

* IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 2358/2021 and CRL.M.A. 15628/2021

Reserved on : 07.10.2021

Date of Decision : 20.12.2021

IN THE MATTER OF:

R. VIJAY KUMAR

..... Petitioner

Through: Dr. Amit George, Mr. Saurabh Bhargavan,
Mr. Rayadurgam Bharat and Ms. Shweta
Sharma, Advocates.

versus

M/S IFCI FACTORS LIMITED & ORS.

..... Respondents

Through: None.

AND

CRL.M.C. 2362/2021 and CRL.M.As. 15635-36/2021

R. VIJAY KUMAR

..... Petitioner

Through: Dr. Amit George, Mr. Saurabh Bhargavan,
Mr. Rayadurgam Bharat and Ms. Shweta
Sharma, Advocates.

versus

M/S IFCI FACTORS LIMITED & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present petitions have been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking quashing of Complaint Case Nos. 627314/2016 and 618548/2016 arising out of the proceedings initiated

under Sections 138/141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the N.I. Act). Additionally, the petitioner has prayed for quashing of the order dated 07.04.2021 passed by the learned Metropolitan Magistrate (N.I. Act), South-East District, Saket Courts, New Delhi, whereby his application seeking discharge/dropping of the proceedings qua him has been dismissed.

2. Briefly stated, the facts of the instant case are that respondent No. 1/complainant filed the aforesaid complaints under Sections 138/141 N.I. Act claiming that the cheques in question were issued in its favour by the accused company, i.e. *Daily Life Retail and Trading Pvt. Ltd.*, and the same, on presentation, were dishonoured and returned with the remarks '*account closed*'. As a result, a legal notice dated 30.07.2010 was issued and on failure of the accused persons to clear the outstanding payment in terms of the cheques in question, the aforesaid complaints came to be filed.

3. Learned counsel for the petitioner has sought quashing of the complaint cases on the ground that only bald and vague allegations have been made against the present petitioner, who was a dormant Director out of the many Directors of the accused company. He submits that the petitioner was not responsible for the running of day-to-day affairs of the company. It is further stated that the petitioner was neither a signatory to the Agreement dated 15.07.2008 executed between the complainant company and the accused company, nor did he sign the cheques in question. It is also submitted that the complaints are bereft of necessary ingredients required under Section 138 N.I. Act. In support of his submissions, learned counsel has placed reliance on the following decisions:-

- i) Meenu Goyal v. Micromax Informatics Ltd. and Others reported as **2020 SCC OnLine Del 1939**

- ii) Sunita Palta & Ors v. M/s Kit Marketing Pvt Ltd reported as **267 (2020) DLT 723**
- iii) Dharna Goyal v. Aryan Infratech Pvt. Ltd. reported as **MANU/DE/1994/2020**
- iv) Har Sarup Bhasin v. Origo Commodities India Pvt. Ltd. reported as **2020 SCC OnLine Del 9**

4. Learned counsel for the petitioner has further invited attention to the order dated 10.10.2019 passed by this Court in CRL.M.C. 5107/2019, whereby the order dated 03.09.2019 passed by the learned Metropolitan Magistrate framing notice under Section 251 Cr.P.C. was set aside and it was directed that a fresh reasoned order be passed within a period of eight weeks. He also invited attention to the particulars mentioned in Form-32 along with ROC records to submit that there are other Directors of the accused company who have not been arrayed in the complaints.

5. I have heard the learned counsel for the petitioner and gone through the material placed on record as well as the decisions cited in support of his submissions.

6. A perusal of the aforesaid complaints would show that the complainant alleged that the present petitioner, who has been arrayed as accused No. 2, had agreed to guarantee repayment of all payments payable by the accused company in terms of the Factoring Agreement. It was also alleged that the present petitioner along with other accused persons was in-charge and responsible for making financial decisions of the accused company.

7. One of the contentions raised on behalf of the petitioner is that he was not served with any demand notice separately. However, the same does not weigh with this Court in view of the decision in Kirshna Texport and

Capital Markets Limited v. Ila A. Agrawal and Others reported as (2015) 8 SCC 28, where the Supreme Court held as under:

“18. In our view, Section 138 of the Act does not admit of any necessity or scope for reading into it the requirement that the directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such Directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company under Section 138. Therefore, neither on literal construction nor on the touchstone of purposive construction such requirement could or ought to be read into Section 138 of the Act.”

8. On an overview of the decisions cited by the learned counsel for the petitioner, it is noted that the reliance placed on the decision in Meenu Goyal (Supra) is misplaced. In the said case, even as per the complainant, it was the husband of the petitioner with whom the entire business transaction was conducted and he alone had signed the cheque in question. Neither in the complaint nor in the pre-summoning evidence, any allegation was levelled against the petitioner. Insofar as the decisions in Sunita Palta (Supra) and Har Sarup Bhasin (Supra) are concerned, the same came to be passed in cases where the petitioners were independent non-executive Directors. In Dharna Goyal (Supra), a Coordinate Bench of this Court had come to the conclusion that there were no specific allegations against the petitioner who was the CEO of the accused company. As such, none of the decisions on which reliance is placed by the learned counsel for the petitioner, are applicable to the facts of the present case.

9. Another contention raised on behalf of the petitioner is that as a special condition precedent to the aforesaid Agreement, the accused company was required to provide security cheques for the concerned amount and it was in furtherance of the same that the cheques in question, i.e. four cheques of Rs. 25,00,000/-, were given as security. The position of

law regarding the issue as to whether cheques in question were given as security in a case under Section 138 N.I. Act is well-settled to the effect that the same shall be a matter of trial. The Supreme Court in Sripati Singh (Since Deceased) Through His Son Gaurav Singh v. State of Jharkhand and Another reported as **2021 SCC OnLine SC 1002** has recently expounded on the above lines. Relevant excerpt from the decision is extracted below:-

“19. ...Therefore, prima facie the cheque which was taken as security had matured for payment and the appellant was entitled to present the same. On dishonour of such cheque the consequences contemplated under the Negotiable Instruments Act had befallen on respondent No. 2. As indicated above, the respondent No. 2 may have the defence in the proceedings which will be a matter for trial. In any event, the respondent No. 2 in the fact situation cannot make a grievance with regard to the cognizance being taken by the learned Magistrate or the rejection of the petition seeking discharge at this stage.

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23. ...The further defence as to whether the loan had been discharged as agreed by respondent No. 2 and in that circumstance the cheque which had been issued as security had not remained live for payment subsequent thereto etc. at best can be a defence for the respondent No. 2 to be put forth and to be established in the trial. In any event, it was not a case for the Court to either refuse to take cognizance or to discharge the respondent No. 2 in the manner it has been done by the High Court. Therefore, though a criminal complaint under Section 420 IPC was not sustainable in the facts and circumstances of the instant case, the complaint under section 138 of the N.I Act was maintainable and all contentions and the defence were to be considered during the course of the trial.”

10. It is also worthwhile 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)

11. From a reading of the judicial dicta on Section 141 N.I. Act and in light of the discussion undertaken hereinabove, this Court is of the opinion that the N.I. Act being a penal statute should receive strict construction. Thus, specific averments in a criminal complaint which satisfy the requirements of Section 141 N.I. Act are imperative. On a *prima facie* view of the material placed on record in the present case, it is apparent that specific allegations have been levelled against the petitioner. Apart from the basic averment that the petitioner was in-charge of and responsible for the day-to-day business of the accused company, it was further averred in the complaint that the petitioner, being a Director, was in charge of the financial decision-making of the accused company and he had agreed to guarantee repayment of all amounts payable by the accused company to the complainant in terms of the Factoring Agreement. Be that as it may, the issue whether or not the conditions stipulated in Section 141 of the N.I. Act have been fulfilled in the present case shall be a matter of trial in view of the decision in Sunil Todi (Supra).

12. In the opinion of this Court, on an overall reading of the complaints, it cannot be said that the allegations levelled are bald and vague. The petitioner has also not placed on record any material of unimpeachable

quality in support of his claim that he was a dormant Director which issue, alongwith other defences raised, shall be a matter of trial. Suffice it to say, the complaint cases ought not be quashed qua the petitioner at this stage.

13. Keeping in view the aforesaid, I find no ground to entertain the present petitions. Accordingly, both the petitions are dismissed and the impugned order is upheld. Miscellaneous applications are disposed of as infructuous.

14. A copy of this order be communicated electronically to the concerned Trial Court.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 20, 2021

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