



2024:DHC:1184



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

Date of decision: 13.02.2024

(77)+ CRL.M.C. 3471/2022

(78)+ CRL.M.C. 3523/2022

PRAVIN JAIN

..... Petitioner

Through: Mr.Shankar Divate, Adv.

versus

ALPS INDUSTRIES LIMITED

..... Respondent

Through: Mr.Shishir Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 14562/2022 (Exemption) in CRL.M.C. 3471/2022

CRL.M.A. 14763/2022 (Exemption) in CRL.M.C. 3523/2022

1. Allowed, subject to all just exceptions.

CRL.M.C. 3471/2022 & CRL.M.A. 14561/2022

CRL.M.C. 3523/2022 & CRL.M.A. 14762/2022

2. These petitions have been filed under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure (in short, 'CrPC') seeking quashing of Criminal proceedings pending against the petitioner herein in Criminal Complaint no.6831/2017 titled ***ALPS Industries Ltd. v. Laycana & Ors.*** and Criminal Complaint no.6830/2017 titled ***ALPS Industries Ltd. v. Laycana & Ors.*** pending adjudication before the Court of the learned Metropolitan Magistrate (NI Act)-2, Rouse Avenue Court



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Complex, New Delhi District, New Delhi (hereinafter referred to as 'MM').

3. The above complaints have been filed by the respondent no.1 alleging that M/s Laycana (accused no.1) is a proprietary firm of the accused no.2 and 3 that is Sh. Rupal Shah and Mr.K.Mahendra and Company.

4. The petitioner herein has been arrayed as accused no.4 in the above-referred complaints describing him as an 'agent'.

5. It is further alleged that the accused no.1 used to purchase the textile products from the respondent no.1 herein and in consideration of the same had issued cheques to the respondent no.1. It is alleged that at the time of giving the said cheques, the accused had given the confidence and assurance to the complainant that is, the respondent no.1 herein, that upon deposit of the said cheques, in its accounts, the payment thereagainst shall be received. The cheques, however, on presentation, were returned dishonoured due to '*insufficient funds*' on 29.08.2014. The respondent no.1 issued a notice dated 17.09.2014 to the accused, however, had received no response thereto.

6. The subject complaints were filed by the respondent no.1 before the Court of the learned Metropolitan Magistrate at Ahmedabad on 05.11.2014. The learned Metropolitan Magistrate took cognizance of the complaint and issued summons thereon to the accused vide order dated 01.04.2015. However, by an order dated 21.03.2017, the said complaints were returned to be filed before the appropriate jurisdictional Courts and accordingly, the same were filed before the Court of the learned MM, Patiala House Courts, New Delhi.



7. It is alleged that the service of summons on accused nos.1 to 3 have not been executed till date.
8. The learned counsel for the petitioner submits that only averment against the petitioner in the complaint is that he was the agent. He submits that there is no further averment of the petitioner having issued the cheque or having any say in the working of the accused no.1 firm. He submits that therefore, the petitioner could not have been summoned on the basis of the averments made in the complaints.
9. The learned counsel for the petitioner further places reliance on the judgement of the Supreme Court in *Siby Thomas v. Somany Ceramics Ltd.*, (2024) 1 SCC 348.
10. The learned counsel for the respondent, on the other hand, submits that the petitioner was an agent of accused no.1, therefore, he has been rightly arrayed as an accused in the complaint. He further submits that, in case, this Court comes to the conclusion that the petitioner has been wrongly arrayed as an accused in the complaint, liberty be granted to the respondent to amend the list of witnesses filed by the respondent before the learned Trial Court and summon the petitioner as a witness.
11. I have considered the submissions made by the learned counsels for the parties.
12. A reading of the complaints would show that barring the assertion that the petitioner had acted as an agent of the accused no.1, there is no other assertion that the petitioner, in any manner, was in-charge of the firm of the accused no.1 or had any say in its working.



The cheques are not stated to be issued by the petitioner.

13. It is trite law that for a person to be subjected to criminal proceedings, specific averments have to be in a complaint. It is also imperative to establish that a person who is sought to be made criminally liable should, at the time of the commission of the offence, be in charge of and responsible for the conduct of the business of the company, to initiate proceedings under Section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'Act').

14. In *Siby Thomas* (supra) the Supreme Court in reference to a complaint where the main accused was a partnership firm, held as under:-

“11. In the light of the afore-extracted recitals from the decision in Gunmala Sales (P) Ltd. v. Anu Mehta [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103], quoted with agreement in S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685] and in view of sub-section (1) of Section 141 of the NI Act it cannot be said that in a complaint filed under Section 138 read with Section 141 of the NI Act to constitute basic averment it is not required to aver that the accused concerned is a person who was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed. In para 53 of S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685] it was held thus : (SCC p. 715)

“53. In the case on hand, we find clear and specific averments not only in the complaint but also in the statutory notice issued to the respondent.”

It is thereafter that in the decision in S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685] in para 58.1



it was held that the primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable.

12. Bearing in mind the afore-extracted recitals from the decisions in Gunmala Sales [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103] and S.P. Mani case [S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC] , we have carefully gone through the complaint filed by the respondent. It is not averred anywhere in the complaint that the appellant was in charge of the conduct of the business of the company at the relevant time when the offence was committed. What is stated in the complaint is only that Accused 2 to 6 being the partners are responsible for the day-to-day conduct and business of the company. It is also relevant to note that an overall reading of the complaint would not disclose any clear and specific role of the appellant.

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18. Thus, in the light of the dictum laid down in Ashok Shewakramani case [Ashok Shewakramani v. State of A.P] , 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.”



15. As noted above, the petitioner herein is averred to only be an agent of the accused no. 1 firm. There is not even an assertion in the complaint that the petitioner was in any manner in charge of or was responsible to the accused no. 2 for the conduct of its business.

16. Applying the above test to the facts of the present case, in my view, therefore, the offence under Section 138 of the Act is not made out against the petitioner. The prejudice caused to the petitioner is evident from the fact that though the complaint has been filed in the year 2014 and was re-filed before the learned MM in 2017, the accused nos.1 to 3 are yet to be served with the summons issued by the Court

17. Accordingly, the above mentioned complaint cases that is, CC no.6831/2017 titled *ALPS Industries Ltd. v. Laycana & Ors.* and CC no.6830/2017 titled *ALPS Industries Ltd. v. Laycana & Ors.*, in so far as they have arrayed the petitioner as an accused, are quashed as against the petitioner(s) herein. They shall proceed against the remaining accused in accordance with law.

18. As far as the plea of the learned counsel for the respondent that the petitioner be allowed to be summoned by the respondent as a witness in the subject complaints, as the petitioner is now not an accused in the complaints, the respondent shall be at liberty to move an appropriate application, if so advised, to include the petitioner in the list of witnesses to be examined. In case such an application is filed by the respondent, the same shall be considered by the learned Trial Court and the petitioner shall be summoned as a witness at the



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appropriate stage of the proceedings of the subject complaints.

19. The petitions are allowed in the above terms. The pending applications also stand disposed of.

20. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 13, 2024/rv/RP

Click here to check corrigendum, if any