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

+ CRL.M.C. 828/2022, CRL.M.A. 3476/2022, CRL.M.A. 17144/2022
and CRL.M.A. 21345/2022
SANJAY GAMBHIR Petitioner

Through: Mr. Saurabh Soni, Ms. Mannat Singh,
Mr. Anam Sabir and Mr. Abhinav
Khurana, Advocates.

versus

STATE OF DELHI & ANR. Respondents

Through: Mr. Digam Singh Dagar, APP for
State.
Mr. Suneel Kumar and Mr. Anil
Sharma, Advocate for R-2.

+ CRL.M.C. 903/2022, CRL.M.A. 3802/2022 & CRL.M.A. 21394/2022
SANJAY GAMBHIR Petitioner

Through: Mr. Saurabh Soni, Ms. Mannat Singh,
Mr. Anam Sabir and Mr. Abhinav
Khurana, Advocates.

versus

STATE & ANR. Respondents

Through: Mr. Digam Singh Dagar, APP for
State.
Mr. Suneel Kumar and Mr. Anil
Sharma, Advocate for R-2.

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Date of Decision: 24.05.2023.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA



J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.C. 828/2022

CRL.M.C. 903/2022

The present petitions have been filed for quashing of summoning order dated 06.10.2021 against the petitioners. summoning order has been Predominantly challenged the order on the ground that the petitioners have resigned from the directorship before the issuance of the cheque.

Learned counsel for the petitioner has invited the attention of the court to the Form-32 which reflects that the petitioner had resigned much prior to the issuance of the cheque.

Learned counsel submits that in view of this the petitioner is liable to be discharged from the complaint and the impugned order is liable to be set aside. Learned counsel for the petition as relied upon the judgment in *Har Sarup Bhasin v. Origo Commodities India Pvt. Ltd.* 2020 SCC Online Del 10.

Learned counsel for respondent has submitted that even as per the documents filed by the petitioner, he continues to run the affairs of the company. Learned counsel has invited the attention of the court to the account/form of the drawer company as per which the petitioner was one of the authorized signatories. Learned counsel further submitted that subsequently therein in 2008 a resolution was passed in which certain more persons were added as authorized signatory in addition to the persons



including the petitioner who were already signatory. Learned counsel submits that this resolution was duly passed by the petitioner herein. Learned counsel submits that even if the petitioner resigned in 2007, the petitioner being in-charge and responsible for running the affairs of the company is liable to be prosecuted.

Learned counsel for the petitioner submits that the respondent is placing reliance on the documents which have not seen the light of the day and have not been ever proved before the learned Trial Court.

The present petitions have been filed under Section 482 Cr.P.C. The exercise under Section 482 Cr.P.C. is to be exercised herein only to prevent the abuse the process of the court and of the miscarriage of justice. Section 141 of Negotiable Instruments Act provides as under:

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:²² [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company



and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Interpretation of the Section has to be made in the manner which should fulfill the intendment and the object of the legislation. The purpose behind enacting the Negotiable Instruments Act is to foster the confidence of the people in the Banking and Commercial transactions. Learned counsel for the respondent has invited the attention of this court to the judgment filed by the petitioner himself titled as *Alibaba Nabibasha V. Small Farmers Agri-Business Constium & Ors.* 2020 SCC online Delhi 1250.

Learned counsel submits that in this case the co-ordinate bench of this court has placed reliance upon the judgment of *Kamal Goel Vs United Phosphorous Ltd.* 2010(116) DRJ 104-Liability of Authorised Signatory where in it was *inter-alia* had mentioned as under:

“12. In the case before the Hon'ble Supreme Court, the respondent No. 1 had resigned from the Directorship of the Company under intimation to the complainant and, in these circumstances, the Hon'ble Supreme Court was of the view that a person who had



resigned with the knowledge of the complainant in the year 1996, could not be a person in charge of the Company in the year 1999 when the cheque was dishonoured as he had no say in the matter that the cheque is honoured and he could not have asked the Company to pay the amount. In my view even if resignation was not given by the petitioner under intimation to the complainant, that would not make any difference, once the Court relying upon certified copy of Form 32 accepts his plea that he was not a director of the Company, on the date the offence under Section 138 of Negotiable Instruments Act was committed. He having resigned from the directorship much prior to even presentation of the cheque for encashment, he cannot be vicariously liable for the offence committed by the Company, unless it is alleged and shown that even after resigning from directorship, he continued to control the affairs of the company and therefore continued to be person in charge of and responsible to the company for the conduct of its business.”

Learned counsel submits that their perusal of this provision makes it clear that even if a person has resigned from the directorship prior to the presentation of the cheque for encashment he can be liable if it is shown that even after resigning from the Directorship, he continues to control the affairs of the company and therefore continues to be person in-charge of and responsible to the conduct of the company. It is pertinent to mention here that under Section 141 Negotiable Instruments Act, it is not necessary that a person who is prosecuted against has to be the Director only. Section 141(2) says that if the person is in-charge of the affairs of the company he can also be prosecuted. Even otherwise whether petitioner remains to be in-charge and in control of the affairs of the company or not is a matter of fact which is needed to be ascertained by the learned Trial Court.



In the circumstances there is no substance in this petition.

In view of the submission made, the present petitions along with pending applications are dismissed.

MAY 24, 2023/AR

DINESH KUMAR SHARMA, J

