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

\+ CRL.M.C. 4769/2024, CRL.M.A. 17843/2024, CRL.M.A. 17844/2024

MAHENDER SINGH KHANOR .....Petitioner

Through: Mr. Umang Gangwar and Mr. Manoj Kr. Pathak, Advocates.

versus

THE STATE & ANR. .....Respondents

Through: Mr. Nawal Kishore Jha, APP for State with SI Amit Kumar, P.S. DBG Road. Mr. Pankaj Vivek and Mr. Naveen, Advocates for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% 02.08.2024

1. By way of the present petition, the petitioner seeks quashing of summoning order dated 22.06.2023 passed in Criminal Complaint No. 3273/2023 filed under sections 138/141/142 of NI Act pending before the learned Judicial Magistrate, First Class (NI Act)-02, Delhi, as well as the proceedings arising therefrom.

2. Briefly, the alleged facts of the case are that the accused company i.e. M/s Furlong Reality Pvt Ltd had taken a corporate deposit from Respondent No.2 and had issued a cheque dated 15.01.2023 in discharge of the said liability through Mr. Vinay Vishal i.e. the authorized signatory of the cheque in question. The said cheque, on presentment, was returned dishonored vide return memo dated 23.01.2023. Consequently, the complainant issued legal

demand notice dated 30.01.2023, however the amount remained outstanding. Subsequently the present complaint came to be filed.

3. The issue raised in the present case is that the complainant has wrongly arrayed the present petitioner to be a Director of the company at the time of the issuance of the said cheques. Learned Counsel for the petitioner contends that the Learned JM has wrongly presumed the petitioner to be in charge of the day-to-day affairs of the accused company and has failed to appreciate that the petitioner had neither issued the cheque nor was he employed in the capacity of a Director at the said time of issuance and presentment of the cheque.

4. The law as regards to the liability of a Director for an offence under Section 138 NI Act committed by a company is no longer res integra. Starting from the decision in S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla &Anr.[1] upto the recent decision of Supreme Court in Susela Padmawathy Amma v. Bharti Airtel Ltd.[2] it has been observed that while a Director holds special/unique position in a company, having authority to take decisions, however, the mere nomenclature or mention of an individual as Director cannot itself bring him/her into the fold of Section 138 by assistance of Section 141 NI Act, the latter of which relates to vicarious liability of a Director. As observed in a catena of judgements, it is only those Directors who were in-charge of the day-to-day affairs and responsible for the conduct of the business of the company, can be held liable for the offence under Section 138 NI Act. The word ‘in-charge of a business’ has been interpreted

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[1] (2005) 8 SCC 89
[2] 2024 SCC OnLine SC 311

to mean a person having overall control of the day-to-day business of the company."[3]

5. In the present case, though the petitioner has been appointed as a Director in the accused company, he had tendered his resignation letter on 10.12.2022 In this regard, reference has been made to Form DIR-12 submitted before the office of ROC, which reflects in the master data of the accused company that the present petitioner had ceased to be a Director w.e.f. 14.12.2022, much prior to the date of issuance of cheque i.e. 15.01.2023.

6. The Court deems it apposite to note the steps as stipulated in proviso to Section 138 NI Act, which must be fulfilled for the said offence to be made out. The first condition is that the cheque ought to be 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. The second condition is that the payee or the holder in due course of the cheque, as the case may be, must make a demand for the said money by giving a notice in writing to the drawer of the cheque within 30 days of receiving the information from the bank regarding the dishonour of the cheque. The third condition states that there should be a failure on the part of the drawer of cheque to make the payment of the amount under the cheque to the payee or the holder in due course, as the case may be, within 15 days of the receipt of the said notice. When all these three conditions are fulfilled, then only an offence under Section 138 of the NI Act can be said to be committed by the person issuing

[3] Girdhari Lal Gupta vs. B.H. Mehta, (1971) 3 SCC 189

the cheque [Ref: MSR Leathers v. S. Palaniappan&Anr.[4] , Charanjit Pal Jindal v. L.N. Metalics[5] and N. Harihara Krishnan v. J. Thomas.[6]]

7. Concededly in the present case, the present petitioner is not the authorised signatory nor someone who had signed the subject cheque. The petitioner's resignation prior to issuance of subject cheque is also duly established by the document FORM DIR-12 submitted before the ROC, a document that is also not disputed by the complainant. This document is of incontrovertible nature and thus can be relied upon in exercise of powers under Section 482 Cr.P.C. [Ref: S.P. Mani & Mohan Dairy *v.* Snehalatha Elangovan[7]]. Therefore, the proceedings pending are liable to be quashed against the present petitioner.

8. Consequently, the petition is allowed and the summoning order dated 22.06.2023 is also set aside. The petition is disposed of in the above directions, alongwith pending applications.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 2, 2024/*js*

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[4] (2013) 1 SCC 177
[5] (2015) 15 SCC 768
[6] (2018) 13 SCC 663
[7] (2023) 10 SCC 685