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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: ***18.01.2024***

\+ **CRL.M.C. 2802/2022 & CRL.M.A. 11577/2022**

SHIKHA GUPTA & ANR. ..... Petitioners

Through: Mr.Anuj Saxena, Mr.Anuj Ruhela, Mr.Abhishek Mishra, Mr.Shubham Sagar, Mr.Prakash Sharma and Mr.Prince Gupta, Advs.

versus

ANISH GUPTA ..... Respondent

Through: Mr.Satish Kumar, Mr.Sabhajeet Singh Yadav, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the order dated 07.12.2021 passed by the learned Metropolitan Magistrate-NI Court, South East District, Saket Courts, New Delhi (hereinafter referred to as 'Trial Court') in C.T. No. 3473/2020, titled ***Anish Gupta v. Satish Gupta,*** and for seeking quashing of the said complaint as far as the petitioners herein are concerned.

2. It is an admitted case that the petitioner no.1 and the respondent, who is the complainant, were partners of petitioner no.2, a partnership firm. The petitioner no.1 and the respondent decided to part ways, and with this intent, executed a Memorandum of

Understanding dated 18.11.2019 (in short, 'MOU'), which *inter alia* records as under:-

> *"**2. Payment terms and exit conditions***
> *i) The First Party shall pay Second Party immediately with Rs40 Lac and balance of the amount as per* **Annexure- I** *shall be paid in PDC (Post Dated Cheques) issued to Mr.Anish Gupta by Mr.Satish Gupta/Shikha Gupta from personal account in six equal monthly instalments through post dated cheque before 31st MAY 2020.At the due date of PDC the PDC will be returned by second party to first party and PDC mentioned amount will be transferred by first party in to requested bank account of second party. Second party will also pay @ 1% of Purchase Order value of Fire Suppression System business taken over by J.K.Exim (An entity of Second Party) to First Party in form of amount to be deducted from last PDC subjected to successful prototype approval.The first party will give undertaking for payment of rest of the amounts as per annexure 1 to second party as per understanding in MOM and Annexure-IV"*

3. It is also admitted that in terms of the above MOU, the petitioner no.1 handed over the post dated cheques issued by her husband, namely, Mr.Satish Gupta, to the respondent. As the cheques were returned unpaid and notice issued also did not bring about a desired result, the respondent filed the above-mentioned complaint not only against Mr.Satish Gupta but also against the petitioners herein.

4. The learned counsel for the petitioners submits that it is only the drawer of the cheque who would be liable to be prosecuted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act'). He submits that even assuming that the

cheques had been given in discharge of a legal liability of the petitioner no. 1, the petitioner no. 1 cannot be arrayed as an accused in the complaint. He submits that, in any case, the MOU, pursuant to which the PDCs have been issued, was only between the petitioner no.1 and the respondent and, therefore, petitioner no. 2 has been wrongly arrayed as an accused in the said Complaint. He submits that as the petitioner no. 2 is not a party to the MOU nor it is alleged that the subject cheques were given for and/or on behalf of the petitioner no. 2, Section 141 of the Act will also not come to the aid of the respondent. In support, he places reliance on the judgment of the Supreme Court in ***Alka Khandu Avhad v. Amar Syamprasad Mishra & Anr.***, (2021) 4 SCC 675.

5. He submits that there are disputes with respect to the MOU itself, and they are subject matter of arbitration proceedings.

6. On the other hand, the learned counsel for the respondent submits that the cheques in question were given in discharge of the liability of the petitioner no. 1. He submits that, therefore, the petitioner no.1 is a proper party to be impleaded as an accused in the complaint. He submits that Section 141 of the Act has also been rightly invoked by the respondent.

7. I have considered the submissions made by the learned counsels for the parties.

8. In ***Alka Khandu Avhad*** (Supra), the Supreme Court was confronted with the complaint where the co-accused was stated to be jointly liable to make certain payments to the complainant. It was, however, admitted that the cheque in question was given by only one

of the accused from his personal account. In the said facts, the Supreme Court held as under:

> "**10.** *Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.*
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> **11.** *Now, so far as the case on behalf of the original complainant that the appellant herein-original Accused 2 can be convicted with the aid of Section 141 of the NI Act is concerned, the aforesaid has no substance.*
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> **12.** *Section 141 of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals. The learned counsel appearing on behalf of the original complainant has submitted that "company" means any body corporate and includes, a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within "other association of individuals" and therefore with the aid of Section 141 of the NI Act, the appellant who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted. Two private individuals cannot be said to be "other association of individuals". Therefore, there is no question of invoking Section 141 of the NI Act against the appellant, as the liability is the individual liability (may be a joint liabilities), but cannot be said to be the offence committed by a company or by it corporate or firm or other associations of individuals. The appellant herein is neither a Director nor a partner in any firm*

who has issued the cheque. Therefore, even the appellant cannot be convicted with the aid of Section 141 of the NI Act. Therefore, the High Court has committed a grave error in not quashing the complaint against the appellant for the offence punishable under Section 138 read with Section 141 of the NI Act. The criminal complaint filed against the appellant for the offence punishable under Section 138 read with Section 141 of the NI Act, therefore, can be said to be abuse of process of law and therefore the same is required to be quashed and set aside."

9. The above judgment would fully apply to the facts of the present case. It is not denied that the cheques in question have been given from the personal account of Mr.Satish Gupta, the husband of the petitioner no. 1. Though, it may be true that it is in discharge of the alleged liability of the petitioner no. 1, it is only Mr.Satish Gupta who can be prosecuted under Section 138 of the Act. Section 141 of the Act can also not be invoked as the cheques were not given for discharge of a liability of the partnership firm or from its bank account.

10. In view of the above, the present petition succeeds. The Complaint, that is, C.T. No 3473/2020 and the order summoning the petitioners thereon, is quashed qua the petitioners.

11. It is made clear that the complaint shall proceed against Mr.Satish Gupta, who has been arrayed as accused no. 1 in the said complaint. Any observation made in the present order shall not, in any manner, prejudice the trial of the above complaint.

12. As regards the submission of the learned counsel for the petitioners that an arbitration proceeding between the parties is pending adjudication, in my view, pendency of such arbitration

proceedings can have no bearing on the maintainability of the Complaint filed by the petitioners herein.

13. The petition along with the pending application is disposed of in the above terms.

NAVIN CHAWLA, J

JANUARY 18, 2024/ns/RP

Click here to check corrigendum, if any