



2024:DHC:6399



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

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Date of Decision: 21.08.2024

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CRL.M.C. 3034/2024, CRL.M.A. 11703/2024

TARUN KUMAR PURI

.....Petitioner

Through: Mr. Pulkit Atal, Mr. Kundan Roy and
Mr. Manoj Kumar, Advs.

versus

STATE (GOVT OF NCT OF DELHI) & ANR.

.....Respondents

Through: Mr. Nawal Kishor Jha, APP for State.
Mr. Dhruv Gupta, Advocate for
respondent No.2.

AND

CRL.M.C. 3035/2024, CRL.M.A. 11705/2024

TARUN KUMAR PURI

.....Petitioner

Through: Mr. Pulkit Atal, Mr. Kundan Roy and
Mr. Manoj Kumar, Advs.

versus

STATE (GOVT OF NCT OF DELHI) & ANR.

.....Respondents

Through: Mr. Nawal Kishor Jha, APP for State.
Mr. Dhruv Gupta, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petitions, the petitioner seeks setting aside of the

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impugned order dated 11.01.2024 passed by Id. Principal District & Sessions Judge, New Delhi Distt. in Crl. Rev. Nos. 564/2023 and 565/2023 whereby petitions filed by respondent No.2/complainant were partially allowed and petitioner was directed to be summoned as an accused in complaint case pending before the Id. Judicial Magistrate.

2. Notably, the present proceedings arise in the context of complaint case preferred by respondent No.2 under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act'). In the criminal complaint, respondent No.2, besides impleading the present petitioner, had also arrayed four other accused persons. While the company was arrayed as accused No.1, the present petitioner was arrayed as accused No.4 in the memo of parties. Id. Judicial Magistrate while taking cognizance of the complaint, directed for issuance for summons only against the accused company and two other Directors namely, Mr. Dhruv Sharma and Mr. Kanav Puri. It was observed that there were no grounds for summoning the present petitioner as well as co-accused Mrs. Anjali Puri, as they were neither holding any office nor were they responsible of the day-to-day affairs or the conduct of the business of the company at the time of issuance of cheques in question.

The said order was assailed by respondent No.2 before the Sessions Court which, while dismissing the challenge qua co-accused Mrs. Anjali Puri, allowed the revision petition to the extent of the present petitioner. As the impugned order pertains to same facts and the complaint being one and the same albeit in respect of two different cheques and considering that common submissions have been addressed, both the petitions are taken up for consideration and disposed of together vide this common judgment.

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3. Petitioner assails the impugned order by contending that while Id. Judicial Magistrate appreciated the factum of the petitioner resigning prior to issuance of the subject cheques, the Sessions Court overlooked the same. The petitioner claims to have resigned from the post of Director of the accused company on 26.04.2022 while the subject cheques were issued in pursuance of a settlement agreement dated 28.04.2022.

4. The petitions are resisted by the respondent No.2 who contends that prior to his resignation, the petitioner was involved in the business transactions with the complainant and had signed the Board Resolution which had authorised Mr. Dhruv Sharma to enter into the settlement in pursuance of which, the subject cheques came to be issued. It is claimed that complaint carries material averments against the present petitioner who even can be proceeded against under Section 141(2) of the NI Act.

5. The factum of the petitioner having resigned prior to issuance of cheque is not disputed. Rather, the respondent No.2 concedes to the said situation. It however, claims that the factum of resignation was well planned and was done to overcome the vicarious liability in case the cheques were dishonoured. In this regard, respondent No.2 while inviting the attention to the complaint, has contended that he was a close friend of petitioner's son i.e., Mr. Kanav Puri who is also a Director in the accused company and arrayed as an accused in the complaint. Petitioner's son induced and persuaded the respondent No.2 and his parents to invest in the accused company by way of a loan initially to the tune of Rs.50 lacs. In return, the respondent No.2 was given assurance of 100% equity (equivalent to 1%) and was promised sharing of profits. It was also agreed that loan amount would be repaid in two equal installments of Rs.25 lacs each for

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which two post-dated cheques bearing Nos. 000001 dated 19.12.2021 and 000002 dated 19.06.2022, both drawn on HDFC Bank, Panchshila Park, were issued under the signatures of co-accused Mr. Dhruv Sharma, another Director in the accused company. Respondent No.2 claims that he was induced to invest a further sum of Rs.25 lacs thereby making the total investment a sum of Rs.75 lacs. On presentment of the aforesaid cheques, the same were dishonoured with the remarks 'payment stopped by the drawer'. In this background, the settlement agreement was entered into vide which the accused person agreed to repay Rs.75 lacs alongwith interest @ 8%. Besides handing over the demand draft bearing No. 039562 drawn on HDFC Bank for Rs.25 lacs, two cheques towards the remaining balance of Rs.50 lacs as well as a third cheque towards the interest were issued in the following manner :

cheque No. 000081 dated 31.08.2022	Rs. 25,00,000/-
cheque No. 000082 dated 31.12.2022	Rs.25,00,000/-
cheque No. 000086 dated 10.02.2023	Rs.10,49,539/-
All the aforementioned cheques were drawn on HDFC Bank.	

These cheques when presented were dishonored with the remarks 'payment stopped by drawer' for one of the cheques and 'drawer's signature differs' for the remaining two.

6. The respondent No.2 has claimed close association with the petitioner's son and alleged that he was induced to invest in the accused company by all the accused persons. It is claimed that accused company is being run by all the Directors including the present petitioner and the

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impugned order is defended with the aid of Section 141(2) of the NI Act. Pertinently, even the initial set of cheques were not signed by the present petitioner. They were stated to be signed by the other Director i.e. Mr. Dhruv Sharma who also executed the settlement agreement. The other allegations against the present petitioner are that he had signed the Board Resolution authorizing Mr. Dhruv Sharma to sign the settlement agreement resulting in issuance of subject cheques to the respondent No.2. Copy of Board Resolution is placed on record, a reading of which would show that it generally authorizes Dhruv Sharma to act on behalf of the company. It nowhere authorized Mr. Dhruv Sharma to act in any specific manner pertaining to the present respondent No.2 or its alleged liability. The Board Resolution is dated 25.04.2022. The petitioner resigned on 26.04.2022 and the settlement agreement was executed on 28.04.2022. Respondent No.2, in support of its contentions, has referred to the decision in S.P. Mani & Mohan Dairy v. Dr. Snehalatha Elangovan reported as **(2023) 10 SCC 685**. In the said case, the observations came to be passed where the accused had claimed that the firm was already dissolved when the subject cheque came to be issued. The complaint came to be quashed by the High Court observing that there was nothing to indicate as to how and what manner the accused at the relevant point of time was incharge and responsible for the conduct of the business of the firm. The Supreme Court while reversing the decision observed that the complaint carried specific averments that the issuance of subject cheque was with her consent and knowledge. Supreme Court also took note of the fact that the statutory notice was not replied to.

In the present case, however the fact situation is not the same. Concededly, the respondent No.2 admits the factum of petitioner having

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resigned prior to issuance of the cheques. Moreover, in the reply filed to the statutory notice by the accused company, it was categorically mentioned about the resignation of the present petitioner and Mrs. Archana Puri prior to issuance of cheques. Recently, Supreme Court Siby Thomas v. Somany Ceramics Ltd. reported as **(2024) 1 SCC 348** has reiterated the settled position as under :-

“18. Thus, in the light of the dictum laid down in Ashok Shewakramani's case (supra), 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. In such circumstances, paragraph”

7. Although respondent No.2's counsel has referred to Section 141(2), however except for raising the bald contention that the petitioner had signed the Board Resolution, he has failed to spell out as to how and in what manner the petitioner after his resignation continued to act in a manner that the offence was committed with his consent and connivance which attributes to negligence on his part. Accordingly, both the petitions are allowed and consequently, impugned orders are set aside.

8. Both the petitions alongwith pending applications are disposed of in

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the above terms.

9. Copy of the judgment be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI, J

AUGUST 21, 2024

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