

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

Crl.M.C.No. 3524/2007 and Crl.M.A. No. 12806/07

Date of decision : February 06, 2009

SAMEER KARNANI

Petitioner
Through : Mr. Jaswinder Singh, Adv.

Versus

THE STATE and ANR.

Respondents
Through : Mr. M.P. Singh, APP for the
State.

ARUNA SURESH, J.

1. Petitioner Sameer Karnani has filed this petition invoking the jurisdiction of this court under Section 482 Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), assailing the order of the trial court dated 4th July, 2007 passed in Complaint Case No.1667/01 of 2007 under Section 138 of Negotiable Instruments Act, (hereinafter referred to as 'N.I.Act') whereby the trial court was pleased to summon the petitioner along with other accused persons for an offence punishable under Section 138 N.I.Act.

2. Complainant (respondent No.2 herein) is a Private Limited Company and is engaged inter alia in the business of travel, tourism and ticketing. On 7th November, 2006 complainant M/s. TSI-Travel Services International Pvt. Ltd. entered into an agreement with accused No.1 company 'Arunodaya Travels' through accused No.4 Mrs. Rashima. Accused Nos.2 to 4 were the Directors of accused No.1 company. Thereafter complainant had been providing tickets to accused No.1 company during the course of business dealings. Complainant/respondent No.2 company had been maintaining a running account of the accused in its books of account. During the course of business dealings a sum of Rs.3,33,861/- had become due and payable by the accused company and in discharge of its liability, accused company issued two cheques (i) Cheque No.166009, dated 22.03.2007 drawn on Citibank for a sum of Rs.2,00,565/- and (ii) Cheque No.166008, dated 13.4.2007, drawn on Citibank for a sum of Rs.1,33,296/-.

3. These cheques on presentation were dishonoured with the remark 'Insufficient Funds' and on subsequent presentation with the remarks 'Payment stopped by drawer'. Resultantly, respondent No.2 issued a legal notice dated 15th May, 2007, posted on 17-18th May, 2007 to the accused persons, calling upon them to pay the cheques amount within the stipulated period of 15 days on receipt of the notice. The legal notice sent to

accused No.1 company was returned with the remarks 'Always locked'. Petitioner Sameer Karnani (accused No.2, in the complaint) did not send any reply to the legal notice. This notice was duly replied by accused Nos. 3 and 4 separately. Since the accused persons failed to make the payment of the impugned cheques, complainant filed a complaint under Section 138 of the N.I.Act which is under challenge in this petition.

4. Mr. Jaswinder Singh, learned counsel for the petitioner has argued that petitioner had no knowledge of the issuance of the impugned cheques nor he had discharged any responsibility of the company towards business dealings between the complainant and the accused No.1 company; the complaint does not disclose commission of any offence by the petitioner as no specific averments have been made in the complaint to disclose commission of any offence by the petitioner to rope him for vicariously liability for the act of accused No.1 company. He has further submitted that petitioner is not a signatory of the cheques nor he handed over the cheques to the complainant towards discharge of liability of the company as a Director as he never participated in the dealings of the company with the complainant.

5. It is submitted by the learned counsel for the petitioner that ingredients and requirement of Section 141 of the N.I. Act are not made out from the averments in the complaint. The learned M.M. erroneously summoned the petitioner as an accused without application of mind and, therefore, the order of the trial court being illegal deserves to be quashed.

6. None has appeared and contested this petition on behalf of respondent No.2 company for the last two dates of hearing despite service.

7. Mr. M.P.Singh, learned counsel for the respondent/State while refuting the submissions of the learned counsel for the petitioner has urged that it is specifically averred in para 5 of the complaint that petitioner was a Director of the accused No.1 company and was responsible for its day to day business and, therefore, was liable for the acts committed for and on behalf of accused No.1 company and in view of Section 141 of the N.I.Act, has committed an offence within the meaning of Section 138 of the N.I.Act and therefore has been rightly summoned by the trial court.

8. It is a common case of the parties that petitioner is one of the Directors of accused No.1 company. As per the averments in the complaint, the agreement was executed between the complainant and accused No.1 company on 7.11.2006 through Mrs. Rashima, who is Director and accused No.4 in the instant complaint. From the complaint, it is not known as to which of the Directors had issued impugned cheques in favour of the complainant/respondent No.2. The fact remains, petitioner is not the signatory of the impugned cheques. To fasten the liability on the petitioner for offence under Section 138 of the N.I.Act, it is necessary for this court of see the averments contained in the complaint qua the petitioner. The only relevant paragraph wherein the petitioner features is para 5 of the complaint which reads as follows:- 'That in the regular course of business, the complainant was providing tickets to the accused No.1, i.e. Arunodaya Travels (Division of Bradbury SPG and WVG Mills Limited), C-3, LSC-1, Paschimi

Marg, Vasant Vihar, New Delhi-110 057. That the accused No.2 to 4 are the directors of the accused No.1 company engaged in to day to day affairs and management of the accused company, and are jointly and severally liable for the offence complained of. Mrs. Rashima, the accused No.4 had entered in to the agreement with the complainant on 7-11-2006.'

9. Thus, it is clear that allegations against the petitioner and other accused persons being Directors of accused No.1 company are that they are engaged in the day to day affairs and management of the accused company and are jointly and severally liable for the offence complained of. It is only accused No.4 Mrs. Rashima, who has been specifically named in this paragraph having entered into agreement with the complainant on 7.11.2006.

10. From perusal of the entire complaint it is obvious that nowhere the complainant has specifically assigned any role to the petitioner to indicate that petitioner was engaged in the day to day affairs and management of the company and therefore was jointly and severally liable for the offence under Section 138 of the N.I.Act. Prima facie there is nothing on record to suggest that petitioner was actively involved in execution of the agreement dated 7.11.2006 or otherwise was actively involved in the company in company's day to day business.

11. For purposes of Section 141 of the N.I.Act, it was necessary for the complainant to have specifically averred in the complaint that at the time when offence was committed, the person/accused was incharge of and responsible for the conduct of the business of the company. Without this averment being made in the complaint, the requirement of Section 141 of the N.I.Act cannot be said to be satisfied. Merely being a Director of a company is not sufficient to make a person liable under Section 141 of the N.I. Act. It is not necessary that Director of a company is the incharge of and responsible to the company for the conduct of its day to day business. A person is incharge of and responsible for the conduct of the business of the company has to be averred as a fact because, there is no deemed liability of a Director in such cases.

12. True that a Managing Director or a Joint Managing Director are incharge of the company and, therefore, are responsible to the company in the conduct of its day to day business. A person holding such position in a company becomes liable under Section 141 of the N.I.Act. Similarly, a signatory of a dishonoured cheque, may be a Director or a responsible officer of the company is responsible for the incriminating act within the meaning of Section 141 sub-Section 2 of the N.I. Act.

13. In the absence of incriminating circumstances, a Director of a company cannot be deemed to be incharge of and responsible to the company for the conduct of its day to day business under Section 141 of the N.I. Act.

14. In the present case, since there are no specific averments in the complaint that petitioner was incharge of and responsible for the conduct of business of accused No.1

company at the relevant time, no vicarious liability can be fastened upon him in the context of Section 141 of the N.I. Act for offence under Section 138 of the N.I. Act.

15. Hence, petition is allowed. Complaint filed under Section 138 of the N.I. Act being Complaint Case No.1667/01 of 2007 and the consequent summoning order dated 4.07.2007 passed therein by the trial court are hereby quashed qua the petitioner only. The trial court shall continue to proceed with the trial of the case against the other accused persons. Attested copy of the order be sent to the trial court through special messenger.

Sd./-
ARUNA SURESH,J

February 06, 2009