

**(2023) 05 DEL CK 0352**

**In the Delhi High Court**

**Case No :** Criminal Miscellaneous Case No. 3787 Of 2023

Alka Ramola & Ors.

APPELLANT

Vs

M/S United Spirits Limited Through Authorized  
Representative.

RESPONDENT

**Date of Decision :** 23-05-2023

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 482

**Citation :** (2023) 05 DEL CK 0352

**Hon'ble Judges :** Rajnish Bhatnagar, J

**Bench :** Single Bench

**Advocate :** Anant Agarwal

**Final Decision :** Dismissed

## Judgement

Rajnish Bhatnagar, J

CRL.M.A. 14238/2023

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

CRL.M.C. 3787/2023 AND CRL.M.A. 14237/2023

3. The present petition has been filed under Section 482 Cr.P.C. by the petitioner for setting aside impugned summoning order dated 26.06.2019 passed in Complaint Case No. 20314/2019 by Id. Chief Metropolitan Magistrate, South West, Dwarka Court and setting aside impugned order dated 16.03.2023 passed in Criminal Revision No.467/2022 by learned Additional Sessions Judge (FTSC) (RC), South West District, Dwarka Courts, Delhi.

4. It is submitted by the counsel for the petitioners that present petitioners were sleeping partners of the partnership firm and were not responsible for day-to-day affairs of the partnership firm, namely, M/s Harsh Associates. It is further

submitted by him that the present petitioners have not signed the cheque in question and only the Managing Partners i.e. Shri Basant Singh Kumain and Shri Santosh Singh Kumain were empowered to sign the cheque. It is further submitted that there are no specific averments against the present petitioners that they were in charge of and responsible to the firm for conduct of its business.

5. In support of his contention the counsel for the petitioner has placed his reliance on *Monaben Ketanbhai Shah and another versus State of Gujarat and others*, (2004) 7 SCC 15; *SMS Pharmaceuticals Ltd. versus Neeya Bhalla*, (2005) 8 SCC 89; *Ravindranatha Bajpe versus Mangalore BEZ & others*, 2021 AIR SC 4587; *Samsung India Electronics Pvt. Ltd. versus MGR Enterprises*, 2019 (262) DLT 304.

6. In the instant case, for adequate conclusion it is necessary to look into the impugned order dated 16.03.2023. The relevant portion of the impugned order dated 16.03.2023 reads as follows:

"13. Further, in the present case, the main ground for challenging the impugned order passed by Ld. Trial Court is that all the revisionists/accused persons were the sleeping. partners in the accused partnership partnership firm and that they were not responsible for day-to-day affairs of the accused partnership firm. It has been contended on behalf of the revisionist/accused persons that they have not signed the cheque in question and that only the Managing Partner i.e. accused Basant Singh and Santosh Singh were empowered to sign the cheque. However, perusal of the Trial Court Record shows that the respondent/complainant has relied upon a Partnership Deed dated 01.06.2017, wherein the names of all the revisionists/accused persons have been mentioned as the partners of accused No.1 M/s Harsh Associates.

14. It is nowhere mentioned in the said Partnership Deed found available on Trial Court Record that the revisionists/accused persons are sleeping partners in the aforesaid firm. Further, the profit & loss sharing ratio amongst the partners, who are revisionists in the present petition can also be easily seen in Clause 8 of the said Partnership Deed, which also confirms the fact that all of them are working partners in the said firm. Perusal of the Trial Court Record also confirms the fact that Ld. Counsel for respondent/complainant has rightly submitted before this Court that revisionists/accused persons No. 1, 2, 3 & 4 were the liquor licence holders through which the said firm used to procure liquor from the respondent/complainant. Thus, the contention of the Ld. Counsel for revisionists/ accused persons that the revisionists/accused persons are sleeping partners and they cannot be held liable for the day-to-day affairs of the partnership firm, is not maintainable.

15. No illegality, infirmity or perversity is found in the impugned order dated 26.06.2019 of the Ld. Trial Court. It is found to be detailed, well reasoned and legally sound decision."

7. A bare perusal of the impugned order dated 16.03.2023 reveals that the

learned Sessions Court has dealt with every contention and grievance of the present petitioners in great detail. It is also pertinent to note here that the partnership deed which has been placed on record as annexure P-2 does not disclose any fact with regard to the contention of the counsel for the petitioner that they are not responsible for the day to day affairs of the partnership firm.

8. I have gone through the Complaint Case No. 20314 of 2019 filed before the learned CMM and the same has been placed on record as annexure P-1. A perusal of same reveals that complainant company has made specific allegations against the present petitioners who approached the complainant company by introducing themselves as the in-charge and responsible for the functioning of the day to day affairs of the partnership firm. It further reveals that the present petitioners are also responsible for making payments for the supply of goods from the complainant company.

9. I have also perused the judgments relied on by the counsel for the petitioner. There is no dispute with regard to the settled proposition of law but the judgments relied on by counsel for the petitioner are distinguishable to the present facts and circumstances.

10. As far as the contention of the Counsel for the petitioners that the petitioners are not empowered to sign the cheque is concerned, there is nothing before this Court which specifically shows that the petitioners are not empowered to do so.

11. In view of the above, I find no infirmity in the impugned orders dated 16.03.2023 and the same is hereby upheld. The prayers are untenable in law. Hence, this Court does not deem it appropriate to issue notice to the respondents. Consequently, the present petition is dismissed.

12. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.