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

\+ CRL.M.C. 2583/2019

SANDHYA GOYAL .....Petitioner

Through: Mr. Vidit Gupta, Ms. Harleen Singh & Mr. Harkeerat Singh, Advs.

versus

VIJAY SINGH & ANR .....Respondent

Through: Mr. Yogesh Swroop, Mr. Alok Kumar Palai & Ms. Nilakshi Vats, Advs.

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CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

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

% **09.07.2024**

1. The present petitions are filed under Section 482 of the Code of Criminal Procedure, 1973 (‘**CrPC**’) seeking quashing of the complaint cases, being CC No. 336/2016 and CC No.332/2016 respectively.

2. The aforesaid complaints were filed by Respondent No.1 under Section 138 of the Negotiable Instruments Act, 1881 (‘**NI Act**’) against the petitioner, Respondent No.2 and co-accused Yashpal Singh. It is alleged that the complainant wanted to purchase an immovable property for agricultural purposes. It is alleged co-accused Yashpal Singh and Respondent No.2 had

approached the complainant stating that they had a suitable property and introduced the complainant to the petitioner. It is alleged that the accused persons represented to the complainant that the late husband of the petitioner had bequeathed agricultural land in her favour.

3. It is alleged that after negotiations, it was finalised that Respondent No.1 will purchase land admeasuring 26 bighas for a total consideration of ₹26,62,50,000/-. The petitioner and Respondent No.1 entered into two agreements for sale of land admeasuring 25 bighas and 1 bigha respectively. Further, it was agreed that Respondent No.1 will pay an advance amount of ₹5,50,00,000/- before execution of the relevant documents, out of which ₹5,00,00,000/- was to be paid as earnest money under the agreement for selling 25 bighas and ₹50,00,000/- was to be paid as earnest money under the agreement for selling 1 bigha.

4. Both the agreements were executed on 07.08.2012 by the petitioner in favour of Respondent No.1 and Respondent No.2 and co-accused Yashpal stood as witnesses to the same. It is alleged that on 07.08.2012, the amount of ₹4,50,00,000/- was paid in cash while the amount of ₹1,00,00,000/- was to be paid by cheque to the petitioner.

5. Thereafter, the complainant found out that the properties were subject matter of a civil dispute wherein a stay order had been passed by the Court against the petitioner. It is alleged that the complainant thus stopped making payments to the petitioner, including of the cheque of ₹1,00,00,000/-. It is alleged that co-accused Yashpal and Respondent No.2 undertook to return the amount of ₹4,50,00,000/-, however, they kept on delaying the same on the pretext that they had invested the sum in some other

project. In discharge of the liability, Respondent No.2 issued five cheques for a sum of ₹50,00,000/- respectively. The said cheques got dishonoured and were returned with the remark- 'Funds Insufficient'. Two of the said cheques became the subject matter of CC No. 336/2016 and the remaining three became the subject matter of CC No. 332/2016.

6. Proceedings under Section 82 of the CrPC were initiated against the petitioner and she was declared as an absconder on 04.01.2017.

7. The learned Trial Court, by common order dated 11.04.2017, framed notice under Section 251 of the CrPC upon Respondent No.2 and discharged co-accused Yashpal. It was observed that as co-accused Yashpal had not issued the cheques in question, the complaints were not maintainable against him under Section 138 of the NI Act.

8. When the petitioner was in custody in another FIR, that is, FIR No.141/2015, registered at Police Station Sonia Vihar, production warrants were issued against her whereafter she moved an application seeking discharge.

9. The learned Trial Court, by order dated 13.09.2018, dismissed the application filed by the petitioner seeking discharge in the complaints. It was observed that it appeared that the cheques in question had been issued for discharging the liabilities of the petitioner and no ground for discharge was made out.

10. The revision petitions filed by the petitioner against order dated 13.09.2018, that is, Criminal Revision No.72/2018 and Criminal Revision No.73/2018, were dismissed by the learned Additional Sessions Judge ('**ASJ**'), Karkardooma Courts, Delhi

vide separate orders dated 22.04.2019. It was observed that the allegation in the complaints is that the cheques in dispute were issued by Respondent No.2 on behalf of the petitioner for discharging her liabilities. It was also observed that whether Respondent No.2 gave the assurance for repayment at the instance of the petitioner is a matter of trial.

11. The learned counsel for the petitioner submits that the petitioner is not the drawer of the cheques in dispute and the same have not been issued from her account either.

12. He submits that vicarious liability can be levelled under the limited circumstances prescribed under Section 141 of the NI Act. He submits that the same is not applicable to the facts of the present case.

13. He submits that the proceedings against the petitioner are in contravention of the orders dated 11.04.2017. He submits that Yashpal has been discharged whereas the petitioner who is on equal footing has been proceeded against.

14. The learned counsel for the complainant submits that the present petition is not maintainable as the petitioner has already invoked the revisional jurisdiction before the learned ASJ.

15. He submits that the petitioner entered into the agreements to sell with the dishonest intention of causing wrongful loss to the complainant and misrepresented that she was the absolute owner of the properties.

16. He submits that a *prima facie* case is made out against the petitioner and the learned Trial Court and the learned Revisional Court have thus rightly not discharged the petitioner.

17. I have heard the learned counsel for the parties and perused the record.

18. At the outset, it is relevant to consider the contention of the complainant *qua* the maintainability of the present case. While it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. The Hon'ble Apex Court, in the case of ***Krishnan v. Krishnaveni* : (1997) 4 SCC 241**, had observed as under:

> "***8.*** *The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice.* ***In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.***"
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> (emphasis supplied)

19. The allegation against the petitioner is that the cheques were issued by Respondent No.2 at the instance of the petitioner. It is, therefore, contended that the petitioner is responsible for issuance of the cheques and is thus liable to be proceeded under Section 138 of the NI Act for the dishonour of the cheques.

20. Section 138 of the NI Act reads as under:

> "*138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is*

insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability."

21. The Hon'ble Apex Court in the case of ***Jugesh Sehgal v. Shamsher Singh Gogi*** **: (2009) 14 SCC 683** had stipulated the ingredients to constitute an offence under Section 138 of the NI Act and quashed the complaint against the accused person therein in similar circumstances. The relevant portion of the judgement is reproduced hereunder:

*"**13.** It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:*

*(i) **a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account**;*

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

***14.** In the case before us, it is clear from the facts, briefly noted above, and in Para 3 of the complaint as extracted, that on receipt of the return memo from the Bank, the complainant is stated to have realised that the dishonoured cheque was issued from an account which was not maintained by Accused 1—the appellant herein, but by one Shilpa Chaudhary.*

15.** As a matter of fact and perhaps having gained the said knowledge, on 20-1-2001 the complainant filed an FIR against all the accused for offences under Sections 420, 467, 468, 471 and 406 of the Penal Code (IPC**). Thus, there is hardly any dispute that the cheque, subject-matter of the complaint under Section 138 of the Act, had not been drawn by the appellant on an account maintained by him in Indian Bank, Sonepat Branch. That being so, there is little doubt that the very first ingredient of Section 138 of the Act, enumerated above, is not satisfied and consequently the case against the appellant for having committed an offence under Section 138 of the Act cannot be proved.

***16.** The next question for consideration is whether or not in the light of the aforementioned factual position, as projected in the complaint itself, it was a fit case where the High Court should have exercised its jurisdiction under Section 482 of the Code?*

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21. Bearing in mind the above legal position, we are of the opinion that it was a fit case where the High Court, in exercise of its jurisdiction under Section 482 of the Code, should have quashed the complaint under Section 138 of the Act."

(emphasis supplied)

22. The Hon'ble Apex Court in the case of ***Aparna A. Shah v.***

***Sheth Developers (P) Ltd.* : (2013) 8 SCC 71** had discharged the appellant therein as the cheque in dispute had not been drawn and signed by her even though the cheque was issued by her husband from their joint account. The relevant portion of the judgement is reproduced hereunder:

> *"18. **In the case on hand, we are concerned with criminal liability on account of dishonour of a cheque. It primarily falls on the drawer, if it is a company, then drawer company and is extended to the officers of the company.** The normal rule in the cases involving criminal liability is against vicarious liability. **To put it clear, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others.** For example, Section 141 of the NI Act is an instance of specific provision that in case an offence under Section 138 is committed by a company, the criminal liability for dishonour of a cheque will extend to the officers of the company. As a matter of fact, Section 141 contains conditions which have to be satisfied before the liability can be extended. **Inasmuch as the provision creates a criminal liability, the conditions have to be strictly complied with. In other words, the persons who had nothing to do with the matter, need not be roped in.** A company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, the officers of the company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the acts which result in criminal action being taken against the company. In other words, it makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. It is true that the proviso to sub-section (1) of Section 141 enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability under Section 141 of the NI Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability."*
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> (emphasis supplied)

23. As expounded by the Hon'ble Apex Court in the aforesaid cases, the first and foremost condition to be satisfied to prosecute a person under Section 138 of the NI Act is that the cheque is

issued by the said person and drawn from an account maintained by them. Admittedly, in the present case, the cheques in question were issued by Respondent No.2 and were not drawn by the petitioner. The cheques were not drawn on an account maintained by the petitioner either.

24. The learned ASJ, in the orders dated 22.04.2019, has discussed the case of ***NSIC Ltd. v. Harmeet Singh* : 2010 (2) RCR (Criminal) 122 SC**, wherein the Hon'ble Apex Court has expounded upon the principles governing vicarious liability under the NI Act arising out of Section 141 of the NI Act. It is relevant to note that apart from the said Section, there is no other provision under the NI Act that provides for vicarious liability for actions of other individuals. However, the scope of Section 141 of the NI Act is explicitly limited to offences committed by companies. For invocation of Section 141 of the NI Act against an individual, it is *sine qua non* that the principal accused happens to be a company and the person sought to be implicated is connected with the said company.

25. It is not the case of the complainant that the petitioner was a joint signatory in the said bank account from which the cheque was issued or that the cheques were issued by a company and the petitioner is responsible for the affairs of the same.

26. It is trite law that a penal provision must be construed strictly. In absence of any provision in the statute that provides for vicarious liability in the present circumstances, it is not open to the Court to read the same into the statute when the same does not provide for such liability.

27. Even if the case of the complainant is taken at the highest, the petitioner may owe some amount to him pursuant to the false

representation made by her about the title of the property sought to be sold but the same cannot translate into the liability under Section 138 of the NI Act in the absence of any cheque being signed by the petitioner. The liability of the drawer of the cheque cannot be fastened on the person at whose instance, the cheque has allegedly been given, unless the same falls within the parameters prescribed under Section 141 of the NI Act which provides that the criminal liability for dishonour of cheque issued by the company would extend to the officers of the company.

28. In such circumstances, this Court is of the opinion that in the absence of any cheque being issued by the petitioner from the account maintained by her, no liability can be fastened against the petitioner under Section 138 of the NI Act and this is a fit case for exercise of the powers under Section 482 of the CrPC.

29. The petitions are therefore allowed. The complaint cases, that is, CC No. 336/2016 and CC No.332/2016, are quashed.

30. Needless to say, the complainant is at liberty to exercise any other remedies that he may have in accordance with law.

31. It is clarified that any proceedings initiated against the petitioner for failing to appear before the Court despite execution of process under Section 82 of the CrPC shall proceed in accordance with law as well.

32. The learned counsel for the respondent requests that the cost imposed on the last date of hearing may be waived.

33. The learned counsel for the petitioner fairly submits that he is not insisting on payment of any cost.

34. In view of the above, the direction to pay cost is waived.

AMIT MAHAJAN, J

JULY 9, 2024