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

\+ CRL.M.C. 6186/2019
RAJ KUMAR GUPTA & ANR. .....Petitioners
Through: Mr. P.R. Sikka, Adv.

versus

M/S RAJASTHAN IRON TRADERS .....Respondent
Through: Mr. G S Gangwar, Adv. (through VC)

\+ CRL.M.C. 6187/2019
RAJ KUMAR GUPTA & ANR .....Petitioner
Through: Mr. P.R. Sikka, Adv.

versus

M/S RAJASTHAN IRON TRADERS .....Respondent
Through: Mr. G S Gangwar, Adv. (through VC)

\+ CRL.M.C. 2769/2022
RAJ KUMAR GUPTA & ANR. .....Petitioner
Through: Mr. P.R. Sikka, Adv.

versus

RAJASTHAN IRON TRADERS .....Respondent
Through: Mr. G S Gangwar, Adv. (through VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R
% **11.07.2024**

CRL.M.A. 41724/2019 *(for exemption)* in CRL.M.C. 6186/2019
CRL.M.A. 41726/2019 *(for exemption)* in CRL.M.C. 6187/2019
CRL.M.A. 11472/2022 *(for exemption)* in CRL.M.C.

<u>2769/2022</u>

1. Exemptions allowed subject to all just exceptions.

2. These applications stand disposed of.

<u>CRL.M.C. 6186/2019 & CRL.M.A. 6732/2024 *(for additional documents)* & CRL.M.A. 6733/2024 *(for condonation of delay in filing additional documents)* in CRL.M.C. 6186/2019</u>

<u>CRL.M.C. 6187/2019 & CRL.M.A. 6724/2024 *(for additional documents)* & CRL.M.A. 6725/2024 *(for condonation of delay in filing additional documents)* in CRL.M.C. 6187/2019</u>

<u>CRL.M.C. 2769/2022 & CRL.M.A. 11539/2022 *(for stay)*, CRL.M.A. 6729/2024 *(for additional documents)* & CRL.M.A. 6730/2024 *(for condonation of delay in filing additional documents)* in CRL.M.C. 2769/2022</u>

3. The present petitions are filed challenging the order dated 04.02.2019 in Complaint Case No. 15092/2018, the order dated 07.02.2019 in Complaint Case No. 15057/2018 and the order dated 03.12.2019 in Complaint Case No. 14237/2018, passed by the learned Trial Court respectively, whereby the petitioners were summoned in regard to the respective complaints filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') read with Sections 141/142 of the NI Act.

4. The aforesaid complaints were filed by the respondent alleging that M/s Hambro Tech India Pvt. Ltd. (hereafter '**accused company**'), which is involved in the business of manufacturing metal sheet, had purchased goods from the respondent on credit basis. It was alleged that the accused company had issued various cheques against the outstanding dues of ₹37,30,375/-. The details of the same are as under:

- Two cheques of ₹5,00,000/- and ₹2,30,375/- respectively, issued on 20.07.2018, were dishonoured on 10.10.2018 (*subject matter of Complaint Case No. 15092/2018*);
- Three cheques of ₹5,00,000/- each, issued on 20.07.2018,

were dishonoured on 10.10.2018 (*subject matter of Complaint Case No. 15057/2018*); and

- Three cheques of ₹5,00,000/- each, issued on 05.07.2018, were dishonoured on 03.10.2018 (*subject matter of Complaint Case No. 14237/2018*)

5. It was alleged that all the said cheques were dishonoured and returned with the remark–'Payment stopped by drawer'.

6. It was alleged that at the time of issuance of the cheques, the accused persons, including the petitioners, had assured the respondent that the cheques would be honoured upon presentation.

7. The learned counsel for the petitioners submits that the learned Trial Court has mechanically passed the summoning orders without appreciating that the petitioners were not involved in the day-to-day affairs of the accused company.

8. He submits that the petitioners had been inducted as directors for a limited time period through a Memorandum of Understanding dated 02.06.2017 executed between them and Mr. Karamvir (Director of the accused company), that is, till the realisation of the amount due by the accused company against supply of raw materials by the petitioners.

9. He submits that the petitioners had also not signed the annual returns filed with the Registrar of Companies and the same were signed by Mr. Karamvir.

10. He submits that the cheques in dispute were not signed by the petitioners and they have been arrayed as accused persons merely on account of being Directors of the accused company at the time of issuance of the cheques.

11. He submits that the petitioners had tendered their resignation and had seized to be the directors of the accused

company on 01.09.2018 before the cheques in dispute were presented. He submits that the master data of the accused company reflects the same as well. He submits that the petitioners could thus not be held to be liable for the dishonour of the cheques in dispute. He relies upon the judgment of the Hon'ble Apex Court in the case of ***Harshendta Kumar v. Rebatlata Koley*** **: AIR 2011 SC 1090** in this regard.

12. He submits that Mr. Karamvir was not authorised to sign multiple or more cheques of ₹5,00,000/- on the same day to a single party.

13. The learned counsel for the respondent disputes the contention of the petitioners and submits that the respondent had inspected the master data of the accused company on 12.10.2018 and the same revealed that the petitioners were on roll of the accused company on the date of dishonour of the cheques.

14. He submits that the petitioners have intentionally not filed the entire Master Data of the accused company which reflects the names of the petitioners. He submits that the petitioners had not taken plea of resignation in the reply to the statutory notice either. He submits that the petitioners have not annexed a copy of Form 32 filed by them to substantiate the acceptance of their resignation either.

15. He submits that the petitioners were directors of the accused company on the date of issuance of the cheques.

16. He submits that there are various documents that show that the petitioners were actively involved in the working and day-to-day affairs of the accused company.

17. He submits that while it is pleaded that the petitioners had resigned from the accused company on account of mismanagement by Mr. Karamvir, however, as per the

respondent, no action was taken against Mr. Karamvir for working without due authorisation.

18. He submits that the present petitions were preferred belatedly merely to delay the proceedings before the learned Trial Court.

19. I have heard the learned counsel and perused the record.

20. The complaints were filed under Section 138 of the NI Act read with Section 141 and 142 of the NI Act. The petitioners are admittedly not the signatories to the cheques in dispute. They also were not holding the post of the Managing Director of the accused company at the relevant time.

21. However, in terms of Section 141 of the NI Act, a person can be vicariously held responsible for the offence committed by a company if he is responsible for the conduct of the company's business at the relevant time. Thus, the short question before this Court is whether the petitioners could have been vicariously made liable for the offence under Section 138 of the NI Act with the aid of Section 141 of the NI Act.

22. At the outset, it is relevant to note that this Court can quash the summoning orders issued in NI Act cases in exercise of its inherent jurisdiction under Section 482 of the CrPC if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques. The Hon'ble Court in the case of ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan*** **: (2023) 10 SCC 685** had discussed the scope of interference by High Court against issuance of process and also summarised the law in reference to Section 141 of the NI Act as under:

> "***55.*** *Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken*

further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned.

56. *Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the noticee. In such circumstances what more is expected of the complainant to say in the complaint.*

57. ***When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention.*** *He must make out a case that making him stand the trial would be an abuse of process of Court.* ***He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial****. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner.*

58. *Our final conclusions may be summarised as under:*

58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

58.2. The complainant is supposed to know only generally

as to who were in charge of the affairs of the company or firm, as the case may be. *The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the Court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141, respectively, of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted.* ***The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.***

58.3. *Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm.* ***But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners "qua" the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.***

58.4. ***If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, <u>he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention</u>. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.***"

(emphasis supplied)

23. In the present case, on a bare perusal of the complaints, it is apparent that specific averments have been made by the respondent that the cheques in dispute were issued with the

consent and knowledge of the petitioners. It is also alleged that the accused persons, including the petitioners, had assured the respondent that the cheques in dispute would be honoured upon presentation.

24. While the said averments were denied in the replies tendered by the petitioners to the statutory notice, however, no mention was made of the defences taken by the petitioners in regard to their limited role in the accused company in view of the Memorandum of Understanding dated 02.06.2017 or their resignation.

25. Insofar as the argument regarding Mr. Karamvir being responsible to carry out the day-to-day affairs of the accused company and him not being authorised to issue multiple cheques of ₹5,00,000/- on the same day to a single party is concerned, no uncontroverted material has been placed on record to substantiate the same.

26. The respondent has also disputed that the petitioners were actively involved in the day-to-day operations of the accused company and pointed out the specific averments regarding the petitioners actively giving assurances to the respondent regarding the cheques in dispute being honoured on presentation. It has also been argued that the petitioners are trying to shirk their accountability even though they were in connivance with Mr. Karamvir which is evident from the fact that no action was taken against him.

27. It is an admitted case that the cheques in dispute had been issued before the petitioners had resigned from the accused company. It is pertinent to note that the petitioners have not placed a copy of their Form 32 on record and the complainant has disputed the date of their resignation. The veracity of the material

brought forth by the petitioners has been disputed by the respondent through documents that show that the petitioners were a part of the company as on the date of dishonour of cheques.

28. In such circumstances, at this stage, considering the contradicting material on record, the documents adduced by the petitioners cannot be said to be of such sterling quality that it merits the quashing of the summons.

29. Needless to say, it will be open to the petitioners to justify the arguments taken by them regarding their resignation and non-involvement in the transaction as well as the veracity of the Memorandum of Understanding during the course of the trial.

30. In view of the above, this Court finds no reason to interfere with the impugned orders.

31. The present petitions are dismissed in the aforesaid terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J

JULY 11, 2024
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