
(2010) 01 DEL CK 0131

In the Delhi High Court

Case No : Criminal M.Cs. 3200, 3678, 3693 and 3694 of 2009

Hardeep Singh Nagra

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Citation : (2010) 2 BC 613

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Kuldeep Singh and Harpreet Singh, for the Appellant; Jaideep Malik, APP, for the Respondent

Judgement

V.K. Jain, J.—These are petitions u/s 482 of the Code of Criminal Procedure of the Criminal Procedure Code, 1973 for quashing the criminal complaints instituted against the petitioner u/s 138 of the Negotiable Instruments Act.

2. A perusal of the complaints would show that besides M/s Routes Car Rentals (India) Pvt. Ltd., three other persons, including the petitioner, have been arraigned as accused. It has been alleged in paragraph 4 of the complaint that accused No. 4 i.e. Hardeep Singh Nagra had given personal guarantee to the complainant in respect of repayment of loan mentioned in the complaint.

3. The petitioner committed no offence punishable u/s 138 of Negotiable Instruments Act, merely by giving guarantee for the loans taken by accused No. 1 and 2. It is the drawer of the cheque who is liable to punishment in case the cheque used by him towards discharge in full or in part of a debt or liability, when presented to his bank for encashment, is dishonoured for want of funds and he fails to make payment within 15 days of receipt of notice envisaged in proviso (b) to Section 138 of the Act. There is no allegation in the complaint that the cheques in question were drawn by the petitioner. Section 138 of Negotiable Instruments Act does not fasten any criminal liability on the guarantor of a loan secured or sought to be paid by way of a cheque, which, when presented to the

bank for encashment is dishonoured for want of funds. Of course, the guarantor incurs a civil liability to pay the debt guaranteed by him and his liability may be joint as well as several, but, he is not liable to be punished u/s 138 of Negotiable Instruments Act.

4. Though learned Counsel for the petitioner fairly conceded that the petitioner is a Director in M/s Routes Car Rentals (India) Pvt. Ltd which has been arraigned as accused No. 1, there is no averment to this effect in the complaint. If the offence u/s 138 of Negotiable Instruments Act is committed by a company, every person who is in-charge of and responsible to the company for conduct of its business, at the time of commission of offence, is also liable to punishment on account of vicarious liability created by Section 141 of the Act. This is not the case of the complainant that petitioner No. 4 was also a person in-charge of and responsible to the company M/s Routes Car Rentals (India) Pvt. Ltd. for conduct of its business. In the absence of such an averment in the complaint it also cannot be said that the petitioner is vicariously liable for the offence committed by the company u/s 138 of the Negotiable Instruments Act on account of dishonor of the cheques issued by it and its failure to make payment even after the receipt of notice from the complainant.

5. Since no offence u/s 138 of Negotiable Instruments Act is made out against the petitioner from the averments made, the criminal complaints subject matter of these petitions to the extent they pertain to the petitioner are hereby quashed. However, the trial will continue as far as the other accused are concerned.