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

% Date of Decision: 21.08.2024

\+ **CRL.M.C. 2169/2024 and CRL.M.A. 8417/2024**

SUGANDHA SHARMA DIRECTOR OF M S AL SAPPHIRE .....Petitioner

Through: Ms.Anu Kushwaha, Mr. Mohit Aggarwal, Mr.Deepak Singh and Mr.Tanuj Gulati, Advocates

versus

M S SHIV SHAKTI FLOAT GLASSES PVT LTD THROUGH ITS AR SHYAM SAXENA .....Respondent

Through: None

**CORAM:**
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT (ORAL)**

1. The present petition has been filed seeking quashing of the summoning order dated 13.01.2013 (hereinafter, *'impugned order'*) in Ct. Cases 1806/2020 initiated under Section 138 NI Act pending before the learned Judicial Magistrate, North District Rohini Courts, Delhi.

2. Notice of the petition was issued and the respondent was also represented on the last date of hearing. The notice of the petition was accepted by learned counsel for the respondent on 18.03.2024, however, neither any reply has been filed nor is the respondent represented today. This court proceeds to consider and dispose of the present petition.

3. Pertinently, the complaint came to be filed with the allegations that the complainant was in the business of float glass/glass material and had

business dealings with the accused persons to whom it was supplying the said goods/materials from time to time. It was further alleged that towards discharge of part liability the goods were supplied by the complainant, the accused persons issued two cheques bearing No. 000172 and 000174 for a sum of Rs.2,55,690/- and Rs.2,10,923/- respectively, both drawn on Punjab & Sindh Bank, Pahar Ganj Branch, New Delhi which on presentment were dishonoured with the remarks *'exceeds arrangements'*. The legal demand notice issued was not replied to, leading to the filing of the criminal complaint.

4. The petitioner assails the impugned order with the contention that the complaint lacks material particulars and necessary averments. It is contended that the accused company is run and looked after by her husband, co-accused/*Arun Sharma*. The entire business was handled by the co-accused and at no point of time, the complainant ever met with or dealt with the present petitioner. The same is also apparent from the criminal complaint as no specific averments have been made against the present petitioner. Besides submitting that the complaint lacks material averments against the present petitioner, it is stated that the subject cheque was also not signed by the present petitioner.

5. As noted above, the complaint pertains to dishonour of two cheques for a sum of Rs.2,55,690/- and Rs.2,10,923/- allegedly given on behalf of the accused accompany towards part discharge of liabilty. Although the present petitioner has been arrayed as an accused No.3, not a single averment has been made to the effect that during the business transactions, the complainant ever met with or dealt with the present petitioner and that the petitioner is responsible for managing the day to day affairs of the

company. Indisputably, the subject cheques were not signed by the present petitioner who has been arrayed as an accused for her vicarious liability. After initial narration of issuance of cheque, the relevant para in the complaint reads as under:-

> *"8. That thus, by his said act and conduct, it is evident that since the time of issuing the above-said cheques, the accused had the malafide intentions of not making the payment and they had issued the same, knowing fully well that the same is not good for payment and shall be dishonoured on presentation and has, thus, rendered themselves liable to be dealt with and punished according to law for the offences committed by them under Section 138 of the Negotiable Instruments Act and also u/s 420 of I. P.C."*

6. No doubt, the petitioner is a Director of the Company, however, to make her vicariously liable, it was necessary for the complainant to aver in the complaint that she was a Director, who was In-charge and was responsible to the company for the conduct of its business. The petitioner is not alleged to be a Managing Director or the Authorized Signatory, who had issued the subject cheques. There is no allegation that offences committed with the consent or connivance or is attributed to any neglect on her part as required under Section 141(2) of the Act. At this stage, positive reference can be made to the decision in Susela Padmavathy Amma *v.* M/s Bharti Airtel Limited reported as **2024 SCC OnLine SC 311** wherein similar fact situation, the Court while considering the complaint filed under Section 138 read with Section 142 of the NI Act in absence of necessary averments while quashing the complaint held as under:-

> *"21. It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-today functioning of the company. This Court held that there is*

*no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.*

*.....30. It can thus be seen that the only allegation against the present appellant is that the present appellant and the accused No.2 had no intention to pay the dues that they owe to the complainant. It is stated that the 2nd accused and the 3rd accused (appellant herein) are the Directors, promoters of the 1st accused being the Company. It is further averred that the 2nd accused is the authorized signatory, who is in-charge of and responsible for the day-to-day affairs of the Company, i.e., the 1st accused.*

*31. It can thus be clearly seen that there is no averment to the effect that the present appellant is in-charge of and responsible for the day-to-day affairs of the Company. It is also not the case of the respondent that the appellant is either the Managing Director or the Joint Managing Director of the Company."*

7. Consequently, in the fact situation of the present case, this Court has no hesitation to conclude that the complaint against the present petitioner deserves to be quashed for the reasons already noted hereinabove and the petition is allowed.

8. In view of the above, the petition is disposed of alongwith the pending application.

**MANOJ KUMAR OHRI, J**

**AUGUST 21, 2024**
*ga*