

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

**W.P. (Cr.) No. 485 of 2024**

**With**

**W.P. (Cr.) No. 486 of 2024**

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Ripunjay Prasad Singh,

**.... Petitioner**

-- Versus --

1. The State of Jharkhand
2. Md. Jamal,

**.... Respondents**

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner	:-	Mr. Kaushik Sarkhel, Advocate
For the State	:-	Mr. Binit Chandra, Advocate
For Respondent No.2	:-	Mr. Shashank Shekhar, Advocate

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**07/23.10.2024** In both the writ petitions, the common question of fact and law are involved and in view of that both the writ petitions are being heard together with consent of the parties.

**2.** Heard learned counsel appearing for the petitioner, learned counsel appearing for the respondent State and learned counsel

appearing for the Respondent No.2.

**3.** W.P.(Cr.) No.485 of 2024 has been filed for quashing of the entire criminal proceeding including the order dated 18.09.2019 passed by learned Judicial Magistrate, Ranchi in connection with Complaint Case No.2902 of 2019 whereby the summons have been issued against the petitioner under Section 138 of the Negotiable Instruments Act pending in the Court of learned Judicial Magistrate, 1<sup>st</sup> Class, Ranchi.

**4.** W.P. (Cr.) No.486 of 2024 has been filed for quashing the entire criminal proceeding including the order dated 13.09.2019 passed by learned Judicial Magistrate, Ranchi in connection with Complaint Case No.2959 of 2019 under Section 138 of Negotiable Instruments Act wherein the petitioner has been summoned and the matter is pending in the Court of learned Judicial Magistrate, 1<sup>st</sup> Class, Ranchi.

**5.** The story of both the complaint case is almost similar and since the amount is different that's why both the complaint case has been filed.

**6.** The complaint case was filed alleging therein that the opposite party No.2 has alleged inter alia stating in the complaint petition that he owns and possess a piece and parcel of land under Khewat No.10, which appertains to Plot No.573, measuring an area 2.89 acres and plot Nos.574 and 593 measuring an area 6 decimal and 37 decimals

respectively situated at Village Purani Ranchi, PS – Kotwali, District – Ranchi. It is further alleged that the petitioner had a dialogue of sale of plot No.573 measuring an area 2.81 acres out of 2.89 acres @ Rs.5 lakhs per decimal with M/s Morias Infrastructure Pvt. Ltd. and after examining the document, he believed that opposite party No.2 is the owner of the property and accordingly agreement to sale was drafted in English language, whereas the allegation of the opposite party No.2 that he would have been more comfortable in Hindi language. It is further alleged that no earnest money was paid by the said Morias Infrastructure Pvt. Ltd. on the day of execution of deed of agreement to sale dated 04.06.2016. It is also alleged that Director of Morias Infrastructure Pvt. Ltd. valued the said property to the tune of Rs. Four crores thirty lacs in the agreement which was not the price negotiated. It is also alleged that protest was made by the opposite party No.2 with Morias Infrastructure Pvt. Ltd. and price on a total lump sum price for Rs.11,64,50,000/- was fixed, which was to be paid by the Morias Infrastructure Pvt. Ltd. to opposite party No.2 at the time of execution of deed of sale. The said Morias Infrastructure Pvt. Ltd. got the deed of sale executed in favour of Kanodia Builders LLP, for a valuable consideration amount of Rs.11,64,50,000/- towards TDS which was deposited by Kanodia Builders LLP in the account of Central Government vide BRS Code No.6360218, challan No.33142 dated 03.06.2016. On verification, the opposite party No.2 found that no

amount has been credited in his account and on being questioned, the respondent No.2 got 5 demand drafts from Morias Infrastructure Pvt. Ltd. of Rs. Three Crore Thirty Lacs, which were duly credited on 08.06.2016 and 14.06.2016 and balance amount was to be paid by Morias Infrastructure Pvt. Ltd. It is further alleged that in order to pay off the legal debt, a cheque bearing Nos.000279 and 000280 was issued by the Morias Infrastructure Pvt. Ltd. but it could not be honored due to insufficient fund and accordingly the opposite party No.2 issued notice to the Morias Infrastructure Pvt. Ltd. and the petitioner but payment was not made to him, hence he filed a complaint under Section 138 of the NI Act.

7. Learned counsel appearing for the petitioners submits that in the first case, the amount of cheque is Rs.50 lacs and in the second case the amount of cheque is also Rs.50 lacs which was dishonored, pursuant to that the complaint case has been filed and the learned Court has been pleased to summon the petitioners under Section 138 of the Negotiable Instruments Act. He further submits that petitioners have paid a sum of Rs.7 crores and only Rs.3 crores remains to be paid. He submits that this figure has come pursuant to a compromise reached between the parties in W.P. (Cr.) No.171 of 2022 in which the challenge was made to the entire criminal proceeding arising out of the complaint case filed by the respondent No.2. He submits that the said writ petition was sent to the mediation center and pursuant to

that the mediation was taken place and thereafter that figure has come and the said writ petition has been disposed of by the order dated 20<sup>th</sup> February, 2024 and in view of the compromise that criminal proceeding was quashed. He submits that respondent No.2 is having the right title possession of the land in question, however the anti-social elements have not allowed the petitioner to erect the boundary wall and those persons have lodged the revenue case against the respondent No.2. He submits that for that action the petitioner has also filed the FIR which is pending. On the law point, so far these two writ petitions are concerned, he submits that the cheque was issued on behalf of the company namely Morias Infrastructure Pvt. Ltd. in the first case and in the second case on behalf of Kanodia Builders LLP have not been made party. He submits that only the Directors have been made party and in view of that complaint petition itself is not maintainable and to buttress his argument, he relied in the judgment of Hon'ble Supreme Court in the case of ***Aneeta Hada versus Godfather Travels and Tours Pvt. Ltd. reported in (2012) 5 SCC 661.*** He also relied in the order passed by this Court in ***Cr.M.P. No.1748 of 2019 dated 27.03.2023.***

**8.** Relying on the above judgment, he submits that the ratio of that judgment is applicable in both the cases and in view of that the complaint case and the orders summoning may kindly be quashed.

**9.** Per contra, learned counsel appearing for the respondent No.2

submits that the intention of the petitioner from the very beginning was not good. He submits that it is disclosed in the sale deed that the RTGS reference is made and the payment of Rs.11,52,85,500/- is shown through RTGS, however, that amount has not been credited in the account of the respondent No.2 and the RTGS number is forged one. He submits that even the TDS amount has been deducted out of the consideration amount. He submits for that fraud the petitioner has filed the complaint case being Complaint Case No.48 of 2021 which was challenged by the petitioners in W.P. (Cr.) No.171 of 2023. He submits that the writ petition was decided along with W.P. (Cr.) No.202 of 2023, however, those writ petitions were arising out of the same complaint case and in that writ petition mediation was made and pursuant to that it was decided to settle the dispute and the respondent No.2 has agreed to settle after receiving a sum of Rs.4 crores and out of that Rs.4 crores after that 1 crore was paid, however, Rs.3 crore was not paid and those writ petitions were allowed on the basis of the compromise and that criminal proceeding has been quashed. He submits that in this background the cheque was presented which was issued by the Director of the company and the learned Court has rightly called upon the Director to face the trial. He submits in view of that this Court may not interfere with the entire criminal proceeding as well as the summoning order.

**10.** Learned counsel appearing for the respondent State submits

that the dispute is there with regard to the cheque and the summon has been issued and it is for them to make out their case in the trial.

**11.** The only question is required to be considered by this Court as to whether in the absence of the company as a separate accused, the entire criminal proceeding can be quashed or not.

**12.** In paragraph No.9 of the writ petition, it is admitted by the petitioner that the petitioner has issued a cheque in the capacity of the Director namely M/s Morias Infrastructure Pvt. Ltd. and one more person namely Rekha Khetawat who has been made as an accused in the present complaint is the Chief Executive Officer of M/s Kanodia Builders LLP. The admission in paragraph No. 9 of the writ petition, it is crystal clear that the petitioners have issued the cheque in the capacity of the Director of the company.

**13.** While the essential element for implicating a person under Section 141(1) is his or her being in charge of and responsible to the company in the conduct of its business at the time of commission of the offence, the emphasis in Section 141(2) is upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. Thus, the important and distinguishing feature in Section 141(1) is the control of a responsible person over the affairs of the company rather than his holding of an office or his person over the affairs of the company

rather than his holding of an office or his designation, while the liability under Section 141(2) arises out of holding an office and consent, connivance or neglect. Section 141(2) the prosecution would be required to allege and prove the consent, connivance or neglect and holding of the office by the accused. However, there is nothing to suggest that the same person cannot be made to face the prosecution either under Section 141(1) or Section 141(2) or both.

**14.** From perusal of the complaint petition, the Court finds that although the company has not been made accused separately, but complainant has made the Director as accused who has signed the cheque as an accused and mentioned the company name *i.e.* M/s Morias Infrastructure Private Limited in the complaint petition in the name of the accused persons column, just below the name of the Director which clearly reveals that company name is there and involvement of the company is also there. It is well settled law that the person who was at the helm of the affairs of the company and in charge of and responsible for the conduct of the business at the time of the commission of the offence will be liable for the criminal prosecution.

**15.** Further it is admitted position that the Directors have been made party. Notice issued in the name of the Director who signed the cheque and admittedly the notice was issued and the same was received by the Director and it is admitted in the writ petition that



cheques were issued by the petitioner and this aspect of the matter has been answered by Hon'ble The Supreme Court in the case of ***Rajneesh Aggarwal versus Amit J. Bhalla reported in (2001) 1 Supreme 24*** wherein paragraph No.6 it has been held as under:-

*6. Having regard to the contentions raised by the counsel for the parties, two questions really arise for our consideration:*

*(1) Was the High Court justified in coming to the conclusion that the drawer has not been duly served with notice for payment?*

*(2) Whether deposit of the entire amount covered by three cheques, while the matter is pending in this Court, would make any difference?*

*So far as the first question is concerned, it is no doubt true that all the three requirements under clauses (a), (b) and (c) must be complied with before the offence under Section 138 of the Negotiable Instruments Act, can be said to have been committed and Section 141 indicates as to who would be the persons, liable in the event the offence is committed by a company. The High Court itself on facts, has recorded the findings that conditions (a) and (b) under Section 138 having been duly complied with and, therefore, the only question is whether the conclusion of the High Court that condition (c) has not been complied with, can be said to be in accordance with law. Mere dishonour of a cheque would not raise to a cause of action unless the payee makes a demand in writing to the drawer of the cheque for the payment and the drawer fails to make the payment of the said amount of money to the payee. The cheques had been issued by M/s Bhalla Techtran Industries Limited, through its Director Shri Amit Bhalla. The appellant had issued notice to said Shri Amti J. Bhalla, Director of M/s Bhalla Techtran Industries Limited. Notwithstanding the service of the notice, the amount in question was not paid. The object of issuing notice indicating the factum of dishonour of the cheques is to give an opportunity to the drawer to make payment within 15 days, so that it will not be necessary for the payee to proceed against in any criminal action, even*

*though the bank dishonoured the cheques. It is Amit Bhalla, who had signed the cheques as the Director of M/s Bhalla Techtran Industries Ltd. When the notice was issued to said Shri Amit Bhalla, Director of M/s Bhalla Techtran Industries Ltd., it was incumbent upon Shri Bhalla to see that the payments are made within the stipulated period of 15 days. It is not disputed that Shri Bhalla has not signed the cheques, nor is it disputed that Shri Bhalla was not the Director of the company. Bearing in mind the object of issuance of such notice, it must be held that the notices cannot be construed in a narrow technical way without examining the substance of the matter. We really fail to understand as to why the judgment of this court in Bilakchand Gyanchand Co. (supra), will have no application. In that case also criminal proceedings had been initiated against A. Chinnaswami, who was the Managing Director of the company and the cheques in question had been signed by him. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court committed error in recording a finding that there was no notice to the drawer of the cheque, as required under Section 138 of the Negotiable Instruments Act. In our opinion, after the cheques were dishonoured by the bank the payee had served due notice and yet there was failure on the part of the accused to pay the money, who had signed the cheques, as the Director of the company. The impugned order of the High Court, therefore, is liable to be quashed.*

**16.** Since the cheque in question has been signed by the Directors of the company and company name has also been mentioned in the complaint petition just below the name of the Director and Directors have been made named accused and that fact is admitted in the writ petition itself, and for not making company as a separate accused in the complaint petition is not fatal for the prosecution.

**17.** The judgment relied by the learned counsel appearing for the petitioner in the case of **Aneeta Hada** (supra) is not in dispute and it

was held by Hon'ble Apex Court that company has to be made accused, the company can have a criminal liability fastened on it. The company is a juristic person, the concept of corporate criminal liability is attracted to a corporation and company and it is so luminescent from the language employed under Section 141 of the Act. The reason for creating vicarious liability is plainly that a juristic entity *i.e.* company would run by living person who was charge of its affairs but the case in hand, Directors are running the company and taking part actively in the affairs of the company and sign the cheque as a authority of the Director further received the notice under Section 138 of the Negotiable Instruments Act further they have not denied that they are not the Directors of the company and cheque has not been issued by them, hence present case is not helping the petitioner.

**18.** Thus, in view of the above the grounds taken by Mr. Sarkhel can be a subject matter of trial.

**19.** In view of the above, no case of interference is made out, these writ petitions are dismissed.

**(Sanjay Kumar Dwivedi, J.)**

*Sangam/*

**A.F.R.**