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

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*Reserved on: 07.12.2023
Pronounced on: 25.01.2024*+ **CRL.M.C. 8631/2023 & CRL.M.A. 32229/2023**

M A ALAGAPPAN

.... Petitioner

Through: Mr.Kirti Uppal, Sr. Adv. with
Mr.Sidharth Chopra, Mr. Navneet
Thakran, Mr. Aditya Raj,
Mr.Himanshu Bidhuri and Mr.
Chandan Sinha, Advts.

versus

PVR LIMITED

..... Respondent

Through: Mr. Tanuj Khurana, Adv.

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed under Sections 482 CrPC seeking quashing and setting aside of order dated 11.04.2016 passed in CC no. 573/1/15 by the learned Metropolitan Magistrate, Patiala House Court, New Delhi whereby the petitioner has been summoned to stand trial in the aforementioned complaint case filed by the respondent. A prayer is also made to quash the proceedings initiated by the respondent *qua* the petitioner.
2. The case of the petitioner is that he was a Non-Executive Director of Vasana Health Care Private Limited, the accused company. The respondent is



a company engaged in the business of providing entertainment services. The accused company approached the respondent company for screening of advertisements of their company in the cinema halls of the respondent company. Following this the respondent company played the advertisement of the accused company in their cinema halls.

3. The accused company issued 08 cheques towards the outstanding amount due to the respondent company for the aforesaid services rendered to the accused company. The said cheques were issued from 22.05.2015 to 22.06.2015. When the said cheques were presented for encashment, the same were returned unpaid by the drawee bank *vide* cheque return memo dated 27.07.2015. This was followed by an issuance of a legal demand notice dated 25.08.2015 to the accused company and its directors.

4. On not receiving any reply or payment from the accused within the period of 15 days stipulated in the said notice, the respondent company filed the complaint case against the accused company and its directors. The petitioner was arraigned as accused no. 4 in the complaint. After the pre-summoning evidence, the impugned order dated 11.04.2016 came to be passed.

5. Mr. Kirti Uppal, learned Senior Counsel for the petitioner, submits that the Petitioner was merely a non-executive director of the accused company and he was neither incharge of nor responsible to the accused company for the conduct of its business or for its day-to-day affairs.

6. He submits that the only allegation in the complaint is that accused no. 2 to 6 are directors of the accused no. 1/company. Accused no. 2 to 6 are all responsible for the day to day affairs and management of the accused no.1. He submits that the petitioner is an elderly man aged about 80 years and has been



impleaded solely in his capacity as a director in the accused company without any specific allegations *qua* him. It has not been elaborated in the complaint as to how the petitioner is responsible to the company for its day to day affairs.

7. He submits that on 13.05.2015, the petitioner resigned from the directorship of the accused company with effect from 11.08.2015, but the tendering of resignation was prior to the date of issuance of the cheques.

8. He places reliance on the order dated 13.11.2017 passed by a coordinate bench of this Court in CRL. M.C. No. 2715/2017 by which complaint *qua* co-accused in the same complaint was quashed as he was a nominee independent director and was not responsible for day-to-day affairs of the company.

9. Reliance has also been placed on the decisions of the Hon'ble Supreme Court in **Siby Thomas vs. M/s Somany Ceramics Ltd., 2023 SCC OnLine SC 1299** and **Sunita Palita & Ors. vs. M/s Panchami Stone Quarry, (2022) 10 SCC 152**, to contend that only the person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company alone, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished, whereas, the petitioner being a Non-Executive Director cannot be said to be involved in the day-to-day affairs of the company or in the running of its business.

10. *Per contra*, the learned counsel for the respondent submits that the Petitioner was inducted as an Additional Director of the 'Company', on 16.03.2011 which is reflected from Form 32 so filed with the petition. As per the records of the ROC, the petitioner is shown as a director. Under Section



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161 of the Companies Act, 2013 read with Section 260, 262 and 313 of the Companies Act, 1956, an Additional Director so appointed holds office upto the date of the next Annual General Meeting or the last date on which the Annual General Meeting should have been held, whichever is earlier. He submits that there is nothing on record to show petitioner's status after the AGM, therefore, it could safely be inferred that he continued to be a director.

11. He submits that while filing the complaint, all the basic averments were made, clearly bringing on record that the Petitioner was incharge of and was responsible for the conduct of the business of the accused company at the relevant time when the offence was committed, the same being the requirement under the Act. He submits that the Petitioner, being accused no.4, has been undergoing trial and has been permanently exempted from appearing by the learned Trial Court, vide its order dated 22.11.2022.

12. He further submits that the Form DIR-12 dated 02.04.2010, has been filed to show the cession of petitioner's directorship and letter dated 13.05.2015 i.e. letter of resignation, only point out that he tendered his resignation on 13.05.2015, but the Form DIR-12 clearly shows that his resignation would come into effect only from 11.08.2015 and it is not in dispute that the cheques were issued from 22.05.2015 till 22.06.2015, when the petitioner was of the one directors of the accused company and his resignation had not come into effect.

13. He further places reliance on the decisions of the Hon'ble Supreme Court in **Gunmala Sales Pvt. Ltd. vs. Anu Mehta &Ors., (2015) 1 SCC 103**, and **S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan, 2022 SCC OnLine SC 1238**, to contend that if any director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that



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only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, 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. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.

14. I have heard the learned counsel for the petitioner, as well as, learned counsel for the respondent and have perused the record.

15. At the outset it may be noted that the petitioner in his petition has specifically alleged that the petitioner was merely a Non-Executive Director of the accused company. The respondent was given an opportunity to file a reply to the petition *vide* order dated 24.11.2023 but no reply has been filed controverting the petitioner's status as Non-Executive Director in the accused company.

16. The petitioner has filed Form 32 alongwith the present petition which has also not been disputed by the respondent. A perusal of Form 32 shows that the petitioner was appointed as an Additional Director (Non-Executive) of the accused company, namely, M/s Vasan Health Care Private Limited w.e.f. 16.03.2011.

17. It is trite that the Non-Executive Director is not involved in the day to day affairs of the company or in the running of its business. Further, when a complaint is filed against the Director of the company, who is not a signatory of the dishonored cheque, specific averments have to be made in the pleadings to substantiate the contentions in the complaint that such Director was incharge of and responsible for conduct of the business of the company unless such Director is designated Managing Director or Joint Managing



Director. Reference in this regard may be had to the decision of Hon'ble Supreme Court in *Sunita Palita and Others. Vs. Panchami Stone Quarry, (2022) 10 SCC 152* wherein it was held as under:-

“42. Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] . The materials on record clearly show that these appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra [(2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] a non-executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.

(emphasis supplied)

18. It is not the case of the respondent / complainant in the complaint that the petitioner has signed the cheques in question. It is also not the case of the respondent / complainant that the petitioner / accused no. 4 was the Managing Director or Joint Managing Director of the accused company. The only averment made in the complaint with regard to the petitioner, who has been arraigned as accused no. 4, is that he is the director of accused no.1-company



and is responsible for the day to day affairs and management of the accused no.1-company. Para 3 of the complaint reads as under:-

“3. That accused no. 1 is also a company incorporated under the Companies Act having its office at the abovesaid address and engaged in the business of Healthcare business and operating by name and style of Vasan Eye Care Hospitals and Vasan Dental Care Hospital. Accused no. 2 is the Chairman / Managing Director of accused no. 1 and accused no. 3 to 6 are the directors of accused no. 1. Accused no. 2 to 6 are all responsible for the day-to-day affairs and management of the accused no. 1”

19. A bare reading of para 3 of the complaint shows that in the complaint it has not been substantiated that in what manner the petitioner / accused no. 4 was incharge of and responsible for conduct of the business of the accused company, which elaboration was mandatory since the petitioner is neither a signatory to the cheque nor was he the Managing Director or Joint Managing Director of the accused company. This being the position, the complaint is not maintainable against the petitioner.

20. The reliance placed on **Gunmala Sales Pvt. Ltd (Supra)** by the learned counsel for the respondent is misplaced as in the said case also it has been laid down that the High Court may quash the complaint when it may come across some unimpeachable evidence or acceptable circumstances which may in its opinion lead to a conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time and therefore making him stand the trial would be an abuse of process of Court as no offence is made out against him.

21. In view of the undisputed status of the petitioner as a Non-Executive Director and further regard being had to the fact that the petitioner is neither signatory to the cheque nor Managing Director or Joint Managing Director of



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the accused company, making him stand the trial would be an abuse of process of Court.

22. Likewise, in **S.P. Mani (supra)** the principle laid down in **Gunmala Sales Pvt. Ltd (Supra)** has been reiterated. Therefore, for the reasons given here-in-above, the benefit of the said decision will also not enure to the petitioner.

23. For the forgoing reasons the Complaint Case No. 573/1/15 titled as PVR Limited Vs. Vasan Health Care Private Limited &Ors, pending in the Court of learned Metropolitan Magistrate (NI Act), Rouse Avenue Courts, New Delhi deserves to be quashed, and is accordingly, quashed *qua* the petitioner.

VIKAS MAHAJAN, J.

JANUARY 25, 2024

N.S. ASWAL