

(2006) 06 DEL CK 0011**Delhi High Court****Case No:** Criminal M.C. No. 160 of 2005

Dr. (Mrs.) Sarla Kumar

APPELLANT

Vs

Srei International Finance Ltd.

RESPONDENT

Date of Decision: June 1, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 141, 141(1)

Citation: (2006) CriminalCC 71**Hon'ble Judges:** A.K. Sikri, J**Bench:** Single Bench**Advocate:** G.S. Raghav and Mr. Pankaj Jain, for the Appellant; Satish Kumar and Mr. Gautam Singhal, for the Respondent**Final Decision:** Allowed**Judgement**

A.K. Sikri, J.

These three petitions raise same questions of law on the same facts on the basis of which the petitioner seeks quashing of the summons issued to her by the learned Metropolitan Magistrate in the three cases filed by respondent herein u/s 138 of the Negotiable Instruments Act. For the sake of brevity, facts in the case of Crl. M.C. No. 160 of 2005 are noted.

2. In 1982 when M/s. Sansar Braktrols Pvt. Ltd. (hereinafter called as "the company" for short) was incorporated as a company, petitioner was one of the founder Director. However, that was 24 years ago and the petitioner who is a lady was 55 years of age. Today she is 79-80 years of age. The petitioner had resigned from the Directorship of the said company on 20.8.1994. Form No. 32 to this effect was also submitted with the Registrar of Companies (ROC). At the time of launch of the said company the petitioner along with her family members was residing in a rented accommodation situated at A-8, Gulmohar Park, New Delhi. She had vacated this

house in the year 1993 after petitioner had purchased residential house which is F-23, Hauz Khas, New Delhi.

3. It appears that the company had issued three cheques to the respondent herein and as those cheques were dishonored, the respondent filed the complaint against the company as well as Directors u/s 138 of the Negotiable Instruments Act being Criminal Complaint No. 1337/2004. Before filing this complaint, notice dated 20.9.2003 was also sent to the company and its Directors. It was also sent to the petitioner but at Gulmohar Park address which she had left 10 years ago and, therefore, she did not receive the said notice. On summons being issued in the said complaint vide order dated 29.10.2003 and served upon the petitioner as well, she has filed present petition for quashing of these proceedings qua her. The case is pending in the Court of Shri Rakesh Kumar, MM, Karkardooma Court, Delhi.

4. The aforesaid facts are not in dispute. The three cheques issued by the company are dated 15.5.2003, 15.6.2003 and 15.8.2003 and all are in the sum of Rs. 1,16,300/- each. Those cheques were issued when the petitioner was not the Director of the company. A perusal of the complaint would show that the only reason given for impleading the petitioner is that she is the Director of the company and "in-charge and responsible for day-to-day conduct and business of accused No. I company at the time of commission of offence". As aforesaid, the petitioner has placed on record clinching evidence viz. the certified copy of Form No. 32 to show that she ceased to be the Director w.e.f. 20.8.1994. Thus not only she was not the Director at the relevant time, by no stretch she could be treated as the person in-charge of the affairs of the company. Learned Counsel for the petitioner has referred to the judgment of the Division Bench of Bombay High Court in the case of Saumil Dilip Mehta Vs. State of Maharashtra and Others, holding that a Director ceases to be so as soon as resignation is accepted by the Board of Directors and he is not required to fill Form 32 and issue notice to the ROC as that is the responsibility of the company. It is also held in this case that any liability incurred by the company after the retirement of the Director is not the responsibility of the retiree Director and he would be liable only for unpaid amount of shares purchased by him.

5. Learned Counsel for the respondent relying upon cases of S.V. Muzumdar & Ors. v. Gujarat State Fertilizer Co. Ltd & Anr. 2005 (1) ACJ 604 (S.C.) : 2005 (2) CCC 720 (S.C.) : 2005 (2) JCC (NI) 150 SC; Atul Kohli & Anr. v. State of Punjab & Anr. 2006 (2) Cri 246(P&H) and in the case of K. Umadevi v. V. Manikandan, 2006 (3) CCC 584 (Mad) : 2006 (2) Cri 223 (Mad.), contended that whether the petitioner had resigned or not is a question of fact and can be gone into at the stage of trial and should not be dealt with in these proceedings and should not be dealt in these proceedings u/s 482 of the Code of Criminal Procedure. In S.V. Muzumdar & Ors. v. Gujarat State Fertilizer Co. Ltd. & Anr. (supra) the Supreme Court observed as under:

We find that the prayers before the Courts below essentially were to drop the proceedings on the ground that the allegations would not constitute a foundation

for action in terms of Section 141 of the Act. These questions have to be adjudicated at the trial. Whether a person is in-charge of or is responsible to the company for conduct of business is to be adjudicated on the basis of materials to be placed by the parties. Subsection (2) of Section 141 is a deeming provision which as noted supra operates in certain specified circumstances. Whether the requirements for the application of the deeming provision exist or not is again a matter for adjudication during trial. Similarly, whether the allegations contained are sufficient to attract culpability is a matter for adjudication at the trial.

6. The Court, therefore, held that whether or not the evidence to be led would establish the accusations is a matter for trial. No doubt when disputed questions are raised in the petition u/s 482, Cr. P.C. those are not to be decided in these proceedings and the appropriate course is to adjudicate upon such disputed questions at the trial. However, on the other hand, here there are no disputed facts and case is to be decided on the basis of admitted position.

7. In S.V. Muzumdar & Ors. v. Gujarat State Fertilizer Co. Ltd. & Anr. (supra) the ground on which the petitioner wanted quashing of the proceedings u/s 138 of the Negotiable Instruments Act lodged against him as a Director on the ground that he was not in-charge and or responsible to the company for the conduct of the business as required u/s 141(1) of the Act. Therefore, it was because of this reason that the Court opined that whether he was or was not in-charge of the affairs of the company is a matter for trial. This would be clear from Para 9 of the said judgment:

Under Scheme of the Act, if the person committing an offence u/s 138 of the Act is a company, by application of Section 141 it is deemed that every person who is in-charge of and responsible to the company for conduct of the business of the company as well as the company are guilty of the offence. A person who proves that the offence was committed without his knowledge or that he had exercised all due diligence is exempted from becoming liable by operation of the proviso to Sub-section (1). The burden in this regard has to be discharged by the accused.

8. In the instant case, the petitioner was not even Director of the company at the material time and had resigned more than 9 years before the cheques in question were issued. The factum of resignation placed on record is not on the basis of any resolution of the Board of Directors, but certified copy of Form-32 issued by the ROC is filed as per which this form was duly submitted with the ROC on 20.8.1994 and it recorded that she ceased to be the Director w.e.f. 20.8.1994.

9. Judgment in the case of Atul Kohli & Anr. v. State of Punjab & Anr. (supra) decided by Punjab & Haryana High Court would also be clearly distinguishable and has no application. That was a case where cheque was bounced on 25.6.2003 and the Director took plea that she resigned w.e.f. 18.5.2003 and in support Board Resolution was produced. Form-32 was also produced but it was filed with the ROC on 16.7.2003 i.e. much after bouncing of the cheque. Thus Form 32 could not come

to the aid of the petitioner in the said case and as far as Board Resolution was concerned, the Court rightly observed that it was a disputed question of fact which could not be gone into in proceedings u/s 482 of the Crl. P.C.

10. Likewise in K. Umadevi v. V. Manikandan (supra) certified copy of Form-32 was not produced but only X-ray copy of extract of Form-32 was produced and Court did not believe the said extract observing that "there are instances where the extract of Form-32 produced by the accused Director to show that he or she had resigned from the company which was registered by the ROC turned out to be a false and fabricated one".

11. In the present case as the petitioner has filed the certified copy issued by the ROC itself, authenticity thereof cannot be disputed. Such a document is conclusive of the fact that the petitioner had resigned w.e.f. 20.8.1994. Therefore, she was not in-charge or responsible for day-to-day affairs of company and could not be so.

12. The above petitions are accordingly allowed and the criminal complaint Nos. 1337/2004, 1362/2004 and 1341 /2004 respectively filed against the petitioner which are pending in the Court of Mr. Rakesh Kumar, MM are quashed qua the petitioner.