refers to the minutes of the meeting of the board of directors of the company accused held on 01.02.2010 reflecting one Rajesh Arora to be the executive director of the company to whom the requisite responsibilities had been entrusted.

4. *Per contra*, the respondent (complainant) by way of counter affidavit has submitted that the petitioner is guilty of suppression of facts and projecting false and baseless contentions and submissions. It is pointed out that in contrast to the claim of he being an NRI, there is material to show that the petitioner has also been residing in New Delhi. It is pointed out that he is the director of the company accused having the largest stake and has been wholly in charge of and responsible for the conduct of its business, there being change in other members of the board over the period, the effective management having throughout been in the command and control of the petitioner. The petitioner, noticeably, despite opportunity, has not filed any rejoinder to the said counter affidavit.

5. At the hearing, the counsel for the complainant placed before the court copies of the extracts of the minutes of the meeting of the board of directors of the company accused, held on various dates (beginning 31.07.2009), also covering the relevant period when the

subject transactions were undertaken, as also the relevant reports submitted to the registrar of companies (ROC) from time to time, the same indicating that the petitioner has been involved in the affairs of the company as Chairman-cum-Managing Director, he indeed being the person holding the largest stake in the company accused, his participation in the meeting of the board of directors being consistent and constant throughout.

6. On being asked, the counsel for the petitioner was unable to refute the above said material. He was also unable to clarify as to whether there has been a cessation in the responsibility of the petitioner in the capacity of Chairman-cum-Managing Director at any point of time over the period and, if so, from what specific date. The averments of the petitioner in these matters are indeed vague and non-specific. Merely because the petitioner has been accepted as an NRI by the income tax authorities does not mean that there would be no occasion for him to participate in or being responsible for the day-to-day affairs of the company accused, particularly around the period to which the issuance of cheques, their dishonor and failure to pay pursuant to the demand notices relates.

7. The petitioner, at best, raises question of facts which cannot be effectively addressed or determined in the jurisdiction under Section 482 of the Code of Criminal Procedure, 1973. His contentions raise defences which will have to be considered on the basis of evidence led before the trial court.

8. In view of the above facts and circumstances, these petitions are dismissed with costs of Rs.20,000/- each.

9. This disposes of pending applications as well.

R.K.GAUBA, J.

MARCH 28, 2018

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