



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 18.03.2024
Pronounced on : 30.04.2024

+ CRL.M.C. 2126/2023, CRL.M.A. 8067/2023
CRL.M.C. 2127/2023, CRL.M.A. 8069/2023
CRL.M.C. 2128/2023, CRL.M.A. 8071/2023
CRL.M.C. 2129/2023, CRL.M.A. 8073/2023
CRL.M.C. 2130/2023, CRL.M.A. 8075/2023
CRL.M.C. 2131/2023, CRL.M.A. 8077/2023
CRL.M.C. 2132/2023, CRL.M.A. 8079/2023

RASHMI GOYAL

..... Petitioner

Through: Ms. Shilpa Sharma, Advocate.

versus

M/S MAHALAXMI FABRICS

..... Respondent

Through: Mr. Vishwendra Verma and Ms. Shivali, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present petitions filed under Section 482 Cr.P.C., the petitioner seeks quashing of criminal complaints instituted under Section 138 read with Section 141 of the Negotiable Instruments Act (hereinafter, '*NI Act*') as well as the summoning order dated 28.01.2020 passed in all these criminal complaints (hereinafter, '*subject complaints*').

2. Considering that the criminal complaints arise out of the same transactions involving the same parties and since common arguments have been addressed from both the said, the present matters are taken up for

**CRL. M.C. Nos. 2126, 2127, 2128, 2129, 2130, 2131, 2132
of 2023**

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consideration together and disposed of vide this common judgement.

3. Pithily put, the facts of the case, as discernible from the complaints, are that the respondent company *M/s Mahalaxmi Fabrics* is engaged in the business of manufacturing Men's jeans. It is alleged that the petitioner alongwith certain other individuals (arrayed as accused Nos.2 to 6/accused persons in the said complaints) approached the respondent, on behalf of the accused company/*City Life Retails Pvt. Ltd.*, requesting the respondent to supply mens jeans to the accused company as per its requirement. At the same time, an assurance was given that payments under the bills would be made without delay. On the said assurance, respondent supplied the goods from time to time and raised bills qua each transaction, which were duly received and acknowledged by the accused persons.

Subsequently, in order to discharge their liability under the bills raised, certain cheques of varied amount ('*subject cheques*') were issued during July-September, 2019. Upon presentation, the subject cheques were dishonoured and consequently, distinct demand notices qua each of the subject cheques were issued. Upon failure to repay the amount, the present criminal complaints came to be filed.

4. As per the material placed on record, the petitioner is sought to be made vicariously liable for the offence under Section 138 NI Act, by describing her as a Director of the accused company and that it was upon her assurance that the goods were provided. Further, she had also assured that the subject cheques would be duly encashed. Thus, upon their dishonour, the petitioner becomes vicariously liable in terms of Section 141 NI Act.

5. Learned counsel for the petitioner submits that the petitioner has been wrongly implicated in the present matters inasmuch as she was never a



Director in the accused company. It has been stated that she had been appointed as a Company Secretary in the accused company w.e.f. 05.01.2019. Reference in this regard has been made to the letter of appointment dated 15.12.2017, letter of consent issued by the petitioner dated 30.12.2018, extract of the meeting of the Board of Directors of the accused company dated 05.01.2019 as well as Form No. DIR-12. A cumulative reading of the same would show that the petitioner was appointed as a Company Secretary. It is further argued that the petitioner had duly resigned from the position of Company Secretary vide letter dated 14.10.2019 addressed to the Board of Directors of the accused company and reference in this regard has also been made to Form No. DIR-12.

6. Even otherwise, it has been argued that the petitioner cannot be roped in the said complaint cases based upon the principles of vicarious liability under Section 141 inasmuch as the necessary averments in terms of the said provision have not been made in the complaints. Concededly, the petitioner is neither the authorized signatory of the accused company nor has she signed the subject cheques. Further, the demand notice statedly issued by the respondent was never received by the petitioner. Lastly, it is submitted that the summoning order has been passed in a mechanical manner and without due consideration of the facts of the case.

7. Learned counsel for the respondent, on the other hand, has disputed the authenticity of certain documents relied upon by the petitioner. It is further argued that even if the said documents are taken at their face value, they raise certain issues that require trial and due appreciation of the evidence led by the parties. This Court, in its jurisdiction under Section 482 Cr.P.C. cannot adjudicate upon such 'triable issues' inasmuch as the same



would amount to holding of a ‘mini trial’, which is unwarranted. Further, the presumption against the petitioner under Sections 118(a) and 139 of NI Act can only be rebutted by adducing evidence. In this regard, reference is made to the decisions in State of U.P. v. Akhil Sharda & Ors.¹ and Rajeshbhai Muljibhai Patel & Ors. v. State of Gujarat & Anr.²

8. It is further stated that the necessary averments have been made qua the petitioner inasmuch as the complaints clearly state that the petitioner alongwith the other accused persons had approached the respondent regarding supply of goods and had provided assurance of due payment of the bills raised. Further, at the time of issuance of the subject cheques, the petitioner alongwith the other accused persons had assured that the same would be duly encashed. Insofar as the receipt of legal notice is concerned, it is stated that the demand notice had been duly served, which is evidenced from the postal documents.

9. Since the entire matter hinges on the aspect of vicarious liability of the petitioner in terms of Section 141 NI Act, it is deemed apposite that the same is reproduced for easy reference:-

“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...

(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

¹ 2022 SCC OnLine SC 820

² (2020) 3 SCC 794



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.”

10. Further, since the petitioner has contended that she was a Company Secretary in the accused company, it is also essential to deal with the position of Company Secretary in a company. Section 2(24) of the Companies Act, 2013 provides that ‘Company Secretary’ means any individuals defined as such in Section 2(1)(c) of the Companies Secretaries Act, 1980, which itself defined him/her as “*a person who is a member of the Institute*”. While no specific definition of Company Secretary has been provided, however Section 2(51) of the Companies Act, which deals with ‘Key Managerial Personnel’ mentions company secretary as one such personnel. Section 204 of the Companies Act provides for the functions of ‘Company Secretary’. The said section reads as under:-

“205. Functions of company secretary-

(1) The functions of the company secretary shall include,— (a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company; (b) to ensure that the company complies with the applicable secretarial standards; (c) to discharge such other duties as may be prescribed...

(2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.”

11. Further, as per the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the duties of the Company Secretary



have been provided as under:-

- Provide Directors of the company guidance as they may require, with regard to their duties, responsibilities and powers;
- Facilitate the convening of meetings and attend Board, committee and general meetings and maintain minutes of the meetings;
- Obtain approval from the Board, general meeting, the government, and such other authorities as required under the provisions of the Act;
- Represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
- Assist Board in the conduct of affairs of the company
- Assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- Discharge such other duties as may be specified under the Act or rules

12. From the discussion above, it can be culled out that the Company Secretary is a ‘key managerial personnel’ who performs secretarial functions on behalf of the Company to ensure that the secretarial compliances are made by the Company. The statutory role that a Company Secretary performs does not include “conducting the business of the Company” of the kind envisaged in Section 141, for such an individual to be made vicariously liable.

13. A Coordinate Bench of this Court in Madan Aggarwal v. State³ observed that:-

“xxx

³ 2006 SCC OnLine Del 121



9... In my view, the role of the Company Secretary is distinguishable and he is a mere employee of the company. He was neither a Director nor signatory to the cheque. The duties of the Company Secretary are well defined. The Court in that matter opined that since employing Company Secretary is compulsory and he has mainly to act upon the policy and resolutions of the company he, therefore, has no active role regarding the demand of financial assistance and issue of cheque. I am also of the view that the Company Secretary has no active role in the passing of resolutions and the policy decisions of the company for seeking financial assistance or issuing cheques and he is rather an outsider and mere employee of the company.

xxx”

14. Concededly, the factum of transaction between the accused persons/company and respondent, the issuance of the subject cheques as well as their dishonour are not disputed. The only point of contention in the present matters relate to the exact role of the petitioner in the accused company and her consequent liability for the offence under Section 138 NI Act. While the petitioner has been arrayed as an accused in the aforementioned criminal complaints, it has been argued on behalf of the petitioner that she was a Company Secretary in the accused company. In support of her contention, she has presented various documents, including Form No.DIR-12. The respondent, in its reply, has in a manner admitted to the position of the petitioner being a Company Secretary, however, it continues to contend that she is liable owing to the assurances advanced by accused persons qua the payment of bills raised as well as encashment of the subject cheques. Noticeably, such averments are missing from the complaint filed under NI Act.



15. Thus, indisputably, it can be observed that the petitioner was employed in the company as a Company Secretary. Once the same is established, the question that arises for consideration is whether the petitioner can be made vicariously liable in terms of Section 141 NI Act. A perusal of the subject complaints would show that nowhere in the said complaints has the respondent averred that the petitioner was in-charge of, and responsible for the conduct of the business of the company. The word ‘in-charge of a business’ has been interpreted to mean a person having overall control of the day-to-day business of the company.⁴ In the ordinary course of business, it cannot be said that the petitioner, who was acting as a Company Secretary, would be in-charge of the day-to-day affairs of the company, as required in terms of Section 141(1). Thus, the petitioner cannot be vicariously liable in terms of Section 141(1).

Insofar as Section 141(2) is concerned, for the petitioner to be made liable in terms of the said provision, it needs to be shown that there was consent, connivance or neglect on her part, in the issuance as well as the dishonour of the subject cheques. A reading of the above-mentioned extract would show that the petitioner (arrayed as accused No.6 in the subject complaints) has been impleaded based upon sweeping allegations and bald averments, stating therein that based upon the assurances provided by the accused persons, respondent supplied the goods as well as accepted the subject cheques in discharge of the liability. Even if the said averments are taken at their face value, they do not appear to be adequate inasmuch as these averments do not particularly address/show the

⁴ Girdhari Lal Gupta v. B.H. Mehta, (1971) 3 SCC 189



consent/connivance/neglect on the part of the petitioner in issuance or dishonour of the cheque.

16. In S.P. Mani and Mohan Dairy v. Dr. Snehlatha Elangovan⁵, while dealing with the distinction between Section 141(1) and 141(2) as well as the requisite evidence in their regard, the Supreme Court observed:-

“xxx

28. 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 officer and consent, connivance or neglect.

xxx

30. As for the requisite evidence, the burden upon the prosecution would be discharged under sub-section (1) when a person is proved to be in charge of and responsible to the company in the conduct of its business and would shift upon the accused to prove that he was ignorant or diligent, if that be his defence; whereas under sub-section (2) the prosecution would be required to allege and prove the consent, connivance or neglect and holding of the officer by the accused. There is nothing to suggest that the same person cannot be made to fact the prosecution either under sub-section (1) or sub-section (2) or both.

xxx”

⁵ (2023) 10 SCC 685



17. In view of the facts of the present case including the fact that the petitioner was employed as a Company Secretary in the accused company as well as the position of law w.r.t Section 141 NI Act and the application of the same to the subject complaints as extracted above, it can be observed that the subject complaints are bereft of the adequate averments against the petitioner alleging the Petitioner's involvement in the conduct of the business of the Company beyond her statutory role as a Company Secretary, more particularly, in relation to the transaction pursuant to which cheque in question was issued. Neither, is there any averment that the offence has been committed with the consent or connivance of is attributable to any neglect on the part of the Petitioner, so as to potentially make her liable under Sub-section (2) of Section 141.

18. There is no cavil with the proposition of law stated in the decisions cited by the respondent but in the absence of appropriate and adequate averments against the petitioner, and the fact that Petitioner's impleadment can only be in her capacity as a Company Secretary, the continuation of proceedings against the petitioners would be nothing but an abuse of the process of law.

19. Consequently, the present petitions are allowed and the criminal complaints filed under Section 138 read with Section 141 NI Act are quashed qua the petitioner. As a necessary sequitur, the summoning orders dated 28.01.2020 issued in the said criminal complaints are also set aside. Pending applications are disposed of as infructuous.

MANOJ KUMAR OHRI
(JUDGE)

APRIL 30, 2024/ga