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

Date of Decision : August 02, 2024

\+ CRL.M.C.2332/2021 AND CRL.M.A.15497/2021

ASHISH VERMA .....Petitioner

Through: Mr. Kedar Yadav, Mr. Rahul Yadav, Ms. Minakshi Yadav and Ms. Nisha Singh, Advocates.

versus

PARMOD KUMAR .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

<u>J U D G M E N T</u>

<u>ANOOP KUMAR MENDIRATTA, J.</u>

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for quashing of Complaint Case No.12041/2016, under Section 138 NI Act, titled as ***Parmod Kumar vs. Ashish Verma*** and proceedings emanating therefrom.

2. In brief, a complaint under Section 138 NI Act was filed on behalf of respondent/complainant alleging that petitioner/accused took an amount of Rs.1 lac from the complainant for the purpose of getting the son of respondent admitted in school. However, since the petitioner/accused failed to get his child admitted, a cheque of Rs.1 lac was handed over by petitioner. The aforesaid cheque got dishonoured on presentation and was returned with remarks 'Funds Insufficient' vide memo dated 03.08.2016. A legal notice dated 11.08.2016 was issued on behalf of the respondent. Further, a complaint under Section 138 NI Act was preferred by complainant/respondent, since the petitioner failed to make the payment.

3. Petitioner was summoned vide order dated 01.10.2016 and during the course of proceedings, vide order dated 02.09.2021 was declared as 'absconder' (Proclaimed Person), after initiation of proceedings under Section 82 Cr.P.C.

4. Both the orders passed by the learned Trial Court have been challenged by the petitioner. So far as proceedings under Section 82 Cr.P.C. initiated by the learned Trial Court vide order dated 02.09.2021 are concerned, the same were stayed vide order dated 28.09.2021 by this Court, subject to deposit of Rs. 20,000/- by the petitioner with Delhi High Court Bar Association Pandemic Relief Fund and petitioner was further directed to appear before the learned Trial Court on 06.10.2021 and furnish an undertaking to the effect that he shall appear regularly.

Present petition is further pending consideration since it was urged on behalf of the petitioner that the proceedings against the petitioner are not maintainable, as the cheque was issued by the petitioner in the name of his proprietorship firm 'Verma Computers', of which petitioner is proprietor but the same has not been impleaded as accused in the complaint under Section 138 N.I. Act. Reliance is further placed upon ***Monaben Ketanbhai Shah and Another vs. State of Gujarat and Others***, (2004) 7 SCC 15 and ***Anil Gupta vs. Star India Pvt. Ltd. & Anr.***, (2014) 10 SCC 373.

5. It may be noticed that in ***Raghu Lakshminarayanan vs M/s. Fine Tubes***, (2007) 5 SCC 103, while distinguishing a company, a partnership or association of persons from a **'proprietary concern'**, it was observed that a person who carries on business in the name of a business concern, being the proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of business. The real party who is being sued is the proprietor of the said business.

6. So far as Section 141 NI Act is concerned, the same has no applicability to a proprietary concern and relates to offences by company, firm or association of individuals. Reliance placed by learned counsel for petitioner on ***Monaben Ketanbhai Shah and Another vs. State of Gujarat and Others*** (*supra*) is misplaced. There is no dispute as to the proposition of law laid down therein, that in case of offence committed by a partnership firm, the liability can be only on those who, at the time of commission of offence, were incharge of and were responsible to the firm for the conduct of its business and necessary averments are required to be made in this regard by the complainant to establish the fact that the offence was committed and the accused was incharge of and responsible to the firm for the conduct of its business.

7. In view of aforesaid legal position, this Court is of the considered opinion that since a 'proprietary concern' is not a separate entity from the 'proprietor', it may not be necessary to array 'proprietary concern' separately in the facts and circumstances of the case, since the liability incurred by the petitioner is in the personal capacity. Petitioner having delivered the cheque in respect of a personal liability, cannot be absolved merely because the petitioner issued a cheque in the name of his firm 'Verma Computers' of which he is the 'proprietor' and has not been impleaded as an accused.

8. Considering the facts and circumstances of the case, the contentions raised by the petitioner are bereft of merits. Petition is accordingly dismissed with cost of Rs.10,000/- (Rupees Ten Thousand Only) to be paid to the respondent. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

AUGUST 02, 2024/*R*