



2024:DHC:6626



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

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Reserved on: 12th August, 2024
Pronounced on: 28th August, 2024

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CRL.M.C. 1892/2020

AMIT SAINI

JA-2, Near Sant Nirankari Public School,
Khirki Extn., New Delhi-110025.

.....Petitioner

Through: Mr. Tarun Rana, Advocate.

versus

JAI PRAKASH MITTAL

Prop. M/s Gupta Timber Traders
25-B, Main Road, Chirag Delhi
Delhi-110025

.....Respondent

Through: Mr. Akash Jain, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The petitioner Jai Prakash Mittal has filed the present petition under Section 482 of Cr.P.C. to challenge the Order dated 03.03.2020 of the learned ASJ, Delhi upholding the Summoning Order dated 13.02.2019 of Ld. M.M. vide which the Petitioner has been summoned in Complaint Case under Section 138 Negotiable Instruments Act (*hereinafter referred to as the N.I. Act*).
2. The Respondent/ Complainant filed a Complaint under Section 138 N.I. Act against the Petitioner/Accused No. 1 Jai Prakash Mittal, Director of Kanak Developers and Infrastructure Pvt. Ltd./ Accused No. 2, in regard to two cheques issued in his favour in discharge of the liability, which were

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dishonoured when presented. The Appellant herein failed to make the payment despite being served with Legal Notice dated 10/12.12.2018.

3. According to the petitioner, he and the Company, accused No.2 received summons in or about April, 2019 without any documents, whereby they were directed to appear on 13.05.2019. On his appearance before the Trial Court, the case was referred to National Lok Adalat for 13.07.2019, and thereafter it was sent to the Mediation Centre. However, the case could not be settled since the petitioner denied having any liability towards the Respondent.

4. The petitioner has claimed that he and his counsel for the first time went through the file at the time of admission/denial of documents under Section 294 of Cr.P.C. on 27.09.2019. The petitioner then realized that the cheques had been issued from the account of the Company wherein the Petitioner had signed as the Director of the Company.

5. The petitioner has claimed that he had resigned from Directorship of the Company long back and even the Company has closed for past few years. In the absence of any prosecution against the Company, the Proceedings against the Petitioner alone, cannot be sustained.

6. The petitioner took an objection that the Notice under Section 251 of Cr.P.C. dated 27.09.2019 cannot be framed as the drawer of cheque, i.e. the Company, has not been served with the Demand Notice and prosecution cannot be initiated against the Company.

7. It is asserted by the petitioner that the learned Trial Court did not consider the submissions of the Petitioner and framed the Notice under Section 251 of Cr.P.C. on 27.09.2019 against the Petitioner.

8. The petitioner filed the Revision Petition before the Sessions court, to challenge the infirmity of the Summoning Order dated 13.02.2019 and argued on maintainability of the proceedings under section 138 of N.I. Act, in the absence





of the Legal Notice to the Company. The Revision Petition was dismissed *vide* Order dated 03.03.2020, by observing that the issues raised are mixed question of law and facts which can be ascertained through trial only.

9. The present petition is preferred against the impugned Order of Summoning dated 13.02.2019 as being passed in a mechanical manner; bad in law and based on misinterpretation of the provisions of the N.I. Act. It is submitted that the learned trial court failed to appreciate the fundamental principle of taking cognizance of the offence under section 138 of N.I. Act. The cheques in question were drawn on the account maintained by the Company. The prosecution was initiated against the Company without serving it with the mandatory Notice of demand. It is claimed that prosecution is not maintainable against the Petitioner as he is not the drawer of the cheques in question, despite which the Notice under Section 251 of Cr.P.C. has been framed only against the Petitioner and not against the Company.

10. The petitioner has placed reliance on the case of Krishna Exports & Capital Markets Limited vs. Ila A. Agrawal &Ors., 2015 (3) JCC NI 226, to argue that the notice under section 138 is required to be given to the drawer of the cheque; on the case of Aneeta Hada vs M/s Godfather Travels & Tours Pvt. Ltd., (2012) 5 SCC 661 to argue that the prosecution under section 138 N.I. Act is not maintainable unless the drawer is arrayed as an accused. Reference has also been made to Jitender Vora vs. Bhavana Y. Shah &Ors., 2015 AIR SCW 5383, in support of the argument that the person who is prosecuted under Section 138 N.I. Act should have drawn the cheque on an account maintained by him.

11. **The Respondent in its Reply** to the petition, has submitted that this petition is not maintainable as the present petition under the garb of Section 482 of Cr.P.C. is in fact, a second revision which is barred under section 397(3) of





Cr.P.C. for which reliance has been placed on the judgement of this High Court in Varinder Kaur vs. State, in CRL MC No. 3931/2017.

12. The respondent/Complainant has denied the contentions of the Petitioner and has submitted that the Complainant has prosecuted drawer of the cheque, being accused No. 1 and accused No. 2. It is submitted that Demand Notice issued to a Director is sufficient Notice to the Company as observed by the Hon'ble Supreme Court in M/s Bilakchand Ghyanchand Co. vs. A.Chinnaswami, AIR 1999 SC 2183. The Coordinate Bench of this Court has observed similarly in the judgement of Sarabjit Singh vs. State of NCT & Ors, in CRL.M.C. 2856/2015 dated 08.10.2018, which was upheld by the Hon'ble Supreme Court in M Tech Developers Pvt. Ltd. vs. State of NCT of Delhi & Ors., SLP(Crl.) No. 15 of 2019 dated 30.07.2019.

13. It is submitted by the respondent that the law laid down in Krishna Exports (Supra) does not aid the case of the petitioner for it merely lays down that no separate Notice to Director is required if the Notice to the Company has been served under section 138 of N.I. Act. Further, the case of Aneeta Hada (Supra) also does not come to the aid of Petitioner for it lays down that arraigning of Company as an accused for maintaining prosecution against the authorised signatory of the cheque, is imperative under section 141 of NI Act, and the Company has been arrayed as accused No. 2 in the present case. Also, the facts and circumstances in the case of Jitender Vora (Supra) are distinguishable in so much as therein the Partnership Firm on whose account the Attorney Holder had issued the cheque, was not arrayed as an accused.

14. It is submitted that the summoning Order dated 13.02.2019 is not against petitioner alone, and the respondent arrayed petitioner and M/s Kanak Developers and Infrastructures Pvt. Ltd. as accused No. 1 and 2 in the *Memo of Parties* filed along with his complaint.





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15. Submissions heard.

16. The facts of this case are that two Cheques bearing no. 439110 and 439107 dated 23.11.2018 and 21.11.2018 for Rs. 47,700/- and Rs. 40,500/- respectively, against Invoice No. 228 and 231 were issued by Kanak Developers & Infrastructure Pvt. Ltd. under the signatures of the petitioner as its Director, in favour of the Respondent/Complainant. The cheques on presentation, were dishonoured owing to *Account being closed*, about which the Complainant was intimated by the Bank of Baroda on 28.11.2018. The Complainant sent a Legal Demand Notice dated 10.12.2018.

17. Thereafter, the Respondent filed the present the Complaint case as CC No. 447/2019, which was registered on 11.01.2019. After recording the pre-summoning evidence of the complainant on 13.02.2019, the accused was *summoned vide Order dated 13.02.2019* to appear in the Court on 13.05.20. The Notice under Section 251 of Cr.P.C. was framed on 27.09.2021 against the petitioner/ accused Amit Saini by the learned M.M. NI Act - 04 on 27.09.2021 and his plea of not guilty along with his statement of defence, was recorded.

18. The petitioner has challenged the Summoning Order dated 13.02.2019 on the grounds that he had signed the cheques as the Director of the Company. No Notice of Demand has been served upon the Company, and thus, the summoning Order is bad.

19. The Legal Notice of Demand dated 10.12.2018 read as "*Amit Saini c/o Kanak Developers and Infrastructure (Pvt.) Ltd. JA-2, Khirki Extn, Near Sant Nirankari Public School, New Delhi*" demanding payment of Rs. 88,200/- along with a sum of Rs. 5,500/- towards the fee of the legal Notice. It is abundantly clear from the language used, that the Notice was sent to the Petitioner, not in his individual capacity but as C/O the Company. The hair splitting arguments on the semantics of the Legal Notice are not tenable as it sufficiently conveyed that





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the Cheques in question were those issued under the signatures of the Petitioner as the Director of the Company.

20. It is abundantly clear that the Company was served through the petitioner as its Director, about which there is no ambiguity. Moreover, the Company has been arrayed as Accused No.2 and no objection till date has apparently been taken on its behalf in regard to non-service of legal Notice or non-maintainability of the Complaint *viz. a. viz.* it.

21. The petitioner, admittedly had signed the Cheques in the capacity as the Director of the Company. Ld. ASJ in the impugned Order has rightly observed that the defence taken on behalf of Petitioner, require a trial.

22. There is no merit in the present petition, which is hereby dismissed. Nothing stated herein shall amount to expression on the merits of the case.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 28, 2024/RS