

(23) We have already held that the State Government is the only competent authority for this purpose. As such this exercise by the Commission would serve no purpose and would be hit by the principle of futility and inherent lack of jurisdiction. It will be more so particularly when the Commission has issued these notices with the stipulation that the petitioner's continuance in office is prejudicial to the public interest.

(24) Consequently, this writ petition is partly accepted. The appointment of the inquiry officer is quashed. We expect the Commission not to proceed with these proceedings any further. It was contended by the learned counsel appearing for the Commission that the Commission in fact proposes to make recommendations/suggestions to the State Government for taking appropriate action on these basis. Certainly such an action would be within the competence of the Commission and permissible in law. Thus, we further direct that if the commission makes any recommendations/suggestions to the State Government, it shall act with utmost expedition and in accordance with law.

R.N.R.

Before V.M. Jain, J

SHAKTI BHAKOO— *Petitioner*

versus

M/S RAJ LAKSHMI MILLS (REGD.)—*Respondent*

Crl.M. No. 7530/M OF 2001

16th August, 2001

Negotiable Instruments Act, 1881—Ss. 138 & 141—Dishonour of cheques — Complaint against a firm—Trial Court ordering summoning of all the partners of the firm—S. 141 provides that only the person incharge of and responsible to the firm for its conduct of the business shall be deemed to be guilty of the offence, liable to be proceeded against & punished— S. 141 does not refer to each & every partner of the firm—Disputed cheques not issued by the petitioner—Petitioner neither incharge of the firm nor responsible to the firm for its conduct—Petitioner being a sleeping parter not guilty of the offence under Section 138— Criminal proceedings liable to be quashed.

Held that, merely because the complainant in the criminal complaint had alleged that accused 2 and 3 namely Anoop Bhakoo and Smt. Shakti Bhakoo were partners of accused No. 1 M/s. Sutlej Knitwears and Managing and looking after day to day affairs of accused No. 1 and were thus responsible for all the acts done on behalf of accused No. 1, it could not be said that accused petitioner Smt. Shakti Bhakoo would be liable for the offence u/s 138 of the Act, especially when it is not disputed that as per the partnership deed, Smt. Shakti Bhakoo was only a sleeping partner being housewife and even otherwise, she had not signed the disputed cheques which were dishonoured. Thus, the accused petitioner being sleeping partner of the firm could not be said to be a person incharge of and responsible to the company for the conduct of its business. The criminal complaint and the summoning order passed by the learned Magistrate and all other subsequent proceedings taken against the petitioner would be an abuse of the process of the court.

(Paras 8 & 9)

Pankaj Bhardwaj, Advocate *for the petitioner*

Sunil Chadha, Advocate, *for the respondent*

JUDGMENT

(1) The order shall dispose of the above mentioned two petitions as common question of law and fact arise in both these petitions. The facts of petition bearing Crl. M.No. 7530-M of 2001. Smt. Shakti Bhakoo vs M/s Raj Lakshmi Mills (Regd.) may be noticed.

(2) Accused petitioner Smt. Shakti Bhakoo had filed this petition against the complainant M/s Raj Lakshmi Mills (Regd.) seeking the quashment of criminal complaint dated 28th February, 2000, copy Annexure P-7, filed by the complainant respondent under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act) and also seeking quashment of the summoning order dated 13th March, 2000, copy Annexue P-8 and all consequential proceedings arising therefrom, being abuse of the process of law. In the petition it was alleged that the petitioner is a sleeping partner of M/s Sutlej Knitwears, Ludhiana and that she is a housewife and not at all connected with the day to day affairs of the said company and is also not responsible of any act done by other partner for himself or on

behalf of the said company. It was alleged that in fact Anoop Bhakoo, brother in law of the petitioner, was the working partner of the said company. A copy of the partnership deed dated 1st April, 1998 of the firm M/s Sutlej Knitwears, was attached as Annexure P-1 with the petition. It was alleged that a perusal of the partnership deed would show that the petitioner had nothing to do with the banking affairs or day to day affairs of the said firm and that she is only a housewife and had been inducted as a sleeping partner in the said firm. It was alleged that Anoop Bhakoo, the other partner of the said firm, had lost 5 crossed cheques of the firm and he got a public notice published in newspaper and also gave intimation to the bank about the loss of the said cheques and stopped the payments of the said cheques. It was alleged that having come to know that the said cheques had come in the custody of the respondent firm and their having refused to return those cheques, Anoop Bhakoo, the other partner of M/s Sutlej Knitwears, filed a criminal complaint dated 2nd November, 1999, copy Annexure P-6 under Section 378/379/420 IPC against the respondent firm and the Central Bank of India. It was alleged that the petitioner was astonished to receive summon in the criminal complaint dated 28th February, 2000, copy Annexure P-7, under Section 138 of the Act, filed by the respondent firm and on the said complaint the learned Judicial Magistrate had passed the summoning order dated 13th March, 2000, copy Annexure P-8. It was alleged that the criminal complaint and the said order of summoning were liable to be quashed (qua the petitioner), on the ground that the petitioner was only a sleeping partner and had nothing to do with the day to day affairs of the company and the cheques in question were lost by the other partner namely Anoop Bhakoo and that the criminal complaint was nothing but a counterblast to the complaint lodged by Anoop Bhakoo, partner of M/s Sutlej Knitwears.

(3) The said petition was contested by the complainant respondent by filing written reply and taking up the preliminary objection that after appearing in the trial court the petitioner had filed application dated 29th July, 2000 under Section 245(2) Cr.PC for her discharge and that the said application was contested by the complainant respondent and after hearing both sides the learned trial court dismissed the said application,—*vide* order dated 25th September, 2000, copy Annexure R-3. It was further alleged that the petitioner challenged the said order dated 25th September, 2000 before the Sessions Court

and the learned Sessions Judge dismissed the said revision petition,— *vide* order dated 5th February, 2001, copy Annexure R-4. It was alleged that the petitioner had deliberately concealed the material facts from the Court. It was further alleged that the second revision petition was barred under Section 397(3) Cr.PC and no case for interference by this Court in the present petition under Section 482 Cr. PC was made out. It was further alleged that the other partner of M/s Sutlej Knitwears namely Anoop Bhakoo had separately filed application under Section 245(2) Cr.PC, which was still pending. It was further alleged that the complainant respondent had issued notices to M/s Sutlej Knitwears and its partners namely Anoop Bhakoo and Smt. Shakti Bhakoo but they sent no replies to those notices. On merits, it was denied that the petitioner was only a sleeping partner and housewife or that she was not connected with the day to day affairs of the firm. It was alleged that a perusal of the partnership deed, copy Annexure P1, would not even remotely suggest that the petitioner is merely a sleeping partner. On the other hand it was alleged that the petitioner was an active partner of the firm. It was denied that cheques were lost and on the other hand it was alleged that the cheques in question were issued by the petitioner and her partner Anoop Bhakoc to the respondent firm in discharge of their liability. It was denied that the cheques in question had come to the custody of respondent firm in the manner alleged by the petitioner or that the respondent firm was ever asked to return back those cheques. It was alleged that the complaint copy Annexure P6 was totally false and was filed just to blackmail and pressurise the petitioner firm and its partners. It was alleged that the respondent firm had filed the criminal complaint under Section 138 of the Act as the cheques issued by the accused were dishonoured.

(4) I have heard the learned counsel for the parties in both the petitions and have gone through the record carefully.

(5) It is no doubt true that after having received the summons in the complaint under Section 138 of the Act, the present petitioner had filed an application under Section 245(2) Cr. PC for her discharge and that the said application was dismissed by the learned trial Magistrate on 25th September, 2000, copy Annexure R-3 and the said order of the learned Magistrate was upheld in revision by the learned Sessions Judge,—*vide* order dated 5th February, 2001, copy Annexure

R-4. It is also true that in the present petition dated 26th February, 2001 filed by the petitioner under Section 482 Cr. P.C., seeking quashment of the criminal complaint and the summoning order passed by the learned Magistrate, no reference has been made to the orders passed by the learned Magistrate and the learned Sessions Judge. The learned counsel for the accused petitioner has not challenged the factum about the filing of the application under Section 245(2) Cr.P.C. by the accused petitioner and its dismissal by the learned Magistrate and also about the dismissal of the revision petition by the learned Sessions Judge. However, it has been submitted before me by the learned counsel for the accused petitioner that he had not challenged those orders passed by the learned Magistrate and the learned Sessions Judge in the application under Section 245(2) Cr.P.C., as the accused petitioner was seeking quashment of the criminal complaint and order of summoning passed by the learned Magistrate, being the abuse of the process of the court. On the facts and circumstances of the present case, in my opinion, the present petition cannot be dismissed solely on the ground that the accused petitioner in this petition had not made any reference to the orders passed by the learned Magistrate and the learned Sessions Judge, in the proceedings under Section 245(2) Cr.P.C. or that those orders were not challenged by the accused petitioner in the present petition under Section 482 Cr.P.C.

(6) In the present petition, primarily the accused petitioner is seeking quashment of the criminal complaint and the summoning order passed against her on the ground that she is only a sleeping partner and as such she could not be proceeded against, in the criminal complaint under Section 138 of the Act, especially when the disputed cheques were also not issued by her but were issued by the other partner of the firm who was running the said firm. Annexure P-1 is the copy of the partnership deed dated 1st April, 1998. As per the said Deed of Partnership, there are two partners of the firm M/s Sutlej Knitwears, Ludhiana, namely Anoop Bhakoo and Smt. Shakti Bhakoo wife of Ashok Kumar Bhakoo. As per para 4 of the said Deed of Partnership, Mrs. Shakti Bhakoo being a housewife was sleeping partner and was not responsible for any act whether civil or criminal done by other partner namely Anoop Bhakoo for himself or on behalf of the firm, whereas the other partner namely Anoop Bhakoo shall be the working partner. The correctness of the said

partnership deed has not been challenged before me. It is also not disputed before me that the disputed cheques on behalf of the firm were issued by Anoop Bhakoo, the working partner of the firm and have not been issued by the present petitioner Smt. Shakti Bhakoo.

(7) Section 141 of the Negotiable Instruments Act reads as under :—

141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation—xxx xxx xxx

(8) From a perusal of the above, it would be clear that only that person who, at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company as well as company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Section 141 of the Act does not refer to each and every partner of the firm. The offence is confined only to the

person incharge of and responsible to the company for the conduct of the business of the company. If the intention was to make every director or partner of a company or the firm liable under Section 141 of the said Act then there was no need to say that every person who at the time when the offence was committed was incharge and was responsible to the company for the conduct of the business of the company as well as the company would be deemed to be guilty of the offence. On the other hand, it could have been said that each and every director or partner of the company/firm shall be guilty of the offence and shall be liable to be proceeded against. In this regard, I am supported by a judgment of this court, in the case reported as *Raj Kumar Mangla versus M/s Indo Lowenbrau Breweries Ltd. (1)*, in which similar view was taken and reference was also made to the cases reported as *Harbhajan Singh Kalra versus State of Haryana and another (2)* and *Smt. Sharda Agarwal and others versus Additional Chief Metropolitan Magistrate II, Kanpur and another (3)*. In the present case, merely because the complainant in the criminal complaint had alleged that accused 2 and 3 namely Anoop Bhakoo and Smt Shakti Bhakoo were partners of accused No. 1 M/s Sutlej Knitwears and managing and looking after the day to day affairs of accused No. 1 and were thus responsible for all the acts done on behalf of accused No. 1, in my opinion, it could not be said that accused petitioner Smt. Shakti Bhakoo would be liable for the offence under Section 138 of the Act, especially when it is not disputed before me that as per the partnership deed, copy Annexure P1 Smt. Shakti Bhakoo was only a sleeping partner being housewife and even otherwise, she had not signed the disputed cheques which were dishonoured. The authority *Khan Chand Gupta versus Raj Kumar (4)*, relied upon by the learned counsel for the complainant respondent in my opinion, would have no application to the facts of the present case, inasmuch as in the present case even as per the Deed of Partnership the petitioner is only a sleeping partner. Similarly the authority of the Hon'ble Supreme Court, *M/s BSI Ltd. versus Gift Holdings Pvt. Ltd. (5)*, relied upon by the learned counsel for the complainant respondent, would be of

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- (1) 1997 (3) RCR 494
 - (2) 1992 (1) RCR 169
 - (3) 1992 (3) RCR 499
 - (4) 1994 ISJ (Banking) 310
 - (5) 2000(1) RCR (Criminal)

no help to the complainant respondent, inasmuch as in the reported case it was held that every person who was incharge and was responsible to the company for the conduct of the business would be liable for the offence under Section 138 of the Act. In the present case, as referred to above, the accused petitioner being sleeping partner of the firm could not be said to be a person incharge of and responsible to the company for the conduct of its business.

(9) For the reasons recorded above, in my opinion, the criminal complaint and the summoning order passed by the learned Magistrate and all other subsequent proceedings taken against Smt. Shakti Bhakoo would be an abuse of the process of the court, especially when she is only a sleeping partner of the firm and could not be said to be incharge of and responsible to the company for the conduct for the business of the company. Accordingly, both the petitions are allowed and the criminal complaint and the summoning order and all subsequent proceedings taken thereon against the accused petitioner are hereby quashed.

R.N.R.

Before Jawahar Lal Gupta and Ashutosh Mohunta, JJ

SANT ESHAR SINGH—*Petitioner*

versus

UNION OF INDIA AND OTHERS—*Respondents*

C.W.P. No. 11279 of 2001

21st August, 2001

Constitution of India, 1950—Arts. 25, 26, 29(1) & 226—Cinematograph Act, 1952—S. 5(b)—Allegations of objectionable scenes and dialogues in a film showing the Sikhs, their religion, culture and traditions in a very bad light thereby defaming the Sikhs and hurting the religious susceptibilities of the Sikhs—Constitution ensures the freedom of speech and expression to every citizen and also reasonable restrictions on the rights in public interest—Everyone has the right to profess and also the duty to tolerate—Film depicts the acts of a mob