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

\+ CRL.L.P. 193/2024

HAREY KRISHNA CABLES ..... Petitioner

Through: Mr. Varun Dewan &
Mr. Keshav Kumar, Advocates.

versus

ANAND ELECTRICALS AND ORS ..... Respondents

Through: None

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

<u>O R D E R</u>

% **15.04.2024**

1. The present petition under Sections 378(4) and 482 of the CrPC seeks leave to appeal against the judgment of acquittal passed by Sh. Anubhav Jain, learned Additional Chief Metropolitan Magistrate (for short 'ACMM'), Shahdara, District Delhi in CC No. 12631/2016 in case titled 'Harey Krishna Cables through its Prop. Sh. Deepak Nam Dev v. Anand Electricals & Ors.' whereby the respondents have been acquitted for the offences punishable under Sections 138 read with 141 of the Negotiable Instruments Act, 1881 (for short 'NI Act').

2. The petitioner had filed a complaint case under Section 138 of the NI Act against a firm namely, Anand Electricals/respondent no. 1 and respondent no. 2 to 4 were subsequently arrayed as accused persons in the said complaint in their capacity as partners of the said firm i.e., respondent no. 1.

3. *Vide* the impugned judgment learned ACMM has acquitted the respondent no. 1, the accused firm, and respondent no. 2 to 4 on various grounds and one of them was that the bank account on which the subject cheque was drawn, was not maintained by the said firm. With the respect to the acquittal of the respondent no. 2, it has been noted by the learned Trial Court that the subject cheque in question, though, was issued by the respondent no. 2 in his personal capacity, however, he was not arrayed as an accused in the present complaint in his personal capacity rather as a partner of the accused firm, respondent no. 1. The learned Trial Court has further noted that the legal demand notice, as per Section 138 of the NI Act, was not addressed to the respondent no. 2 in his personal capacity or otherwise therefore, the ingredients of Section 138 of the Act remains unfulfilled *qua* the respondent no. 2.

4. The learned Trial Court has placed reliance on the testimony of the Mr. Ranvijay Singh, Relationship Manager, ICICI Bank (DW-2) whereby it had been cogently proved that the bank account on which the subject cheque was drawn, was not maintained by the accused firm i.e., respondent no. 1. It is further noted that the endorsement 'For Anand Electricals' made by the respondent no. 2 on the subject cheque at best shows that the same was issued by him in discharge of the debt of respondent no. 1/firm but the same could not be considered as a cheque drawn on behalf of the accused firm i.e., respondent no. 1.

5. Learned counsel for the petitioner submitted that the respondent no. 2 has issued the subject cheque in discharge of liability on behalf of respondent no. 1. He draws the attention of this Court to the invoices issued by the petitioner (Annexure A/3) and submits that the respondent no. 2 had

issued the said cheque for the discharge of the liability in respect of these invoices and for the supply of materials and particular objects as mentioned in the invoices.

6. Learned counsel for the petitioner further submitted that in the testimony(Annexure A/19) of the respondent no. 2 (DW-3) recorded before the learned Trial Court latter has admitted the issuance of the said cheque with regard to the supply of the materials by the firm.

7. It is further submitted that the legal demand notice under clause (b) to the proviso to Section 138 of the NI Act was addressed to respondent no. 1 which would suffice the service of notice to the respondent no. 2, 3 and 4 irrespective of the fact whether they had issued the subject cheque in their personal capacity or not.

8. Heard learned counsel for the petitioner and perused the record.

9. It is a matter of record that the notice in the present case has been addressed only to respondent no. 1 and not to respondent no. 2, 3 and 4. The invoices placed on record reflects that the same were issued for the materials purchased by respondent no. 1. Evidence of DW-2 reflects that the subject cheque has been issued by respondent no. 2 from his personal account. The record further reflects that respondent no. 2 who examined himself as DW-3 has stated that he did not issue the cheque to the complainant/petitioner and the same was a blank cheque and has also denied the endorsement 'For Anand Electricals' on the said cheque. It is pertinent to note that no notice was issued to the entity 'Bahu Plaza, Jammu' whose name is shown as drawer on the subject cheque.

10. The case of the petitioner is that the subject cheque was issued by respondent no. 2 in his personal capacity in discharge of liability on behalf

of the accused/respondent no. 1 firm. It is a matter of record that the subject cheque, as stated hereinabove, has been issued from an account maintained by respondent no. 2 in his personal capacity, however, no statutory notice, as provided under clause (b) of the proviso to Section 138 of the NI Act, was issued by the petitioner to the respondent no. 2.

11. It is also a matter of record that the demand notice served by the petitioner/complainant was not addressed to the respondent no. 2 and the same cannot be considered as service of notice under clause (b) of the proviso to Section 138 of the NI Act to the respondent no. 2. Same would be the position with respect to the respondent no. 3 and 4 who are stated to be partners of the respondent no. 1/firm.

12. Learned Trial Court while acquitting the respondents has observed as under:-

> "35. Furthermore, in the case hand, since the liability is primarily imputed to the accused firm under Section 138 NI Act and vicariously under Section 141 NI act upon the other accused persons in their capacity as it's partners, this court has to ascertain whether the said firm can be held liable for the dishonour of the cheque in question.
> 36. As discussed above, to attract the penal provisions under Section 138 Negotiable Instruments Act, a cheque must have been drawn by the Accused on an account maintained by him with a banker for payment. It is the defence of the accused that cheque in question was never issued by or from account of Anand Electricals, rather same was issued from the personal account of accused Manish Anand.
> 37. In order to establish their defence, the accused persons have examined the concerned official from ICICI bank, Jammu who deposed as DW-2. DW-2 has categorically deposed that the cheque in question is drawn on personal savings account maintained by accused Manish Anand as opposed to the accused firm i.e. Anand Electric.
> 38. The testimony of DW-2 has clearly proved that the bank account on which the cheque in question is drawn, is not 'maintained' by the accused firm. Further, a mere endorsement on the cheque in question i.e. "for Anand electric" at best only shows that the accused Manish

> Anand issued the same in discharge of the debt of his firm but cannot convert a cheque drawn on his personal account into a cheque drawn by the accused firm. Having said that, irrespective of any other remedies that the complainant might have under any other law for the time being in force with respect to the alleged cheating or forging the cheque in question in order to deceive him, no offence under Section 138 NI Act is made out against the accused firm.
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> 39. Moving ahead, when no offence is made out against the accused firm under Section 138 NI Act, no liability can be imputed to the other accused persons who have been arrayed as an accused in the present case in the capacity of its partners in terms of Section 141 NI Act.
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> 40. With regard to accused Manish Anand (who has issued the cheque in question), it is pertinent to state in here that, no offence under Section 138 NI Act is made out even against him on two counts. Firstly for the dishonour of his personal cheque, he has not been arrayed as accused in his personal capacity but as a partner of the accused firm. And, secondly, since legal demand notice was never addressed to accused Manish Anand in his personal capacity but only to the accused firm, hence the ingredients of the offence under Section 138 NI Act remains unfulfilled qua the accused Manish Anand as well.
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> 41. In view of the foregoing discussion, this court is of the view that \ no offence under Section 138 read with 141 of NI act is made out against either of the accused persons namely Anand Electricals, Manish Anand, M.K. Anand and Ashish Anand and all of the said accused are acquitted for the offence u/s 138 NI Act."

13. In **Prem Chand Vijay Kumar v. Yashpal Singh and Another, (2005) 4 SCC 417,** the Hon'ble Supreme Court has held and observed as under:

> "**13.** One of the indispensable factors to form the cause of action envisaged in Section 138 of the Act is contained in clause (*b*) of the proviso to that section. It involves the making of a demand by giving a notice in writing to the drawer of the cheque "within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid". If no such notice is given within the said period of 15 days, no cause of action could have been created at all."

14. In view of the aforesaid position of law and in facts and circumstances of the case, this Court finds no reason to interfere with the judgment of

acquittal passed by the learned ACMM and accordingly the present petition is dismissed and disposed of accordingly.

15. Pending application(s), if any, also stand disposed of.

AMIT SHARMA, J

APRIL 15, 2024/*sn*

Click here to check corrigendum, if any