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

\+ CRL.M.C. 7970/2023, CRL.M.A. 29749/2023

ANITA SHRIVASTAVA .....Petitioner

Through: Mr. Santosh Chauriha, Ms. Suman Mishra and Ms. Pratiksha, Advocates.

Versus

MIRAJ INFORENT SYSTEMS .....Respondent

Through: Mr. Rajat Choudhary and Mr. Kishan Pandey, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

<u>O R D E R</u>

% **17.09.2024**

1. By way of the present petition, the petitioner seeks quashing of Criminal Complaint No. 4658/2018 titled <u>Miraj Inforant Systems v. M/s Ambunita Kanvos Pvt. Ltd. & Ors.</u> pending before the Ld. Judicial Magistrate First Class (JMFC), NI Act (East), Karkardooma Courts, Delhi.

2. Learned counsel for the petitioner contends that the present proceedings arise in the context of cheque bearing No. 198952 dated 20.08.2018 drawn on IDBI Bank for a sum of Rs.45,000/- issued by other co-accused namely, *Ambuj Srivastav* who happens to be petitioner's husband. Learned counsel further contends that the subject cheque has not been issued either from the joint account of the petitioner and *Ambuj* or the company's account where both of them were Directors but rather, from the individual account of the co-accused.

It is further submitted by the learned counsel for the petitioner that the petitioner never came in contact with the respondent/complainant and that the petitioner has neither entered into any transaction with the respondent nor signed the cheque in question. In lieu thereof, it is submitted that the petitioner does not have any legal liability against the respondent. Lastly, it is submitted that without appreciating the aforesaid facts, the Trial Court has summoned the present petitioner.

3. Learned counsel for the respondent has contested the present petition by contending that it was both the accused persons who had approached the complainant for supply of laptops on rent against which the subject cheque came to be issued. It is stated that both the accused in the complaint i.e., *Ambuj* and the petitioner are Directors of Company and since the cheque issued by Ambuj was to discharge the liability of the aforesaid company, the petitioner is also vicariously liable for the dishonour of the cheque in question.

4. I have heard the learned counsels for the parties and perused the material placed on record.

5. The copy of the subject cheque is placed on record. Concededly, in the present case, Section 141 of NI Act is not attracted as the subject cheque was signed by the co-accused/*Ambuj Srivastava* from his personal account and not from the account of the company. To this, Respondent No.2 has contended that though the cheque was drawn from the personal account of the co-accused, however since it was issued with respect to the liability of the firm, the petitioner would also be jointly liable for its dishonour. Thus the issue which arises for consideration is whether the petitioner would be vicariously liable for the dishonour of a cheque issued by the personal account of the co-accused/Director of the firm.

6. To deal with the issue at hand, it would be necessary to analyse Section 138 of the N.I. Act which is extracted below for convenience.

> *"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4 [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:…"*

7. From a reading of the above Section, it is evident that in order to attract the rigours of Section 138 of the NI Act on a person, the cheque in question has to be drawn by a person on an account maintained by him. It cannot be that some other person is roped in a criminal case involving Section 138 NI Act, merely because they were co-Directors in the firm. The only provision which allows vicarious liability to be imposed on directors in the NI Act is Section 141, however the same applies in situations where the offence under Section 138 has been committed by a Company. There is no concept of shared liability in the NI Act. Moreover, the proceedings in the NI Act are quasi-criminal in nature, with penal consequences and are *in personam* in nature and hence the provisions have to be strictly construed. A person who is not otherwise liable under the Act cannot be roped in by some misguided notion of shared liability. The cheque may have been issued for discharging the debts of a company but unless it was issued by the company, other Directors cannot be roped in the criminal proceedings.

8. The Supreme Court, while dealing with a case having similar facts, in

P.J. Agro Tech Ltd. v. Water Base Ltd, reported as **(2010) 12 SCC 146** held as under:-

> *"13. From a reading of the said section, it is very clear that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability. It is only such a cheque which is dishonoured which would attract the provisions of Section 138 of the above Act against the drawer of the cheque.*
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> *14. In the instant case, the cheque which had been dishonoured may have been issued by Respondent 11 for discharging the dues of Appellant 1 Company and its Directors to Respondent 1 Company and the respondent Company may have a good case against Appellant 1 Company for recovery of its dues before other fora, but it would not be sufficient to attract the provisions of Section 138 of the 1881 Act. The appellant Company and its Directors cannot be made liable under Section 138 of the 1881 Act for a default committed by Respondent 11. An action in respect of a criminal or a quasi-criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence."*

9. As discussed above, proceedings under Section 138 NI Act being quasi criminal in nature, the act has to be strictly construed. Since the Act mandates that the person drawing the cheque from his account will be the one who is liable, no other person could be made liable without fulfilling the ingredients of the section.

10. Similarly, when deciding if the concept of joint liability is applicable to proceedings under NI Act, the Supreme Court, in Alka Khandu Avhad v. Amar Syamprasad Mishra, reported as **(2021) 4 SCC 675** held as follows:-

> *"10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt*

or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque."

Thus, merely being jointly liable to pay back the amount would not be sufficient to proceed against a person under the NI Act unless the bank account on which the cheque was drawn was jointly operated and such person was a signatory on the cheque.

11. Applying the said dictum to the facts of the present case, this Court is of the considered opinion that the petitioner cannot be held vicariously liable as it is not the company on whose accounts the subject cheque has been issued. Further, the said cheque has been issued by the other-accused and the present petitioner has been impleaded in the vicarious capacity. The subject cheque having not been issued from the accused company's account, the question of vicarious liability of the present petitioner does not arise. Accordingly, the petition succeeds and the Criminal Complaint No. 4658/2018 is hereby quashed qua the petitioner.

12. Petition is disposed of in the above terms alongwith miscellaneous application.

13. Copy of the order be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI, J

SEPTEMBER 17, 2024

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