

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. No. 2795 of 2013 and CrI.M.C. No.2809/2013**

Date of decision: 24th April, 2014

SHRI R. RAMAMURTHY & ORS. Petitioners
Through: Mr.Ashu Ann Michael &
Mr. Sajith P. Advocates

versus

M/S ITC LIMITED & ORS. Respondents
Through: Mr. Anil K.Kher, Sr. Adv. with
Mr. Ankur Bansal, Adv.

AND

+ CRL.M.C. 2809/2013 & CrI.M.A. No. 10791/2013

R RAMAMURTHY & ORS. Petitioners
Through: Mr.Ashu Ann Michael &
Mr. Sajith P. Advocates

versus

ITC LTD. Respondent
Through: Mr. Anil K.Kher, Sr. Adv. with
Mr. Ankur Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

1. By way of these two petitions under Section 482 Code of Criminal Procedure, 1973 (hereinafter referred to as `Cr.P.C.`), the petitioners assails the order dated 21.12.2012 passed by learned Metropolitan Magistrate in Complaint Case No.988/1/12 titled M/s ITC Limited vs. M/s Srvana Traders & Ors. and order dated 20.10.2012 passed by learned Metropolitan

Magistrate in Complaint Case No.26/12/12 titled M/s ITC Limited vs. M/s Srwana Traders & Ors. for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). Since both the petitions are on identical grounds and between the same parties, both the petitions are being disposed of by this common order.

2. Brief facts of the case are that the respondent ITC Ltd. filed the aforesaid complaints under Section 138 read with Section 142 of the Act against M/s Srwana Traders and its partners (petitioners and respondents No.2 & 3 herein).
3. The case of respondent No.1/complainant is that the accused No.1 is a partnership firm and accused No.2 to 6 are its partners and engaged in the business of distribution/manufacturing/marketing/commission agent or broker in garments and textiles. The accused No.2 to 6, for and on behalf of accused No.1 being desirous of associating with the complainant as a Consignment Sales Agent approached the complainant and requested that the accused No.1 may be appointed as Consignment Sales Agent of the complainant for the branded apparels and accessories of the complainant. The complainant acceded to the said request and appointed accused No.1 as their Consignment Sales Agent on the terms and conditions as mentioned in the agreement entered into between the accused persons and the complainant on 28.7.2008 at Delhi. The said agreement was signed by the accused No.2 to 6 on behalf of accused No.1. The complainant has also stated that along with the accused No.1, the complainant also has the right to file a complaint against accused No.2 to 6, as the accused No.2 to 6 are the partners and persons incharge of the affairs of the accused No.1. The accused No.2 to 6 are

signatories to the agreement in reference and also have been making representations and assurances to the complainant that the cheque is being issued to liquidate the debts of the complainant in part and the said cheque shall be honoured on its presentation. The accused No.2 to 6 are also responsible for making the appointment arrangements with the bankers of accused No.1, so that the cheque in reference is honoured. Accused No.2 to 6 are jointly, severally and personally liable for the dishonour of the cheque. The complainant has also stated that accused No.1 issued a cheque bearing No.225760 dated 3.10.2011 for Rs.20.00 lakhs (Rupees twenty lakhs), Cheque bearing no. 225761 dated 17.10.2011 for Rs.20.00 Lakhs (Rupees twenty lakhs) and cheque bearing no. 225763 dated 24.10.2011 for Rs.20.00 lakhs (Rupees twenty lakhs), all drawn on State Bank of Travancore, Ernakulam. On presentation, the said cheques in question were dishonoured with the remarks 'Exceeds Arrangement'. A statutory notice dated 4.3.2012 and 2.4.2012 was served and the accused persons failed to make the payment of the amount of the cheques despite service of notice. Hence the complaint under Section 138 of the Act was filed.

4. Vide order dated 21.12.2012 in Complaint Case no. 988/1/12, learned trial court took cognizance of the offence under Section 138 of the Act read with Section 142 of the Act against the petitioners and respondents No.2 to 3 for dishonour of cheque bearing no. 225760 dated 3.10.2011 for Rs.20.00 lakhs.
5. Vide order dated 20.10.2012 in Complaint case no. 26/12, learned trial court took cognizance of the offence under Section 138 of the Act read with Section 142 of the Act against the petitioners and respondents No.2 to 3 for dishonour of cheque

bearing no. 225761 dated 17.10.2011 and cheque bearing no. 225763 dated 24.10.2011 both for Rs.20.00 lakhs each.

6. Against the impugned orders dated 21.12.2012 and 20.10.2012, the petitioners have filed the present petition.
7. Learned counsel for the petitioners submits that the petitioners are not `Drawers` of the cheque in question and are not liable for the offence under Section 138 of the Act. Counsel for the petitioners further contends that the petitioners are not responsible for the day to day affairs of the accused firm and they are only partners and, therefore, provisions of Section 141 of the Act are not applicable.
8. In support of his submissions learned counsel for the petitioners relied upon **Mrs. Aparna A. Shah vs. M/s. Sheth Developers Pvt. Ltd. & Anr.** (2013) 8 SCC 71.
9. I have carefully gone through the judgment in **Mrs. Aparna A. Shah**'s case (supra) relied upon by the counsel for the petitioners. The same is of no help to the petitioner. In the said case, the cheque was issued by the husband of the petitioner from their joint account and on dishonour of the said cheque, a complaint under Section 138 of the Act was filed against the petitioner Mrs. Aparna Shah and her husband. The petitioner had challenged the order of summoning on the ground that she was not the `drawer` of the cheque. In the instant case, admittedly the petitioners are partners of the accused firm namely Srvana Traders.
10. It is settled principle of law that the primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the

complainant to show that the accused partner of the firm was aware about the each and every transaction. On the other hand, proviso to Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his knowledge or he had exercised due diligence to prevent the commission of such offence, he will not be liable to punishment. Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those who at the time of commission of the offence were incharge and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of the firm when it is specifically averred in the complaint about the status of the partners 'qua the firm'. This would make them liable to face the prosecution. But it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty. As a necessary consequence thereof would be acquittal.

11. At the threshold, it cannot be said that no cognizance of the complaint can be taken by the trial court. Unless the parties are given an opportunity to lead evidence, it is not possible to come to a definite conclusion as to whether all the partners are liable for the offence under Section 138 of the Act.

12. Indeed, it would be nothing short of a mockery of justice if the directors of a company or partners of a firm who have duped a third party by producing false documents like partnership deed or making false statements (that some others were incharge of the company/firm), at a subsequent stage, seek protection from prosecution on the ground that they were not directly indicted in

the complaint. Such a proposition strikes against one of the very basic tenets of the law of natural justice, which is, that none shall be allowed to take advantage of his own default. Of course, the above observations is of general nature and has no bearing on the present case. But nevertheless, the power to quash the criminal proceeding with respect to an offence under Section 141 of the act must be exercised carefully and keeping the aforesaid caveat in mind.

13. Admittedly, in the instant case the petitioners are partners of the accused firm and, therefore keeping in view the above said parameters, all the petitioners are jointly and severally liable for the acts of the firm.

14. For the foregoing reasons, the present petitions are without any merits and the same are hereby dismissed.

15. Both the petitions stand disposed of.

Crl.M.As. No.10790/2013 & 10791/2013

Dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

April 24, 2014

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