



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

Date of Decision : 21.12.2021

+ **CRL.M.C. 3/2021**

IN THE MATTER OF:

M/S SUNGLO ENGINEERING INDIA PVT. LTD..... Petitioner

Through: Mr. Vinay Shanker Dubey, Advocate

versus

THE STATE & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for State
Ms. Shruti Tiwari, Advocate for
respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner assailing the order dated 30.09.2020 passed by the Principal District & Sessions Judge, Patiala House Courts, New Delhi in Criminal Revision No. 64/2020 arising out of Complaint Case No. 3011/2019 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the N.I. Act) read with Section 142 N.I. Act. Vide the aforesaid order, the Revisional Court has set aside the order of summoning passed by the Trial Court qua respondent No. 2, i.e., *Pranati Samal*.

2. Briefly stated, the facts involved in the present case are that the petitioner filed the aforesaid complaint under Section 138 N.I. Act against *M/s Samal Infra*



Projects Pvt. Ltd. (hereinafter referred to as 'the accused company') and respondent Nos. 1 and 2 who are stated to be Directors of the accused company. It was stated in the complaint that the accused company had business relations with the petitioner company, in terms of which the accused company had been allowed to supply material and labour for a project. However, on account of untimely supply of material and labour, the project was delayed. The accused company issued a cheque towards its part liability for Rs.1.30 crores which, on presentation, got dishonoured. Subsequently, the petitioner company received return memo dated 25.01.2019 and discovered that the cheque got dishonoured because it was stopped by the Drawer bank. A legal notice raising the demand for the outstanding liability was issued by the petitioner company, however, the amount remaining unpaid, the aforementioned complaint came to be filed.

3. Mr. Vinay Shanker Dubey, learned counsel for the petitioner, while assailing the impugned order, submits that the accused company is a private limited company having only two Directors, i.e., respondent No. 2 and her husband, namely *Minaketan Samal* and thus, respondent No. 2 was rightly summoned by the Trial Court. It is further contended that the Revisional Court has failed to appreciate that necessary averments were made in the complaint against respondent No. 2 by stating that she was one of the Directors in the accused company and that she was responsible for the day-to-day affairs of the company. Learned counsel has also placed reliance upon the balance sheets of the accused company for the relevant years, which were signed by respondent No. 2 in the capacity of Director, along with her husband/co-accused, to submit that she was in-charge of and responsible for conduct of the business of the accused company.



4. Learned counsel for respondent No. 2, on the other hand, has supported the impugned order. She submits that no specific averments have been made in the complaint regarding the role of respondent No. 2 in the affairs of the accused company and/or the transaction in question. She further submits that respondent No. 2, albeit a Director of the accused company, was not involved in its financial affairs and did not sign the cheques in question. Thus, no liability under Sections 138/141 N.I. Act could be attributed to her merely on account of the position held by her in the accused company.

5. I have heard learned counsels for the parties and also perused the entire material placed on record.

6. The law on summoning of an accused for the offence punishable under Section 138 N.I. Act has been enunciated by the Supreme Court time and again. It has been propounded that before summoning an accused under Section 138 N.I. Act, the Magistrate shall examine the nature of the allegations made in the complaint and the evidence, both oral and documentary, in support thereof, and then proceed further with the proper application of mind to the legal principle of the issue.

7. It is also well settled that at the time of issuing of the process, the Magistrate is required to see only the allegations in the complaint and only where the allegations in the complaint do not constitute an offence against a person, the complaint is liable to be dismissed.

8. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another reported as (2005) 8 SCC 89, it has been observed that Section 204 Cr.P.C. commences with the words "*if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding*" and that apart, the words "*sufficient ground for proceeding*" again suggest that ground should be made out in the



complaint for proceeding against an accused. Thus, a complaint under Sections 138/141 N.I. Act must contain material to enable the Magistrate to make up his mind for issuing process.

9. For making a Director of a company liable for the offences committed by the company under Section 141 of the N.I. Act, there must be an averment in the complaint that he was in-charge of and responsible to the accused company for running of its day-to-day business at the time of commission of the alleged offence. In this regard, the Supreme Court while answering a reference in S.M.S. Pharmaceuticals (Supra), has held that:

“19. ... It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.”

10. Reference is further taken of the decision in Gunmala Sales Private Limited v. Anu Mehta and Others reported as **(2015) 1 SCC 103**, where the Supreme Court was concerned with the law on prosecution of a Director under Sections 138/141 N.I. Act, when it outlined that it is necessary for prosecution under these Sections that an averment is made to the effect that the accused Director was in-charge of or responsible for the conduct of the affairs of the accused company. It was further held that if an accused seeks quashing of the criminal complaint on the ground that only bald averments have been made, they must lead some evidence of incontrovertible nature in support of the contention. The law surrounding liability of a Director who was not the signatory of the cheque in dispute was also discussed in this case in the following terms:



"27. It is clear from a perusal of the above decisions that SMS Pharma (1), which is a three-judge Bench decision, still holds the field. In all subsequent decisions, two-judge Benches of this Court have followed SMS Pharma (1)...

28. We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the conclusions drawn in the abovementioned cases that it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company. This is a basic requirement. There is no deemed liability of such Directors...

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30. When a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, the High Court may find that the basic averment is sufficient, that it makes out a case against the Director; that there is nothing to suggest that the substratum of the allegation against the Director is destroyed rendering the basic averment insufficient and that since offence is made out against him, his further role can be brought out in the trial. In another case, the High Court may quash the complaint despite the basic averment. It may come across some unimpeachable evidence or acceptable circumstances which may in its opinion lead to a conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time and therefore making him stand the trial would be an abuse of process of court as no offence is made out against him."

31. When in view of the basic averment process is issued the complaint must proceed against the Directors. But, if any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not



concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint it must be shown that no offence is made out at all against the Director.”

(emphasis added)

11. On an overview of the judicial dicta on the subject, this Court is of the opinion that the N.I. Act being a penal statute should receive strict construction and thus, averments in the complaint which satisfy the requirements of Section 141 N.I. Act are imperative.

12. Before proceeding to the facts of the present case, it is worthwhile also to reproduce the view taken recently in Sunil Todi and Others v. State of Gujarat and Another reported as **2021 SCC OnLine SC 1174**, wherein the Supreme Court was in seisin of appeals preferred by accused/appellants against the order of the High Court, whereby petitions seeking quashing of criminal complaints filed under Section 138 N.I. Act were dismissed. The Court observed thus:-

“53. The test to determine if the Managing Director or a Director must be charged for the offence committed by the Company is to determine if the conditions in Section 141 of the NI Act have been fulfilled i.e., whether the individual was in-charge of and responsible for the affairs of the company during the commission



of the offence. However, the determination of whether the conditions stipulated in Section 141 of the MMDR Act have been fulfilled is a matter of trial. There are sufficient averments in the complaint to raise a prima facie case against them. It is only at the trial that they could take recourse to the proviso to Section 141 and not at the stage of issuance of process.”

(emphasis added)

13. In the present case, a perusal of the complaint would show that the following averments were made insofar as respondent No. 2, who is the wife of another Director in the accused company, is concerned:

“2. That the complainant had need supplier of material and labour therefore due to above need, as per accused/respondents' proposal the complainant had allowed to the accused/respondents for supplied of material and supplied of labour and also agreed by the accused/respondents that they will only entitled 6% of profit on invoice value without any written agreement and the accused/respondents No. 2 and 3 are the director of the accused/respondent No.1 and the accused/respondents No. 2 & 3 are also involving in the day to day affairs of the accused/ respondent No. 1.

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10. That after dishonoring of the cheque, the complainant intimated the accused/respondents and requested them to pay the due amount but clearly refused to pay the same.

xxx

12. That the complainant has not received back the notice envelops and the notice duly received by the accused/respondents and the accused/respondents have sent a false reply to the notice but till date did not make any payment to the complainant. It is pertinent to mention herein that the accused/respondents are



working at the above mentioned address as the complainant went several times to the said address of accused persons and requested them for making the payment.”

14. From a bare perusal of the same, it is apparent that a basic averment to the effect that respondent No. 2 was responsible to the accused company for its day-to-day affairs has been clearly made. An overview of the record of the case further shows that no material has been placed on record, much less of incontrovertible or unimpeachable nature, to establish that respondent No. 2 was in fact not responsible for the day-to-day affairs of the accused company. Rather, despite the legal notice having been issued to respondent No. 2 as well, no reply was furnished on her behalf to the effect that she was not in-charge of or responsible to the accused company for the conduct of its business at the relevant time. The fact that respondent No. 2 is a Director of the accused company is also not disputed. The petitioner has also placed on record balance sheets of the accused company for the relevant years, which indicate that the same were signed by respondent No. 2 in the capacity of Director. In this backdrop, what role, if any, was played by respondent No. 2 at the time when the offence was committed shall be a matter of trial and may be discerned by the concerned Court once both parties have led evidence.

15. In the opinion of this Court, no ground for quashing of the summoning order qua respondent No. 2 is made out, as the case is at nascent stage. Considering the facts thereof, requirements of Section 141 N.I. Act are *prima facie* satisfied. The Magistrate having exercised his discretion, this Court finds no reason to substitute its opinion in place thereof.

16. In view of the above facts and circumstances and the exposition of law as outlined hereinabove, this Court finds infirmity in the impugned order passed by the Revisional Court. Accordingly, the present petition is allowed and the



NEUTRAL CITATION NO: 2022/DHC/000045

impugned order is set aside. The Trial Court is directed to proceed against respondent No. 2 in accordance with law.

17. A copy of this order be communicated electronically to the concerned Trial Court through the concerned District Judge forthwith.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 21, 2021

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[Click here to check corrigendum, if any](#)

