

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

CRL.M.C.1143/2005

Judgment delivered on: 01.12.2006

MS BIRTHE FOSTER

.... Petitioner

versus

STATE & ANOTHER

.... Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr Sidharth Luthra with Ms Priya Puri,
Ms Rajni Gupta and Mr Pankaj

For the Respondent No.2 : Mr N.S. Bajwa.

BADAR DURREZ AHMED, J (ORAL)

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 is directed against the order dated 05.09.2003 whereby the petitioner alongwith other accused have been summoned in respect of the complaint bearing bearing No.9234/2001 entitled Umano Moda v Gin Company Ltd pending before the learned Metropolitan Magistrate. Two cheques were issued by Gin Company Ltd, which is the accused No.1 in this case, in favour of the complainant. The cheques were signed by accused No.2 Mr Gier Ivar Nordli who is the Managing Director of the accused No.1 company. The petitioner is the accused No.3 (Ms Birthe Foster). The short point urged by the learned counsel for the petitioner is that the petitioner, who is shown as accused No.3, is not an employee of the accused No.1 company nor has the petitioner any authority to issue any cheque on behalf of the company. He further submits that admittedly the cheques had been issued by the company under the signatures of the accused No.2. The account from which the cheques were issued were also those of the accused No.1 company. It is, therefore, submitted by the learned counsel for the petitioner that the provisions of Section 141 of the Negotiable Instruments Act, 1881 cannot be utilised for the purposes of roping in the petitioner in this complaint. The reason being that the petitioner cannot be regarded as a person who was in charge or responsible to the accused No.1 company for the conduct of business of the said company as contemplated under Section 141. The petitioner was neither a shareholder nor a director or an employee of the said company. Therefore, there was no question of the petitioner being summoned by invoking the provisions of the said Section 141 which relates to offences by companies.

2. The learned counsel appearing on behalf of the complainant/respondent submitted that the petitioner was the agent of the company in India and was conducting their business in India on behalf of the company and, therefore, in his view, the petitioner would fall within the purview of Section 141 of the Negotiable Instruments Act, 1881.

3. It is clear that Section 138 refers to persons who issue cheques on accounts maintained by them. If the persons happen to be juristic persons such as companies then the provision of Section 141 would apply. By virtue of provision 141 not only the company which issues the cheque is made liable but, also the person who, at the time of the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company has been made liable along with the company. A reading of Section 141 (2) of the Negotiable Instruments Act 1881 gives an indication as to who those persons might be. The persons mentioned in sub-section (2) of Section 141 are “any director”, manager, Secretary or other officer of the company. This gives an indication as to which persons would fall within the purview of Section 141 (1) of the said Act. The petitioner is neither a director, manager, secretary or other officer of the company. Furthermore, the petitioner even otherwise was not in charge of or responsible to the accused No. 1 company for the conduct of the business of the said company. It is another matter that as an agent, the petitioner may have handled transactions for and on behalf of the company in India but that does not bring the petitioner within the purview of Section 141 which, in my view, is restricted to an officer of the company or a director or manager or secretary. That being the case. The summoning order, insofar as the petitioner is concerned, is liable to be set aside. The same is set aside and quashed to this extent.

SD./-
BADAR DURREZ AHMED,J

December 01, 2006