NC: 2024:KHC:8143
CRL.P No. 7982 of 2023

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 7982 OF 2023

BETWEEN:

MR. SAROJ KUMAR SAHOO
S/O KHYAMAKAR SAHOO
AGED ABOUT 46 YEARS
RESIDING AT MOCHIBANDH
KENDUJHAR, ODISHA - 758 001.

...PETITIONER

(BY SRI ANIRUDH, ADV.)

AND:

MULURA LOGISTICS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF COMPANIES ACT, 2013
HAVING ITS OFFICE AT NO.333, 3RD FLOOR
THIMMAIAH ROAD, VASANTH NAGAR
BANGALORE, KARNATAKA - 560 054.

...RESPONDENT

(BY SRI SHRISH KRISHNA, ADV.)

Digitally signed by B A KRISHNA KUMAR
Location: HIGH COURT OF KARNATAKA

THIS CRL.P FILED U/S.482 CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.51444/2022 DATED 03.03.2022 PENDING ON THE FILE OF XVII ADDITIONAL JUDGE, SMALL CAUSES COURT, MAYO HALL COURT (SCCH-21), BENGALURU ARISING OUT OF DISHONOUR OF CHEQUE NO.208207 DRAW ON BANK OF INDIA, KEONJHAR BRANCH U/S 200 OF CR.P.C. R/W SECTION 138 AND 142 OF NEGOTIABLE INSTRUMENTS ACT AGAINST THE PETITIONER WHO IS ARRAYED AS THE ACCUSED NO.2 THEREIN.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Petitioner, who is facing trial for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') in C.C.No.51444/2022 pending before the Court of XVII Addl. Judge, Small Causes Court, Mayo Hall, Bengaluru, is before this Court under Section 482 Cr.PC with a prayer to quash the entire proceedings in the said case as against him.

2. Heard the learned Counsel for the parties.

3. The respondent-company had filed a private complaint in PCR.No.51569/2022 before the Court of XXXIV Addl. Metropolitan Magistrate, Mayo Hall, Bengaluru, against Utkal Steel and Power Pvt. Ltd., and two others with a prayer to convict and sentence the accused in the said case for the offence punishable under Section 138 of the Act. Petitioner is arrayed as accused no.2 in the said case. The Trial Court, after recording the sworn statement of the complainant, has registered a case against the accused for the offence punishable under Section 138 of the Act and has issued

summons to them. Being aggrieved by the same, the petitioner is before this Court.

4. Learned Counsel for the petitioner submits that the petitioner had resigned from the company as a Director as on the date of presentation of the cheque for realization. Section 141 of the Act provides that only the Directors who are incharge of daily affairs and management of the company can be prosecuted. Former Directors of the company cannot be arrayed as accused and they cannot be vicariously held liable for the company. He submits that the petitioner had already informed the complainant that he had resigned as the Director of the company. Therefore, the respondent-company ought not to have arrayed the petitioner as an accused to the proceedings. In support of his arguments, he has placed reliance on the judgment of the Apex Court in the case of **ANITHA MALHOTRA - (2012)1 SCC 520**, and **DCM FINANCIALS VS J.N.SAREEN - (2008)8 SCC 1**.

5. Per contra, learned Counsel appearing for the respondent submits that in the complaint there is a clear averment that the petitioner is a signatory of the cheque in question. The

signature found in the cheque is not in dispute. It is also not in dispute that the cheque was drawn on the account of accused no.1-company. The authorized signatory of the company can always be prosecuted for the offence punishable under Section 138 of the Act. Signatory of the cheque which is dishonoured is responsible for the incriminating act and he is covered under sub-section (2) of Section 141 of the Act. In support of his arguments, he has placed reliance on the judgment of the Apex Court in the case of **HARSHENDRA KUMAR.D. VS REBATILATA KOLEY & OTHERS (2011)3 SCC 351** and **SUNITA PALITA & OTHERS VS PANCHAMI STONE QUARRY - (2022)10 SCC 152**.

6. The Hon'ble Supreme Court in Anitha Malhotra's case supra, in paragraph 21, has observed as under:

> *"21. Inasmuch as the certified copy of the annual return dated 30-9-1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with Section 74(2) of the Evidence Act, 1872, we hold that the appellant had validly resigned from the Directorship of the Company even in the year 1998 and she cannot be held responsible for dishonour of the cheques issued in the year 2004."*

7. In DCM Financials' case supra, the Hon'ble Supreme Court has held that in case of post-dated cheques becoming due for payment after the Director had resigned from Directorship and had given notice of resignation to the complainant, the past Director who had resigned cannot be arrayed as accused.

8. In the case on hand, the petitioner is not being tried for the offence punishable under Section 138 of the Act on the premise that he is the Director of the company. In the complaint, it is very clearly averred that petitioner is the past Director of accused no.1-company, but he is a signatory to the cheque in question. In the case of Anitha Malhotra and DCM Financials supra, the past Directors who had approached the court were not signatories to the cheque in question. Therefore, the said judgments cannot be made applicable to the facts of the present case.

9. Section 141 of the Negotiable Instruments Act, reads as under:

> *"141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the*

offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or the State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager,

secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, —

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

10. From a reading of the aforesaid provision of law, it is very clear that in a case of Director or a Officer of the company, who has signed the cheque on behalf of the company, it is not necessary to make any specific averment in the complaint with regard to his role in the company. The mere fact that he is a signatory to the cheque in question on behalf of the company would give rise to a responsibility and liability under Section 141(2) of the Act.

11. In Harshendra Kumar's case supra, though the Hon'ble Supreme Court has held that it is untenable to proceed against

the Director who had resigned prior to the offence under Section 138 of the Act was allegedly committed by the company, has held that signatory of the cheque which is dishonoured is clearly responsible for the incriminating act and he will be covered under sub-section (2) of Section 141 of the Act.

12. In **K.K.AHUJA VS V.K.VORA - (2009)10 SCC 48**, at paragraph 27, the Hon'ble Supreme Court has observed as under:

> ***"27.*** *The position under Section 141 of the Act can be summarised thus:*
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> > *(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.*

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and

connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

13. The Hon'ble Supreme Court as well as this Court time and again have held that only those persons who are in charge of and responsible for the conduct of the business of the company at the time of commission of the alleged offence under Section 138 of the Act can be held liable for criminal action. A Director who was not in charge of and who was not responsible for the day-today affairs of the company as on the relevant time cannot be held liable for the offence under Sections 138 & 141 of the Act.

14. It is trite that a bald cursory statement in the complaint that the Director who is arrayed as an accused in the complaint

was in charge of the company for the conduct of the business of the company without specifying the role of the Director in the company is not sufficient to prosecute the Director under Section 141 of the Act. The complaint shall contain averments as to how and in what manner the Director was incharge and was responsible to the accused-company for the conduct of its business and day to day administration. Criminal prosecution of an individual affects his liberty and since for the offence punishable under Section 141 of the Act a person is being vicariously held liable for the act of the company, unless specific role of the Director is spelt out in the complaint, merely on the averment that he is part and parcel of the management of the company, a Director cannot be prosecuted for the offence under Section 141 of the Act.

15. In the present case, a specific averment is made in the complaint that the petitioner is a signatory to the cheque in question. The cheque is dated after the petitioner had resigned as a Director from the company. Therefore, it cannot be said that he cannot be prosecuted for the act of the company, more so in view of sub-section (2) of Section 141 of the Act. Under

the circumstances, I do not find any good ground to entertain this petition. Accordingly, petition is dismissed.

Sd/-
JUDGE

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