



2024:DHC:8481



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 137/2022 & CRL.M.A. 536/2022**

ASHA CHHATWAL

.....Petitioner

Through: Mr. Sahil Goyal, Advocate.

versus

SURENDRA KOHLI AND ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court seeking quashing of an Order dated 07.09.2019 passed by the Ld. MM-05, NI Act, South, Saket, New Delhi issuing summons to the Petitioner in Complaint Case No.13631/2019 filed under Section 138 of the Negotiable Instrument Act, 1881 (*hereinafter referred to as "NI Act"*).

2. The facts as stated in the complaint are that the Petitioner herein, Respondent No.3/Mr. Sandeep Chhatwal and Respondent No.4/Mr. Brijesh Chhatwal are partners in a partnership firm, namely, M/s M. M. Glass Works. It is stated in the complaint that all the partners of the partnership firm are known to each other and they have also family relations. It is stated that in March, 2017, the partners approached the Respondent No.1/Complainant for a financial loan of Rs.5,00,000/- for business purpose and also by stating that the family is facing economic crisis. It is stated that, accordingly, the Complainant transferred a sum of Rs.5,00,000/- in the



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account of the firm HDFC Bank through RTG UTR No.SBINR52017031400050206. It is stated a cheque bearing No.000774 dated 26.04.2019 of Rs.5,00,000/- drawn on Kotak Mahindra Bank, Green Park, New Delhi was issued to the Complainant towards the repayment of loan. It is stated that the said cheque was signed by Respondent No.3/Mr. Sandeep Chhatwal who was also a partner in the firm. The cheque was presented by the Complainant for encashment with Canara Bank, Green Park, Delhi but the same was returned with remarks "Account Blocked". It is stated that this fact was brought to the knowledge of the partners of the firm, however, no payment was made. It is stated that a legal notice dated 01.06.2019 was served on the firm and all the three partners calling upon the partners of the firm to make the payment of Rs.5,00,000/- within the time prescribed under the NI Act. It is stated that the legal notice was returned undelivered. It is specifically averred in the complaint that the Petitioner herein refused to receive the legal notice. Since the payment was not made to the Complainant, the written complaint under Section 138 of the NI Act was filed against the firm and the partners of the firm. Pre-summoning evidence was recorded and summons were issued. It is stated that summons were also refused to be received by the Petitioner herein. However, on 07.09.2019, the Petitioner herein appeared along with her Counsel before the Trial Court and was admitted on bail. The matter is proceeding before the Trial Court.

3. The present petition has been filed by the Petitioner herein challenging the Order dated 07.09.2019 along with other consequential orders whereby the Petitioner was summoned, contending that there is no specific averment in the complaint that the Petitioner is responsible for the



conduct and business of the partnership firm. The Petitioner has placed reliance upon various Judgments passed by the Apex Court in Sabitha Ramamurthy and Anr. vs. R.B.S. Channabasavaradhya, (2006) 10 SCC 581, S.M.S Phamaceuticals Ltd. vs. Neeta Bhalla and Anr., (2005) 8 SCC 89, Katta Sujatha (Smt) vs. Fertilizers & Chemicals Travancore Ltd. and Anr., (2002) 7 SCC 655, K.P.G. Nair vs. Jindal Menthol India Ltd., (2001) 10 SCC 218, Monaben Ketanbhai Shah and Anr vs. State of Gujarat and Ors., (2004) 7 SCC 15, Dhariwal Tobacco Products Limited and Ors. vs. State of Maharashtra and Anr., (2009) 2 SCC 370 and a Judgment dated 12.02.2013 passed by this Court in **CRL.M.C. 2549/2012** in the case of Vinod Rawal vs. State of Delhi & Anr.

4. Though the Respondents have been served but there is no appearance on behalf of the Respondents.

5. Learned Counsel appearing for the Petitioner states that in the absence of any averment made in the complaint that the Petitioner is responsible for the conduct and business of the partnership firm, the complaint should be dismissed. He places reliance upon the aforementioned Judgments in support of his contention. He states that the Petitioner is not even the signatory of the cheque in question. He states that the Petitioner was only made a namesake partner to the partnership firm because she is the elder member of the family.

6. Heard learned Counsel appearing for the Petitioner and perused the material on record.

7. The issue as to the nature of averments in a complaint has been crystallized by the Apex Court in a number of judgments [Refer: Monaben Ketanbhai Shah vs. State of Gujarat, (2004) 7 SCC 15, S.M.S



Phamaceuticals Ltd. vs. Neeta Bhalla and Anr., (2005) 8 SCC 89 and Gunmala Sales (P) Ltd vs. Anu Mehta, (2015) 1 SCC 103].

8. The principles have been finally crystallized by the Apex Court in S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685.

The relevant portion of the said Judgment reads as under: as under:

“42. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:

42.1. Vicarious liability can be fastened on those who are in-charge of and responsible to the company or firm for the conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;

42.2. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;

42.3. If the substance of the allegations made in the complaint fulfils the requirements of Section 141, the complaint has to proceed in regard to the law.

42.4. In construing a complaint a hypertechnical approach should not be adopted so as to quash the same.

42.5. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141, respectively, should be kept in mind by the Court concerned.

42.6. These provisions create a statutory



presumption of dishonesty exposing a person to criminal liability if payment is not made within the statutory period even after the issue of notice.

42.7. The power of quashing should be exercised very sparingly and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed.

42.8. The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking.

(emphasis supplied)

9. At this juncture, it is relevant to extract certain Sections of the Partnership Act, 1932 to understand as to how a business of a firm is conducted, mutual right and liabilities of the partners of a partnership firm and how the partners bind each other. Sections 12, 13, 18, 19, 22, 23 and 25 of the Partnership Act, 1932 read as under:

“Section 12: THE CONDUCT OF THE BUSINESS.

Subject to contract between the partners –

(a) every partner has a right to take part in the conduct of the business;

(b) every partner is bound to attend diligently to his duties in the conduct of the business;

(c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have



the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners;

(d) every partner has a right to have access to and to inspect and copy any of the books of the firm;

(e) in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of access to and to inspect and copy any of the books of the firm.

Section13: MUTUAL RIGHT AND LIABILITIES.

Subject to contract between the partners –

(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

(c) where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;

(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum;

(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him

(i) in the ordinary and proper conduct of the business; and



(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

(f) a partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

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Section 18. Partner to be agent of the firm.

Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.”

Section 19. Implied authority of partner as agent of the firm.

(1) *Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.*

The authority of a partner to bind the firm conferred by this section is called his implied authority--.

(2) *In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—*

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,



- (c) compromise or relinquish any claim or portion of a claim by the firm,*
- (d) withdraw a suit or proceeding filed on behalf of the firm,*
- (e) admit any liability in a suit or proceeding against the firm,*
- (f) acquire immovable property on behalf of the firm,*
- (h) transfer immovable property belonging to the firm, or*
- (g) enter into partnership on behalf of the firm.*

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Section 22. Mode of doing act to bind firm.

In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Section 23. Effect of admissions by a partner.

An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

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Section 25. Liability of a partner for acts of the firm.



Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.”

10. A perusal of the abovementioned Sections shows that every partner has a right to take part in the conduct and business of a partnership firm and is bound to attend the duties diligently for the conduct of the business of the firm. Section 18 of the Partnership Act postulates that a partner is an agent of the firm for the purpose of business of the firm. Section 22 of the Partnership Act prescribes that in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the name of the firm, or in any other manner expressing or implying an intention to bind the firm which would mean that every partner is bound by it. Section 25 of the Partnership Act prescribes that every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

11. A perusal of the complaint discloses that it has been specifically averred in the complaint that all the partners approached the Complainant for a friendly loan and that all the partners are known to each other and they are having family relations. The relevant portion of the complaint reads as under:

“2. That your all the partners were known to each other very well more than three decades and were having the family relations also visiting each others.

3. That in the month of March 2017, you partners approached and requested the complainant to lend/help us as friendly financial loan Rs.5,00,000/- (Rupees Five lakhs) for the business purpose as economically crises, bonafide need and requirement



and all of you promised to refund the amount to complainant within years. Accordingly the complainant had transferred Rs. Five lakh (Rs.5,00,000/-) to your one of the partner RTG UTR No. SBINR52017031400050206 on 14th March 2017 in your firm account (Bank HDFC) as per your advice and the same was duly received and acknowledge by your firm.”

12. The fact that the Petitioner herein, Respondent No.3/Mr. Sandeep Chhatwal and Respondent No.4/Mr. Brijesh Chhatwal are partners means that the Petitioner is responsible for the conduct and business of the partnership firm. The complaint as a whole makes out a case for an offence punishable under Section 138 of the NI Act as stated by the Apex Court in S.P. Mani & Mohan Dairy (supra) that a person being a partner in the firm is responsible for the conduct and business of the firm need not to be repeated like a *mantra* in the complaint. The contention of the Petitioner that she is only a sleeping partner can be substantiated by the Petitioner during the trial. The Petitioner has not chosen to file the Partnership Deed to establish her contention that she is only a sleeping partner and in the absence of Partnership Deed, it cannot be said that the Petitioner has brought on record the evidence which is unimpeachable and of sterling quality which would have absolved the Petitioner of the liability under Section 138 of the NI Act. The Trial Court cannot be found fault with for issuing summons to the Petitioner as a partner of the firm.

13. In view of the above, this Court is not inclined to quash the complaint at this juncture. The petition is dismissed, along with pending application(s), if any.



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14. It is made clear that all the observations made by this Court in the Order is only limited for the issue as to whether the Trial Court ought to have issued summons to the Petitioner or not. The issue as to whether the Petitioner was served with a legal notice or not is also left open and it is for the Petitioner to establish the same by leading evidence.

15. This Court has also not made any observations as to whether the Petitioner is responsible for the conduct and business of the firm so as to make the Petitioner vicariously liable for the action of the firm under Section 141 of the NI Act.

SUBRAMONIUM PRASAD, J

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S. Zakir