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

Order reserved on :06/09/2022

Order pronounced on : 20/10/2022

+ **CRL.M.C. 1266/2022 & CRL.M.A. 5543/2022**

PRASHANT GARG

..... Petitioner

Through: Ms Rebecca M John, Sr. Advocate
with Mr Vikas Walia, Mr Pravir
Singh and Ms Adya R Luthra,
Advocates.

versus

MINIONS VENTURE PVT LTD

..... Respondent

Through: Mr Abhishek Vikram and Mr
Mayank Mukerjee, Advocates.

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J.:

1.0. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (**Cr.P.C**) **seeking quashing of the summoning order dated 24.11.2021** (**'impugned order'** in short) passed by Learned MM (NI) Act, Saket Courts, New Delhi against the petitioner herein in case titled "Minions Venture Pvt. Ltd vs Garage Cowork Pvt. Ltd and Ors." bearing CC No. 5441/2021, for the offences under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (**'NI Act'** in short) and the proceedings emanating therefrom

2.0. Let me at the outset refer to the impugned summoning order dated 24.11.2021, relevant portion of which reads as under :

"The instant complaint has been filed u/s 138 of Negotiable
Instrument Act, 1881. Arguments on the point

of summoning heard. Further, the court has examined the documents filed by the complainant and is satisfied with regard to sufficiency of grounds to proceed against the accused as prescribed u/s 202 Cr.P.C. **In the light of section 141 of Negotiable Instruments Act 1881, the directors of the company are vicariously liable for the acts of the company** if they were incharge of, and responsible for the conduct of the business of the company at the time of commission of the offence. Perusal of the record shows that accused no. 1 is registered and private limited company. Further, company's master data form shows that accused no. 4 & 5 are the directors in the accused no. 1 company. Further, **the cheque in question has been signed by accused no. 2 on behalf of accused no. 1 company**. Further, with regard to proposed accused No.3 Nishant Goyal is dropped from the array of parties as from the material on record, it prima facie appears that he was not the director at the relevant time period. Further, with regard to accused No.4 and 5, Id. Counsel submitted that they are the current directors of the accused No.1 company and are responsible for day to day affairs and management and control of the accused No.1 company. All the statutory requirements under the N.I. Act are complied with.

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Accordingly, issue summons to accused No.1 Garage Cowork Pvt. Ltd., **accused No. 2 Prashant Garg**, accused no. 4 James Lopes Bernardo and accused No. 5 Hiu Yat Elaine Tsung through post/approved courier including electronic modes on filing of PF & RC. PF & RC to be filed within 7 days from today. Id. Counsel for the complainant is also directed to submit the metadata form along with PF&RC within 7 days from today.....

Accused is directed to appear before this court through video conferencing on the cisco webex application on the following

link <https://delhidistrictcourts.webex.com/meet/nisouth5>. **Put up for appearance of accused/furnishing of bail/framing of notice on 06.01.2022.”**

3.0. The petitioner has challenged the above order submitting that he has been mechanically summoned by the Learned Magistrate on the basis that the petitioner is the signatory of the dishonoured cheque, which was issued on behalf of the accused company Garage Cowork Pvt. Ltd. and Ors./accused no. 1.

3.1. It is submitted that the petitioner had resigned from the directorship of the accused company with effect from 17.07.2021 i.e., prior to the date of the issuance of cheque i.e, 21.08.2021, which is duly reflected in Form DIR-12 filed as Annexure P-2(Colly).

3.2. It is further submitted that the petitioner had issued a blank cheque to the complainant company/respondent herein under his signatures on behalf and under instructions of the accused company towards security. However, the said cheque was filled in later, on 21.08.2021, when he had already resigned from the directorship on 17.07.2021. The said cheque on presentation was dishonoured on 24.08.2021 and was returned with remarks “*payment stopped by drawer*”.

3.3. Learned counsel for the petitioner argued that the legal notice of demand dated 18.09.2021 issued by the complainant was never delivered to the petitioner. Subsequently, the respondent filed criminal complaint dated 18.10.2021 under Section 138 read with Section 148 NI Act arraigning the petitioner, as one of the accused persons, merely because he was the signatory of the cheque in question.

3.4. The petitioner has challenged the impugned order mainly on the grounds that the learned Magistrate failed to appreciate that :

(i) as the cheque was issued on a date (21.08.2021) subsequent to the petitioner's resignation as a director, the petitioner could not have been held vicariously liable under Section 141, in absence of any specific averment that he was in charge and responsible for day-to-day affairs of the accused company. Reliance is placed on the judgment of the Hon'ble Apex Court in '*Girdhari Lal Gupta Vs. D.H. Mehta & Anr.*' (1971) 3 SCC 189;

(ii) the complainant/respondent was required to make specific averments to satisfy the ingredients of Section 141, the provision being penal in nature ; the petitioner could not have been roped in merely being the signatory of the cheque. In support, reliance is placed on the judgment of the Hon'ble Supreme Court in '*SMS Pharmaceuticals Ltd. vs. Neeta Bhalla*', (2005) 8 SCC 89;

(iii) requisite notice was not served on the petitioner ;

(iv) even if the case of the complainant is accepted in entirety, no prima facie offence is made out against the petitioner.

4.0. On the other hand, the respondent/complainant vide its reply has sought dismissal of this petition with exemplary cost pleading that the

petitioner has not approached the court with clean hands; and that this petition is malicious and is an abuse of process of law.

4.1. It is submitted that the petitioner has deliberately suppressed that prior to filing of Form DIR-12 with Registrar of Companies (**ROC**), the petitioner had filed a Form DIR-11 with ROC along with which, an e-mail dated 19.07.2021 sent to Elaine Tsung, the existing Director of the accused company was annexed; vide said e-mail, the petitioner has stated he (petitioner) was resigning from the Board of Directors to avoid legal complications, and that he shall continue to be available to the company for discussion and finding process. The said mail however, was deliberately not made part of the Form DIR-12.

4.2. It is further submitted that the petitioner was directly responsible for dealing with the respondent in his capacity as a director of the accused company i.e. Garage Cowork Pvt. Ltd., as all the transaction documents between the accused company and the respondent, were executed by him. It was the petitioner, who in his capacity as director of the accused company, had signed the dishonoured cheque, which was post dated. In view of the same, the petitioner is responsible under Section 141 (2) N.I. Act.

4.3. It is also submitted by the respondent that it is the petitioner, who is a de facto head/director of the accused company and indeed in a position to instruct the accused company to make the payment ; other two existing directors are non-residents and foreign citizens.

4.4. Ld. counsel for the respondent also submitted that the petitioner did not even reply to the legal demand notice dated 18.09.2021, which

was duly delivered to him by email. He did not, by way of reply, informed that he had resigned from the directorship of the accused company. Further, the fact that the petitioner has been deliberately avoiding the process of law, can be seen from the fact that the summons along with order dated 24.11.2021 issued to the petitioner, were refused to be accepted as has been duly stated in the affidavit of service filed by the respondent's counsel in the complaint case before the learned Magistrate. Same is also reflected from the delivery report of the Speed Post.

4.5. It is further submitted that the petitioner continues to be associated with the accused company as email address of the petitioner is the same, as the official e mail address of the accused company as registered with ROC (Annexure IV). It is also submitted that the petitioner's plea that the cheque issued by the petitioner is a security cheque or not, is inconsequential in view of the judgement of Hon'ble Supreme Court in the case of '**Sripati Singh v. State of Jharkhand, AIR 2021 SC 573**'².

5.0. I have duly considered the submissions made by both the sides.

6.0. Before appreciating the rival contentions, it would be appropriate to refer at the outset to the relevant provision of law i.e. Sections 138 and 141 NI Act, which read as under :-

138 Dishonour of cheque for insufficiency, etc., of funds in the account. —Where **any cheque drawn by a person** on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, **is returned by the bank unpaid**, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, **such person shall be deemed to have committed an offence and shall**, without prejudice to any

other provisions of this Act, be punished with imprisonment for¹⁹ [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque,²⁰ [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]

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141 Offences by companies. —

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, **shall be deemed to be guilty of the offence** and shall be liable to be proceeded against and punished accordingly: **Provided that nothing** contained in this sub-section **shall render any person liable** to punishment **if he proves** that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:²² [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), **where any offence under this Act has been committed** by a company and it is proved that the offence **has been committed with the consent or connivance of, or is attributable to,** any neglect on the part of, **any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable** to be proceeded against and punished accordingly. Explanation.— For the purposes of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
(b) “director”, in relation to a firm, means a partner in the firm.]

7.0 The respondent in its complaint under Section 138 read with Sections 141 and 142 NI Act has stated that the accused no. 1 is a private limited company and the petitioner (accused no. 2 in the complaint) is the signatory of the dishonoured cheque in question; and was the director at the time of signing of the cheque in question.

7.1. Complaint also mentions that the accused no. 1 company, as a seller, entered into a ‘Seller Service Agreement’ dated 24.02.2020 with the complainant and listed the membership agreement which provides details of future receivables, from the customer of the accused no. 1 and its affiliate therewith. A Tripartite Agreement/undertaking dated 17.02.2020 was executed between the accused no. 1, the Affiliate and the Complainant, wherein the Affiliate agreed to remit undisputed membership fees/receivable due and payable under the Membership Agreement dated 24.01.2019, Both the Membership Agreement dated 24.01.2019 and the tripartite Agreement/Undertaking dated 17.02.2020, were signed by the petitioner on behalf of the accused no. 1, in his capacity as the director of the accused no. 1.

7.2. Complaint further mentions that based on the terms and conditions enumerated in the aforementioned Tripartite Agreement, **the petitioner on behalf of the accused no. 1 executed two separate Agreements for Transfer of Rights dated 26.02.2020 with the complainant** and the financier for listing the Membership Agreement for receivables on the Platform for a consideration of Rs. 1,38,60,342/- (Rs. One Crore Thirty-Eight Lakhs Sixty Thousand three hundred and Forty-

Two only) for the customer and Rs. 1, 24, 85,218/- (Rs. One Crore Twenty-Four Lakhs, Eighty-five thousand, two hundred and eighteen only) for the Affiliate, respectively. In this regard, the accused no. 1 was paid a sum of Rs. 2, 63, 45,560/- by the financiers (through the Complainant) for discounting of the invoice. As per the provisions of the Agreement for Transfer of Rights for Lease Rental, the petitioner (accused no. 2) on behalf of the company/ accused no. 1, provided a cheque bearing no. 000525 dated 21.08.2021 for an amount of Rs. 1,33,67,470.88/- to the complainant towards discharge of its legal and written liability in terms of the Agreements for Transfer of Rights towards the Complainant; the accused no. 1, being primarily responsible for payment of receivables in the event of default of payment by the Customer and/or Affiliate.

7.3. The complaint also mentions that in order to recover the amount due and payable by the accused no. 1, the complainant/the respondent herein presented the aforesaid cheque bearing no. 000525 dated 21.08.2021 for an amount of Rs. 1,33,67,470.88/- to the authorized bank on 23.08.2021 which was returned unpaid upon presentation vide Cheque Return Memo dated 24.08.2021 due to reasons “payment stopped by drawer”. Another cheque dated 27.07.2021 bearing no. 000523 for a sum of Rs. 1,18,72,358/- issued by the Accused no. 1 to the complainant, was also presented by the complainant to its bank and the same was also dishonoured and returned with a return memo dated 28.07.2021 for the reason ‘Funds Insufficient’. In view of the same, the complainant/respondent had sent an e-mail notice dated 26.08.2021 to the accused persons including the petitioner for payment, but they kept on deferring the same on one pretext or other. Accordingly, a legal notice of demand dated 18.09.2021 was delivered to the accused persons

on 20.09.2021 by way of e-mail. The hard copy of the legal notice sent to the accused persons was returned undelivered as the accused no. 1 company had vacated both the office addresses. The accused persons failed to make the payment of the abovementioned cheque amount to the complainant within 15 days of receipt of the same.

8.0. As per the averments made in the complaint, it was the petitioner, who on behalf of the accused company, in his capacity as a director, had signed various agreements; and (in his capacity as authorised signatory), had issued the aforesaid dishonoured cheque towards the liability arising out of the said business transaction.

8.1. Admittedly, the petitioner (accused no. 2) was the director of the accused no. 1 company; and the dishonoured cheque dated 21.08.2021 for Rs. 1, 33,67,470.88/- was issued by the petitioner, in his capacity as an authorized signatory for the accused company; and that the said cheque on presentation for payment on 23.08.2021 was dishonoured/ returned by the drawee bank vide return memo with the remarks **‘payment stopped by the drawer’**.

9.0. The petitioner has pleaded that he, in his capacity as a director/authorized signatory of the accused company, had signed a blank cheque towards security. He has also submitted that he (petitioner) had resigned from the directorship on 17.07.2021 and the cheque was subsequently dated as 21.08.2021 and was presented on 23.08.2021 and dishonoured on 24.08.2021. Therefore, the petitioner cannot be held liable by virtue of Section 141 NI Act for a cheque which was dated after his resignation, as the said provision requires that a person must be a director, at the time, when the offence is committed. In

support, reliance is placed on the judgments “**K Bhaskaran Vs. Sankaran Vaidhyan Balan and Anr. [(1999) 7 SCC 510]** and ‘**Kamal Goyal Vs. United Phosphorus Ltd., ILR (2010) Supp. (3) Delhi 17**’.

9.1. On the other hand, Ld. Counsel for the respondent, to further his contention that the petitioner had resigned from the directorship of the accused company only to avoid his liability and other legal complications, drew attention of this court to the petitioner’s e mail annexed with Form DIR-11.

9.2. Perusal of the petitioner’s e-mail dated 19.07.2021 addressed to Elaine Tsung, the non-resident director of the accused company, shows that while conveying his decision to resign as a director of the accused company, the petitioner has stated that he was stepping down as he was receiving threats from KRW landlord for payment of rental and cheque bouncing and that police persons were visiting at his residence, which was causing threat to him and also putting tremendous pressure on his family. The Petitioner also mentioned in his mail that –

“Once I resign as the Indian director, we would have 2 to 3 months time to appoint a new Indian Director. **I am still committed towards our on going funding process which is going on. I would be always available for all the discussions and support whenever.**”

9.3. Ld. Counsel for the respondent also drew attention of this Court to the fact that name of the petitioner still appears on the website of the accused company, as its country manager; the Petitioner’s company e-mail id, prashantgarg@thegaragesociety.com still appears on the MCA

master data, which clearly show that the resignation submitted by the petitioner is simply a sham and tendered only to avoid the liability.

9.4. In rebuttal, Ld. counsel for the petitioner argued that except stating that the petitioner is a director of the accused company and is a signatory of the cheque in question, there is no specific averment in the complaint about the petitioner being in-charge and responsible to the company for the conduct of its business.

9.4.1. In this respect, it would be pertinent to refer here to the judgment of the Hon'ble Supreme Court in case titled **K.K. Ahuja vs. V.K. Vora and Another, (2009) 10 SCC 48**, wherein it has been held that :

“27. The position under Section 141 of the Act can be summarised thus:

- (i)
- (ii) **In the case of a Director** or an officer of the company **who signed the cheque on behalf of the company**, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance of negligence. **The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to the responsibility under sub-section (2) of Section 141.”**

9.4.2 Thus, the petitioner, a director and signatory of the cheque is

responsible u/s. 141(2) N.I. Act. Even otherwise, as already noted above, the complainant (respondent herein) has mentioned in the complaint that the petitioner was directly responsible for dealing with them; and in his capacity as a director, had been executing the transaction documents between the parties and has given details of such documents. Thus, the case law relied upon by the petitioner in this respect does not help the petitioner in any manner.

9.5. Further, from the aforesaid e-mail of the petitioner, it is apparent that the petitioner did not actually sever his connection with the company and had stepped down from the Board of Directors simply to avoid legal complications/ consequences of cheque bouncing etc. Vide said e-mail, the petitioner, rather assured his continued commitment towards the accused company's ongoing funding process and even assured his availability for all the discussions and support required by the accused company.

9.5.1. It would be pertinent to refer here to the judgment of the Hon'ble Supreme Court in case titled as **Ved Prakash Gupta & Anr. Vs. M/S. Anchon Chemplast Pvt. Ltd. & Ors., 2013 SCC OnLine Del 438**, wherein the court dealt with a plea of resignation prior to the presentation/dishonor of cheque issued by the director. The Apex Court observed :

“9. Turning to the facts of the instant case, there are specific averments that the Petitioners negotiated for the purchase of goods by *Pragati* and they were responsible for the day to day affairs and conduct of the business of the company. All the transactions are related to the period when the Petitioners were Directors, and as stated above, according to Respondent No. 1 (the complainant)

they had negotiated with regard to supply of goods. **The question for consideration is, even if the resignation is presumed to have been received in the office of Registrar of Company immediately after 20.07.2011, can the Petitioner be absolved of his liability? If this is allowed, perhaps neither Director nor any officer of the accused company can ever be made liable, because they can enter into any transaction at their will, issue some post dated cheques and then tender their resignation before the date of its encashment.”**

9.5.2 Thus, the plea of the petitioner that he could not have been summoned as he had already resigned prior to presentation of the cheque, more so in the light of other facts and circumstances as discussed above, hardly holds any water.

9.6. In view of the above facts and circumstances, the judgments in the Kamal Goyal’s case (*supra*) and K. Bhaskaran’s case (*supra*) as relied upon by the petitioner, are hardly of any assistance to the petitioner.

9.6.1. In K. Bhaskaran’s case (*supra*), it was rather held that ‘the ‘presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date, which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption by putting his defence.’

9.6.2. In Kamal Goyal’s case (*supra*), the Hon’ble Supreme Court held that :

“12. He having resigned from the directorship much prior to even presentation of the cheque for encashment, he cannot be vicariously held liable for the offence committed by the company, unless it is alleged and shown that even after resigning from directorship, he continued to control the affairs of the company and therefore continued to be person in charge of and responsible to the company for the conduct of its business.”

9.6.3. Facts in the instant case are very different. As already noted above, the petitioner on behalf of the accused company was allegedly directly responsible for dealing with the respondent/complainant, he executed transaction documents/agreements with the complainant/respondent, the petitioner expressed his continued commitment towards on going funding process of the accused company and assured to be available for discussion and support to the accused company, even after his resignation.

9.7 In view of the above, the pleas raised by the petitioner in his defence are a matter of trial and the petitioner is at liberty to raise the same before the Ld. Trial Court.

10.0 In view of the foregoing, I find no merit in this petition. **Petition is accordingly dismissed.**

11.0 Any observation made hereinabove shall not tantamount to expression of opinion on merits of the case.

(POONAM A. BAMBA)
JUDGE

OCTOBER 20, 2022/chandan

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