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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 01.05.2024*+ **CRL.M.C. 3392/2024****M/S POOJA BANGLES & ORS.**

..... Petitioners

Through: Mr.Deepak Kohli, Mr.Sanjay
Kohli and Ms.Manisha Bagga,
Advs.

versus

M/S SUMAN JEWELLERS

..... Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CRL.M.A. 13053/2024 (Exemption)**

1. Allowed, subject to all just exceptions.

CRL.M.C. 3392/2024 & CRL.M.A. 13052/2024

2. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 06.07.2019 passed by the learned Metropolitan Magistrate, NI Act-06, Tis Hazari Courts in CC No.6643/2019, titled *M/s Suman Jewellers v. M/s Pooja Bengals & Ors.*, summoning the petitioners herein as accused in the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act').



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3. The above complaint has been filed by the respondent alleging that it is in the business of manufacturing of gold articles/jewellery. The respondent alleges that the petitioners are in the business of trading in all kinds of gold jewellery and have business dealing with the respondent. It is alleged that the petitioner nos.2 and 3 are the partners of the petitioner no.1 firm, who are the signatories of the cheques issued to the respondent, and are also responsible for day-to-day affairs of the firm.

4. It is alleged that an agreement was executed between the respondent and the petitioners on 31.12.2018, wherein the respondent had agreed to give gold jewellery on credit basis to the petitioners. The petitioners had agreed to issue post dated cheques to the respondent by keeping 15 days average time from the date of receipt of gold jewellery/article from the respondent.

5. It is further alleged that the respondent had given gold jewellery of 22 carats, weighing 1083.040 grams, on credit basis to the petitioners, amounting Rs.38,34,000/-, for which, the petitioners have issued two post dated cheques to the respondent. The cheques when deposited were, however, returned back with the remarks '*fund insufficient*'.

6. The respondent then claims to have issued a legal notice dated 22.05.2019 to the petitioners claiming the amount of the cheques. The complaint, in regard to the notice, contains the following averments:

"7. That having no other option the complainant was constrained to give the following legal notice to the accused persons, hence through legal notice:-



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*a) The accused persons were directed to pay the amount of Rs.38,34,000/- (Thirty Eight Lakhs and Thirty Four Thousand only) i.e. for cheques bearing No. 337656 and 337642 within 15 days of receipt of legal notice. The original Legal notice dated 22.05.2019 is annexed herewith as **Annexure C-6** and original postal receipt dated 22.05.2019 are annexed herewith as **Annexure-C-7**. The tracking reports are annexed herewith as **Annexure-C-8 (colly)**. The notice was duly served upon the accused, but neither any reply was given nor any payment was made by Accused persons."*

7. As noted hereinabove, the petitioners have been summoned in the above complaint vide order dated 06.07.2019. The present petition has been filed only around 29.04.2024, that is almost after a delay of 5 years. This itself is a sufficient ground to dismiss the present petition, however, I have proceeded to consider the submissions made by the learned counsel for the petitioners on merits as well.

8. The learned counsel for the petitioners submits that the complaint is not maintainable inasmuch as the demand notice was issued in favour of 'M/s Pooja Bangles'. He submits that the petitioner no.1 is, in fact, 'M/s Pooja Bangles'. He submits that the petitioner firm is registered at Delhi, while the notice was issued to another firm at Saharanpur. He submits that if the principal offender, that is, the firm has not been issued a legal notice nor impleaded in the complaint, even its partners cannot be made vicariously liable under Section 141 of the NI Act. He places reliance on the judgments of the Supreme Court in *Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd. &*



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Ors. (2012) 5 SCC 661; *Rahul Builders v. Arihant Fertilizers and Chemical & Ors.* (2008) 2 SCC 321; *Dalmia Cement Ltd. v. Galaxy Traders* (2001) 6 SCC. 463; *Harman Electronics (P) Ltd. & Ors. v. National Panasonic India Ltd.* (2009) 1 SCC 720; and judgment of this Court in *HDFC Bank Limited v. Amit Kumar Singh* 2009 SCC OnLine Del 1559; and judgment of High Court of Madras in *Rangabashyam & Ors. v. Ramesh*, 2019 SCC OnLine Mad 17188.

9. He submits that even the petitioner no.3 has not been issued a legal notice, and in absence thereof, complaint against the petitioner no. 3 is not maintainable.

10. I have considered the submissions made by the learned counsel for the petitioners, however, find absolutely no merit in the same.

11. While there can be no dispute on the propositions of law that have been canvassed by the learned counsel for the petitioners, they are not applicable to the facts of the present case.

12. As noted hereinabove, the legal notice in terms of Proviso (b) of Section 138 of the NI Act has been issued to the petitioner no. 1 firm, though with a spelling mistake of 'Bengals' as against 'Bangles'. This spelling mistake itself cannot render the legal notice as null and void or as being without any effect. The petitioners for the above spelling mistake, cannot claim a defect in the legal notice or claim that no legal notice was issued to it. The above spelling mistake has also been made by the respondent in the complaint. However, again, the petitioners cannot claim that the petitioner no. 1 is a different firm than the accused no. 1.

13. As far as the plea that the petitioner firm is registered at Delhi



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while the legal notice has been served on the firm at Saharanpur is concerned, it is not denied by the petitioners that the two partners of the petitioner no.1 firm, that is, the petitioner nos.2 and 3 are residents of Saharanpur. The respondent may not have been aware that the firm has, however, been registered at Delhi. The petitioner is not to seek registration details of the partnership firm before instituting the complaint. In any case, this is a matter to be considered by the learned Trial Court once the evidence is led before it. It cannot be a ground for scuttling the complaint at this stage. Reference in this regard can be made to the judgement of the Supreme Court in ***Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi) and Another***, 2022 SCC OnLine SC 513.

14. On the plea of the petitioners that the petitioner no.3 has not been served with a legal notice, the legal notice is addressed to the petitioner no.1 firm through the petitioner no.3. I may quote from the notice as under:

“To,
1. M/s Pooja Bengals,
Through Sh. Sudhir Jain S/o Gautam
Chand Jain
R/o:- H.No. 8/1125 Jain Bagh Kotwali
Mandi,
Saharnpur U.P.277001”

15. Therefore, it cannot be said that the petitioner no.3 had not been issued or served with any legal notice in compliance with Proviso (b) to Section 138 of the NI Act.

16. On the plea of the learned counsel for the petitioners that the legal notice has not been served on the petitioners, as has been



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reproduced hereinabove, the respondent, in the complaint, has clearly stated that the notice was duly served on the petitioners. He has also annexed the tracking report along with original postal receipts. In any case, this would again be a matter of evidence and cannot be agitated in the present petition.

17. In view of the above, I find no merit in the present petition. The same is dismissed, with costs quantified as Rs.15,000/- to be deposited with Delhi High Court Legal Services Committee within a period of four weeks from today. The pending application also stands disposed of as infructuous.

NAVIN CHAWLA, J

MAY 1, 2024/ns/RP

Click here to check corrigendum, if any