* IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 1248/2020 & Crl. M.A. 4821/2020

Reserved on : 20.11.2020

Date of Decision : 01.12.2020

IN THE MATTER OF:

SMT. MEENU GOYAL .... Petitioner

Through: Mr. Praveen Suri, Advocate.

Versus

M/S MICROMAX INFORMATICS LTD. & ORS. ..... Respondents

Through: Mr. Parvez Alam Khan, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present petition has been filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C. seeking setting aside of the summoning order dated 05.12.2019 passed by the learned MM, Patiala House Courts, New Delhi whereby the petitioner has been summoned for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, the N.I. Act) by the trial court in Complaint Case No. 5618/2019.

2. Briefly, the facts are that the petitioner is one of the directors of M/s Beyond Tele Private Limited (respondent no.2 herein). The petitioner's husband namely *Krishan Gopal Goyal* (respondent no.3 herein) is the other director of the said company. M/s Beyond Tele

Private Limited is in the business of sales, marketing and distribution of GSM and CDMA mobile handsets, data cards, smart phones, LED TVs, Air-Conditioners etc. M/s Beyond Tele Private Limited entered into a Distributorship Agreement dated 12.02.2016 with M/s Micromax Informatics Limited (complainant/respondent no. 1 herein) on the basis of which they became an authorized distributor on non-exclusive basis. During the course of business, it was alleged by the complainant company that M/s Beyond Tele Private Limited had an outstanding balance of Rs.24,00,878.56/- against which it issued a cheque bearing no. 279362 dated 06.03.2019 for an amount of Rs.24,00,878/- drawn on Axis Bank Ltd. However, on presentation, vide return memo dated 08.03.2019, the said cheque was returned unpaid due to the reason "payment stopped by the drawer". The complainant company issued a legal notice dated 29.03.2019 to M/s Beyond Tele Private Limited as well as its directors i.e., the present petitioner and her husband *Krishan Gopal Goyal*. A reply to the legal notice on behalf of M/s Beyond Tele Private Limited as well as its directors was also sent. Simultaneously, M/s Beyond Tele Private Limited also issued a legal notice through its director *Krishan Gopal Goyal* to the complainant company and its directors claiming that an amount of Rs.16,53,992/- was due to them. Subsequently, an Insolvency Petition under Section 9 of the Insolvency and Bankruptcy Code was also filed against the complainant company before the National Company Law Tribunal.

3. Mr. Praveen Suri, learned counsel for the petitioner has assailed the impugned order on the ground that the same was passed by the trial court without due application of mind. He submitted that the impugned cheque was in fact towards security and not meant towards discharge of

any legal liability. He also submitted that though the present petitioner is a director but not incharge of day-to-day affairs of the company as she was not an active director. He has referred to the legal notice, the complaint as well as the pre-summoning evidence filed by way of an affidavit by the complainant company to submit that no specific allegations have been levelled against the present petitioner which satisfy the ingredients of Section 141 of the N.I. Act.

4. To buttress his contention, learned counsel for the petitioner has referred to the Distributorship Agreement and the impugned cheque to submit that neither the Distributorship Agreement nor the impugned cheque was signed by the present petitioner. He has also referred to the various emails exchanged between M/s Beyond Tele Private Limited and the complainant company to submit that none of the correspondence was in fact, carried out by the present petitioner. It was also submitted that the petitioner never dealt with the complainant company or its office bearers. It was next submitted that despite specific stand taken in the reply on behalf of the petitioner to the legal notice of the complainant company, no further clarification or detail has come either in the complaint filed or in the pre-summoning evidence detailing the role of the present petitioner. In support, learned counsel has relied upon the decision rendered in K.K. Ahuja *v.* V K. Vora and Another reported as **(2009) 10 SCC 48**. Lastly, it was submitted that the cheque in question was given as a security and not towards discharge of any debt or liability.

5. Per contra, Mr. Parvez Alam Khan, learned counsel for the complainant company has supported the impugned order. While referring to various paragraphs in the legal notice as well as in the complaint, learned counsel submitted that necessary averments in terms of the

offence punishable under Section 141 N.I. Act have been made. It was also contended that the defence taken by the petitioner is a question of fact, which cannot be gone into in the present petition. In support of his submissions, learned counsel has referred to the decisions rendered in K.K. Ahuja (Supra), Standard Chartered Bank *v.* State of Maharashtra and Others reported as **(2016) 6 SCC 62**, HMT Watches Limited *v.* M.A. Abida and Another reported as **(2015) 11 SCC 776** and Lata Agrwal *v.* Micromax, in *CRL.M.C No. 1215/2017* decided on 20.02.2018.

6. I have heard learned counsels for the parties and have also gone through the case records.

7. So far as the contention whether the cheque was given towards the security or discharge of legal liability is concerned, the same came up before this Court in M/s Chesons Enterprises *v.* M/s Cadiz Pharmaceuticals Pvt. Ltd. in *CRL.M.C. 2149/2020* decided on 09.11.2020, wherein it was held as under:-

> *"9. Whether the cheque in question was issued towards the security and not towards any debt or liability is a matter of defence which could be determined in the trial on the petitioner adducing his evidence.*
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> *10. At this stage, I deem it profitable to refer to the decision of the Supreme Court in HMT Watches Limited v. M.A. Abida & Another reported as (2015) 11 SCC 776, where it was held as follows :-*
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> *"10....Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court*

should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplied with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it."

11. Recently, in Womb Laboratories Pvt. Ltd. v. Vijay Ahuja & Ors. reported as 2019 (4) RCR (Criminal) 358, it was held that whether the cheques were given towards security and not towards discharge of any debt or liability is a triable issue for which the relevant facts need to be proved."

8. Even, in HMT Watches Limited (Supra), it was held by the Supreme Court that the issue whether the cheque was given towards security or not, or whether there was an outstanding liability or not, is a question of fact, which needs to be gone into by the trial court after recording of the evidence.

9. The only question that remains to be examined is whether as per the averments made in the legal notice, complaint and the pre-summoning evidence, the petitioner at the time of commission of offence

was in charge of and responsible for the conduct of the business of the company and its day-to-day affairs.

10. The liability of Directors and other officers of the company for the offence punishable under Section 138 of the N.I. Act came up for consideration before the Supreme Court in Gunmala Sales Private Limited *v.* Anu Mehta and Others reported as **(2015) 1 SCC 103**, where while referring to its earlier decision in K.K. Ahuja (Supra), the Supreme Court summarised its conclusions, which were also later reiterated in Standard Chartered Bank (Supra), as under:-

> *"34. We may summarise our conclusions as follows:*
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> *34.1. Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director.*
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> *34.2. If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.*
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> *34.3. In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable*

circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed.

34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into *account which may lead it to conclude that no trial is necessary qua a particular Director...”*

(emphasis added)

11. Recently, in A.R. Radha Krishna *v.* Dasari Deepthi and Others reported as **(2019) 15 SCC 550**, the Supreme Court held as follows: -

“7. ...In a case pertaining to an offence under S. 138 and S. 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company’s business at the time when the offence was committed. The High Court, in deciding a quashing petition under S. 482, Cr.P.C., must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has been brought on record which leads to the 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. While the role of a Director in a company is ultimately a question of fact, and no fixed formula can be fixed for the same, the High Court must exercise its power under S. 482, Cr.P.C. when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court. [See Gunmala Sales (P) Ltd. v. Anu Mehta].”

12. In the present case, it is seen that in the legal notice issued by complainant company, a bald assertion was made that the co-accused i.e., *Krishan Gopal Goyal* (petitioner’s husband) along with the petitioner had approached the complainant company for being appointed as their authorized distributor and subsequently, at the time when products were provided, they were received/acknowledged by M/s Beyond Tele Private

Limited through both of its directors and other representatives. It was also stated that M/s Beyond Tele Private Limited, under instructions from both the directors, had issued the impugned cheque.

13. In the reply dated 08.04.2019 to the above legal notice, a specific stand was taken that the present petitioner has nothing to do with the daily affairs of the company i.e., M/s Beyond Tele Private Limited. It was also stated that it was *Krishan Gopal Goyal* who had been handling the company's business. It was also specifically stated that the petitioner never dealt with the representatives of the complainant company.

14. The complainant company acknowledged the receipt of the reply however, despite coming to know of the aforesaid stand of the petitioner, no specific or further details regarding the date, time and place of the meetings with the petitioner were mentioned either in the complaint filed under Section 138 read with Section 142 of the N.I. Act or in the pre-summoning evidence. Even in the present proceedings, only written submissions have been filed but no reply has been filed by the complainant company either specifically denying the petitioner's stand or giving any further details qua the petitioner. A combined reading of the legal notice, the complaint as well as the pre-summoning evidence would show that in spite of the aforementioned specific stand taken on behalf of the petitioner, no additional averment has come detailing the role of the petitioner either in the complaint or in the pre-summoning evidence.

15. In similar facts and circumstances, a Co-ordinate Bench of this Court in Chanakya Bhupen Chakravarti *v.* Rajeshri Karwa reported as **2018 SCC OnLine Del 12968** held as under:-

> *"9. The respondent (complainant) concedely had received the replies on behalf of the petitioners to the demand notices issued in*

the wake of the dishonor of the cheque which are the subject matter of these eight petitions. By the said replies, they had specifically informed the complainant that they had no role to play in the day-to- day affairs of the accused company or conduct of its business. It was the responsibility against this backdrop, to set out as to why they wanted to proceed against the petitioners as well. The complaints are conspicuously silent on this score. Rather the complaints would not even acknowledge receipt of the said replies. Same is the position with the affidavits which were filed during the pre-summoning inquiry. The complaints, insofar as they are directed against the petitioners, would, thus, fail even on the averment test."

16. So far as reliance placed by learned counsel for the complainant company on the decision of a Coordinate Bench of this Court in Lata Agarwal (Supra), is concerned, it is noted that the facts were not similar. In the captioned case, no such reply to the legal notice, as is available in the present case, was brought to the notice of the Court. On the other hand, the decision in Chanakya Bhupen Chakravarti (Supra) applies squarely to the facts of the present case.

17. Admittedly, the present petitioner neither signed the cheque in question nor signed nor witnessed the Distributorship Agreement. In fact, it has not even been averred that the petitioner was even present at the time of signing the agreement. The person who has signed the cheque in question and the Distributorship Agreement i.e., *Krishan Gopal Goyal* (husband of the petitioner) as well as the company i.e., M/s Beyond Tele Private Limited have also been summoned as accused in the complaint

case along with the present petitioner. The present petition has been filed only on behalf of the petitioner.

18. In view of the peculiar facts and circumstances of the case, when examined in light of the above exposition of law, this Court is of the opinion that the necessary ingredients required to constitute the offence under Section 141 of the N.I. Act qua the present petitioner are not satisfied.

19. In Pepsi Foods Ltd. and Another *v.* Special Judicial Magistrate and Others reported as **(1998) 5 SCC 749**, it was held that summoning an accused person cannot be resorted to as a matter of course and the order must show the due application of mind.

20. Resultantly, I deem it fit to allow the present petition and accordingly, the impugned order only to the extent of summoning the present petitioner for the offence punishable under Section 138 of the N.I. Act is quashed. The petition is disposed of in the above terms along with the pending application.

21. A copy of the judgment be communicated electronically to the concerned trial court.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 01, 2020
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