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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6174/2018, CRL.M.A. 48894/2018**

NARESH KUMAR GUPTA

.....Petitioner

Through: Mr. P.D.Gupta, Senior advocate with
Mr. Abhishek Gupta, advocate

versus

SOHAN LAL GUPTA

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

23.07.2024

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1. The present petition has been filed, challenging the order dated 12.11.2018 whereby the petitioner has been summoned for the offence under section 138 Negotiable Instrument Act.
2. Learned Senior counsel for the petitioner, at the outset, invited the attention of the court to the cheque dated 08.08.2018 on the basis of which the present complaint has been filed. Learned Senior counsel submits that the cheque was issued by the petitioner as Director of N.K. Wears Private Limited.
3. Learned Senior counsel submits that, however, the notice dated 4.9.2018 was served only upon the petitioner and similarly the complaint was filed only against the petitioner. Learned senior



counsel submits that neither the notice was served upon the company i.e. N.K. Wears Private Limited nor complaint was filed against N.K. Wears Private Limited. Learned Senior counsel submits that in view of the categorical judgement by the Apex Court in *Aneeta Handa vs. Godfather Travels and Tours Pvt. Ltd.* 2012 (5) SCC 661, the impugned order is liable to be set aside.

4. Perusal of the record indicates that the notice was issued to the respondent. The respondent duly appeared. However, the reply was filed. Today also none has appeared for the respondent. Section 141 of the N.I. Act deals with the offences by the companies. Section 141 (1) specifically provides that 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.
5. Learned Senior counsel submits that in view of section 141, the Directors or the other persons responsible to the company for the conduct of a business of the company can be prosecuted only along with the company. Learned Senior counsel submits that thus in the absence of the company being prosecuted, the director or other persons stated to be responsible and in charge of the conduct of the company cannot be prosecuted. In *Aneeta Handa* (supra), the question came up for consideration and the apex court inter alia held as under:



“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 51. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

6. The identical question came up for consideration before the court in ***Gopal Gupta v. Silver line Incorporation***, 2017 SCC OnLine Del 6809, wherein the coordinate bench of this court relying upon ***Aneeta Handa*** (supra) quashed the complaint case.



7. I consider that it requires nothing further to detain this court to quash the present complaint being in the teeth of the settled legal position. Therefore, the present petition is allowed.
8. The petition along with the pending application stand disposed of.

DINESH KUMAR SHARMA, J

JULY 23, 2024
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