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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CrI.M.C. No.5577/2019 & CrI.M.A. No.39370/2019 (for stay)

MR. SUNINDER SANDHA Petitioner
Through Mr.Jatin Sehgal, Adv. with
Mr.Adhirath Singh, Adv., Mr.Madhav
Narayan, Adv., Mr.R. Singh, Adv. &
Ms.Shikha Khurana, Adv.

versus

SANTOSH PANDITA Respondent
Through Nemo.

AND

CrI.M.C. No.5565/2019 & CrI.M.A. No.39398/2019 (for stay)

MR. SUNINDER SANDHA Petitioner
Through Mr.Jatin Sehgal, Adv. with
Mr.Adhirath Singh, Adv., Mr.Madhav
Narayan, Adv., Mr.R. Singh, Adv. &
Ms.Shikha Khurana, Adv.

versus

MAHARAJ KRISHNEN PANDITA Respondent
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

% **31.10.2019**

CrI. M.A.No. 39371/2019 in CrI.M.C. No.5577/2019
CrI. M.A.No. 39340/2019 in CrI.M.C. No.5565/2019

Exemption allowed subject to just exceptions.

The applications stand disposed of.



Crl.M.C. No.5577/2019 & Crl.M.A. No.39370/2019 (stay)
Crl.M.C. No.5565/2019 & Crl.M.A. No.39398/2019 (stay)

The petitioner has challenged the impugned order dated 28.03.2018 by virtue of which the petitioner has been summoned as accused in the complaint case filed by the respondents under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “NI Act”). It is submitted by the counsel for the petitioner that the petitioner has resigned from the Company on 15.03.2016 which is evident from the Form DIR 12. He further submits that this situation was also uploaded on the website of the Ministry of Corporate Affairs. He further submits that the petitioner tendered his resignation on 15.03.2016 which was accepted on the same day and a Board Resolution in this regard was also passed on the same day. He further submits that a Memorandum of Understanding (MoU) was executed between the petitioner and the Company namely M/s Concept Horizon Infra Private Limited on 16.03.2016 and it was agreed that the first party i.e. the Company, would recall all the post-dated cheques issued by the petitioner in the capacity of the Director. He further submits that even the notice under Section 138 of the NI Act was not issued to the petitioner and the respondents have made a wrong averment in the complaint filed by the respondents in the Court of Metropolitan Magistrate stating that the petitioner was also one of the Directors of the Company. Though, he was not on the date of filing of the complaint. He further submits that the learned Magistrate has also not called for the DIR Form and had the Magistrate called the



DIR Form, the position would have been clear with regard to the status of the petitioner in the Company. He relied upon the judgment of this Court in ***Kamal Goyal Vs. United Phosphorus Ltd.*** 2010 (116) DRJ 104, relevant para 13 whereof reads as under:-

“13. It was also contended by the learned counsel for the complainant/respondent that the petitioner being the signatory of cheque in question, he was its drawer within the meaning of [Section 138](#) of Negotiable Instruments Act. In my view, the contention is totally misconceived. The cheque was issued by the Company and not by the petitioner. He only signed the cheque on behalf of the Company. He does not become a drawer of the cheque merely by signing it on behalf of the company when the cheque is issued by the company in discharge of its debt or liability and is not signed by him in his personal capacity. If the contention of the learned counsel for the complainant/respondent is accepted, even an employee of the Company, who on account of his being an authorized signatory signs a cheque issued by the Company towards discharge of the debt or other liability of the Company, would be liable to prosecution and conviction under [Section 138](#) of Negotiable Instruments Act even after he resigns from the company and is no more in its employment. This certainly could not have been the intention of the legislature. Even the vicarious liability created under [Section 138](#) of Negotiable Instruments Act would not be attracted in respect of a Director or an employee of the Company who resigns and severs his connections with the company, unless the complainant is able to bring his case within the purview of sub-Section 2 of Section 141 of [Negotiable Instruments Act](#), by proving that the offence had been committed with his consent or connivance or was otherwise attributable to any neglect on his part.”



Learned counsel for the petitioner also relied on the judgment passed by this Court in ***Sudeep Jain Vs. M/s. ECE Industries Ltd.*** (2013) 201 DLT 461, relevant para 10 whereof reads as under:-

“10. With a view to ensure that the Metropolitan Magistrates dealing with the complaint cases filed under [Section 138](#) r/w [Section 141](#) of the Negotiable Instruments Act have a clear and complete picture of the persons arrayed by the complainant so as to hold them vicariously liable for the commission of the offence by the accused company, I am inclined to direct that the Magistrates must seek copies of Form-32 from the complainant to prima facie satisfy the Court as to who were the directors of the accused company at the time of commission of the alleged offence and on the date of filing of the complaint case. In addition to the above, the Magistrates must also seek information as given in the following table which is to be annexed by the Complainant on a separate sheet accompanying the complaint:-

- a. Name of the accused Company;
- b. Particulars of the dishonoured cheque/cheques;
 - Person/Company in whose favour the cheque/cheques were issued.
 - Drawer of the cheque/cheques
 - Date of issuance of cheque/cheques
 - Name of the drawer bank, its location
 - Name of the drawee bank, its location
 - Cheque No. /Nos.
 - Signatory of the cheque/cheques.
- c. Reasons due to which the cheque/cheques were dishonoured;
- d. Name and Designation of the persons sought to be vicariously liable for the commission of the offence by the accused



Company and their exact role as to how and in what manner they were responsible for the commission of the alleged offence;

e. Particulars of the legal notice and status of its service;

f. Particulars of reply to the legal notice, if any.”

In view of the facts noted above, issue notice to the respondents upon the steps taken by the petitioner by all possible modes, returnable on 05.02.2020.

The proceedings before the Trial Court be stayed qua petitioner/respondent no.3 till the next date of hearing.

RAJNISH BHATNAGAR, J

OCTOBER 31, 2019/aa