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

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***Reserved on: 24.01.2023***  
***Pronounced on: 01.05.2023***

+ CRL.M.C. 1159/2019 & CRL.M.A. 4502/2019 & CRL.M.A.  
4505/2019

AMBIKA NARANG ..... Petitioner

Through: Ms. Aakansha Nehra and Mr.  
Shalaka Garg, Advocates

versus

M/S. SHIVAM SHUBHAM FASHIONS  
PRIVATE LIMITED & ORS. .... Respondents

Through: Ms. Mansoor Ansari, Advocate  
for R-1.

**CORAM:**  
**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**SWARANA KANTA SHARMA, J.**

1. By way of the present petition filed under Section 482 of the Criminal Procedure Code, 1973 read with Article 227 of Constitution of India, 1950, the petitioner seeks quashing of summoning order dated 24.04.2018 passed by learned Metropolitan Magistrate (NI Act)-04, South-East, Saket Court, New Delhi in Criminal Complaint No. 3611/2018 titled as “*M/s Shivam Shubham Fashions Pvt. Ltd. v. M/s The*

*Aura Creation Exports Private Limited & Ors.*” and all its consequent proceedings, so far as it relates to the petitioner.

2. A perusal of the complaint under Section 138 of Negotiable Instruments Act, 1881 (*‘NI Act’*) reveals that the complainant (respondent no. 1 herein) i.e. ‘M/s Shivam Shubham Fashions Pvt. Ltd.’, a Private Limited Company, was having business relations with the accused no. 1 (respondent no. 2 herein) i.e. ‘M/s. Aura Creation Exports Private Limited & Ors.’, whose directors were accused no. 2 i.e. Tarun Narang (respondent no. 3 herein) and accused no. 3 i.e. Ambika Narang (petitioner herein). The case of complainant was that the accused company had ordered laces and embroidery items of different kind which the complainant had supplied from time to time against the bills, for which payments/part-payments were made by the accused company in due course of business. It is stated that as on 28.02.2018, an amount of Rs.35,09,844/- was still due for payment by the accused company as per the books of complainant. It is alleged that in order to discharge part liability, the accused company had issued a Cheque bearing no. 825500 dated 30.11.2017 for Rs.19,29,922/- (Rupees Nineteen Lakhs Twenty Nine Thousand and Nine Hundred and Twenty Two) drawn on Punjab National Bank, Sector-27, Noida Branch, duly signed by accused no. 2 (respondent no.3). Upon presentation of said cheque by the complainant for encashment with its bank i.e. Citi Bank Ltd., Nehru Place, New Delhi, the cheque was returned unpaid vide memo dated 17.02.2018 with the remarks ‘Funds Insufficient’. On 16.03.2018, a legal notice of demand dated 15.03.2018 under Section 138 of NI Act, 1881 was sent to the accused persons by the complainant

calling upon them to pay and clear a sum of Rs.19,29,922/- (Rupees Nineteen Lakhs Twenty Nine Thousand and Nine Hundred and Twenty Two) within 15 days from receipt of notice, which was delivered at the addresses of accused persons on 17.03.2018. Having not received any payment from the accused persons, the complainant filed the present complaint bearing no. 3611/2018 before the Court of learned Metropolitan Magistrate (NI Act)-04, South-East, Saket Court, New Delhi.

3. The case set up by the petitioner is that she had resigned from the office of Director of the accused company, *vide* resignation letter dated 13.10.2017, with effect from 25.10.2017 as per provisions of Section 168 of the Companies Act, 2013 and the corresponding Form DIR-11 was duly filed on 24.11.2017 with the official website of the Ministry of Corporate Affairs. It is further the case of petitioner that after resigning from the accused company, she had started working with another company as an employee, and in November-December, 2018, the petitioner had learnt that she was being prosecuted in certain cases which she had no knowledge about, after which she had engaged a new counsel and upon so advised, she had started entering appearance in the relevant matters and present case is one such matter.

4. Learned counsel for petitioner states that petitioner had resigned with effect from 25.10.2017 i.e. before the cheques were even allegedly issued, returned and prior to the commencement of subsequent legal proceedings. It is also stated that the cheque in question was issued by the accused company bearing the signature of accused no. 2 (respondent no. 3 herein), and the criminal complaint is bereft of any averments with

respect to the involvement of the petitioner in the alleged transaction. Learned counsel for petitioner argues that the petitioner did not have any control nor was she in-charge of the day-to-day affairs of the accused company either when the cheque in question was issued or was dishonored. It is stated that even otherwise, petitioner was never involved in the activities of the financial aspects of the accused company.

5. On the other hand, learned counsel for respondent no. 1 states that petitioner was a director of the accused company, having complete knowledge of the business transactions that used to take place between the complainant and accused company. It is stated that even admittedly, the petitioner was director of the company when the invoices were issued. It is also submitted that the factum of petitioner being a director or not at the time of issuance and dishonor of cheque and the contentions qua the same are a matter of trial and cannot be considered at this stage.

6. The rival contentions of both the parties have been heard and the material on record has been carefully perused.

7. At the outset, it will be appropriate to first refer to Section 138 and 141 of the Negotiable Instruments Act, 1881, which are reproduced as under:

**“138. Dishonour of cheque for insufficiency, etc., of funds in the account** — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of

money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless —

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.”

**141. Offences by companies.** — (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:

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.”

8. The Hon’ble Apex Court in *S.P. Mani & Mohan Dairy v. Dr. Snehalatha Elangovan* 2022 SCC OnLine SC 1238, while analysing Section 141 of the Act, had observed as under:

26. While the essential element for implicating a person under sub-section (1) is his or her being in charge of and responsible to the company in the conduct of its business at the time of commission of the offence, the emphasis in sub-section (2) is upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. **Thus, the important and distinguishing feature in sub-section (1) is the control of a responsible person over the affairs of the company rather than his holding of an office or his designation, while the liability under sub-section (2) arises out of holding an office and consent, connivance or neglect.** While all the persons covered by sub-section (1) and subsection (2) are liable to be

proceeded against and also punished upon the proof of their being either in charge of and responsible to the company in the conduct of its business or of their holding of the office and having been guilty of consent, connivance or neglect in the matter of commission of the offence by the company, the person covered by sub-section (1) may, by virtue of the first proviso, escape only punishment if he proves that the offence was committed without his knowledge or despite his due diligence.

(Emphasis supplied)

9. In the present case, the complainant had alleged that the accused company/respondent no. 2 had issued a cheque dated 30.11.2017 for a sum of Rs.19,29,922/-, which was dishonoured on 17.02.2018. The petitioner and respondent no. 3 were the only two Directors as well as Promoters of the accused company and the cheque in question was signed by respondent no. 3. The primary contention of the learned counsel for the petitioner was that since petitioner had resigned more than a month prior to even issuance of cheque in question, summons could not have been issued against her in a mechanical manner. To buttress these arguments, a copy of Form DIR-11, copy of Company Master Data as obtained from Ministry of Corporate Affairs (MCA) website, and a few letters have been placed on record.

10. After having gone through the entire material on record, this Court finds that though the Form DIR-11 shows the date of resignation of petitioner as 25.10.2017, it is not a disputed fact that any Director who resigns from a company is himself supposed to update the details about his resignation to the MCA by way of filing Form DIR-11. Even as per the case of petitioner, the details were filed with the Registrar on 24.11.2017, whereas cheque in question was issued only a week later

i.e. on 31.11.2017. Furthermore, in the certified copy of Form DIR-11 annexed with the present petition, the 'name of the document' mentions '*Form DIR-11-05122017\_signed*', which *prima facie* reflects the date of filing the resignation with the MCA as 05.12.2017, which is after issuance of cheque in question. Moreover, admittedly, after the resignation was forwarded to the accused company by the petitioner, no Board Meeting had taken place or no Board Resolution was passed to accept her resignation. As far as reliance placed upon Company Master Data (Annexure A-3) is concerned, the same shows the list of directors where the term of respondent no. 3 has been shown as beginning 23.08.2012 and continuing till date, and the term of another director starts from 07.02.2018. Thus, even perusal of this documents reveals that in place of petitioner, the director who was so appointed by the accused company was on 07.02.2018 whereas petitioner claims to have resigned in October, 2017.

11. Considering the proximity of time in alleged resignation of the petitioner and issuance of cheque in question and its dishonor, the date of appointment of new director in place of present petitioner, absence of any board resolution to strengthen the case of petitioner and in view of other reasons mentioned in preceding paragraphs, this Court, at this stage, cannot come to a conclusion, with utmost certainty, as to when had the petitioner actually resigned from the office of Director of accused company and as to whether or not she was involved in issuance of cheque and its dishonoring

12. While holding so, this Court also takes note of the observations made by the Hon'ble Apex Court in *S.P. Mani & Mohan Dairy (supra)*, which read as under:

“33. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:—

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(b) It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;

(c) If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed in regards the law.

(d) In construing a complaint **a hyper-technical approach should not be adopted so as to quash the same.**

(e) The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141 respectively should be kept in mind by the Court concerned.

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(g) The **power of quashing should be exercised very sparingly** and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed...

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47. Our final conclusions may be summarised as under:—

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d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, **he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention.** He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.”

(Emphasis supplied)

13. The issues regarding date of resignation, including as to whether or not or when the resignation letter was actually sent to Board of Directors, or as to when were the details qua resignation updated on the MCA website are all triable issues, especially in view of lack of certain relevant documents as discussed in preceding paras, in the present case. The material placed on record by the petitioner is not sterling incontrovertible material or unimpeachable material to show that petitioner was not involved either in day to day activities of the company or had no role in issuance of cheque in question.

14. Thus, this Court does not find it a fit case to quash the summoning order dated 24.04.2018 passed by learned Metropolitan Magistrate at the very threshold.

15. However, the petitioner shall be at liberty to raise all these contentions by placing on record all the relevant documents before the learned Metropolitan Magistrate who shall adjudicate upon the same as per law.

16. In view thereof, the present petition stands dismissed, along with pending applications if any.

17. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**MAY 1, 2023/kss**