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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 5837/2022 & CRL.M.A. 22939/2022

GAURAV MITTAL & ANR.Petitioners

Through: Mr. Varun Dev Mishra,
Ms. Mrinmoi Chatterjee &
Mr. Kirti Lal, Advocates

versus

STATE NCT OF DELHI & ANR.Respondents

Through: Mr. Satinder Singh Bawa,
APP for the State
Mr. Ranjan Kumar Rai &
Mr. Navneet Kumar Jha,
Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

21.11.2024

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1. The present petition is filed challenging the summoning order dated 06.11.2020, passed by the learned Metropolitan Magistrate (**MM**) (NI Act)-02, South-West District, Dwarka Courts, Delhi, pursuant to which the petitioners were summoned in Ct. Cases 10112/2020, 10113/2020, filed by Respondent No. 2 under Section 138 and 142 of the Negotiable Instruments Act, 1881 (**NI Act**).
2. The subject cheques were issued by the company, namely, CHD Developers Ltd. The petitioners are the Managing Director and the Authorized Signatory respectively, of the accused company.
3. The only ground on which the petitioners challenge the summoning order is that the accused company has not been named as an accused in the complaint (Ct. Case 10113/2020).
4. It is a contention of the petitioners that to fasten a vicarious liability when a company has committed an offence, it is essential to make the company a necessary party to the

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complaint.

5. The learned counsel for the petitioners submits that the statutory notice was also not issued to the accused company.

6. When an offence under Section 138 of the NI Act is committed by the company, every person, who at the time when the offence was committed, was in-charge of or was responsible for the conduct of the business of the company as well as the company, shall be deemed to be guilty of offence and shall be liable to be proceeded against and punished.

7. There is not cavil that in the absence of the company being arrayed as an accused, the complaint against the persons allegedly responsible for the conduct of the business of the company, is not maintainable.

8. I have perused the statutory notice and the complaint filed by Respondent No. 2.

9. The title of the complaint indicates that the accused company has been referred to as accused. The title states *Sandeep Jain ... Complainant v. CHD Developers Ltd Through Its Directors ... Accused*. The Memo of Parties filed along with the complaint also mentions CHD Developers Ltd. as accused.

10. The pleadings in the complaint also refer to CHD Developers Ltd. as accused company though in some paragraphs of the complaint, it is mentioned that the accused company in discharge of contractual liability issued cheques through Accused No. 1 (Petitioner No. 2 herein) as Authorized Signatory.

11. The contention of the petitioners is that since the Accused No. 1 is mentioned as the Authorized Signatory, therefore, the company has not been named as accused.

12. The same appears to be a typographical and inadvertent



error, which could have happened due to the drafting error of the learned counsel who filed the complaint. However, once a company has been mentioned as accused company in the complaint and is also referred as accused in the Memo of Parties and the case title, the said error is not fatal.

13. It is pointed out that an amended Memo of Parties was also filed before the learned Trial Court. As noted above, the Memo of Parties originally filed though mentioned CHD Developers Ltd. as accused, however, no number was mentioned in front of its name. The said error was corrected by filing an amended Memo of Parties.

14. The perusal of the legal notice also indicates that the notice was issued to Mr. RK Mittal, the Authorized Signatory of the accused company, Mr. Gaurav Mittal, the Managing Director and other Directors. It was also mentioned alongwith Mr. R.K. Mittal's name that the registered office of the company is 201, Radha Chambers, Plot No.19-20, G Block Community Centre, Vikaspuri, New Delhi- 110018.

15. The mandatory requirement in terms of Section 138 of the NI Act is that the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque.

16. The case of the petitioners is not that the accused company had not received the notice or was not aware of the notice, but is that the notice does not separately mentions its name as one of the addressee.

17. In the present case, it is not disputed that the notice was in fact received by the Authorized Signatory, the Managing Director and the other Directors. The notice was served at the



registered office of the accused company, CHD Developers Ltd.

18. Thus, it cannot be contended that the notice in writing demanding the payment of the cheque(s) amount was not served on the accused company, CHD Developers Ltd. Only a bald averment has been made that the notice in writing making a demand of the cheque(s) amount was not made on the accused company. Not mentioning the name of the accused company in the notice when the same was addressed to the Authorized Signatory, the Managing Director and other Additional Directors of the company and was served at the registered office as well as the corporate office of the company, in my opinion, will not make the notice defective.

19. In view of the above, this Court finds no merit in the present petition.

20. The present petition is, therefore, dismissed. Pending application(s) also stand disposed of.

21. The parties are at liberty to take all arguments before the learned Trial Court.

AMIT MAHAJAN, J

NOVEMBER 21, 2024 / 'Aman'