

(2022) 12 DEL CK 0262

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1091 Of 2022, Criminal Miscellaneous Application No. 4715 Of 2022

Rushmika Chatterji

APPELLANT

Vs

Nct Of Delhi & Anr.

RESPONDENT

Date of Decision : 20-12-2022

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138(c), 141, 141(1), 141(2)

Citation : (2022) 12 DEL CK 0262

Hon'ble Judges : Jasmeet Singh, J

Bench : Single Bench

Advocate : Jai Bansal, Abhishek Verma, Ajay Vikram Singh, Amol Sharma, Jagriti Ahuja

Final Decision : Dismissed

Judgement

Jasmeet Singh, J

1. This is a petition seeking quashing of Case No. 9367/2017 pending before the Court of learned MM, Patiala House Courts, New Delhi in case titled as "HDFC Bank Ltd. vs. M/s Techno Automobiles Pvt. Ltd. & Ors.".

2. It is stated by Mr. Bansal, learned counsel for the petitioner that the petitioner is the Director who was not involved in the day-to-day affairs of the M/s Techno Automobiles Pvt. Ltd. He has drawn my attention to paragraph 3, 4 and 7 to state that the allegations against the petitioner are of a stereotype nature and it is Mr. Sandeep Bansil i.e. accused No.3, who was running the entire show.

3. He has further relied on the judgment of the Hon'ble Supreme Court in "Dilip Hariramani vs. Bank of Baroda" [(2022) SCC OnLine SC 579], and more particularly, paragraph 13, which reads as under:-

"13. In the present case, we have reproduced the contents of the complaint and the deposition of PW-1. It is an admitted case of the respondent Bank that the

appellant had not issued any of the three cheques, which had been dishonoured, in his personal capacity or otherwise as a partner. In the absence of any evidence led by the prosecution to show and establish that the appellant was in charge of and responsible for the conduct of the affairs of the firm, an expression interpreted by this Court in *Girdhari Lal Gupta v. D.H. Mehta* to mean "a person in overall control of the day-to-day business of the company or the firm?", the conviction of the appellant has to be set aside.¹² The appellant cannot be convicted merely because he was a partner of the firm which had taken the loan or that he stood as a guarantor for such a loan. The Partnership Act, 1932 creates civil liability. Further, the guarantor's liability under the Indian Contract Act, 1872 is a civil liability. The appellant may have civil liability and may also be liable under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. However, vicarious liability in the criminal law in terms of Section 141 of the NI Act cannot be fastened because of the civil liability. Vicarious liability under sub-section (1) to Section 141 of the NI Act can be pinned when the person is in overall control of the day-to-day business of the company or firm. Vicarious liability under sub-section (2) to Section 141 of the NI Act can arise because of the director, manager, secretary, or other officer's personal conduct, functional or transactional role, notwithstanding that the person was not in overall control of the day-to-day business of the company when the offence was committed. Vicarious liability under sub-section (2) is attracted when the offence is committed with the consent, connivance, or is attributable to the neglect on the part of a director, manager, secretary, or other officer of the Company."

4. Mr. Bansal, learned counsel also relies upon the judgment titled "*Sunita Palta & Ors. vs. M/s Kit Marketing Pvt. Ltd.*" in CRL.M.C. 1410/2018.

5. He states in the present case that there are only bald averments and the petitioner was not running the day-to-day affairs of the said automobile company.

6. He further submits that the cheque is not signed by the petitioner and also was not the authorised signatory of M/s Techno Automobiles Pvt. Ltd. He further states that the blank cheque which is the cheque in question was given way back in the year 2013 and the same has been filled by the respondent No.2 and lodged for presentation.

7. Per contra Mr. Sharma, learned counsel for the respondent has drawn my attention to paragraph 8 of the complaint which shows that the petitioner had executed a deed of guarantee dated 28.10.2013. He further has drawn my attention to a judgment titled "*Standard Chartered Bank vs. State of Maharashtra and Ors.*" [(2016) 6 SCC 62] and more particularly, paragraphs 30 and 31 which read as under:- "30. We have referred to these decisions as they explicitly state the development of law and also lay down the duty of the High Court while exercising the power of quashing regard being had to the averments made in the complaint petition to attract the vicarious liability of the persons

responsible under Section 141 of the Act.”

31. Now, is the time to scan the complaint. Mr. Divan, learned Senior Counsel appearing for the appellant-Bank, has drawn our attention to paras 2, 4 and 10 of the complaint petition. They read as follows:-

“2. I further say that I know the accused abovenamed.

Accused 1 is a company incorporated under the Companies Act, 1956 having its registered address as mentioned in the cause title. Accused 2 to 7 are the Chairman, Managing Director, Executive Director and whole-time Director and authorized signatories of Accused 1, respectively. As such being the Chairman, Managing Director, Executive Director and whole time Director were and are the persons responsible and in charge of day to day business of Accused 1 viz. when the offence was committed. Accused 6 and 7 being signatories of the cheque are aware of the transaction and therefore Accused 2 to 7 are liable to be prosecuted jointly or severally for having consented and/or connived in the commission of present offence in their capacity as the Chairman, Managing Director, Executive Director, whole-time Director and authorized signatories of Accused 1, further the offence is attributable to Accused 2 to 7 on account of their neglect to ensure and make adequate arrangements to honour the cheque issued by Accused 1 and further on account of the neglect of Accused 1 to 7 to comply with the requisition made in the demand notice issued under the provisions of Section 138(c) of the Negotiable Instruments Act within the stipulated period. The accused are therefore liable to be proceeded.

4. I say that Accused 1 through Accused 2 and 3 approached the complainant Bank at its branch situated at Mumbai for a short term loan facility for a sum of Rs. 200 crores to meet the expenditure of four ORV vessels being built at ABG Shipyard. After verifying the documents submitted the complainant bank vide its sanction letter dated 28-4-2012 sanctioned the said facility for the purpose mentioned therein. The said terms and conditions mentioned in the sanction letter dated 28-4-2012 were duly accepted by Accused 1 by signing the same. Accused 1 also agreed to pay interest at the negotiated rate by the complainant Bank. Hereto annexed the marked as Ext. “B” is a copy of the said sanction letter dated 28-4-2012.

10. I say that Accused 1 to 7 were aware that the aforesaid cheque would be dishonoured for being “account blocked” and all the accused, in active connivance mischievously and intentionally issued the aforesaid cheques in favour of the complainant Bank.””

8. I have heard learned counsels for the parties.

9. In the present case, respondent has stated that the petitioner was in-charge

and responsible for conduct of the affairs of M/s Techno Automobiles Pvt. Ltd. In addition, a deed of guarantee dated 28.10.2013 was executed by the petitioner in favour of the respondent bank.

10. Mr. Sharma, learned counsel further states that the Form-32 has not been filed which is a part of the Trial Court records which shows that the petitioner is a Promotor/ Director of M/s Techno Automobiles Pvt. Ltd.

11. The fact whether she was responsible for day-to-day affairs of the company and to what extent cannot be adjudicated today in the absence of her stepping into the witness box.

12. Lastly, the judgment relied upon by the learned counsel for the petitioner was a judgment where the trial had been concluded and thereafter, it was after scrutiny of evidence that the Hon'ble Supreme Court was of the view that the petitioner therein was not in control of the company or running the day-to-day affairs of the company. That stage is yet to arrive in the facts of the present case.

13. The observations in the judgment titled "Sunita Palta & Ors. vs. M/s Kit Marketing Pvt. Ltd." (supra) are also on similar lines of the year 2020 but do not take into account the judgment of the Hon'ble Supreme Court in "Standard Chartered Bank vs. State of Maharashtra and Ors." (supra).

14. In this view of the matter, there is no merit in the petition and the same is dismissed.