



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

% ***Reserved on : 03.07.2023***
Pronounced on : 24.07.2023

+ **CRL.M.C. 942/2023 & CRL.M.A. 3608/2023, CRL.M.A. 3610/2023**

VINOD KENI & ORS. Petitioners
 Through: Mr. Aditya Wadhwa and Mr. Shivansh Agarwal, Advocates.

versus

TECHNOLOGY DEVELOPMENT BOARD Respondent
 Through: Ms. Shagun Bhargava, Advocate.

+ **CRL.M.C. 943/2023 & CRL.M.A. 3611/2023 and CRL.M.A. 3613/2023**

VINOD KENI & ORS. Petitioners
 Through: Mr. Aditya Wadhwa and Mr. Shivansh Agarwal, Advocates.

versus

TECHNOLOGY DEVELOPMENT BOARD Respondent
 Through: Ms. Shagun Bhargava, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J

1. The present petitions have been filed by the petitioners under Section 482 Cr.P.C. for quashing of the Complaint Case No. 4629/2022 registered under Section 138 of the Negotiable



Instruments Act, 1881 and setting aside of the summoning order dated 19.07.2022 passed by M.M. (N.I. ACT), Digital Court No. 8, South District, Saket Courts, in Complaint Case No. 4629/2022; and for quashing of the Complaint Case No. 527/2022 registered under Section 138 of the Negotiable Instruments Act, 1881 and setting aside summoning order dated 28.04.2022 passed by Ld. M.M. (N.I. ACT), Digital Court No. 5, South District, Saket Courts, in Complaint Case No. 527/2022; and the proceedings emanating therefrom.

2. The Complainant Board/ Respondent herein, had instituted a Complaint Case No. 4629/2022 under section 138 of the Negotiable Instruments Act, 1881 against the petitioners in respect of non-payment against one dishonored cheque for the amount of Rs 1,38,67,507/- and Complaint Case No. 527/2022 under section 138 of the Negotiable Instruments Act, 1881 against the petitioners in respect of non-payment against one dishonored cheque for the amount of Rs.1,41,10,643/- issued by the petitioners in favour of the respondent.

3. The Metropolitan Magistrate vide order dated 19.07.2022 in Complaint Case No. 4629/2022 and vide order dated 28.04.2022 in Complaint Case No. 527/2022 issued summons requiring the petitioners to attend the Court.

4. The petitioners being aggrieved filed the present petitions invoking jurisdiction of this Court under Section 482 Cr.P.C.



5. It has been mainly argued by the Ld. Counsel for the petitioners that the complaints filed by the complainant board under Section 138 of Negotiable Instruments Act, 1881 against the petitioners are false and frivolous. He submitted that the petitioners cannot be held to be vicariously liable for the alleged offence as they were only nominee and non-executive directors of M/s Sure Waves MediaTech Private Limited (SMPL) at the relevant time when the offence was committed and they were neither in charge of the conduct of business of SMPL nor the day to day affairs of SMPL. He further submitted that the complainant board has failed to bring on record any evidence to suggest that the petitioners had knowledge regarding the return of the said cheques or to show that there was any consent or connivance on the part of the petitioners. Furthermore, Ld. counsel for the petitioners submitted that no specific roles have been assigned to the present petitioners by the respondent and the petitioners were neither signatories nor witnesses to the loan agreement or any of the subsequent related agreements executed between SMPL and the respondent, and therefore, it cannot be assumed that there exists a legally enforceable debt or liability against the petitioners.

6. Ld. Counsel for the petitioners in support of his contentions has placed reliance on the following judgments:

- ***Sudeep Jain vs. ECE Industries Ltd. [Crl. M.C. 1821 of 2013]***



- *Sunita Palita & Ors. vs. M/s Panchami Stone Quarry [(2022) 10 SCC 152]*
- *SMS Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr. [(2005) 8 SCC 89]*
- *Dashrath Rupsingh Rathod vs. State of Maharashtra [(2014) 9 SCC 129]*
- *Anita Malhotra vs. Apparel Export Promotion Council [(2012) 1 SCC 520]*
- *Sunil Bharti Mittal vs. CBI [(2015) 4 SCC 609]*
- *National Bank of Oman vs. Barakara Abdul Aziz [(2013) 2 SCC 488]*
- *Netcore Solutions Pvt. Ltd. vs. Pinnacle Teleservices Pvt. Ltd. [2011 SCC OnLine Bom 1497]*

7. On the contrary, Learned counsel for the respondent submitted that the DIR 12 with respect to petitioner no. 1 had been filed by the accused company and the said DIR 12 does not mention that the said director is a non-executive director as is evident from the E-Form DIR 12 filed along with the reply of the respondent. She submitted that the respondent in para 3 and more specifically in para 12 has clearly and unequivocally demonstrated the role of the petitioners in committing the offence by them acting in capacity of directors of the accused company, namely, M/s Sure Waves MediaTech Private Limited (SMPL). She further submitted that with respect to petitioner no. 2 and petitioner no. 3, it is pertinent to mention that said petitioners are representing shareholders who hold substantial stake in the accused company and approximately 96% of the paid up convertible preference share capital and more than 20% of the paid up equity capital of the accused company. She



further submitted that the loan was taken by the accused company from the respondent after petitioner no 3 became the executive director. It is pointed out by the learned counsel for the respondent that the petitioners have in suppression of earlier DIR 12's filed with the Ministry of Corporate Affairs, have along with the present petition filed a Form DIR 12 wherein it has been alleged that the said DIR 12 was filed in 2021 and as per the said DIR 12 the petitioners have allegedly become non-executive directors in 2021 itself, however, it is pertinent to mention that the said alleged E-Form DIR 12 is a dummy document filed on 13.07.2022 and from the petitioner's latest DIR 12 filed in 2022 it is evident that prior to filing of the said E-form the said petitioners were not non-executive directors. She further submitted that the complaint cases were filed prior to filing of the E-Form DIR 12 dated 13.07.2022 and the same has been filed only after the complaints were lodged. She further submitted that till date the accused company has not made a single payment of the loan instalment of the loan availed by it from the respondent board and as on date, the company along with petitioners owe an amount of Rs 13,05,75,708 to the respondent. She further submitted that the petitioners knowing well that the cheques will not be honoured by the drawee bank and that there is not sufficient balance in the Bank account, issued the cheques in question. Lastly, it is submitted by the Ld. counsel for respondent that the presumption under Section 139 N.I Act includes a presumption that there exists a legally



enforceable debt and liability, therefore, no case for quashing of the complaints or the summoning orders is made out.

8. Ld. Counsel for the respondent in support of her contentions has placed on record the screen shot taken from Ministry of Corporate Affairs showing that no DIR 12 pertaining to change of designation of directors or appointment thereof was filed by petitioners/ accused company in 2021 and the screen shot taken from the Ministry of Corporate Affairs showing that DIR 12 for change of designation of petitioners was filed on 13.07.2022. She has also placed reliance upon *Ashutosh Ashok Parasrampuriya & anr. vs. M/s Gharrkul Industries Private Limited (Criminal Appeal No 1206 of 2021)*, *Ionic Metalliks case [MANU/GJ/0683/2014]*, *Sudeep Jain vs. ECE Industries Ltd. (Crl. M.C.1821 of 2013)* and *Suo Moto W.P. (Crl.) No.2 of 2020 in Re: expeditious trial of cases under section 138 of N.I. ACT 1881*.

9. As far as the judgments relied upon by the Ld. Counsel for the petitioners are concerned, there is no dispute with regard to the proposition of law laid down in the said judgments, but with due regard, the same are not applicable to the facts of the present case as from perusal of the summoning orders dated 19.07.2022 and 28.04.2022, it is apparent that while passing these orders, the learned Magistrate has perused the complaints as well as affidavits in evidence filed in support of the complaints and other documents filed on record, and therefore,



it cannot be said that the trial court has committed any error while summoning the petitioners in the instant cases.

10. Now coming to the legal position in this case and taking into consideration the various provisions of Cr.PC which have been discussed in various judgments time and again demonstrate that the Negotiable Instruments Act, provides sufficient opportunity to a person who issues the cheque. Once a cheque is issued by a person, it must be honoured and if it is not honoured, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still does not pay, he is bound to face the criminal trial and consequences. It is seen in many cases that the petitioners with malafide intention and to prolong the litigation raise false and frivolous pleas and in some cases, the petitioners do have genuine defence, but instead of following due procedure of law, as provided under the N.I. Act and the Cr.PC, and further, by misreading of the provisions, such parties consider that the only option available to them is to approach the High Court and on this, the High Court is made to step into the shoes of the Metropolitan Magistrate and examine their defence first and exonerate them. The High Court cannot usurp the powers of the Metropolitan Magistrate and entertain a plea of accused, as to why he should not be tried under Section 138 of the N.I. Act. This plea, as to why he should not be tried under Section 138 of the N.I. Act is to be raised by the accused



before the Court of the Metropolitan Magistrate under Section 251 of the Cr.PC & under Section 263(g) of the Cr.PC.

11. The offence under Section 138 of the N.I. Act is an offence in the personal nature of the complainant and since it is within the special knowledge of the accused as to why he is not to face trial under section 138 N.I. Act, he alone has to take the plea of defence and the burden cannot be shifted to complainant. There is no presumption that even if an accused fails to bring out his defence, he is still to be considered innocent. If an accused has a defence against dishonour of the cheque in question, it is he alone who knows the defence and responsibility of spelling out this defence to the Court and then proving this defence is on the accused. Once the complainant has brought forward his case by giving his affidavit about the issuance of cheque, dishonour of cheque, issuance of demand notice etc., he can be cross-examined only if the accused makes an application to the Court as to, on what point he wants to cross examine the witness(es) and then only the Court shall recall the witness by recording reasons thereto.

12. Sections 143 and 145 of the N.I. Act were enacted by the Parliament with the aim of expediting trial in such cases. The provisions of summary trial enable the respondent to lead defence evidence by way of affidavits and documents. Thus, an accused who considers that he has a tenable defence and the case against him was not maintainable, he can enter his plea on the very first day of his appearance and file an affidavit in his



defence evidence and if he is so advised, he can also file an application for recalling any of the witnesses for cross-examination on the defence taken by him.

13. In view of the procedure prescribed under the Cr.PC, if the accused appears after service of summons, the learned Metropolitan Magistrate shall ask him to furnish bail bond to ensure his appearance during trial and ask him to take notice under Section 251 Cr.PC and enter his plea of defence and fix the case for defence evidence, unless an application is made by an accused under Section 145(2) of N.I. Act for recalling a witness for cross-examination on plea of defence. If there is an application u/s 145(2) of N.I. Act for recalling a witness of complainant, the court shall decide the same, otherwise, it shall proceed to take defence evidence on record and allow cross examination of defence witnesses by complainant. Once the summoning orders in all these cases have been issued, it is now the obligation of the accused to take notice under Section 251 of Cr. PC., if not already taken, and enter his/her plea of defence before the concerned Metropolitan Magistrate's Court and make an application, if they want to recall any witness. If they intend to prove their defence without recalling any complainant witness or any other witnesses, they should do so before the Court of Metropolitan Magistrate.

14. Moreover, as far as the contention of the Ld. Counsel for the petitioners that the petitioners were only nominee and non-executive directors of M/s Sure Waves MediaTech Private



Limited (SMPL) at the relevant time when the offence was committed and were neither in charge of the conduct of business nor involved in the day to day affairs of SMPL, does not cut much ice as perusal of Form No. MGT-7 nowhere shows that the petitioners were non-executive directors and E-Form DIR 12 also reveals that there was no change in directors of M/s Sure Waves MediaTech Private Limited in 2021 as well as in 2022 and the petitioners were only nominee directors of SMPL. Furthermore, the petitioners have been categorically mentioned as '*Directors of M/s Sure Waves MediaTech Private Limited*' in the Complaint Case No. 4629/2022 and Complaint Case No. 527/2022 registered under section 138 of the Negotiable Instruments Act, 1881 against the petitioners and whether they were in charge of the conduct of business or involved in the day to day affairs of SMPL is a matter of trial.

15. Therefore, I find no flaw or infirmity in the proceedings pending before the Trial Court. However, the Trial Court shall certainly consider and deal with the contentions and the defense of the petitioners in accordance with law.

16. Accordingly, the present petitions along with pending applications are dismissed being devoid of any merits.

RAJNISH BHATNAGAR, J

JULY 24, 2023/ib