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

\+ CRL.M.C. 7763/2024, CRL.M.A. 29617/2024 and CRL.M.A. 29618/2024

RAJEEV KUMAR .....Petitioner

Through: Ms. Abhishek Dubey, Advocate

versus

SANJAY KUMAR .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **01.10.2024**

1. By way of present petition, the petitioner seeks setting aside/quashing of the impugned order dated 06.06.2018 passed by the learned Judicial Magistrate First Class (JMFC), Shahdara, KKD, Delhi, in Complaint Case No.2098/2018, titled '*Sanjay Sharma vs Rajiv Chaudhary & Anr*', which has been instituted by the respondent under Section 138 of the Negotiable Instruments Act, 1881.

2. The petitioner, who is arrayed as the only accused, seeks quashing of the complaint by contending that the debt was owed by the proprietorship concern which has not been impleaded as a party. In support of this contention, learned counsel for the petitioner places reliance on the decision of the Punjab and Haryana High Court in CRM-M-54111-2021 titled as 'Sardar Bhupinder Singh v. M/s Green Feeds Through its partner Vipin Kumar' decided on 26.08.2022.

3. The only issue which requires consideration in the present proceedings is whether a proprietorship concern would stand on the same pedestal as a company or a partnership concern and consequently, whether the liability of the proprietor would only be vicarious in nature. The issue

stands long settled by the Supreme Court in Raghu Lakshminarayan *v.* Fine Tubes, reported as **(2007) 5 SCC 103.** The relevant extract of the same reads as under:-

> *"8. The concept of vicarious liability was introduced in penal statutes like the Negotiable Instruments Act to make the Directors, partners or other persons, in charge of and control of the business of the company or otherwise responsible for its affairs; the Company itself being a juristic person.*
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> *9. The description of the accused in the complaint petition is absolutely vague. A juristic person can be a company within the meaning of the provisions of the Companies Act, 1956 or a partnership within the meaning of the provisions of the Partnership Act, 1932 or an association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. A proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Company in terms of the Explanation appended to Section 141 of the Negotiable Instruments Act, means any body corporate and includes a firm or other association of individuals. Director has been defined to mean in relation to a firm, a partner in the firm. Thus, whereas in relation to a company, incorporated and registered under the Companies Act, 1956 or any other statute, a person as a Director must come within the purview of the said description, so far as a firm is concerned, the same would carry the same meaning as contained in the Partnership Act."*

4. To the similar extent are the decisions of this Court in Ashish Verma *v.* Parmod Kumar, reported as **2024 SCC OnLine Del 5211** and Siddharth Duggal v. State (Govt. of NCT of Delhi) and Others, reported as **2023 SCC OnLine Del 6499**.

5. At this stage, another contention is raised by the learned counsel for the petitioner that the demand notice was not served at the correct address. However, this is a disputed question of fact, which would need to be tested at the stage of trial. In this regard, reference is made to the Supreme Court's decision in D. Vinod Shivappa v. Nanda Belliappa, reported as **(2006) 6 SCC 456**, the relevant extract of the same is reproduced hereinunder:

> *15. We cannot also lose sight of the fact that the drawer may by dubious means manage to get an incorrect endorsement made on the envelope that the premises has been found locked or that the addressee was not available at the time when postman went for delivery of the letter. It may be that the address is correct and even the addressee is available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are proved, it may amount to refusal of the notice. If the complainant is able to prove that the drawer of the cheque knew about the notice and deliberately evaded service and got a false endorsement made only to defeat the process of law, the court shall presume service of notice. This, however, is a matter of evidence and proof. Thus even in a case where the notice is returned with the endorsement that the premises has always been found locked or the addressee was not available at the time of postal delivery, it will be open to the complainant to prove at the trial by evidence that the endorsement is not correct and that the addressee, namely, the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive notice. Therefore, it would be premature at the stage of issuance of process, to move the High Court for quashing of the proceeding under Section 482 of the Code of Criminal Procedure. The question as to whether the service of notice has been fraudulently refused by unscrupulous means is a question of fact to be decided on the basis of evidence. In such a case the High Court ought not to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.*

6. In view of the above, I find no grounds to entertain the present

petition. Accordingly, the same is dismissed alongwith the pending applications. Needless to state, all the relevant contentions are left open to be urged before the learned Trial Court.

MANOJ KUMAR OHRI, J

OCTOBER 1, 2024

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