



\$~46

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

% Judgment delivered on: 12.09.2023

+ CRL.L.P. 462/2023

VINOD KUMAR

..... Petitioner

versus

STATE GOVT OF NCT OF DELHI AND ORS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. M. L. Yadav, Advocate.

For the Respondents : Mr. Satinder Singh Bawa, APP for State.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CRL.M.A. 24510/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.L.P. 462/2023 & CRL.M.A. 24511/2023 (for delay)

3. This is a leave petition under Section 378 (3) read with Section 482 Cr.P.C., 1973 filed on behalf of the leave petitioner seeking leave to appeal against the impugned judgment dated 19.04.2023 passed by the Court of learned MM-01 (NI Act), New Delhi District, RACC, New Delhi in CC No. 245/2023.

4. By way of the present leave petition, the leave petitioner seeks



leave to appeal against the aforesaid order on the ground that the impugned order passed by the learned MM, which is placed at page No. 18 of the present petition, has been passed without considering the facts as culled out not only from the complaint but also from the evidence of the respondent/ accused.

5. Mr. M.L. Yadav, learned counsel appears for the leave petitioner and draws attention of this Court to the affidavit of settlement executed by the respondent/ accused, wherein it is stated that the cheques in question were issued by him on a personal basis.

6. Mr. Yadav, learned counsel also refers to page No. 25 of the impugned order, particularly to para 23 to submit that there was, in existence, an agreement executed on 10.02.2013, whereby the respondent/ accused is stated to have issued the impugned cheques in discharge of his personal liability.

7. On the aforesaid basis, Mr. Yadav, learned counsel submits that the manner in which the learned Trial Court has proceeded purely on the basis of the impugned cheques issued on behalf of the company, to non-suit the leave the petitioner from proceeding with the complaint, is absolutely erroneous and contrary to the facts on record.

8. Learned counsel also relies upon the judgment of the ***H.N. Nagaraj vs. Suresh Lal Hira Lal*** in Crl. P. No. 8257/2019 decided on 21.09.2022 by the High Court of Karnataka, to support the aforesaid contentions.

9. This Court has heard the arguments of Mr. Yadav, learned counsel as also perused the impugned order.



10. It is not disputed that the cheques were issued in the name of the company, however, signed by the respondent/ accused.

11. That apart, the fact that there is an agreement or even an affidavit of settlement executed by the accused/ respondent on 12.12.2017 would also not come to the rescue of the leave petitioner. The reason for the aforesaid observation is, that irrespective of what the respondent may have orally submitted, there cannot be any question of oral evidence being taken on record or taken into consideration, where the written evidence or document is available. This would be in terms of section 91-92 of the Indian Evidence Act, 1872.

12. That apart, in the impugned order, the learned Magistrate has carefully scrutinised the facts which have arisen in the present case and has passed a reasoned order to that extent.

13. Learned Trial Court has also considered the judgments of the Supreme Court in *Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd.* reported in (2012) 5 SCC 661, *Himanshu vs. B. Shivamurthy And Another* reported in (2019) 3 SCC 797 and *Dilip Hiraramani vs. Bank of Baroda* in Criminal Appeal No. 767/2022 on behalf of the respondent/ accused.

14. That apart, the judgment of the Supreme Court in *Hindustan Unilever Ltd. vs. State of Madhya Pradesh* reported in (2020) 10 SCC 751 has categorically held as under :-

“22. Section 17 of the 1954 Act reads as under:

“17. Offences by companies.—(1) Where an offence under this Act has been committed by a company—

(a)(i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and



responsible to, the company for the conduct of the business of the company (hereinafter in this section referred to as the person responsible), or

(ii) where no person has been so nominated, 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; and

(b) 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 such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence."

(emphasis supplied)

23. Clause (a) of sub-section (1) of Section 17 of the Act makes the person nominated to be in charge of and responsible to the company for the conduct of business and the company shall be guilty of the offences under clause (b) of sub-section (1) of Section 17 of the Act. Therefore, there is no material distinction between Section 141 of the NI Act and Section 17 of the Act which makes the company as well as the nominated person to be held guilty of the offences and/or liable to be proceeded and punished accordingly. Clauses (a) and (b) are not in the alternative but conjoint. Therefore, in the absence of the company, the nominated person cannot be convicted or vice versa. Since the Company was not convicted by the trial court, we find that the finding of the High Court to revisit the judgment will be unfair to the appellant-nominated person who has been facing trial for more than last 30 years. Therefore, the order of remand to the trial court to fill up the lacuna is not a fair option exercised by the High Court as the failure of the trial court to convict the Company renders the entire conviction of the nominated person as unsustainable."

15. This Court is supported in its view by the following judgments :-

(a) ***Aneeta Hada vs. M/s Godfather Travels and Tours Pvt. Ltd.***



reported in (2012) 5 SCC 661 :-

“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative.”

(b) **Himanshu vs. B. Shivamurthy and Another** reported in (2019) 3 SCC 797 :-

“12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, every person, who at the time when the offence was committed was in charge of or 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.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.

14. We, accordingly, are of the view that the High Court was in error in rejecting the petition under Section 482 CrPC. We hence allow the appeal and set aside the judgment of the High Court. In



consequence, the complaint, being CRP No. 27 of 2004 shall stand quashed.”

(c) ***Geeta Singh vs. Pradeep Singh*** reported in 2022 SCC OnLine Del 3914 :-

“16. Since, the drawer of the cheque was the accused Company, solely on the ground that the respondent had signed the cheque, a liability under Section 138 of the NI Act did not arise against him. The complaint was prima facie not maintainable against the Company as drawer of the cheque, the liability towards the respondent also did not arise keeping in view that respondent was acting on behalf of the Company and where the liability against the Company had been discharged, a private and severed liability against the respondent could not have arisen in the circumstances of the instant matter.”

16. Keeping in view the fact that there is no dispute that the respondent/ accused was the Director of the company i.e., M/s. D.S.M. Infracon Pvt. Ltd., liability cannot be vicariously fastened upon the respondent/ accused, unless the Company was itself made a party to the proceedings before the learned Trial Court.

17. It has also been noticed that even the legal notice issued by the leave petitioner is also addressed only to the respondent/ accused and not the company. It is also not disputed that the cheques in question which have been issued belongs to the company and has been signed by the respondent/ accused only on behalf of the company.

18. In such circumstances, it cannot be said that the respondent/ accused has issued the said cheques in a personal capacity.

19. The aforesaid agreement dated 10.02.2013 as also the affidavit of the respondent/ accused dated 12.12.2017 shall also, to the aforesaid extent, not come to the rescue of the leave petitioner.



20. Learned Trial Court had also judicially scrutinised the answers elicited from the leave petitioner/ complainant and has examined the entire issue to conclude that no vicarious liability will attach upon the respondent/ accused in the absence of the company being named as a party respondent or an accused before it.

21. Keeping in view the aforesaid, this Court is of the considered opinion that the leave as sought by the leave petitioner cannot be granted for the aforesaid reasons.

22. Accordingly, the leave petition along with pending application is dismissed.

TUSHAR RAO GEDELA, J .

SEPTEMBER 12, 2023/nd