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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved On: 12th December, 2023

Pronounced On: 7th March, 2024

+ CRL.M.C. 1414/2023 & CRL.M.A. 5421/2023 (Stay), CRL.M.A. 28864/2023 (Directions) & CRL.M.A. 28893/2023 (Directions)

SMT. SANTOSH DEVI @SANTOSHI DEVI Petitioner

Through: Mr. Ch. Rabindra Singh, Mr. Paras Aggarwal, Ms. Ekta Singh, Mr. Asif Ali and Ms. Jyoti, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Mr. Hitesh Vali, APP for the State.
Mr. Tanveer Ahmed Mir,
Mr. Shaurea Tyagi and Mr. Aman,
Advocates for Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks setting aside of summoning order dated 25.07.2019 and quashing of CC No. 344/2019 under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') *qua* the petitioner, instituted at the instance of respondent no. 2, pending before the Court of Sh. Yashdeep Chahal, Metropolitan Magistrate – 01, Patiala House Courts, New Delhi.



2. Briefly stated, facts of the present case, as set out in the complaint filed by respondent no. 2, i.e., M/s Sesame Foods Pvt. Ltd., are as under:

- i. The complaint in the present case was filed against four accused persons, i.e., M/s Shree Ram Developers (accused no. 1), Mr. Ashok Agarwal (accused no. 2), Mr. Shankar Lal Gupta (accused no. 3) and the petitioner (accused no. 4). Accused no. 1 firm was stated to be a partnership concern involved in the business of construction and development and the accused persons were stated to be partners in the said firm.
- ii. The accused firm and the respondent no. 2 entered into a 'Development Agreement' dated 16.03.2018. Business between the two companies was conducted as per the agreed upon terms and thereafter, the accused firm was supposed to clear the total dues of Rs. 3,02,00,000/- (Rupees Three Crore and Two Lakh).
- iii. Towards discharge of the aforesaid liability, the accused firm issued various cheques in favour of the respondent no. 2, including cheque no. 051067 dated 27.07.2018 for a sum of Rs. 39,21,652/- and cheque no. 051102 dated 05.08.2018 for a sum of Rs. 34,90,696/-.
- iv. The said cheques were presented at State Bank of India, Connaught Place and was returned unpaid on the ground of 'funds insufficient', *vide* return memos dated 24.10.2018.
- v. On 20.11.2018, the respondent no. 2 sent a legal notice dated 19.11.2018 to the accused firm, calling upon them to clear the dues of the cheque amount. However, the payment was not made.



- vi. Accordingly, the complaint under the notice 138 of the NI Act was filed on 04.01.2019.
- vii. The learned Metropolitan Magistrate passed the impugned summoning order dated 25.07.2019, thereby summoning the accused persons including the present petitioner to face trial in the complaint case.
- viii. On receipt of the said summons, the petitioner moved an application dated 07.05.2022 seeking discharge from the case. The said application was dismissed by the learned Metropolitan Magistrate *vide* order dated 22.02.2023 and put the matter up for framing of notice.
3. Learned counsel for the petitioner submitted that respondent no. 2 has filed two complaint cases, i.e., CC No. 12459/2018 (in relation to dishonour of a third cheque in the sum of Rs. 25,00,000/-) and CC No. 344/2019 (subject matter of the present petition). It was submitted that in the previous complaint, i.e., CC No. 12459/2018, the petitioner was not impleaded as an accused person and thereafter, in the subsequent complaint, i.e., CC No. 344/2019, respondent no. 2 arrayed the petitioner as an accused in a routine manner and based on vague and general allegations.
4. Learned counsel for the petitioner submitted that the latter, who is a 65 year old lady, never issued or signed the subject cheques and that she never met with any representative of respondent no 2 in relation to the transaction involved. It was submitted that respondent no. 2 was well aware of the fact that the petitioner had no involvement in the subject transactions, which is also evident from the fact that she was not arrayed as an accused in the earlier complaint, as stated hereinabove. It was submitted that the petitioner has been



arrayed as an accused only to create pressure on the other partners of the accused firm.

5. It was further submitted that the complaint filed by respondent no. 2 also lacks the necessary averments to illustrate that the petitioner was involved in day-to-day affairs of the accused firm, and therefore, in absence of such averments, the learned Magistrate erred in taking cognizance on the complaint *qua* the petitioner.

6. Learned counsel for the petitioner placed reliance on the following judgments:

- i. Siby Thomas v. Somany Ceramics Ltd., (2024) 1 SCC 348
- ii. Sunita Palita and Others v. Panchami Stone Quarry, (2022) 10 SCC 152

7. *Per contra*, learned counsel for respondent no. 2, i.e., M/s Sesame Foods Pvt. Ltd. submitted that petitioner's plea to the Court under Section 482 of the CrPC is liable to be rejected as the petition raises disputed questions of facts which cannot be adjudicated without leading evidence in the trial. It is further submitted that the petitioner does not dispute the fact that she was a partner of the firm at the relevant time when the transaction took place and as per provisions of Section 141 of the NI Act, an accused can be summoned for vicarious liability of the principal entity,

8. Learned counsel for respondent no. 2, has placed on record, alongwith the reply to the present petition, copies of Income Tax Returns of the year 2015-2016 filed by the accused partnership firm, i.e., M/s Shreeram Developers to demonstrate that the same were filed under signatures of the petitioner, in her capacity as a partner. It is submitted that the petitioner was not named as an accused in the previous complaint on account of an oversight



and the same would not give her any benefit in the subject proceedings. It is pointed out that necessary averments with respect to the petitioner in terms of Section 141 of the NI Act have been made in the complaint.

9. Learned counsel for respondent no. 2 places reliance on the following judgments:

- i. N. Rangachari v. Bharat Sanchar Nigam Ltd., (2007) 5 SCC 108
- ii. Shree Raj Travels & Tour Ltd. & Ors. v. Destination of the World (Subcontinent) Private Limited, 2010 SCC OnLine Del 3358,
- iii. Fipola Retain India Pvt. Ltd. v. M2N Interiors, 2022 SCC OnLine Mad 3065;
- iv. S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan, 2022 SCC OnLine SC 1238.

10. Heard learned counsel for the parties and perused the record.

11. The primary contention of learned counsel for the petitioner is that the present petitioner had nothing to do with the running of day to day affairs of the partnership firm. It is submitted that the subject matter of the present complaint is the development agreement between the accused partnership firm and respondent no. 2 dated 16.08.2013. It is a matter of record that the petitioner was not a signatory to the said Development Agreement. It is pointed out that the name of the petitioner is conspicuously absent in the previous complaint filed by respondent no. 2 with regard to the same subject matter, i.e., the Development Agreement dated 16.08.2013. It was also submitted that the notice under Section 138 of the NI Act was not served to the petitioner and even before the learned Trial Court, only a postal receipt has been placed on record, without any tracking report.



12. Before proceeding further, the relevant averments in the subject complaint are reproduced as under:

2. That the Accused No. 1, M/s Shree Ram Developers is a Partnership concerned and is into the business of construction and development having its registered office at: 1, Dayal Nagar, Gopalpura Bypass, Jaipur -302 018. The Accused Nos. 2, 3 and 4 are the Partners in the Accused No.1 Partnership concerned and are responsible for the day to day affairs of the Accused No.1 and are incharge and in control and management of the Accused No.1.

3. That the Accused approached the Complainant and entered into a "Development Agreement" dated 16.03.2018 to develop the land owned by the Complainant. The said "Development Agreement" was executed through Sh. Ashok Aggarwal, Partner and all the terms and conditions were incorporated in the said agreement."

13. It is an admitted fact that respondent no. 2 had previously also filed a complaint, i.e., CC No. 12459/2018 against the accused partnership firm, and other two partners, without arraying the present petitioner as an accused. The relevant paras of the said complaint are as under:

"2. That the Accused No. 1, M/s Shree Ram Developers is a Partnership concerned and is into the business of construction and development having its registered office at: 1, Dayal Nagar, Gopalpura Bypass, Jaipur. The Accused Nos. 2 and 3 are the Partners in the Accused No.1 Partnership concerned and are responsible for the day to day affairs of the Accused No.1 and are incharge and in control and management of the Accused No.1.

3. That the Accused approached the Complainant and entered into a "Development Agreement" dated 16.03.2018 to develop the land owned by the Complainant. The said "Development Agreement" was executed through Sh. Ashok Aggarwal, Partner and all the terms and conditions were incorporated in the said agreement."

14. The issue before this Court is whether the aforesaid averments satisfy the requirements of Section 141 of the NI Act, especially in view of the fact



that in a previous complaint between the same parties, with respect to the same subject matter, the present petitioner was not named as an accused (as a person in-charge of conduct of day to day affairs of the accused partnership firm).

15. The Hon'ble Supreme Court, in **S.P. Mani** (*supra*), has held as under:

“Specific averments in the complaint

51. In *Gunmala Sales [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580]*, this Court after an exhaustive review of its earlier decisions on Section 141 of the NI Act, summarised its conclusion as under : (SCC pp. 126-27, para 34)

“34. ... 34.1. Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director.

34.2. If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

34.3. In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who



had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactic, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed.

34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.”

52. The principles of law and the dictum as laid in *Gunmala Sales* [*Gunmala Sales (P) Ltd. v. Anu Mehta*, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580] , in our opinion, still holds the field and reflects the correct position of law.

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. 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 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 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. Adherence 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 judgment 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.”



Further, the Hon'ble Supreme Court, in **Siby Thomas v. Somany Ceramics Ltd., (2024) 1 SCC 348**, after interpreting **S.P. Mani (supra)**, observed and held as under:

“12. Bearing in mind the afore-extracted recitals from the decisions in *Gunmala Sales [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580]* and *S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685 : (2024) 1 SCC (Cri) 203]*, we have carefully gone through the complaint filed by the respondent. It is not averred anywhere in the complaint that the appellant was in charge of the conduct of the business of the company at the relevant time when the offence was committed. What is stated in the complaint is only that Accused 2 to 6 being the partners are responsible for the day-to-day conduct and business of the company. It is also relevant to note that an overall reading of the complaint would not disclose any clear and specific role of the appellant.

18. Thus, in the light of the dictum laid down in *Ashok Shewakramani case [Ashok Shewakramani v. State of A.P., (2023) 8 SCC 473 : (2023) 4 SCC (Civ) 116 : (2023) 3 SCC (Cri) 568 : 2023 INSC 692]*, it is evident that a vicarious liability would be attracted only when the ingredients of Section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of Section 141(1) of the NI Act, would reveal that only that 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 alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.”

16. At this stage, it is apposite to refer to the following observations made by the Hon'ble Supreme Court in **Gunmala Sales (P) Ltd. V. Anu Mehta, (2015) 1 SCC 103**:



“28. We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the conclusions drawn in the abovementioned cases that it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company. This is a basic requirement. There is no deemed liability of such Directors. This averment assumes importance because it is the basic and essential averment which persuades the Magistrate to issue process against the Director. That is why this Court in *SMS Pharma (1)* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] observed that the question of requirement of averments in a complaint has to be considered on the basis of provisions contained in Sections 138 and 141 of the NI Act read in the light of the powers of a Magistrate referred to in Sections 200 to 204 of the Code which recognise the Magistrate's discretion to reject the complaint at the threshold if he finds that there is no sufficient ground for proceeding. Thus, if this basic averment is missing the Magistrate is legally justified in not issuing process. **But here we are concerned with the question as to what should be the approach of a High Court when it is dealing with a petition filed under Section 482 of the Code for quashing such a complaint against a Director. If this averment is there, must the High Court dismiss the petition as a rule observing that the trial must go on? Is the High Court precluded from looking into other circumstances, if any? Inherent power under Section 482 of the Code is to be invoked to prevent abuse of process of any court or otherwise to secure ends of justice. Can such fetters be put on the High Court's inherent powers? We do not think so.**

29. *SMS Pharma (1)* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , undoubtedly, says that it is necessary to specifically aver in the complaint that the Director was in charge of and responsible for the conduct of the company's business at the relevant time when the offence was committed. It says that this is a basic requirement. And as we have already noted, this averment is for the purpose of persuading the Magistrate to issue process. If we revisit *SMS Pharma (1)* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , we find that after referring to the various provisions of the Companies Act it is observed that those provisions



show that what a Board of Directors is empowered to do in relation to a particular company depends upon the roles and functions assigned to Directors as per the memorandum and articles of association of the company. There is nothing which suggests that simply by being a Director in a company, one is supposed to discharge particular functions on behalf of a company. As a Director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two Directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. This Court further observed that what emerges from this is that the role of a Director in a company is a question of fact depending on the peculiar facts in each case and that there is no universal rule that a Director of a company is in charge of its everyday affairs. What follows from this is that it cannot be concluded from *SMS Pharma (1)* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] that the basic requirement stated therein is sufficient in all cases and whenever such an averment is there, the High Court must dismiss the petition filed praying for quashing the process. It must be remembered that the core of a criminal case are its facts and in factual matters there are no fixed formulae required to be followed by a court unless it is dealing with an entirely procedural matter. We do not want to discuss “the doctrine of indoor management” on which submissions have been advanced. Suffice it to say, that just as the complainant is entitled to presume in view of provisions of the Companies Act that the Director was concerned with the issuance of the cheque, the Director is entitled to contend that he was not concerned with the issuance of cheque for a variety of reasons. **It is for the High Court to consider these submissions. The High Court may in a given case on an overall reading of a complaint and having come across some unimpeachable evidence or glaring circumstances come to a conclusion that the petition deserves to be allowed despite the presence of the basic averment. That is the reason why in some cases, after referring to *SMS Pharma (1)* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , but considering overall circumstances of the case, this Court has found that the basic averment was insufficient, that something more was needed and has quashed the complaint.**



35. We will examine the facts of the present case in the light of the above discussion. In this case, the High Court answered the first question raised before it in favour of the respondents. The High Court held that *“in the complaint except the averments that the Directors were in charge of and responsible to the Company at the relevant time, nothing has been stated as to what part was played by them and how they were responsible regarding the finances of the Company, issuance of cheque and control over the funds of the Company”*. After so observing, the High Court quashed the proceedings as against the respondents. In view of this conclusion, the High Court did not go into the second question raised before it as to whether the Director, who has resigned can be prosecuted after his resignation has been accepted by the Board of Directors of the Company. Pertinently, in the application filed by the respondents, no clear case was made out that at the material time, the Directors were not in charge of and were not responsible for the conduct of the business of the Company by referring to or producing any incontrovertible or unimpeachable evidence which is beyond suspicion or doubt or any totally acceptable circumstances. It is merely stated that Sidharth Mehta had resigned from the directorship of the Company on 30-9-2010 but no incontrovertible or unimpeachable evidence was produced before the High Court as was done in *Anita Malhotra* [*Anita Malhotra v. Apparel Export Promotion Council*, (2012) 1 SCC 520 : (2012) 1 SCC (Civ) 329 : (2012) 1 SCC (Cri) 496] to show that he had, in fact, resigned long before the cheques in question were issued. Similar is the case with Kanhaiya Lal Mehta and Anu Mehta. Nothing was produced to substantiate the contention that they were not in charge of and not responsible for the conduct of the business of the Company at the relevant time. In the circumstances, we are of the opinion that the matter deserves to be remitted to the High Court for fresh hearing. **However, we are inclined to confirm the order passed by the High Court quashing the process as against Shobha Mehta. Shobha Mehta is stated to be an old lady who is over 70 years of age. Considering this fact and on an overall reading of the complaint in the peculiar facts and circumstances of the case, we feel that making her stand the trial would be an abuse of process of court. It is however, necessary for the High Court to consider the cases of other Directors in light of the decisions considered by us and the conclusions drawn by us in this judgment.”**

(emphasis supplied)



17. In the present case as noted hereinabove, the allegation with respect to the present petitioner is to the extent that she alongwith with other accused in the said complaint were partners of the partnership firm and “*are responsible for the day to day affairs of the Accused No.1 and are incharge and in control and management of the Accused No. 1*”. A further reading of the complaint reflects that the subject matter of the same was a Development Agreement dated 16.03.2018 for developing a land owned by respondent no. 2. It is an admitted case that the said agreement has not been signed by the present petitioner. It is a matter of record that respondent no. 2, in the previous complaint filed on the basis of said Development Agreement did not implead the present petitioner as an accused. As highlighted hereinabove, respondent no. 2 makes an averment with respect to other accused persons who are partners, as being incharge of affairs of the accused partnership firm. The name of the petitioner is conspicuously not mentioned as an accused or a person responsible for the affairs of the said partnership firm. In the complaint that is the subject matter of the present petition, no averment has been made by respondent no. 2, to state that the petitioner, although not named in the previous complaint but on account of some subsequent development, came to know that she was incharge of affairs and also responsible for conduct of business of the accused partnership firm at the relevant time. In view of the fact that the previous complaint did not name the present petitioner, it was incumbent upon respondent no. 2 to place on record more particulars about the role of the present petitioner in the complaint.



18. In fact, in the pleadings before this Court, the petitioner has taken the ground of not being named as an accused in the first complaint, in the following manner:

“4. That conspicuously, in the previous complaint being CC no.12459/2018 u/s 138 N.I.Act,1881, titled as “M/s Sesame foods Pvt.Ltd vs. Shree Ram Developers & ors.”pending in the court of Ms. Anam Rias Khan,MM-03, New Delhi, the petitioner herein was not impleaded as accused. A copy whereof is enclosed as ANNEXURE-P2.

C. Because, the cheques in question are not related to the Petitioner in any manner, that the said fact was very known to the Respondent no.2, still knowing the fact the Respondent no.2 wrongly impleaded the petitioner as accused no.4 in the case, just to create undue pressure on the petitioner and his family members being a old lady, even the Respondent no.2 doesn't know the name of the petitioner as the same is Santosh Devi, wherein, the complainant used the name as Santoshi Devi, leading to a reasonable inference that the Respondent no.2 had never meet/dealt with the Petitioner.

D. Because, there is no privity of contract between the petitioner & the respondent No.2/complainant qua the alleged agreement dated 16.08.2013, the genesis of the complaint.

In response to the aforesaid contentions, in the reply filed on behalf of respondent no. 2, it is stated as under:

“4. The contents of Para No.4 of the Petition are a matter of record and needs no reply.

C. The contents of Para No. C of the Petition are wrong and hence vehemently denied. It is submitted that the Petitioner cannot be selective with the roles and responsibilities which come with the position of 'partner' in the partnership firm and upon ascending to that position the petitioner has to honor it. It is further denied that the answering Respondent is impleading the Petitioner wrongfully and just to create undue pressure on the petitioner and her family. It is submitted in this regard that the issue with the name of the Petitioner is merely a typographical error which is same as the Petitioner mentioning in the present petition - '..... still knowing the fact the Respondent no.2 wrongly



impleaded the petitioner as accused no.4 in the case, just to create undue pressure on the petitioner and his family members being a old lady wherein the petitioner is mentioned as 'his' instead of 'her' which is an - understandable and human error.

D. The contents of Para No. D of the Petition are wrong and hence denied. It is specifically denied that the their exist no privity of contract between the Petitioner and the answering Respondent. It is submitted in this regard that the agreement as stated by the Petitioner was entered between the Partnership concern wherein the Petitioner is one of the Partner and M/s _ Sesame Foods Pvt Ltd. in whose favour the cheque in question was issued by the Partnership concern.”

19. The petitioner is admittedly a 65 years old lady and the accused partnership firm is a family concern. The reliance placed by respondent no. 2 on Income Tax Returns for the financial year 2015-16, filed under the signatures of the petitioner cannot bring her case within Section 141 of the NI Act. As held in **Siby Thomas (supra)** it is be shown that the petitioner was responsible for the affairs of the partnership and in control of the same for the relevant transaction, .i.e., present cheques in question which are dated 27.07.2018 and 05.08.2018. Admittedly, the petitioner is not a signatory to the cheque. Apart from the above basic averment, nothing has been placed on record to show the petitioner’s involvement in the firm or with respect to the subject transaction.

20. In the considered opinion of this Court, the aforesaid circumstances would bring the case of the present petitioner within the category described in Para 34.3 of **Gunmala Sales (supra)**, as reproduced hereinabove. In the interest of justice and to present abuse of process of law, this Court deems it fit to exercise its inherent powers under Section 482 of the CrPC.



21. In view of the above, summoning order dated 25.07.2019, arising out of CC No. 344/2019, *qua* the petitioner, is hereby quashed.
22. The petition is allowed and disposed of.
23. Pending application(s), if any, also stand disposed of.
24. Needless to state, nothing stated hereinabove is an opinion on the merits of the case pending before the learned Trial Court.
25. Judgment be uploaded on the website of this Court, *forthwith*.
26. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA
JUDGE

MARCH 07, 2024/bsr