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

% *Decided on: February 8, 2022*

+ **CRL.M.C. 1731/2021**

SANJAY MEHTA Petitioner

Represented by: Mr.Rajeev Sharma, Advocate.

versus

STATE AND ANR. Respondent

Represented by: Mr. Tarang Srivastava, APP for the
R-1/State.
Mr. Shikhar Srivastava, Advocate
for R-2.

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

MUKTA GUPTA, J. (ORAL)

1. By this petition, the petitioner seeks setting aside of the order dated 10th May 2019 passed by the learned Metropolitan Magistrate-03, N.I.Act, Tis Hazari Courts summoning the petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act (in short, the N.I.Act).

2. Learned counsel for the petitioner states that the cheque which got dishonoured was issued by the accused No. 1 company namely KRF Ltd. of which the accused Nos. 2 and 3 were the Director and Managing Director respectively. Without any averment in the complaint against the petitioner who was employed as the 'Finance Head' of the company, the

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petitioner was impleaded as accused No. 4 and summoned by the impugned order by the learned Metropolitan Magistrate.

3. Learned counsel for the petitioner states that besides there being no averment in the complaint qua the petitioner, no legal notice was issued to the petitioner and notice of dishonour of cheque was issued only to the company. Thus, no cause of action for instituting the complaint under Section 138 of the N.I.Act arises against the petitioner. Further, the petitioner being neither In-charge nor responsible for the conduct of the affairs of the company nor signatory to the cheque, the impugned order be quashed. Reliance is placed on the decisions of Hon'ble Supreme Court reported as (2010) 3 SCC 330 *National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and Another*; (1971) 3 SCC 189 *Girdhari Lal Gupta Vs. D.H.Mehta and Another* and (2005) 8 SCC 89 *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another*.

4. Refuting the contentions of learned counsel for the petitioner, learned counsel for the respondent No. 2 submits that the present petition is liable to be dismissed on the ground of delay and laches. The impugned order was passed on 10th May 2019 and the present petition has been instituted in July 2021. He further states that the respondent No. 2 had impleaded five accused, the fifth accused being Rohan Sharma, the 'Business Head' of the company who has since been discharged, however, since the petitioner was impleaded as accused No. 4 being the 'Finance Head' of the company and was in control of the day to day affairs and functioning of the company, he cannot be absolved of his liability towards the respondent No. 2. He states that the decision of the Hon'ble Supreme Court in the case of *S.M.S. Pharmaceuticals Ltd. (supra)* has no
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application to the facts of this case as the Hon'ble Supreme Court in the said matter was dealing with the responsibilities of the Directors and held that the Directors who are responsible for the day to day functioning of the accused company would be responsible for the dishonour of the cheque. Petitioner being the Finance Head of the company would be deemed to be responsible for all the financial irregularities of the company including dishonour of the cheque. Reliance is placed on the decision of this Court reported as III (2012) CCR 45 (Del) *P.P.Marina and Ors. Vs. State and Ors.* as also on the decision in *S.M.S. Pharmaceuticals Ltd. (supra)*.

5. Contention of learned counsel for the respondent No.2 that petition is liable to be dismissed on the ground of delay and laches deserves to be rejected for the reason, no period of limitation is prescribed for filing a petition under Section 482 Cr.P.C. which inherent power of the Court is required to be exercised to meet the ends of justice and to prevent abuse of the process of law. Further, even though, no period of limitation has been prescribed for filing a petition under Section 482 Cr.P.C., however, still the same is required to be filed within a reasonable period. The impugned order was passed on 10th May, 2019 and the period of limitation stands suspended by the orders of the Supreme Court w.e.f. 15th March, 2020 till date in Suo Motu WP(C) NO. 3/2020 *In Re: Cognizance for Extension of Limitation*. Thus the petitioner having filed the present petition in July, 2021 challenging the order dated 10th May, 2019, cannot be dismissed on the ground of delay and laches.

6. Respondent No. 2 herein i.e. M/s. Dynamic Text Book Printers Pvt. Ltd. through its Managing Director filed a complaint case bearing CC No. 16315/2017 impleading M/s. KRF Ltd., Prateek Chaudhary, Prem Rani
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Chaudhary, Sanjay Mehta and Rohan Sharma as accused Nos. 1 to 5 respectively before the learned Metropolitan Magistrate. The accused No. 5 was since discharged, however, vide the impugned order dated 10th May 2019, accused Nos. 1 to 4 including the present petitioner who was impleaded as accused No. 4 were summoned. In the complaint, the respondent No. 2 stated that in the month of May-June 2017, KRF Ltd. approached respondent No. 2 for execution of certain printing jobs of Text Books and assured respondent No. 2 of timely payment. Respondent No. 2 agreed to execute the work and printed lakhs of books within the stipulated period. Pursuant to the invoices raised by the respondent No.2, part payment was made to the respondent No. 2 and for the remaining payment, a cheque bearing No. 000685 dated 3rd July 2017 for a sum of ₹1,84,57,369/- drawn on the State Bank of India was issued in favour of the respondent No. 2. When the said cheque was presented by the respondent No. 2 on 5th July 2017, the same was dishonoured due to ‘insufficient funds’. When the respondent No. 2 informed the company, request was made to not take legal recourse as the payment would be made in short time and the cheque could be represented at a later point of time. Despite reminders as no indication was received from the company, the cheque was represented on 26th September 2017 within its validity period, and the same was dishonoured with the endorsement ‘payment stopped by drawer’. Thus, a legal notice was sent to M/s. KRF and on the accused company failing to pay the amount, the complaint was filed.

7. Para 3 of the complaint notes the averments qua the role of accused persons was in para 3 which reads as under:-

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“3. That the Accused No. 1 Company in the month of May-June 2017, approached Complainant for executing of certain printing jobs on priorities of textbooks. The Accused No. 1 Company assured Complainant of timely payments and requested to execute the work immediately, as the Accused No. 1 was in urgent requirement of such printed books. Accused No. 3 is the authorized signatory of the Accused No. 1 Company, while remaining accused persons are directly responsible for day to day affairs of the Accused No. 1 Company”.

8. As noted above, the accused No. 1 is the company in whose name the cheque was issued and the accused Nos. 2 and 3 were the Director and Managing Director of the company and signatories to the cheque. However, the petitioner was arrayed as accused No. 4 being the Finance Head of the accused company against whom there is no specific allegation except stating in para 3 of the complaint that the remaining accused persons were directly responsible for day to day affairs of the accused No. 1 company.

9. In *National Small Industries Corporation Ltd. (supra)*, the Hon’ble Supreme Court culled out the principles for fixing the vicarious liability of the accused including the Directors of the Company, as under:-

“39. From the above discussion, the following principles emerge:-

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were



in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases”.

10. Further, in *S.M.S. Pharmaceuticals Ltd. (supra)*, it was held that that in order to array an accused for an offence under Section 138 of the N.I.Act who is not signatory to the cheque, specific averments have to be made in the complaint as to the role attributable to the said accused and as to how he was responsible for the conduct and affairs of the company. Hon’ble Supreme Court held:

“18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal



process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That respondent falls within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and



responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141”.

11. Learned counsel for the respondent No. 2 relies upon the decision in *P.P.Marina and Ors. (supra)*, wherein, it was held that persons who have authority to take decisions over the transaction and having knowledge of the transaction are deemed to be Incharge of and responsible to the company for the day to day affairs and conduct of the company, even though, such persons may or may not be the Directors of the company. This Court in *P.P. Marina (supra)* following the decisions in *S.M.S. Pharmaceuticals Ltd. (supra)* noted that Section 141 of the NI Act creates a legal fiction against the defaulting company so as to cover within its ambit all persons who have consented, connived or anyway attributed to the commission of the offence and the offence is the result of the said transaction. Thus, vicarious liability of the other accused who is not a signatory to the cheque arises on account of conduct, act or omission on the part of the person and not merely on account of holding an office or



position in a company.

12. As noted above, the only averment in para 3 of the complaint is that the remaining accused persons are directly responsible for day to day affairs of the accused No.1 company. Considering the fact that the petitioner is neither the signatory nor the Managing Director of the company nor is there any averment in the complaint as to how the petitioner is responsible and Incharge of the day to day affairs and conduct of the company, nor does the complaint attribute any conduct, act or omission on the part of the petitioner which would be sufficient to hold him vicariously liable for the act of the company, the impugned order summoning the petitioner is liable to be set aside.

13. Consequently, the impugned order dated 10th May 2019 of the learned Metropolitan Magistrate is set aside.

14. Petition is disposed of.

CRL.M.A. 12034/2021 (stay)

In view of the order passed in the petition, the application is disposed of as infructuous.

(MUKTA GUPTA)
JUDGE

FEBRUARY 8, 2022

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