



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

% **Reserved on: December 12, 2023.**
Pronounced on: December 18, 2023

+ **CRL.M.C. 598/2023 & CRL.M.A. 2346/2023**

PRABHA SHANKAR SINGH

..... Petitioner

Through: Mr. Ajeet Kumar, Mr. Rajeev Kumar, Mr. Satendra Kumar Mishra and Mr. Om Prakash, Advocates

Versus

SANGITA KUMARI @ SANGITA

..... Respondent

Through: Mr. Ajai Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. By way of present petition under Section 482 of the Code of the Criminal Procedure, 1973 [*Cr.P.C.*] for quashing summoning order dated 30.10.2021 passed by the learned Trial Court in CC No.16760/2021 titled *Sangita Kumari Vs. M/s Delhi Infratech Ltd.*, which was filed under Section 138 of the Negotiable Instruments Act, 1881 [*N.I. Act*].

2. As per facts, petitioner was a Director of a company, namely M/s. Delhi Infratech Limited [*DIL*] which was involved in construction business, till 13.10.2021. The respondent booked a 4 BHK flat with DIL with a proposed amount of Rs.71,20,000/- (*Seventy One Lakhs Twenty Thousand only*) whilst paying a total token amount of Rs.7,12,000/- (*Seven Lakhs Twenty One Thousand only*) on different occasions. Whereafter, the business deal fell through *inter se* DIL and the respondent and thereafter, in lieu of partial payment of their debt, DIL issued a



Cheque bearing no.000776 dated 05.04.2021 drawn on **ICICI bank, Delhi Vikas Puri** for a sum of Rs.2,50,000/- [*Two Lacs Fifty Thousand Only*], which was returned with remark “**account blocked**”. Thereafter, though the respondent sent a Legal Notice dated 28.06.2021 to DIL through its authorised signatory but the same was not sent to the petitioner herein. Thereafter, not receiving any satisfactory response to the Legal Notice, the respondent filed a complaint case under Section 138 N.I. Act arraying the petitioner as a party, wherein the learned Trial Court issued the summons *vide* impugned order dated 30.10.2021.

3. Notice was first issued vide order dated 31.01.2023, whereafter, the learned counsel for the petitioner whilst addressing final arguments submitted that the respondent did not comply with the statutory requirements of Section 138(b) N.I. Act. Learned counsel for the petitioner further submitted that the petitioner did not have any dealing with the respondent and he had ceased to be a Director of the aforesaid company. Moreover, the petitioner was not involved with the day-to-day affairs of the said company. Thus, the summons issued to the petitioner, are bad in law and liable to be quashed. For the aforesaid contention, learned counsel for the petitioner placed reliance upon “**Alavi Hazi v. Palpetty Muhammad & Anr**” (2007) 6 SCC 555 and the judgment dated 01.07.2019 of this Court in Crl.Rev.P. 438/2017 titled “**R.L. Verma & Sons (HUF) vs. P.C. Sharma**”.

4. *Per-contra* learned counsel for the respondent submitted that the petitioner was the founder and Director of DIL when the cheque was issued, furthermore, relying upon **Krishna Texport and Capital Markets Limited vs Ilaa Agarwal & Ors** (2015) 8 SCC 28 he submitted that once a
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Legal Notice has been sent to a company, the Director(s) of the said company need not be personally served.

5. This Court has heard the learned counsel for the parties and perused the documents alongwith judgments relied upon as well.

6. The present proceedings are involving a company of which the petitioner is/ was one of the Directors. A company is an independent entity run by living persons. As per settled position of law, in a complaint filed under Section 138 of the N.I. Act against any Company, it is not necessitated a Legal Notice to be sent to each of the Director(s), specifically/ individually, whence the same is issued to the company instead. The learned counsel for the respondent has rightly placed reliance on the judgment of the Hon'ble Supreme Court, dealing with the facts involving similar circumstances, in ***Krishna Texport and Capital Markets (supra)*** and held as under:-

“16. ... Section 141 again does not lay down any requirement that in such eventuality the Directors must individually be issued separate notices under Section 138. The persons who are in charge of the affairs of the company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such company. It is precisely for this reason that no notice is additionally contemplated to be given to such Directors. The opportunity to the “drawer” company is considered good enough for those who are in charge of the affairs of such company. ...

17. If the requirement that such individual notices to the Directors must additionally be given is read into the provisions concerned, it will not only be against the plain meaning and construction of the provision but will make the remedy under Section 138 wholly cumbersome. ...

18. In our view, Section 138 of the Act does not admit of any



necessity or scope for reading into it the requirement that the Directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such Directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company under Section 138. Therefore, neither on literal construction nor on the touchstone of purposive construction such requirement could or ought to be read into Section 138 of the Act.”

7. Admittedly, the cheque involved in the present proceedings was issued on 05.04.2021 and the petitioner was a founder-Director of the said Company, prior to his cessation on 13.10.2021. Therefore, the role assigned and/ or performed by the petitioner at the time of issuance of cheque requires holding of trial and in any event, this Court is not an appropriate forum to adjudicate the same.

8. As such, at this stage, when the learned Trial Court has merely issued summons, it is too premature for this Court to draw any conclusion qua any of the contentions raised by the petitioner. Furthermore, the judgments relied upon by the petitioner cannot come to aid of the petitioner as the facts therein are completely different than the case at hand.

9. Accordingly, no ground for quashing the summoning order dated 30.10.2021 passed by the learned Trial Court in CC No.16760/2021 titled ***Sangita Kumari Vs. M/s Delhi Infratech Ltd.*** against the petitioner is made out.

10. In terms of above, the present petition alongwith pending application is dismissed.

SAURABH BANERJEE, J.

DECEMBER 18, 2023/akr

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