2024:DHC:811

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

Reserved on: 15.01.2024
Pronounced on: 06.02.2024

+ CRL.M.C. 620/2022 & CRL.M.A. 2681/2022
+ CRL.M.C. 621/2022 & CRL.M.A. 2683/2022
+ CRL.M.C. 622/2022 & CRL.M.A. 2685/2022
+ CRL.M.C. 623/2022 & CRL.M.A. 2687/2022
+ CRL.M.C. 624/2022 & CRL.M.A. 2689/2022
+ CRL.M.C. 669/2022 & CRL.M.A. 2882/2022
+ CRL.M.C. 670/2022 & CRL.M.A. 2884/2022
+ CRL.M.C. 671/2022 & CRL.M.A. 2886/2022

HIMANSHU CHOPRA ..... Petitioner
ATUL CHOPRA ..... Petitioner

Through: Mr.Chandan Bhatia, Adv.

versus

STATE & ANR. ..... Respondents

Through: Ms.Priyanka Dalal, APP.
Mr.Prince Arora and Mr.Gagan Gupta, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. These petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the summoning orders dated 07.03.2019 and 23.08.2019, passed in CC No. 391/2019; CC No. 1041/2019; CC No. 2055/2019; CC No. 391/2019; CC No. 695/2019; CC No. 2055/2019; CC No. 695/2019; CC No. 1041/2019, all titled ***Parshant Gupta v. M/s AM Vinyl & Ors.***

(hereinafter collectively referred to as the 'Impugned Orders') by the learned Additional Chief Metropolitan Magistrate, Shahadara District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Trial Court').

2. As the submissions of the parties are common in all these petitions, they were taken up for hearing together and are being disposed of by this common judgment.

3. The limited challenge of the petitioners to the Impugned Orders is that the learned Trial Court has failed to appreciate that the petitioners had resigned from the accused Company, that is, M/s AM Vinyl Pvt. Ltd., on 25.03.2018, while the cheques that had been issued by the Company to the respondent no.2, that is, the complainant, were handed over to the respondent no.2 and returned unpaid much later and after the resignation of the petitioners.

4. The learned counsel for the petitioners submits that the offence was committed by the Company after the resignation of the petitioners, therefore, the petitioners cannot be made liable for the offence under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'). In support, he places reliance on the judgments of the Supreme Court in ***Hareram Satpathy v. Tikaram Agarwala & Ors.*** (1978) 4 SCC 58; ***S.M.S. Pharmaceutical Ltd. v. Neeta Bhalla & Anr.*** (2005) 8 SCC 89; ***CREF Finance Ltd v. Shree Shanthi Homes (P) Ltd. & Anr.*** (2005) 7 SCC 467; ***N.K. Wahi v. Shekhar Singh & Ors.*** (2007) 9 SCC 481; and of this Court in ***J.B. Garg v. State & Anr.*** 2006 OnLine Del 892; ***J.N.Bhatia & Ors. v. State & Anr.*** 2006 SCC OnLine Del 1598; ***Ashok Sikka & Ors. v. State*** 2008 SCC OnLine

Del 166; and ***Man Mohan Patnaik v. CISCO Systems Capital India Pvt. Ltd. & Ors.,*** 2022 SCC OnLine Del 4652.

5. On the other hand, the learned counsel for the respondent no. 2/complainant submits that specific allegations have been made in the complaint against the petitioner(s) of the complainant having entered into the transaction for the supply of goods by the complainant based on the assurances of the petitioner(s), that they are the in-charge of the day-to-day activities/affairs of the Company and shall be responsible for the acts of omission and commission as well as the conduct of the said Company. He submits that, at the stage of issuing summons to the accused, the learned Trial Court is not to conduct a mini-trial or a roving inquiry, but is to only *prima facie* find that a case has been made out against the accused person(s).

Analysis & Findings:

6. I have considered the submissions made by the learned counsels for the parties.

7. At the outset, three important principles of law would have to be kept in mind while considering the respective submissions of the learned counsels for the parties:

a) At the stage of issuing process, the learned Trial Court is mainly concerned with the allegations made in the complaint and the evidence led in support of the same. The learned Trial Court is only to be *prima facie* satisfied that there are sufficient grounds for proceeding against the accused person(s). The learned Trial Court is not even required to record the reasons while issuing the process. At this stage, it is not the province of the learned

Trial Court to enter into a detailed discussion/analysis on the merits or demerits of the case. Reference in this regard is made to the judgments of the Supreme Court in ***UP Pollution Control Board v. Mohan Meakins Ltd. & Ors.*** (2000) 3 SCC 745 and ***Bhushan Kumar & Another v. State (NCT of Delhi) & Another*** (2012) 5 SCC 424.

b) Exercise of powers by the High Court under Section 482 of the Cr.P.C. is limited in its scope and can be exercised only where the Court is fully satisfied that the material produced would irrefutably rule out the charge and is of such sterling and impeccable quality that the invocation of powers under Section 482 of the Cr.P.C. to quash the criminal proceedings is warranted. Reference is placed on the judgments of the Supreme Court in ***Smt.Nagawwa v. Veeranna Shivalingappa Konjalgi & Ors.,*** (1976) 3 SCC 736; ***HMT Watches Ltd. v. M.A. Abida & Anr.*** (2015) 11 SCC 776; ***Rajiv Thapar & Ors. v. Madan Lal Kapoor*** (2013) 3 SCC 330; and, ***Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi) & Anr.*** 2022 SCC OnLine SC 513.

c) For attracting Section 141 of the NI Act, the primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. Thereafter, the burden is on the Board of Directors or the officers in-charge of the affairs of the Company/partners of a firm to show that they were not liable to be convicted. He/she must make out a case that making him/her stand the trial would be an abuse of the process of the Court. {Refer: ***S.P.Mani & Mohan Diary v. Dr.Snehalatha Elangovan,*** 2022 SC OnLine SC 1238}

8. Testing the submissions made by the learned counsels for the parties on the above principles, in the present case, the complainant in his complaint has alleged as under:

> *"2. That the Accused No. 2, 3, 4 & 5 had approached the Complainant at his office and offered to purchase goods and the Accused No. 2, 3, 4 & 5 had further represented, assured and promised to the Complainant that they shall maintain, financial discipline and punctually pay and discharge all their liabilities for the purchases made by them. It was categorically represented by the Accused No. 2, 3, 4 & 5 to the Complainant that they are the Directors of M/s A.M. Vinyl Pvt. Ltd. & incharge of day to day activities and business of the company and also responsible for the act, omissions and conduct of the said company*
>
> *3. That upon believing the said representations, false assurances and promises made by the accused's, the Complainant had provided the goods to the Accused's against the Invoices at their complete satisfaction and Accused's accepted the goods against the Invoices.*
>
> *xxxx*
>
> *5. That thereafter in discharge of their legal liability, the Accused No. 2 & 3 and on behalf of the other Accused made a settlement with the Complainant, vide dated 22nd August, 2018.*
>
> *xxxx*
>
> *7. That the Accused No. 2 & 3 and on behalf of the other Accused had further assured to the Complainant that the above stated cheques as mentioned in para 6, would be honored at the time of the presentation. That accordingly with the said*

*mandate, the Complainant presented the cheques vide cheque bearing No. 353698 dated 01.12.2018 for a sum of Rs. 1,23,850/-, cheque bearing No. 353700 dated 07.12.2018 for a sum of Rs. 2,11,369/-, cheque bearing No, 353704 dated 18.12.2018 for a sum of Rs. 1,04,463/-, all drawn on State Bank Of India, Greater Kailash Part 1; New Delhi, within a period of their validity but to the utter shock and surprise of the Complainant, the said cheques were dishonored when it were presented through the Complainant's Banker i.e, HDFC Bank Ltd, vide Bank Advice Dated 3rd December, 2018 for the cheque bearing No. 353698 for the reasons "**Funds Insufficient**", 10th December, 2018 for the cheque bearing No. 353700 for the reasons "**Funds Insufficient**" & 19th December, 2018 for the cheque bearing No. 353704 for the reasons "Account Closed" which was intimated to the Accused by the Complainant."*

9. The petitioners herein have been arrayed as the accused nos.2 and 3 in the complaints filed by the respondent no.2. A reading of the above averments in the complaint(s) would show that specific allegations have been made against the petitioner(s) herein of them not only being in charge of the affairs of the Company but also giving assurances to the complainant, based whereon the complainant had entered into the transaction of supplying goods and later, into the Settlement Agreement.

10. Section 141 of the NI Act reads as under:

> *"**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."

(Emphasis Supplied)

11. A reading of the above would show that the abovementioned Section is in two parts. While Sub-section (1) of Section 141 makes "every person" who, at the time the offence was committed, was in charge of and responsible for the day-to-day affairs and conduct of the

business of the company, to be "deemed to be guilty of the offence", unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such an offence, Sub-section (2) of Section 141 makes any director, manager, secretary, or other officer of the Company, with whose consent or connivance of or due to whose neglect the offence has been committed by the company to be deemed to be liable to be proceeded against and punished under Section 138 of the NI Act.

12. The Supreme Court in its recent decision in ***S.P.Mani & Mohan Diary*** (supra), considering the above provision in detail has held as under:

> *"**58.** Our final conclusions may be summarized 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. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to subsection (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 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. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. 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.

58.3 *Needless to say, the final judgement and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.*

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."*

13. In the present case, as noted hereinabove, it is the case of the respondent no.2 that even the cheque, on the basis of which the complaints have been made, were given by the company and taken by the respondent no.2 on the assurance of the petitioners herein that the said cheques would be duly honoured at the time of their presentation. These cheques are stated to be given post the date of the alleged resignation of the petitioners. It is also important to note that there were other Directors arrayed as accused in the complaint(s), however, against them such averment is not specifically made. The averments made in the paragraphs 5 and 7 are specifically made against the petitioners herein. In any case, whether this averment of the respondent no.2 is correct or not, has to be tested during the trial. As noted hereinabove, this is not the stage for testing the veracity of the above averments made by the respondent no.2 in the complaint(s). The same shall have to be tested in trial by way of evidence.

CONCLUSION

14. In view of the above, I do not find any merit in the challenge made by the petitioners in the present petitions.

15. The petitions along with the pending applications are accordingly, dismissed.

16. Any and all observations made hereinabove shall not amount to an expression of opinion on merits of the said Complaint Cases. They

shall be adjudicated upon by the learned Trial Court remaining uninfluenced by any observation made in the present judgment.

17. There shall be no orders as to costs.

NAVIN CHAWLA, J

FEBRUARY 06, 2024/ns/RP/AS

Click here to check corrigendum, if any