



2024:DHC:3444



\$~36 & 37

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

Date of decision: 29.04.2024

+ **CRL.M.C. 7002/2022 & CRL.M.A. 27101/2022**

+ **CRL.M.C. 7003/2022 & CRL.M.A. 27103/2022**

GOPAL PRASAD AGARWAL Petitioner

Through: Mr.Gurpreet Singh and Mr.C.B.
Bansal, Advs.

versus

BLS POLYMERS LTD Respondent

Through: Mr.Gautam Dhamija, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 24.12.2011 passed by the learned Metropolitan Magistrate (NI Act)-2, Patiala House Court, New Delhi in CC No.446/2016 and CC No.447/2016, summoning the petitioner as an accused in complaints filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'); the order dated 24.05.2022 passed by the learned Metropolitan Magistrate (NI-Act)-01 Rouse Avenue Courts Complex, New Delhi, whereby the notice under Section 251 of the Cr.P.C. was framed against the petitioner; and the



2024:DHC:3444



order dated 20.09.2022 passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi in Crl.Rev.No.2379/2022, whereby the Revision Petition filed by the petitioner was dismissed.

2. It is the case of the complainant that the accused company, M/s Vandana Industries Ltd., which is engaged in the business of manufacturing various plastic products, approached them to conduct business. Believing the representations of the accused persons, the complainant delivered anti-fabrication master batch to the accused. Thereafter, the accused company in discharge of its liability issued cheque bearing no. 327143 for an amount of Rs. 5,55,912/- dated 26.09.2011 drawn on Punjab National Bank. The complainant further states that the cheque was signed by Mr. Tumkur Narasimhaiah Vijay Kumar, being an Authorized Signatory of the accused company. *Vide* Return Memo dated 02.02.2012, the cheque was returned unpaid with the remarks '*funds insufficient*'. Thereafter, on 07.11.2011, the complainant issued a notice under Section 138 of the NI Act. Upon receiving no reply, the above complaint was filed by the respondent/complainant before the learned Metropolitan Magistrate, Patiala House Courts, New Delhi, on 30.03.2012.

3. It is stated that the learned Trial Court took cognizance of the complaint and issued summons to accused nos.1 to 3, and dropped proceedings against accused nos.4 to 6.



2024:DHC:3444



4. It is to be noted that previously also the petitioner had challenged the above proceedings before this Court, which was dismissed on 27.01.2014.

5. The learned counsel for the petitioner submits that in the complaint, a vague assertion is made that the accused nos.2 to 6 are directors of the accused no.1 Company and are in charge of and responsible for its day-to-day business. He submits that this averment alone will not be sufficient to make the petitioner liable under Section 138 of the NI Act. He places reliance on the judgment of the Supreme Court in ***SP Mani & Mohan Dairy v. Snehalatha Elangovan***, (2023) 10 SCC 685.

6. He further submits that the learned Metropolitan Magistrate raised a query to the Authorized Representative of the respondent as to why the accused nos.3 to 6 have been impleaded in the complaint, and on the answer that the accused no.2 had signed the cheque on the instruction of the accused no.3, that is, the petitioner, issued summons to the petitioner. He submits that this process is unknown to law inasmuch, as it is the averments in the complaint which have to be considered and not an answer given to a question put by the Court in an enquiry under Section 202 of the Cr.P.C.. He submits that there was no such assertion in the complaint.

7. On the other hand, the learned counsel for the respondent submits that the petitioner is the Managing Director of the accused no.1 Company. He resigned from the accused no.1 only after the issuance of the summoning order and merely to escape



the liability. He submits that, in the complaint, averments invoking Section 141 of the NI Act had been made against all the directors, however, the learned Metropolitan Magistrate, in the Impugned Order, directed only the accused no.2 and the petitioner herein to be summoned. He submits that the petitioner cannot take advantage of the said order and now claim that even he should not have been summoned in the complaint.

8. I find merit in the submission made by the learned counsel for the respondent.

9. In the complaint, the respondent has pleaded as under:

“3. That the Accused No. 2 to 6 approached the Complainant for and on behalf of Accused No. 1 and represented that the Accused No. 1 is an well established Industrial House engaged in the business of manufacturing various Plastic Products with a proven expertise and experience.

4. That the Accused No. 2 to 6 interacted personally, with various officers of the Complainant company from time-to-time and represented to the Complainant's officials that the Accused No. 2 to 6 are Directors of Accused No. 1 and are the persons-in-charge of Accused No. 1 and are responsible for the conduct of the day-to- day business of Accused No. 1. Further Accused No. 2 to 6 also represented that all acts and deeds done by them are binding on Accused No. 1.

xxxxx

6. The Accused No. 2 to 6 made on Assurance to the Complainant's official that the cheque shall be honoured on the presentation for the recovery of the liability.

xxxxx



2024:DHC:3444



12. That due to the dishonour of the cheque and non payment in response to the legal notice, the Accused No. 1 to 6 have committed offences punishable under Section 138 r/w Section 141 of the Negotiable Instrument Act, 1881 as the aforesaid cheque is signed and issued by Accused No. 2 as Authorised Signatory of Accused No.1 and Accused No. 2 to 6 are Directors of Accused No. 1 and are the persons-in-charge of Accused No.1 and are responsible for the conduct of the day-to-day business of Accused No. 1. Further all acts and deeds done by them are binding on Accused No. 1.”

10. Before filing of the complaint, the respondent had also issued a legal notice of demand dated 07.11.2011 in terms of Proviso (b) to Section 138 of the NI Act. The petitioner did not respond to the same nor disputed the averment of the respondent that he is in charge of or responsible for the affairs of the accused no.1.

11. In ***SP Mani & Mohan Dairy*** (Supra), the Supreme Court held that a complaint and subsequent proceedings are maintainable when averments meeting the requirements of Section 141 of the NI Act have been made against the accused, especially where the director, on receipt of the notice in compliance with Proviso (b) to Section 138 of the NI Act, does not dispute his position in the company and of him being responsible for the affairs of the company. The Supreme Court observed as under:-

“ 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.

xxxxx

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, 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.”

12. In the present case, the petitioner has been unable to meet the above test. In fact, the submission of the learned counsel for the respondent that the petitioner was the Managing Director of the Accused No. 1 Company during the relevant period, could not be disputed by the learned counsel for the petitioner.

13. In view of the above, I find that the Complaint cannot be quashed against the petitioner on the ground of it being lacking the necessary averments. There is no infirmity in the impugned orders passed by the learned Metropolitan Magistrate or by the learned Additional Sessions Judge.

14. Consequently, I find no merit in the present petitions. The same are dismissed. The pending applications are also stand disposed of.



2024:DHC:3444



15. Needless to state that any observation made in the present order shall in no manner influence the proceedings before the learned Metropolitan Magistrate.

NAVIN CHAWLA, J

APRIL 29, 2024/rv/RP

Click here to check corrigendum, if any