(2009) 10 DEL CK 0138

In the Delhi High Court

Case No : Criminal M.C. No. 2687 of 2009

Sudesh Jain APPELLANT

Vs

State of NCT (Delhi) and Another RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2010) 1 BC 659 : (2010) 2 Crimes 642

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

Bench : Single Bench

Advocate : Nitesh Kr. Singh, for the Appellant; Pawan Bahl, APP, for the Respondent

Judgement

V.K. Shali, J.—This is a petition filed by the petitioner for quashing of the complaint case No. 4123/2008 u/s 138 of the Negotiable Instruments Act registered at P.S. Mandawali, Delhi in case titled Anil Kumar Jain v. State and Ors. pending before Mr. Sanatan Prasad, the learned Metropolitan Magistrate, Karkardooma Courts, Delhi.

2. Briefly stated the facts of the case are that the respondent No. 2 filed a criminal complaint against the present petitioner, her husband Mr. Anil Kumar Jain and their company, M/s Freedom Measures Pvt. Ltd. (hereinafter referred as ''the company'') to whom he had advanced the loan of Rs. 2,40,000/-. The said loan amount carried the interest @18% per annum. It is alleged that in discharge of the said liability of repayment of loan, the company M/s Freedom Measures Pvt. Ltd. through its Director Anil Kumar Jain issued a cheque of Rs. 2,68,000/- drawn on The Jammu & Kashmir Bank Ltd. Chawri Bazar, Delhi dated 23rd April, 2008, however, the said cheque on presentation had bounced. It is alleged that the present petitioner was the Director of the company in question, and therefore, the petitioner was vicariously liable for the offence u/s 141 of the Negotiable Instruments Act. Since the aforesaid liability was not discharged despite a statutory demand notice having been issued, accordingly, the complaint

in question was filed. The learned Metropolitan Magistrate after recording the pre summoning evidence passed the summoning order not only against the petitioner but also against her husband Anil Kumar Jain and the Company M/s Freedom Measures Pvt. Ltd. The petitioner feeling aggrieved by virtue of the said summoning order has not only challenged the same by way of present petition but has also prayed for quashing of the complaint.

3. I have heard the learned Counsel for the petitioner as well as the learned Counsel for the respondent. The main contention of the learned Counsel for the petitioner has been that before making a Director of a Company vicariously liable under the provisions of 141 of the Negotiable Instruments Act the complainant must not only make an averment in the complaint that the said Director was in-charge and responsible for the day to day conduct of the business of the company but he must also adduce the evidence in this regard. Reliance in this regard is placed on S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, , T. Stanes & Co. Ltd. v. A. Jaffarullah (2000) 1 SCC 1174, K.K. Ahuja Vs. V.K. Vora and Another, , Sabitha Ramamurthy and Another Vs. R.B.S. Channabasavaradhya, .

4. The learned Counsel for the respondent has contested the plea of the learned Counsel for the petitioner and urged that the question as to whether the petitioner was in-charge and responsible for the conduct of the business of the company at the time when the cheque was dishonoured is the question of fact which can be proved only when the parties adduce their respective evidence before the Court for adjudication of the case on merits.

5. I have gone through the judgments cited by the learned Counsel for the petitioner. This is a settled legal proposition of law by now that in order to bring the Director of the company within the ambit of vicarious liability in terms of the Section 141 of the Negotiable Instruments Act for commission of an offence u/s 138 of the Negotiable Instruments Act, not only there has to be an averment in the complaint that the said Director was in-charge and responsible for day to day conduct of the business of the firm or a company at the time when the cheque was dishonoured but it must also be prima facie established by way of documents or by way of evidence which is led at the stage of preliminary evidence to show that he was actually holding such a position so as to conduct the day to day business. It is not merely holding of an office of a Director which would be considered sufficient to bring a person within the ambit of vicarious liability for having committed an offence. Reliance in this regard is placed on S.M.S. Pharmaceuticals? case (supra).

6. The recent trend in these cases of Section 138 of the Negotiable Instruments Act especially where there are private limited companies closely held by the family members and where female family members are holding the position of a Director, the complainant wants to enrobe such family members knowingly fully well that once such lady Directors are made as an accused and she is summoned, it is bound to put pressure on the other co-accused persons to come

round and either pay the debt or settle the same across the table. I feel that this is a gross abuse of the processes of law in case there is a person who is simply alleged to be a Director but it is not shown as how he is the incharge of day to day conduct of the business of the company at the relevant time is summoned to face the trial. In the light of the aforesaid legal position the only averment which has been made in the complaint against the present petitioner is that she is the Director of the company. There is not even an iota of averment that she was in-charge and responsible for day to day conduct of business of the company at the relevant time when the cheque in question is purported to have been issued or bounced much less is there prima facie evidence in this regard. The affidavit which has been sworn by the petitioner at the pre-summoning stage is nothing but the replica of the complaint. This factual matrix in my considered opinion does not satisfy the basic requirement of law u/s 141 of the Negotiable Instruments Act for making the petitioner vicariously liable for having committed an offence u/s 138 of the Negotiable Instruments Act.

7. For these reasons mentioned above, there is a merit in the contention of the petitioner that the complaint does not make out a prima facie a case against the present petitioner for having committed an offence u/s 138 read with Section 141 of the Negotiable Instruments Act vicariously and accordingly the complaint itself against her is quashed. A copy of this order be sent to the learned Trial Court.