$~25

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

\+ CRL.M.C. 761/2023 and CRL.M.A. 2913/2023

LAMBA AUTO ELECTRIC PVT LTD EARLIER KNOWN AS KARMIC INFRASTRUCTURE PVT LTD AND ORS .....Petitioners

Through: Mr.Vipin Bhasker, Advocate

versus

SH TARANDEEP SINGH AND ANR .....Respondents

Through: Mr.Vipin Nandwani, Advocate for respondent No.1

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **20.09.2024**

1. By way of present petition, the petitioners seek quashing of the complaint case No.3951/2018 titled as '*Tarandeep Singh Vs. M/s Kaarmic Infrastructure Pvt. Ltd. & Ors.*' qua the petitioners only, preferred by respondent No.1 under Sections 138/141, Negotiable Instruments Act, 1881, arraying the present petitioners as accused alongwith respondent No.2, who has issued and signed the subject cheques, and the proceedings emanating thereof.

2. The present proceedings arise out of a dispute wherein the respondent No.2/complainant was allegedly induced by the petitioner Nos. 2 and 3 and respondent No.2, who claimed to be the Directors and the Manager and Authorized Signatory of the petitioner No.1 company, respectively, to invest a sum of Rs.18,00,000/- towards purchase of a plot area of 2000 square yards in a residential colony by the name of '*Kaarmic City*' at Alodha Village, Khatu Shyam, District Seekar, Rajasthan. An acknowledgement receipt of the said amount was duly issued in the name of the respondent

No.1/complainant on 30.05.2014 by the accused persons (petitioners and respondent No.2 herein). Thereafter, an agreement dated 10.07.2014 was executed between the parties, whereby commercial plots Nos. C- 196 to C-204, B-298 and B-300 in Block Nos. C & B admeasuring approximately 1,900 square yards were tentatively allotted to the respondent No.1/complainant in the aforesaid project. Subsequently, in regard to the proposed buy back return plan by the accused persons, a post-dated cheque for an amount of Rs.25,00,000/- was issued in favour of the complainant. However, the accused persons thereafter replaced the aforestated cheque with fresh post-dated cheques with proportionately increasing sum, out of which, some of the cheques were also encashed. The dispute is regarding the following three cheques, issued by respondent No.2, apparently as the authorized signatory of the petitioner No.1 company and on behalf of all the accused persons, drawn on Canara Bank, Vikas Puri, Delhi, totaling Rs.80,00,000/-, which were subsequently dishonoured with the remarks, '*Funds Insufficient*':

S.No.	Cheque No.	Date	Amount	Date of Return Memo
1.	706274	10.01.2018	Rs.25,00,000/-	07.04.2018
2.	706275	10.01.2018	Rs.40,00,000/-	07.04.2018
3.	706276	15.03.2018	Rs.15,00,000/-	07.04.2018

3. Learned counsel for the petitioners submits that the petitioners were neither served with any notice sent by the respondent No.1/complainant nor with notice/summons in the complaint filed by respondent No.1/complainant, and only got to know of the same when Non Bailable Warrants (NBW) were served on them vide order dated 29.08.2022 on the

grounds of non-appearance before the Trial Court. It is also pointed out that a notice under Section 251 Cr.P.C. was issued against the respondent No.2 on 04.07.2022, wherein respondent No.2 has claimed that he was never the Director of the petitioner No.1 company and that respondent Nos. 1 and 2 were partners in *Sagan Infra Home Pvt. Ltd.* and the subject cheques were in the possession of respondent No.1.

The petitioners' grievance is that the subject cheques have been issued by the respondent No.2 in his personal capacity and not from the company's account and as such, the petitioners cannot be impleaded vicariously for the offence punishable under Sections 138 and 141 of NI Act. Learned counsel for the petitioners submits that the petitioners were neither signatories to the subject cheques nor the cheques were drawn on their bank account. In fact, the account from which the subject cheques were issued was not even a joint account of the petitioners and the respondent No.2. It is contended that even if the petitioners were jointly liable towards the payment of the debt so created, they cannot be prosecuted under Section 138 NI Act as they were neither the signatories nor held the bank account jointly with the respondent No.2. Reliance has been placed on the Supreme Court decision in Mainuddin Abdul Sattar Shaikh Vs. Vijay D. Salvi reported as **(2015) 9 SCC 622** to contend that if a cheque is drawn by the employee of the accused company on his personal account, even if to discharge dues of the accused company and its Directors, the accused company and Directors cannot be held liable under Section 138 NI Act and that only the drawer will be liable in such a case. Lastly, it is contended that no specific averments had been made in the complaint against the Directors of the accused company (petitioner Nos. 2 and 3 herein), which is an essential requirement under Section 141 NI Act.

4. The petition is contested by learned counsel of respondent No.1 by contending that the complaint has all the necessary averments and consequently, a trial would be required to determine the liability of the petitioners. Learned counsel further contends that since the cheque issued by respondent No.2 was to discharge the liability of the petitioner No.1 company, the petitioners are also vicariously liable for the dishonour of the cheque in question. However, learned counsel does not dispute that the subject cheques have been issued from respondent No.2's individual account.

5. I have heard learned counsels for the parties and have perused the material on record.

6. From a reading of Section 138 NI Act, it is evident that in order to attract the rigours of the provision on a person, the cheque in question has to be drawn by a person on an account maintained by them. It cannot be that some other person is roped in a criminal case involving Section 138 NI Act, merely because they were co-directors in the firm. The only provision which allows vicarious liability to be imposed on directors in the NI Act is Section 141, however, the same applies in situations where the offence under Section 138 has been committed by a Company. There is no concept of shared liability in the NI Act. Moreover, the proceedings in the NI Act are quasi-criminal in nature, with penal consequences and are *in personam* in nature and hence, the provisions have to be strictly construed. A person who is not otherwise liable under the Act cannot be roped in by some misguided notion of shared liability. The cheque may have been issued for discharging the debts of a company but unless it was issued by the company, other

directors cannot be roped in the criminal proceedings.

7. The Supreme Court, while dealing with a case having similar facts, in P.J. Agro Tech Ltd. v. Water Base Ltd, reported as **(2010) 12 SCC 146** held as under:-

> *13. From a reading of the said section, it is very clear that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the 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. It is only such a cheque which is dishonoured which would attract the provisions of Section 138 of the above Act against the drawer of the cheque.*
>
> *14. In the instant case, the cheque which had been dishonoured may have been issued by Respondent 11 for discharging the dues of Appellant 1 Company and its Directors to Respondent 1 Company and the respondent Company may have a good case against Appellant 1 Company for recovery of its dues before other fora, but it would not be sufficient to attract the provisions of Section 138 of the 1881 Act. The appellant Company and its Directors cannot be made liable under Section 138 of the 1881 Act for a default committed by Respondent 11. An action in respect of a criminal or a quasi-criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence.*

8. Similarly, when deciding if the concept of joint liability is applicable to proceedings under NI Act, the Supreme Court, in Alka Khandu Avhad v. Amar Syamprasad Mishra, reported as **(2021) 4 SCC 675** held as follows:-

> *10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained*

by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.

9. Insofar as the legal position regarding quashing of complaints filed under Section 138 NI Act against the Directors in exercise of the powers conferred under Section 482 Cr.P.C. is concerned, the same has been discussed in detail by the Supreme Court in Sunita Palita *v.* Panchami Stone Quarry[1] and S.P. Mani & Mohan Dairy *v.* Snehalatha Elangovan[2]. In S.P. Mani (Supra), it has been observed: -

"xxx

58. Our final conclusions may be summarised as under:

58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable… On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the

[1] (2022) 10 SCC 152
[2] (2023) 10 SCC 685

case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm… The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

xxx

58.4. 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.
xxx"

10. Considering that the subject cheque has been issued by the respondent No.2 from his account and in his personal capacity, the question of vicarious liability of the present petitioners does not arise. Accordingly, the petition succeeds and the Criminal Complaint No.3951/2018 is hereby quashed qua the petitioners. As a necessary sequitur, the summoning order is also set aside. Pending application is also disposed of as infructuous.

MANOJ KUMAR OHRI, J

SEPTEMBER 20, 2024
na