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

+ CRL.M.C. 9603/2024 & CRL.M.A. 36844/2024 (stay)

RAKHI RANDHIR ASERPetitioner

Through: Ms. Vinita Tiwari, Advocate

versus

KEI INDUSTRIES LTD.Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
06.12.2024

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CRL.M.A. 36843/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 9603/2024

1. This petition has been filed assailing the impugned order dated 18th July 2019 in Criminal Complaint (C.C.) No.14428/2019 passed by the Metropolitan Magistrate-04, (N.I. Act) South-East, Saket Courts, New Delhi summoning the petitioner in proceedings under Section 138 NI Act.
2. The complaint was filed basis dishonour of a cheque of Rs.11,16,080/- (*Rupees Eleven Lakh Sixteen Thousand and Eighty only*) on 21st May 2019, which was issued by accused no.1, a partnership firm M/s R.D. Enterprises. Accused no.2 was the signatory of the said cheque while accused no.3, wife of accused no.2, was an inactive partner of the firm, and not in-charge of its day-to-day affairs.



3. Accused no.3/petitioner contends that she has been unnecessarily dragged in the matter and summons ought not to have been issued to her. It is further contended that she is a resident of Nagpur, Maharashtra and came to know about this summons in August 2023, whereafter she appeared before the Trial Court as well. Subsequently, she has filed this petition challenging the said summons.

4. Counsel for petitioner, in support of her plea, relies on the decision of the Supreme Court in ***Siby Thomas v. Somany Ceramics Ltd.***, (2024) 1 SCC 348, wherein one of the partners of an accused firm, in Section 138 proceedings, had moved the Punjab & Haryana High Court for quashing of the complaint against him. The High Court dismissed the quashing petition on the basis that the accused therein would have to lead evidence and prove the factum of retirement. The Supreme Court traversed the law in relation to the same, considering *inter alia* decisions in ***Gunmala Sales (P) Ltd. v. Anu Mehta***, (2015) 1 SCC 103, which was noted and cited with approval in ***S P Mani & Mohan Dairy v. Snehalatha Elangovan***, (2023) 10 SCC 685 and ***Ashok Shewakramani v. State Of Andhra Pradesh*** (2023) 8 SCC 473, and held that vicarious liability under Section 141 NI Act can only be attracted if somebody is the managing affairs of the company/firm and is responsible for its day-to-day affairs.

5. Issue notice to respondents, on steps being taken by petitioner, through all permissible modes, returnable on the next date of hearing.

6. In the meantime, proceedings *qua* the petitioner herein (*accused no.3*) shall remain stayed till the next date of hearing.

7. Proceedings against accused nos.1 and 2 are continuing, notices are issued, and the matter is listed before the Trial Court on 6th January 2025.



8. List on 28th March 2025.
9. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 6, 2024/sm/sc