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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6356/2019 & CRL.M.A. 42324/2019**

SHYAM SHARMAPetitioner
Through: Mr. Thakur Sumit &
Mohd. Afaq, Advs.

versus

M/S M.S FAB INDIA & ORSRespondents
Through: Mr. Shaikh Bakhtiyar, Mr.
Aziz Ahmad, Mr. Vipin
Kumar, Advs for R-1
through V.C.
R-1 in person.

+ **CRL.M.C. 6366/2019 & CRL.M.A. 42360/2019**

SHYAM SHARMAPetitioner
Through: Mr. Thakur Sumit &
Mohd. Afaq, Advs.

versus

M/S M.S FAB INDIA & ORSRespondents
Through: Mr. Shaikh Bakhtiyar, Mr.
Aziz Ahmad, Mr. Vipin
Kumar, Advs for R-1
through V.C.
R-1 in person.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
20.12.2024

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1. Since Respondent No. 1 is present in person, the bailable warrants issued against him by order dated 21.11.2024, stand discharged.

2. The present petitions are filed on the ground that the petitioner had allegedly only stood as a surety / guarantor of the Respondent No. 2 company. The petitioner is neither a Director



nor an Authorized Representative of the accused company and was made accused in the complaint only for the reason that he had allegedly witnessed the transaction between the complainant and the accused and had allegedly stood as a surety.

3. The learned counsel for the complainant, on instructions, submits that he has no objection if the present petitions are allowed and the petitioner is dropped from the arrays of the accused.

4. The petitioner is sought to be implicated in the present case under Section 141 of the Negotiable Instruments Act, 1881 (**‘NI Act’**). Section 141 of the NI Act reads as under:

“141. Offences by companies.

(1) If the person committing an offence under section 138 is a company, every 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, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.



Explanation.-- For the purposes of this section, --

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

5. 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.

6. It is undisputed that the petitioner is neither a Director nor the Authorized Signatory and, therefore, could not have been prosecuted for the offence committed by the company only on the allegation that he had witnessed the transaction and allegedly stood as a surety for the accused.

7. The respondents also do not object if the prayers in the present petitions are allowed.

8. In view of the above, the present petitions are allowed and the petitioner is dropped as an accused from the complaint cases bearing No.12928/2019 & 12930/2019 and the proceedings in the said cases are quashed in regard to the petitioner.

9. The learned Trial Court, however, is not impeded to proceed further against the other accused persons.

10. A copy of this order be placed in both the matters

AMIT MAHAJAN, J

DECEMBER 20, 2024

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