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

\+ CRL.M.C. 3875/2022 & CRL.M.A. 16192/2022

LAXMIDEVI JIWARAJKA .....Petitioner

Through: Mr. Narender Singh Yadav and Mr. Manu Prakash Uphadhyay, Advocates.

Versus

STATE N.C.T. OF DELHI & ANR. .....Respondents

Through: Mr. Shoaib Haider, APP for the State. Mr. Kush Gupta and Mr. S.K. Sen, Advocates for R-2.

\+ CRL.M.C. 3876/2022 & CRL.M.A. 16157/2022

SAKSHI KUNAL JIWARAJKA .....Petitioner

Through: Mr. Narender Singh Yadav and Mr. Manu Prakash Uphadhyay, Advocates.

versus

STATE (N.C.T. OF DELHI) & ANR. .....Respondents

Through: Mr. Shoaib Haider, APP for the State. Mr. Kush Gupta and Mr. S.K. Sen, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

O R D E R

% **21.08.2024**

1. The Petitioners have approached this Court challenging the Summoning Order dated 09.01.2020 passed by the Ld. MM, South West District, Dwarka Court, Delhi in Complaint Case No.1121/2020 on the ground that on the date when the cheques were dishonoured, the Petitioners

had ceased to be the Directors of the Company - M/s JSK Marketing Limited (*hereinafter referred to as "Company"*).

2. The facts of the case reveal that the Petitioner in CRL.M.C. 3875/2022 was appointed as Director in the Company on 12.01.1989 and the Petitioner in CRL.M.C. 3876/2022 was appointed as Director in the Company on 01.12.2010. Material on record indicates that the Company took lease finance assistance in respect of various machineries from Respondent No.2/Complainant – Orix Leasing and Financial Services India Ltd (*hereinafter referred to as "Complainant Company"*). It is stated that for discharging the liability four cheques bearing No.000347 of Rs.6,45,836/-, bearing No.000318 of Rs.2,97,247/-, bearing No.000332 of Rs.21,61,203/- and bearing No.000302 of Rs.2,64,117 each dated 01.10.2019 were issued to the Complainant Company. It is stated that the cheques were dishonoured with a remark "Account Blocked" *vide* Memos dated 20.11.2019. The Statutory Legal Notice was sent on 25.11.2019 *vide* a registered post to the Petitioners on 27.11.2019. The factum of the receipt of the Statutory Legal Notice is not disputed. It is stated that the payment was not made in terms of the Statutory Legal Notice as a result of which the complaint under Section 138 and 142 of the Negotiable Instruments Act, 1881 was filed against the Petitioners.

3. The averments made against the Petitioners in the complaint reads as under:

> *"8. That the said cheques were issued by Accused No.1 through Its Managing Director with consent of all other Director i.e Accused No. 2 to 4 to discharge the aforesaid liability that accrued on account of availing the lease finance assistance from the Complainant*

Company. The said Cheques were signed by the Accused No. 2 with the consent of all other Accused(s). The accused(s) had assured the Complainant Company that they would ensure that the said cheques as provided to the complainant will be duly honoured on their presentation."

4. The Petitioners have approached this Court for quashing the Impugned Summoning Order dated 09.01.2020 primarily contending that on the date when the cheques were dishonoured, the Petitioners had ceased to be the Directors of the Company. The Petitioners have filed the Company Master Data issued by the Ministry of Corporate Affairs along with a Certificate under Section 65(B) of the Indian Evidence Act. A perusal of the Master Data reveals that the Petitioner in CRL.M.C. 3875/2022 was appointed as Director in the Company on 12.01.1989 and has resigned on 30.03.2019 and the Petitioner in CRL.M.C. 3876/2022 was appointed as Director in the Company on 01.12.2010 and has resigned on 30.03.2019.

5. Apart from stating in the complaint that the Petitioners were directors in the Company, there is no averment in the complaint as how they were responsible for the conduct and affairs of the company at the time when the transactions took place. There is no averment in the complaint that the Petitioners in anyway were responsible for the affairs of the company at the time when the lease finance assistance was taken from Complainant Company.

6. Reply has also been filed by Complainant Company and in the reply, no averment has been made by the Complainant Company contradicting the details mentioned in the Master Data.

7. It is well settled that Courts are slow to interfere with the Summoning

Orders unless there is material which is unimpeachable in nature and sterling in quality which would show that the complaint is not maintainable against the accused. The Certificate under Section 65(B) of the Indian Evidence Act from the Ministry of Corporate Affairs and the Master Data, the Petitioners had ceased to be the Directors of the Company on the date when the cheques were issued and in the absence of any averment in the complaint that the Petitioners were anyway responsible for the conduct and affairs of the Company at the time when the lease finance assistance was taken from the Complainant Company.

8. The cheques are dated 01.10.2019 which is after the date on which the Petitioner had resigned, i.e., 30.03.2019. On the day when the cheque was dishonoured, the Petitioner was not a Director of the company and therefore cannot be held vicariously liable for the offence committed by the company on the date when the cheque was dishonoured.

9. In view of the material which unimpeachable in nature and sterling in quality, this Court is inclined to quash the Impugned Summoning Order dated 09.01.2020 qua the Petitioners herein. The Impugned Summoning Order dated 09.01.2020 stands quashed.

10. The petitions are disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 21, 2024
S. Zakir