



2024:DHC:7525



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 10th September, 2024+ CRL.REV.P. 1129/2024, CRL.M.A. 27401/2024, CRL.M.A. 27402/2024, CRL.M.(BAIL) 1520/2024

HEAVEN LOUNGE PVT LTD & ORS.Petitioners
Through: Mr. Sundeep Sehgal, Advocate.

versus

STATE OF GNCTD & ANR.Respondents
Through: Mr. Satinder Singh Bawa, Ld. APP
for State.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. A Criminal Revision Petition under Section 438 Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" *hereinafter*) has been filed on behalf of the petitioner to challenge the judgment dated 10.07.2019 and Order on Sentence dated 26.08.2019 passed by learned M.M, whereby the petitioner has been convicted and sentenced under Section 138 Negotiable Instruments Act, 1881 ("N.I. Act" *hereinafter*), which has been upheld by the learned ASJ vide Order dated 13.05.2024 in the Appeal.

2. ***Briefly stated***, the accused was the tenant in the premises of the complainant. In discharge of his liability to pay rent, he issued cheque in question bearing No.000044 dated 10.12.2014 for Rs. 3,33,077/- drawn on HDFC Bank, M.G. Road, Guragaon, Haryana which on

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presentation was dishonored for “*Funds Insufficient*”. Despite the service of the Legal Notice, the petitioner failed to make payments and the Complaint under Section 138 N.I. Act got filed.

3. The learned M.M framed the Notice under Section 251 Cr.P.C. on 23.07.2016, wherein the petitioner took the defence that he had given the cheques to Mr. Nitin Chawla from whom he had taken over the Company in October, 2011 and with whom he had certain disputes. He also had some liability of payments towards the complainant. Mr. Nitin Chawla applied for 50:50 partnership in ROC but it did not materialize as the documents were not complete. The petitioner took the defence that he had not signed the cheque and did not know the complainant and had no liability of making a payment under the dishonored cheque.

4. The complainant/respondent No.2 in his post summoning affidavit, proved the documents Ex.CW1/A to Ex.CW1/J in support of his claim for dishonor of the cheque by the petitioner on account of insufficient funds. The petitioner in his statement recorded under Section 281 read with Section 313 Cr.P.C on 23.08.2017 repeated his defence as disclosed under Notice under Section 251 Cr.P.C. Additionally, he admitted that he was the Director of the Company, but returns of the Company were not filed. Despite several opportunities, the petitioner failed to adduce any evidence in his defence which was closed vide Order dated 20.03.2019.

5. The learned M.M. observed that the petitioner No.2 Shri Gurdeep Singh Bhasin as Director of Company *M/s Heaven Lounge Pvt. Ltd.*, had issued the cheque Ex.CW1/D as admitted by him in the

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Notice under Section 251 Cr.P.C. as well as in the Statement under Section 313 Cr.P.C. He also admitted that at the time of issuance of cheque petitioner No.3 Sukhdeep Singh Bhasin was the Director of petitioner No.1 Company.

6. It was thus, held by Ld. MM that the petitioners successfully established the ingredients of the offence under Section 138 N.I. Act and convicted the petitioners vide judgment dated 10.07.2019 and sentenced them to 2 years SI and fine of Rs.666154/- i.e. double the cheque amount, in default six months imprisonment under Section 138 N.I. Act. It was further directed that Rs.4,66,154/- be released to the complainant while a sum of Rs.2 lakhs be deposited in the Army Relief Fund.

7. Aggrieved, the petitioner had filed an Appeal bearing CA No.492/2019 before the learned ASJ who, vide his judgment dated 13.5.2024 upheld the Order of Conviction though the Order of Sentence was modified with the observation that accused No.1 was a Company and being a legal entity, it cannot be send to imprisonment. The sentence of imprisonment was thus, limited to the petitioner No.2 and 3 who were the Directors, to undergo to sentence and pay the fine as directed by the learned M.M.

8. Aggrieved by the said Order of conviction as upheld by learned ASJ, it has been challenged in the present Revision Petition on the grounds that the respondent had examined CW1 Dr. Ritin Behl, who was the SPA holder of the complainant and had no personal knowledge about the transaction. He was not a competent witness as has been held by the Apex Court in the case of Man Kaur

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(Dead) Through LRs vs. Kartar Singh Sangha 2010 (10) SCC 512.

Moreover, in the SPA Ex.CW1/A there was no clause specifically authorizing CW1 to depose in the Court.

9. The petitioner has also relied upon A.C. Narayanan vs. State of Maharashtra (2014) 11 SCC 719.

10. Moreover, petitioner No.3 Sukhdeep Singh Bhasin had not even signed the cheque and was not actively involved in the day-to-day affairs of the Company and therefore, could not have been held liable for the offence under Section 138 N.I. Act. Reliance has been placed on National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal MANU/SC/0112/2010, wherein it was held that the complainant must make specific averments that the accused person was In-charge and was responsible for the day-to-day affairs of the Company. Vicarious liability of the Directors is not only to be pleaded but also to be proved. If the accused is the Managing Director, there is no necessity to make specific averments as he is liable by virtue of his position, and if the signatory of a cheque is a Director or an Officer, then too no specific averments are required to be made. It is stated that no criminal liability can be fixed on petitioner No.3.

11. Furthermore, the letter Ex.CW1/C on which the reliance has been placed by both the learned M.M and learned ASJ, had been filed by the Manager of the complainant and the SPA holder had no authority to sign the same. Further, petitioner No.2 and 3 were not the Directors as the time of signing of the Lease Deed. Both Courts failed to appreciate that the basic ingredients of Section 138/141/142 N.I.



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Act had not been proved. The impugned judgment is therefore, liable to be set aside.

12. Submissions heard.

13. The complainant/respondent had averred in his complaint that the impugned cheque Ex.CW1/D was issued by the petitioner No.1 Company under the signatures of its Director petitioner No.2, which on presentation was dishonored.

14. The *first* ground which has been taken on behalf of the petitioners is that the complainant has failed to step into the witness box and only CW1 Sh. Ritin Behl the SPA holder, who has been examined and he had not personal knowledge of the facts involved in the present case. First and foremost, even though CW1 Sh. Ritin Behl had deposed on the basis of an SPA but it is a settled law that irrespective of the Special Power of Attorney in favour of the witness, he is a competent witness to depose about the facts which are in his knowledge. Furthermore, the entire case under Section 138 N.I. Act was based on the documents. There is no special knowledge of CW1 which was required. On the other hand, it was for the petitioners to have led cogent evidence in their defence, which they have miserably failed to do, as has been observed by the learned M.M as well as by the learned ASJ in their respective judgments.

15. The *second* defence taken on behalf of the appellants is that petitioner No.3 though a Director of the Company but there were no specific averments of he being actively involved in the day to day affairs of the petitioner No.1 Company. However, it is not denied that it is a private limited Company of which petitioner No.2 and 3 were



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the Directors. The onus was on the petitioners to prove that petitioner No.2 had no involvement in the affairs of the Company, which it has miserably failed to discharge.

16. In so far as the contention of the petitioners is concerned that the cheque did not bear the signatures of respondent No.3, but Section 141 N.I. Act clearly states that in the case of Company, the Directors, Manager, Secretary or other Officer of the Company, who are involved in the affairs of the Company are vicariously responsible for the acts done for and on behalf of the Company. In the light of specific provision under Section 141 N.I. Act making the Company and its Directors, Manager, Secretary or other Officer of the Company liable. Admittedly, petitioner No.2 and 3 herein i.e. accused Gurdeep Singh Basin and Sukhdeep Singh Bhasin were the two Directors of petitioner No.1 Company and the cheque had been issued for and on behalf of the Company under the signatures of petitioner No.2. This argument has no merit.

17. The complainant has further proved the Lease Deed Ex.CW1/C vide which the petitioners were inducted as a tenant in the suit premises of the complainant vide Lease Deed and the impugned cheque had been issued towards the rent liability which was admitted by the petitioners in the letter Ex.CW1/C, the authenticity of which had not been refuted by the petitioners. The testimony of the petitioner established that the cheque was issued in discharge of legally recoverable liability.

18. Ld. MM had rightly observed that once the signatures on the cheque were admitted, the presumption under Section 139 NI Act



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worked in favour of the complainant and the onus was on the petitioners/accused to prove that the cheques were not issued in discharge of the legally recoverable debt. However, neither the authenticity of the letter has been questioned in the cross-examination of CW1 nor is there any other cogent evidence brought to disprove that the cheque was not in discharge of any legally recoverable debt.

19. The defence taken by the petitioners that a letter was written in relation to their dealings with one Nitin Chawla and was intended to be given to him, stood completely demolished because the Letter Ex.CW1/C clearly stated that the cheque had been issued to the joint owners of the property named in the letter i.e. Ravinder Kumar Bahl and Mrs. Sudesh Bahl Dhall. The accused persons who were the Directors at the time of execution of the Lease Deed, issued the cheques in discharge of the rent liability.

20. Moreover, CW1 Dr. Nitin Bahl explained in his cross-examination that one cheque issued earlier by the petitioner No.2 had been encashed, which was not denied by the petitioners.

21. The Petitioner has been rightly convicted and sentenced. The impugned judgment of learned ASJ dated 13.05.2024 does not deserve any interference as it suffers from no infirmity. The present Revision Petition is hereby dismissed.

NEENA BANSAL KRISHNA, J

SEPTEMBER 10, 2024/va