

125 CRM-M-18808-2024 (O&M)

JYOTI SINDHU V/S M/S ACCORD METAL INDIA PVT LTD

Present :- Mr. Anoop Verma, Advocate for the petitioner.

Present petition has been filed for quashing of criminal complaint No.NACT/12011/2019 dated 03.04.2019 registered under Sections 138/141 of the Negotiable Instruments Act, 1881 and summoning order dated 27.02.2020 and the subsequent proceedings arising out of the proceedings.

Learned counsel for the petitioner *inter-alia* refers to para 1 of the complaint, relevant extract of which reads as under :-

*“The complainant has passed a resolution on 01-04-2019 and duly authorized Sh. Vinod Kumar as authorized person to file the present complaint on the behalf of the complainant. **The copy of the resolution dated 01-04-2019 is attached herewith.**”*

Further invites attention of this Court to the resolution attached to the complaint Ex. C-1 to contend that the same is in the name of one Pankaj Kumar and not Vinod Kumar as pleaded in para 1 of the complaint. Counsel submits that same is the case with the affidavit. The same is pleaded to be on the solemn affirmation of Vinod Kumar but has been signed by one Pankaj Kumar.

Further submits that in order to attract the liability of the petitioner who has been arraigned as accused No.5 and is not signatory to the cheque (s) in question it was incumbent upon the complainant to plead and aver that the petitioner is responsible for day-to-day affairs of the accused-company. However, the complaint is totally bereft of any

such plea. Rather para 8 of the complaint reads as under :-

“8. That the accused No.1 is a firm and accused No.2 is its Director and is responsible for day to day affairs of the accused No.1. Hence, the both the accused persons are jointly and severally liable for the dishonored of the cheque.”

The aforesaid plea rather exonerates the petitioner completely. Further relies upon ***Gunmala Sales Private Limited vs. Anu Mehta, 2015(1) SCC 103*** to submit that plea with respect to the Director being incharge of day-to-day affairs is *sine qua non* to summon the person who is not the signatory to the cheque.

Notice of motion for 09.07.2024.

In the meantime, further proceedings shall remain stayed.

(PANKAJ JAIN)
JUDGE

19.04.2024
Pooja sharma-I