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

+ **CRL.M.C. 1921/2022 & CRL.M.A. 8203/2022**

SURENDER JAIN

.....Petitioner

Through: **Mr. Parveen Kumar Aggarwal, Mr.
Abhishek Grover, Advocates.**

versus

JAYANTI METALS ALLOYS & ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

28.08.2024

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1. Petitioner has approached this Court seeking quashing of CC No.934/2016, pending in the Court of learned Metropolitan Magistrate – 07, Tis Hazari Courts, New Delhi. The Petitioner has also challenged the Order dated 20.09.2019, passed by the learned Metropolitan Magistrate, issuing notice under Section 251 Cr.P.C. against the accused, including the Petitioner herein.

2. The facts, in brief, leading to the present Petition are that M/s Mantech Manufacturing Co. (P.) Ltd./Respondent No.2 herein issued two cheques bearing No.607623 dated 17.01.2014 for a sum of Rs.10,00,000/- & cheque No.607624 dated 27.01.2024 for a sum of Rs.10,27,411/- to the Respondent No.1 herein. It is stated that the said cheques were dishonoured vide Memos dated 19.04.2014 & 24.04.2014 respectively with remarks “funds insufficient”



3. It is stated that the Petitioner was Additional Director in Respondent No.2 from 11.01.2010. It is stated that on the dishonor of the abovementioned cheques, a complaint was filed against the accused under Section 138 NI Act and Notice under Section 251 Cr.P.C has been issued against the accused persons, including the Petitioner herein.

4. The present Petition has been filed on the ground that the Petitioner has resigned from Respondent No.2 Company before the issuance of the cheques. It is stated that the Petitioner had resigned on 06.01.2014 whereas the cheques in question were issued on 17.01.2014 & 27.01.2014. Learned Counsel for the Petitioner places reliance on the letter of resignation dated 06.01.2024 to contend that the Petitioner cannot be held liable for offence under Section 138 NI Act. He further states that the necessary averments stating the role of the Petitioner in the transaction in question has not been mentioned in the Complaint and, therefore, the Petitioner cannot be made vicariously liable for the offence of Respondent No.2.

5. *Per contra*, learned Counsel appearing for Respondent No.1 states that when the transaction in question took place, the Petitioner was a party to the transaction. He further states that on the date when the complaint was filed, it was not known to the Complainant as to whether the Petitioner continued to be a Director of the company or not. Learned Counsel for the Respondent No.1 places reliance on the documents of the Ministry of Corporate Affairs stating that form DIR – 12 was updated only on 03.07.2017. Learned Counsel for Respondent No.1 states that all the contentions raised in the present Petition can be a valid defence for the Petitioner at the stage of trial but not at this stage.

6. Heard the Counsels and perused the material on record.



7. This Court is of the opinion that at the stage of framing of notice under Section 251 Cr.P.C. the material available before the learned Metropolitan Magistrate is only the complaint filed by the Respondent No.1 along with the documents filed along with the complaint. In the complaint it is averred that the Petitioner herein was the Additional Director of the Respondent No.2, which is a private limited company. Unlike a public company where there are many Directors and Additional Directors, in a private limited company there are only a few Directors who are responsible for the day-to-day affairs of the company and, therefore, an averment in the complaint is sufficient for issuance of notice under Section 251 Cr.P.C. It is always open for the Petitioner to show at the time of trial that he was not responsible for the day-to-day affairs of the company when the cheques in question were issued and that delay on the part of the Respondent No.2 to transmit the data to the Ministry of Corporate Affairs cannot make the Petitioner responsible for the conduct of the company as he was no longer the Additional Director of the Respondent No.2 company and, therefore, he cannot be made vicariously liable for the offence of the company.

8. Without commenting on the merits of the case, this Court is not inclined to entertain the present Petition at this juncture.

9. The Petition is disposed of, along with the pending applications, if any.

10. It is made clear that all the contentions of the Petitioner are left open to be argued at a later stage.

SUBRAMONIUM PRASAD, J

AUGUST 28, 2024/Rahul