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

+ CRL.M.C. 6461/2022 & CrI. M.A. No.25177/2022

MAN MOHAN PATNAIK Petitioner

Through: Mr. Sandeep Mahapatra with
Mr.Osheen Verma, Advocates.

versus

CISCO SYSTEMS CAPITAL INDIA PVT.LTD & ORS.

..... Respondents

Through: Mr. Kartik Bhalla, Advocate for R1.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **02.12.2022**

CrI. M.A. No. 25178/2022

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

Application stands disposed of.

CRL.M.C. 6461/2022

By way of the present petition under section 482 of the of the Criminal Procedure Code 1973 ('CrPC' for short) the petitioner impugns summoning order dated 19.09.2019 made by the learned Metropolitan Magistrate in C.C. No. 17370/2018 under section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short).

2. Mr. Sandeep Mahapatra, learned counsel appearing on behalf of the petitioner submits, that though the petitioner was one of the signatories to the cheques that are the subject matter of the criminal complaint, at the time when these were signed and issued, the cheques were post post-dated for 30.07.2018 and 30.08.3018, and had been issued on behalf of M/s. Ortel Communication Ltd./respondent No.2, where the petitioner was employed as Chief Technology Officer, at the time of signing of the cheques. Counsel submits however that the petitioner retired from employment w.e.f. 06.01.2018.
3. Counsel draws attention to Office Order dated 11.01.2018 issued by respondent No.2 as an official communication that the petitioner had retired from the services of the company and intimating the appointment of an alternate officer in his stead. It is also pointed-out that Office Order dated 11.01.2018 also recorded that the officer appointed in place of the petitioner was to be responsible for all technology related activities etc. with immediate effect.
4. Attention is also invited to letter 09.01.2018 issued by respondent No.2 to the National Stock Exchange of India Ltd., informing the Stock Exchange of the retirement of the petitioner and of the appointment of the alternate officer.
5. Mr. Mahapatra submits that, as is evident from the cheque return memos, the subject cheques were presented for encashment and returned for insufficient funds on 25.10.2018; but the petitioner was in no way engaged with the business or affairs of respondent No.2 on that date since he had retired more than 9 months earlier.

6. It is also argued that along with the criminal complaint, the complainant/respondent No.1 has itself filed the List of Signatories of respondent No.2 company, as derived from the Company Master Data available with the Registrar of Companies, which does not reflect the petitioner's name at all.
7. It is argued however, that none of the foregoing aspects was considered by the learned Metropolitan Magistrate at the time of summoning the petitioner *vide* order dated 19.09.2019; and the learned Metropolitan Magistrate has proceeded to summon the petitioner only for the reason that he was one of the authorized signatories who co-signed the cheques.
8. Upon a *prima-facie* conspectus of the averments contained in the petition and the submissions made; and upon a perusal of the documents annexed with the petition, issue notice.
9. Learned counsel appearing on behalf of respondent No.1 accepts notice; and seeks time to file reply.
10. Upon the petitioner taking requisite steps let notice be sent to all other respondents, by all permissible modes, returnable for the next date.
11. Let reply to the petition be filed within 06 weeks of service; rejoinder thereto, if any, be filed within 04 weeks thereafter; with the copies to the opposing counsel.
12. Upon a bare perusal of section 138 of the NI Act, it is evident that the genesis of an offence under that provision is the '*return*' of a cheque by a bank '*unpaid*', *inter-alia* for insufficiency of funds in the account on which the cheque is drawn. Furthermore, the provision also stipulates certain pre-conditions which must be fulfilled before the offence is

taken to be committed, one of which is the issuance of a written notice of demand for payment to the drawer of the cheque within 30 days of the cheque being returned unpaid by the bank; and giving to the drawer at least 15 days from the date of receipt of notice, to make such payment.

13. Furthermore, section 141 of the NI Act is clear, that if the person committing the 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 ... shall be liable to be proceeded against and punished accordingly...”

(emphasis supplied)

Clearly therefore, on a *prima facie* view, merely being a signatory to a cheque does not, in and of itself, make a person guilty of the offence under section 138 of the NI Act. The offence is triggered at the stage when a cheque is *returned unpaid* by the bank *inter-alia* for insufficiency of funds. For guilt to be imputed to an officer of a company, at the very least, the officer should have been responsible for the business and affairs of the company and for honouring the cheque *on the date that the cheque was returned unpaid*.

14. In the present case, it is clear that though the petitioner co-signed the cheques in question, he had retired from the company more than 09 months before the cheques came to be presented; and could not therefore have ensured sufficient funds in the bank account of the company to honour the cheques, even if he had so desired.

15. On a first blush therefore, the deeming provision contained in section 141 NI Act would not apply to the petitioner, since he was no longer in charge of the affairs of the respondent company on the date that the offence defined in section 138 was committed.
16. In view of the above, further proceedings in C.C. No. 17370/2018 dated 07.01.2022 *insofar as they concern the petitioner*, are stayed, until further orders.
17. Re-notify on 29th March 2023.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 2, 2022

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