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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1617/2017**
N.S. ENTERPRISESPetitioner
Through: Mr. P.S.Rana, Advocate.

versus

AMARTYA DUTTA GUPTARespondent
Through: Mr. P.S.Singhal and Mr. Siddhant
Prakash Malik, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER
04.02.2025

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1. The Criminal M.C. under *Section 482* of the *Criminal Procedure Code, 1973* has been filed against the Order dated 17.12.2016 whereby learned ASJ has disallowed the Application under *Section 319* of *Cr.P.C.* to implead Sh. Amartya Dutta Gupta as a party by setting aside the Order of learned M.M dated 05.03.2016 whereby the Application under *Section 319* of *Cr.P.C* had been allowed.
2. It is submitted in the Revision Petition that Petitioner is the Proprietor of *N.S. Enterprises* who had filed the Complaint under *Section 138/141* of *N.I. Act* against *M/s. Unit Construction Pvt Ltd* and Ors which is pending trial before the Court of learned M.M.
3. The Petitioner filed an Application to implead the Respondents and three other persons in the Complaint herein, being the Directors



of the Company. It is submitted in the Application that the Petitioner herein had initially filed a Complaint under *Section 138 of N.I. Act* not against the Respondent and three other persons, on account of misrepresentation of the said persons said that they were employee of *M/s. Unit Construction Company*. It is only subsequently that the Petitioner came to know that the Petitioner herein is not an employee but a Managing Director of the Respondent Company and other persons were in fact the Directors of the Company involved in the day to day working of the Company and are liable to be impleaded as a party to the Complaint under *Section 138 of N.I. Act*. After coming to know about the fraud committed by the respondent, the Complainant also lodged a FIR under *Section 402 IPC* dated 12.12.2014 P.S. Rani Bagh, Delhi.

4. The Application was allowed by the learned M.M *vide* its Order dated 05.03.2016 and the Respondent Sh. Amartya Dutta Gupta along with Sh. Ranender Nath Dutta Gupta, Sh. Mukul Bhatia and Sh. Amit Rai were impleaded in the Complaint and summoned under *Section 138 of N.I. Act*.

5. The Respondent herein filed a Revision Petition before the learned ASJ who *vide* Order dated 17.12.2016 allowed the Revision Petition and set aside the Order of the learned M.M.

6. The Order of learned ASJ had been impugned on the ground that the Petitioner was unable to include their name initially in the Complaint under *Section 138 of N.I. Act* as he had been deliberately misled that the Respondent was only an employee of the Company. The correct facts have not been appreciated by the learned ASJ and



thus, the impugned Order is liable to be set aside.

7. **Learned Counsel on behalf of the Respondent** has submitted that there is no material on record to show that Respondent was the Director of the Company. Moreover, there are no averments in the Complaint that the Respondent was involved in day to day activities of the Company and rightly, the learned ASJ has set aside the Order of the learned M.M. in regard to his impleadment.

8. It is submitted that there are no merits in the present Revision Petition which is liable to be dismissed.

9. **Submissions heard and Record perused.**

10. The Complaint under *Section 138 of N.I. Act* was filed by the Petitioner/*N.S. Enterprises* against *M/s. Unit Construction Company Pvt Ltd*, Mr. Debasri Ghosh/Director; Mr. Dilip Dutta/Project Head and Mr. Partha Samaddar. It was specifically averred in the Complaint that accused No.4 i.e. Mr. Partha Samaddar was the Authorised Signatory of the Company for signing the cheques. The other Accused No. 2 & 3 were incharge and responsible for the day to day affairs of Accused No.1. Even the Legal Notice that was served upon the Respondents prior to filing of the Complaint was not addressed to the Respondent. Neither in the Legal Notice nor in the Complaint are there any averments that the Respondent was involved in day to day activities of the Company.

11. *Section 141 of N.I. Act* provides that only such Directors, signatories, employees who are involved in “**day to day working of the Company**” are liable to be impleaded as Accused in the Complaint under *Section 138 of N.I. Act* as has also been observed in



S.M.S. Pharmaceuticals Ltd. vs Neeta Bhalla and another, (2005) 8 SCC 89 and most recently in Susela Padmavathy Amma vs M/S Bharti Airtel Limited, 2024 INSC 206. There being no averments to this effect, the Accused/Respondent could not have been summoned under *Section 319 of Cr.P.C* immediately after the summoning Order. The accused can be summoned under Section 319 Cr.P.C only when he is in charge of and responsible for the conduct of the business of the Company at the time of commission of the offence. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act.

12. In so far as the contention of learned counsel for the Petitioner is concerned that he has been shown as a Director in Form 32 and that he had admitted in the FIR that he was a Director, are not sufficient for his impleadment in the absence of any averment of him being involved in the day to day affairs of the Company.

13. There is no infirmity in the Order of learned ASJ. The Petition is accordingly, dismissed.

NEENA BANSAL KRISHNA, J

FEBRUARY 4, 2025

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