



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

% **Pronounced on: 26th July, 2022**

+ **CRL.M.C. 692/2020**

RAM LAKHAN SHARMA & ANR. Petitioners
Through: **Mr. Ranjan Kumar, Advocate**

Versus

SUBHASH CHAND Respondent
Through: **None**

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. The petition has been filed by two of the accused who have been summoned to face trial in Complaint Case no. 37941/2016 filed under Section 138 of the Negotiable Instruments Act, 1881 (NI Act for short) by the respondent on the allegations that the cheque bearing no. 134919 of the accused No.1 namely M/s. PMS Buildtech Pvt. Ltd., for a sum of Rs.7,25,734/- had been dishonoured. The present petitioners, stated to be the directors of accused No.1 company, were arrayed as accused nos. 4 and 6 respectively.

2. Mr. Ranjan Kumar, learned counsel for the petitioners submitted that the summoning order was faulty for two reasons. Firstly, the legal notice dated 31st May, 2016 issued under Sections 138/141/142 of the NI Act was only sent to accused No.1/M/s. PMS Buildtech Pvt. Ltd, accused no.2/Mr. Shiv Kumar Sharma and accused no.3/Mr. Manoj Kumar Mishra whereas the complaint was filed with the memo of parties showing six



accused persons including the two petitioners herein. The Legal Notice has been placed on record as Annexure P-1. Secondly, it was submitted that the petitioners had resigned from the accused No.1 company/M/s. PMS Buildtech Pvt. Ltd. on 1st May, 2009 and 1st October, 2010 respectively and despite bringing this fact to the notice of the learned Trial Court and moving an appropriate application for the deletion of their names from the array of parties, the learned Trial Court dismissed the same vide the impugned order dated 5th September, 2019 holding that the matter was one calling for evidence.

3. The respondent was duly served but none had appeared on his behalf.

4. I have heard the submissions and perused the record including the two documents which have been placed on the record pursuant to the last order.

5. It is settled law that in a complaint under Section 138/141/142 of the NI Act, the specific roles of the accused must be delineated in the complaint. It is generally mentioned in the complaint filed by the respondent that the accused No. 2 to 6 including the petitioners herein are jointly and severally liable for the offences. It is nowhere pleaded that the cheque that was dishonoured had been issued by any of the petitioners. On the contrary, is the case of the petitioners, that the cheque in question was allegedly issued on 25th April, 2016 for a sum of Rs.7,25,734 /- drawn on Union Bank of India which was presented and returned on 27th April, 2016, after the petitioners had resigned from the company. The learned Trial Court dismissed these pleas of the petitioners by observing that the Form-32 filed by the complainant/respondent before it were not certified



copies and, therefore, evidence was required to be brought on record to prove the factum of resignation. Those certified copies have now been filed before this Court.

6. But it is to be noticed that the reasoning of the learned Trial Court is rather strange in view of the two facts recorded in the impugned order. One is that the petitioners, as the accused, had relied upon on the Form-32 filed by the complainant at the time of pre-summoning evidence. The second is that in the reply to the application of the petitioners as accused for discharge, the complainant has not disputed the genuineness of Form-32 but has simply denied the fact of resignation.

7. In other words, the Form-32 produced before the learned Trial Court was by the complainant/respondent himself and he did not dispute the genuineness of that Form that he had placed on the record. When the document was not disputed and it is a form that is filed as a statutory requirement entailing consequences for false information being furnished to the Registrar of Companies, on the mere say so of the complainant that the present petitioners were still active Directors, the learned Trial Court chose to reject their plea for discharge. It was of the view that without the certified copies, the undisputed documents could not be accepted. The proof that they would have led as evidence would be the certified copies of the Form-32 filed before the ROC. They have now filed the certified copies before this Court. In fact, the learned Trial Court could have called for the same.

8. The certified copy of Form-32 is of sterling quality and can be considered by this Court at this stage. It is clear that once the petitioners had resigned way back in 2009 and 2010 respectively, they could not have



been responsible either for the issuance of the cheque dated 25th April, 2016 nor for its dishonor in April and May, 2016. They could not have been impleaded as accused in the complaint. The absence of a legal notice to these petitioners would suggest that the respondent was aware of the fact that they have resigned from the company long ago.

9. The petition is accordingly allowed. The proceedings in Complaint Case No.CC 37941/2016 qua the petitioners Ram Lakhan Sharma and Namu Narayan Misra pending before the learned MM(C-02), Delhi stand quashed.

10. The copy of this order may be sent to the learned Trial Court electronically.

11. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JULY 26, 2022
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