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

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Reserved on: 03.01.2024
Pronounced on: 08.01.2024

+ **CRL.M.C. 938/2020**

HIMANSHU CHOPRA

..... Petitioner

Through: Mr. Chandan Bhalla & Mr
Amit Gupta, Advocates.

versus

M/S EQUITAS SMALL FINANCE BANK
LTD.

..... Respondent

Through: Mr. Kush Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner, seeking quashing of Complaint Case No. 15614/2018, for the offence punishable under Section 138 read with Section 141 of the Negotiable Instrument Act, 1881 ('NI Act'), pending before the Court of learned Metropolitan Magistrate, Saket Court, South District, New Delhi, and for setting aside of impugned summoning order dated 23.10.2018 passed by learned Magistrate in the above-mentioned complaint case and order dated 31.07.2019 dismissing the discharge application filed by the petitioner.



2. The case of the petitioner is that a false complaint case was filed by the respondent herein under Section 138 of NI Act and that cognizance and summoning of the accused was in total disregard of law without applying judicial mind and without considering that no *prima facie* case was made out against him. It is stated that the petitioner had taken steps for seeking discharge, however, the same was rejected by the learned Magistrate. It is stated that the allegations contained in the complaint are that accused no. 1 AM Vinyl Pvt. Ltd. had entered into a loan agreement with the respondent, and towards the repayment of the same, the accused no. 1 had issued a cheque for amount of Rs. 20,04,565/-. The petitioner was working as Director in the accused no. 1 company from 15.03.2009 to 25.03.2018 and had resigned on 25.03.2018. The petitioner had learned that the cheque which was given as security to the complainant and was not issued in discharge of liability to accused no. 1, had been misused and a complaint under Section 138 of NI Act had been filed against him. It is stated that pursuant to sending a legal demand notice dated 29.09.2018, the respondent had filed the present complaint case before the learned Magistrate where the present petitioner was impleaded as accused no. 3 and was summoned by the Court.

3. Learned counsel for the petitioner states that the petitioner had nothing to do with the accused company and he was not the company's authorized signatory after his resignation from 25.03.2018. It is argued that since he was neither a director at the time of issuance of cheque nor at the time of commission of offence, he cannot be liable for any act of the company. It is stated that he was



not involved in the day-to-day affairs of the accused/company. It is stated that since he has resigned prior to the issuance of cheque in question i.e. on 25.03.2018, he could not have been summoned by the learned Magistrate. Therefore, it is prayed that the present petition be allowed.

4. Learned counsel for the respondent states that the respondent was not informed and was not aware that the petitioner had resigned on 25.03.2018 from the accused company. It is stated that at the time of filing of complaint under Section 138 of NI Act, the respondent was not aware that the petitioner had resigned from the accused company on 25.03.2018, which is prior to the date of the issuance of cheque in question. It is further stated that the respondent has no objection if the present petition is allowed to the extent that the petitioner is deleted from the array of parties in the proceedings before the learned Magistrate in respect of cheque bearing no. 013433 dated 24.09.2019, without commenting upon any other aspect and genuineness of the documents which have been filed along with the present petition.

5. This Court has heard arguments addressed on behalf of both the sides and has perused the material on record.

6. In the present case, the respondent/complainant i.e. M/s. Equitas Small Finance Bank Ltd. had filed a complaint under Section 138/141/142 of NI Act against accused company i.e. accused no. 1 AM Vinyl Pvt. Ltd., and its directors namely Ashok Chopra, Himanshu Chopra and Deeksha Chopra, who were arraigned as accused no. 2, 3 and 4 respectively. It was alleged that accused



company had approached the complainant for financial assistance and on believing the representations made by the accused persons, the complainant had entered into a loan agreement no. BLESTD0000426 with accused no. 1. It is further alleged that in discharge of part liability, the accused persons had issued a cheque bearing no. 013433, dated 24.09.2018, for an amount of Rs.20,04,565/-, drawn on Kotak Mahindra Bank. The complainant was assured that the cheque would be honored upon its presentation. However, upon presentation of cheque for encashment, it had returned unpaid due to reasons 'Funds Insufficient' vide cheque returning memo dated 26.09.2018. The statutory legal notice dated 29.09.2018 was sent by the complainant, calling upon the accused to make the payment. Upon failure of accused persons to make the payment, the present complaint was instituted by the complainant. *Vide* order dated 23.10.2018, learned Magistrate had summoned accused no. 1, 2 and 3.

7. The petitioner has placed on record, certain documents including Form No. DIR-12, to show that the petitioner herein had ceased to be Director of accused no. 1/accused company with effect from 25.03.2018. Learned counsel for the respondent, on the other hand, submitted that respondent has no objection if the present petition was allowed to the extent of deleting the name of petitioner from the array of parties as accused before the learned Trial Court, without commenting on the merits of the case. Learned counsel for the petitioner also submitted that he has no objection to the request made on behalf of respondent.



8. Therefore, considering the aforesaid submissions of the learned counsel for respondent and petitioner, the present petition is allowed to the extent that the name of the petitioner Himanshu Chopra, who is accused no. 3, is deleted from Complaint Case No. 15614/2018, and the proceedings qua him are quashed.

9. In view of the above, the present petition stands disposed of.

10. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

11. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 8, 2024/zp