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March 21,
2022
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CRR No.1762 of 2018
With
CRAN 1 of 2019 (Old CRAN 2041 of 2019)
With
CRAN 2 of 2021

In Re: An application under Section 482 of the Code of Criminal
Procedure, 1973;

Suresh Kumar Somani
Versus
Tushita Properties Private Limited

Mr. Krishnendu Bhattacharya,
Mr. Rajib Mullick,
Mr. Priyankar Ganguly,
Ms. Sonia Mukhrjee,
Ms. Shalini Bairagi.
...for the petitioner.

Mr. Avik Ghatak,
Ms. Afreen Begum,
Mr. Sagnik Mukherjee.
...for the opposite party.

The present revisional application has been preferred by
one of the accused in Complaint Case No.20404 of 2013
(corresponding to CS/0323539/2014) presently pending before the
learned Metropolitan Magistrate, 15th Court, Calcutta.

The main thrust of the contention of the petitioner is that
the paragraph 2 of the petition of complaint is the only foundation
for implicating the petitioner as an accused in the present case. The
said allegation/averment made in paragraph 2 is bereft of the
detailed requirements regarding compliance of Section 141 of the
Negotiable Instruments Act for holding a person being vicariously

liable in alleged commission of offence under Section 138 of the Negotiable Instruments Act.

Learned advocate for the petitioner has relied upon a decision in the case of **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.** reported in **AIR 2005 SCC 3512**.

On the other hand, Mr. Ghatak, learned advocate appearing for the complainant/opposite party has relied upon the judgments of the Hon'ble Supreme Court in **K.K. Ahuja Vs. V.K. Vora & Anr.** reported in **(2009) 10 SCC 48** and **A.K. Singhania Vs. Gujarat State Fertilizer Company Limited & Anr.** reported in **(2013) 16 SCC 630**.

The purpose of all these judgments which have been delivered by the Hon'ble Supreme Court was innocent persons or person who are not involved are unnecessarily not asked to take a criminal trial by invoking the provisions of Section 141 of the Negotiable Instruments Act.

All the judgments referred to are on the issues of Section 141 of the Negotiable Instruments Act but there are thread line difference in all these judgments regarding the allegation or averment required for implicating a person or holding them vicariously responsible for facing the trial in a proceeding under Section 138 of the Negotiable Instruments Act. Primarily, I am of the view that there is a requirement for at least stating that person who is responsible or in-charge for the day-to-day conduct of the business of the company was also holding his office at the relevant point of time when the offence was committed. The part of the

averment whether the person was holding the office at the time of commission of the offence is missing in paragraph 2 of the petition of complaint. However, a complaint can also be amended and the very purpose of a criminal court is to ascertain or unearth the truth.

In view of the aforesaid, I am of the opinion that let an enquiry be conducted under Section 202 of the Code of Criminal Procedure to ascertain as to whether the present petitioner before this Court, namely, Suresh Kumar Somani, was a Director of the company at the time when the offence was committed, that is after the period of 15 days on receipt of the statutory notice.

Let such enquiry in terms of Section 202 of the Code of Criminal Procedure be conducted by the authorities referred to in such Section under the direction of the learned Metropolitan Magistrate, 15th Court, Calcutta. It would be at the discretion of the said authority to call for a document either only from the complainant or if required from the accused.

Let the whole process of Section 202 Criminal Procedure Code be completed within a period of 60 days from the next date so fixed by the learned Metropolitan Magistrate, 15th Court, Calcutta. Thereafter, the learned Magistrate would take a decision whether the provisions of Section 204 of the Code of Criminal Procedure are to be invoked so far as the present petitioner is concerned.

With the aforesaid directions, CRR 1762 of 2018 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)