



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

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Reserved on : 13.07.2023

Pronounced on : 29.11.2023

+ **CRL.M.C. 1326/2023**

RAHUL SHAH

..... Petitioner

Through: Mr. Satyajit Kumar Singh and Ms.
Khushboo, Advocates.

versus

ANUBHAV GUPTA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present petition under Section 482 Cr.P.C has been filed by the petitioner seeking the following reliefs:-

“a) Quash/set aside/annul the judgment and order dated 8.7.2022 passed by Sh Sanjay Sharma-II, Ld ASJ (Central), Tis Hazari Courts, Delhi in Crl. Revision No. 36/2022 titled as Anubhav Gupta Vs. Rahul Shah, whereby the Ld. ASJ allowed the revision petition filed by respondent and set aside the summoning order dated 30.9.2021 passed against the respondent by Ld MM in a case U/s.138 NI Act hearing C.C. No. 5512/2021 titled as Rahul Shah VS. M/s. Excel Sales & Supplies & Ors.

b) Pass any other or further order as this Hon'ble Court may deems fit and proper in the interest of justice.”

2. The complainant (petitioner herein) had instituted a complaint under



Section 138 read with Section 141 of Negotiable Instruments Act, 1881 against M/S Excel Sales & Supplies, Ajay Kumar Gupta and Anubhav Gupta (respondent herein) in respect of non-payment against one dishonoured cheque for the amount of Rs.31,95,299/- issued by accused in favour of the petitioner.

3. The Metropolitan Magistrate vide Order dated 30.09.2021 issued summons under Section 138 of Negotiable Instruments Act, 1881 requiring the three accused persons to attend the Court.

4. Anubhav Gupta- respondent preferred a revision petition under Section 397 Cr.P.C. for setting aside of Summoning order dated 30.09.2021. Vide impugned order dated 08.07.2022, the criminal revision petition filed by the respondent was allowed and summoning order dated 08.07.2022 against him was set-aside.

5. The petitioner/complainant feeling aggrieved, filed the present petition invoking jurisdiction of this Court U/s 482 Cr.P.C.

6. It has been mainly argued by the Ld. Counsel for the petitioner that Ld. Sessions Court has failed to appreciate the fact that prima facie case U/s 138 NI Act is made out against the respondent as he is jointly, vicariously and severally liable to pay the cheque amount to the petitioner/complainant. He further submitted that the Admission - cum - Retirement Deed dated 01.04.2021 containing covenant regarding liability of the said firm for making payment of Rs.31,95,299/- was duly signed by the respondent as well as Ajay Kumar Gupta. He further submitted that the respondent being one of the partners of M/s. Excel Sales & Supplies, is liable for the payment



of dues of the said firm and furthermore, he is the son of Ajay Kumar Gupta as such he alongwith other partner-Ajay Kumar Gupta is liable and responsible for the day-to-day affairs of M/s. Excel Sales & Supplies. Ld. Counsel for the petitioner, in support of his contentions, has also placed reliance upon *Subhrhramaniam Sethuraman Vs. State of Maharashtra & Anr* [AIR 2004 SC 4711], *Adalat Prasad Vs. Roop Lal Jindal & Ors*, [(2004) SLT 353] and *Amit Sibbal Vs Arvind Kejriwal* [(2018) 12 SCC 165].

7. In *Harsh Kapoor & Others vs Smt. Komal Kapoor, the High Court Of Uttarakhand At Nainital in Criminal Misc. Application No. 842 of 2013*, has observed and held as follows:

“I have carefully examined both the judgments, relied upon by learned counsel for the petitioners, passed by two different coordinate Benches of this Court. In both the judgments, coordinate Benches of this Court have placed reliance on the judgments of three Judges Bench of the Hon'ble Apex Court in the case of Adalat Prasad vs. Rooplal Jindal and others, 2004 (7) SCC, 338, and in the case of Subramaniam Sethuraman vs. State of Maharashtra and another 2004(13) SCC, 324.

In the case of Adalat Prasad (Supra) the question involved was as to whether ratio of the judgment of the Hon'ble Apex Court in the case of K.M. Mathew vs. State of Kerela and another 1992 (1) SCC, 217, that after issuance of summons under Section 204 of the Code, it was open to the Magistrate on being satisfied at the instance of summoned accused to reconsider its decision of issuing summons under Section 204, was correct?

In the case of Adalat Prasad (Supra) in paragraph nos. 16 & 17, Hon'ble Apex Court has held as under:



16. Therefore, in our opinion the observation of this Court in the case of Mathew (supra) that for recalling an erroneous order issuance of process, no specific provision of law is required, would run counter to the Scheme of the Code which has not provided for review and prohibits interference at interlocutory stages. Therefore, we are of the opinion, that the view of this Court in Mathew case that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down, the correct law.

17. In view of our above conclusion, it is not necessary for us to go into the question whether order issuing a process amounts to an interim order or not.

As per the observation made in paragraph no. 17 in the Adalat Prasad case, three judges Bench of the Hon'ble Apex Court did not enter into the question as to whether order issuing a process amounts to an interim order or amounts to intermediate or quasi final order.

In the case of Subramaniam Sethuraman (Supra) Hon'ble Apex Court in para 17 has held that aggrieved person can challenge an order in interlocutory stage under Section 482 of the Code of Criminal Procedure and not by way of application to recall.

In my considered opinion, neither in the case of Adalat Prasad (Supra) nor in the case of Subramaniam Sethuraman (Supra), Hon'ble Apex Court has considered the question as to whether order issuing the process or summoning order would be interlocutory order or would amount to intermediate order or quashi final order. Nor question of maintainability of criminal revision under Section 397 of the Code against the order passed by the Magistrate to issue process of summon was raised nor Hon'ble Apex Court had occasion to consider the same nor considered. Observations of Hon'ble Apex Court that interlocutory order can be challenged under Section 482 of the Code should not be construed to mean that summoning order would be interlocutory order."

8. In view of the above, as far as the judgments relied upon by the Ld. Counsel of the petitioner are concerned, there is no dispute with regard to



the proposition of law laid down in the said judgments, but the same are not applicable to the facts of the present case as it is trite law that a criminal revision is maintainable under Section 397 of the Code of Criminal Procedure before the Ld. Sessions Judge against the impugned order issuing process of summon.

9. In the instant case, the main issue raised by the Ld. Counsel for the petitioner is that respondent, namely, Anubhav Gupta being one of the partners of M/s. Excel Sales & Supplies and son of Ajay Kumar Gupta (Accused No. 2) is vicariously liable for dishonour of the cheque in question issued by Ajay Kumar Gupta towards discharge of liability of the said firm.

10. Perusal of the impugned order dated 08.07.2022 shows that the issue raised by the counsel for the petitioner in the present petition has already been dealt with by the Ld. Sessions Court in great detail. Relevant paras of the impugned order dated 08.07.2022 reads as follows: -

"13. Admittedly, Ajay Kumar Gupta (Accused No. 2) was a signatory of the said firm (Accused No. 1) as on 09.06.2021. He had issued/ signed the said cheque.

14. The petitioner was admitted as a partner of the said firm on 01.04.2021 vide Admission-cum-Retirement Deed. The petitioner was not an authorized signatory of the said firm.

15. In SMS Pharmaceuticals Ltd. vs. Neeta Shalla & Anr., (2005) 8 SCC 89, Hon'ble Supreme Court of India held as under:

"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 the question posed in sub-para (b) has to be in the 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 the 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 the 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 the 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 the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under subsection (2) of Section 141."

16. There must be an averment that the person accused was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company. This is basic requirement under Section 141 NI Act.

17. In the case at hand, the complainant has not averred that the petitioner was in charge of, and responsible to the said firm (Accused No. 1) for conduct of its business.

18. In that regard, relevant para of the complaint is as under:

"1. That the accused No. 1 is Partnership Firm, the accused No. 2 is partner of the accused. No. 1 and Authorized signatory of the accused No. ·1 and the accused No. 3 is partner of the firm and son of the accused No. 2.

14. That the accused No. - 1 is the Partnership Company, the accused No. 2 is Partner and Authorized Signatory and looking



after the day to day administration, management and in charge of the business of the Firm (Accused No. 1) and the accused No. 3 is partner of the accused No. 1 and son of the accused No. 2. Therefore, all the accused are responsible for the offence under Section 420/406/1206/34 IPC."

19. *On holistic reading of the complaint, it is evident that Ajay Kumar Gupta (Accused No. 2) entered into settlement with the complainant on 07.06.2021 vide Memorandum of Understanding (MOU).*

20. *Basic averments that the petitioner was in charge of and responsible to the said firm for the conduct of its business are absent. In absence of basic averments, the petitioner cannot be made vicariously liable for dishonour of the said cheque issued by Ajay Kumar Gupta (Accused No. 2) towards discharge of liability of the said firm (Accused No. 1). The petitioner cannot be made vicariously liable simply because he is a partner of the said firm and son of Ajay Kumar Gupta (Accused No. 2).*

21. *As regards reliance on stipulation pertaining to liability of the said firm, in Clause 6 of Admission-cum-Retirement Deed dated 01.04.2021, it can be a foundation for a civil liability. It cannot be made foundation for making the petitioner vicariously liable for infraction of the said cheque issued by Ajay Kumar Gupta (Accused No. 2) as an authorized signatory of the said firm (Accused No. 1).*

22. *There is no sufficient ground for proceeding against the petitioner for dishonour of the said cheque issued by Ajay Kumar Gupta (Accused No. 2) as an authorized signatory of 'M/s. Excel Sales & Supplies' (Accused No.1).*

23. *The impugned order so far as summoning of the petitioner suffers from manifest jurisdictional error which would occasion injustice, if it is not corrected in exercise of revisional jurisdiction.*

24. *Accordingly, criminal revision petition filed by the petitioner is allowed.*

25. *Consequently, the impugned order dated 30.09.2021 summoning the petitioner for offence under Section 138 NI Act is set-aside."*



11. In the instant case, the accused no. 1, namely, M/ s Excel Sales & supplies is a Partnership Firm, accused no.2, namely, Ajay Kumar Gupta is the partner and authorised signatory of accused no. 1 and accused no. 3, namely, Anubhav Gupta is the partner of the firm and son of accused no. 2. The complainant (petitioner herein) had instituted a complaint under Section 138 read with Section 141 of Negotiable Instruments Act, 1881 against M/S Excel Sales & Supplies, Ajay Kumar Gupta and Anubhav Gupta (respondent herein) in respect of non-payment against one dishonoured cheque for the amount of Rs.31,95,299/- issued by accused in favour of the petitioner.

12. Perusal of the records of the case shows that it is only Ajay Kumar Gupta (Accused No. 2) who had entered into a settlement with the complainant vide Memorandum of Understanding dated 07.06.2021 and there are no allegations whatsoever against respondent-accused no. 3. Furthermore, apart from being a partner in the accused firm, the respondent was neither shown to be in charge of M/s. Excel Sales & Supplies or responsible for the day-to-day affairs of the said firm.

13. Therefore, keeping in view the facts and circumstances of this case, the respondent cannot be held vicariously liable for the dishonour of the cheque in question issued by Ajay Kumar Gupta (Accused No. 2) towards discharge of liability of M/S Excel Sales & Supplies, merely because he is the partner of the accused firm and son of accused no.2.

14. The prayers are untenable in law. Hence, this Court does not deem it appropriate to issue notice to the respondent. Accordingly, no ground for



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setting aside of the impugned order dated 08.07.2022 is made out and the present petition is devoid of any merit and therefore, deserves to be dismissed. Pending application, if any, is also disposed of accordingly.

RAJNISH BHATNAGAR, J

NOVEMBER 29, 2023/ib