

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION No.4071/2019

BETWEEN:

SRI. PARVEEN KUMAR
S/O. SRI. OMPRAKASH
C/O. OM SWEETS
AGED ABOUT MAJOR
RESIDING AT PURANI SABZI MANDI
SOHNA, GURUGRAM DISTRICT
HARYANA STATE - 122 103.

... PETITIONER

(BY SRI. ABHILESH J., ADVOCATE)

AND:

SRI. DEVKI NANDAN JAIN
@ DWARKA NATH
S/O. SRI AMARNATH
AGED MAJOR
ADOPTED SON OF SRI. YAD RAM
RESIDENT OF SOHNA, TEHSIL SOHNA
GURUGRAM DISTRICT
HARYANA STATE - 122 103.

PRESENTLY RESIDING AT
C/O MANOJ KUMAR JAIN
B-3/305, VICEROY BOULEVARD APARTMENT
TULASI THEATRE ROAD, MARATHAHALLI
BENGALURU - 560 037.

... RESPONDENT

(BY SRI. P. PRASANNA KUMAR, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ORDER OF THE LEARNED 22ND A.C.M.M., TAKING COGNIZANCE AND ISSUING SUMMONS TO THE PETITIONER DATED 08.09.2017 AND ENTIRE PROCEEDINGS IN C.C.NO.22717/2017 FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF N.I. ACT, PRODUCED AS ANNEXURE-A.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Though the matter is listed for admission, with consent of the parties taken up for final disposal.

2. Heard the learned counsel for the parties.
3. This petition is filed under Section 482 of Cr.P.C. praying this Court to quash the order of taking cognizance dated 08.09.2017 and entire proceedings in C.C.No.22717/2017 on the file of XXII Additional Chief Metropolitan Magistrate at Bengaluru.
4. The factual matrix of the case is that respondent invoked Section 200 of Cr.P.C. against this petitioner and also other accused persons for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'the N.I.

Act'). The Trial Court vide order dated 08.09.2017 passed an order of taking cognizance. While passing the order, it is observed that the contents of the complaint and the oral and documentary evidence adduced by the complainant have been perused. That on perusal of the same, it *prima facie* appears that the accused has committed the offence punishable under Section 138 of the N.I. Act. Hence, the present petition is filed before this Court.

5. Learned counsel for the petitioner would vehemently submit that there is no averment in the complaint that the petitioner was incharge of the affairs of the Company. In support of the said contention, learned counsel relied upon the judgments of the Apex Court in the case of ***N.K. Wahi v. Shekhar Singh and Others*** reported in ***(2007) 9 SCC 481*** and in the case of ***DCM Financial Services Limited v. J.N. Sareen and Another*** reported in ***(2008) 8 SCC 1***. Referring to these two judgments, learned counsel would submit that if the petitioner is not incharge of the affairs of the Company and there is no averment under Section 141 of the N.I. Act, the proceedings are liable to be quashed. There is no dispute with

regard to the principles laid down in the judgments referred supra and the Court has to take note of the fact as to whether any averment has been made in the complaint.

6. Having perused the averments made in the complaint in para Nos.4 and 5, the specific averment is made in the complaint that this petitioner is also a partner along with others in the partnership firm of accused No.1. The specific averment is made in para No.5 that accused Nos.2 to 5 have borrowed the loan from the complainant on various occasions and listed out the details of borrowing the loan in para No.5. Hence, the very contention of the learned counsel for the petitioner that he was not incharge of the affairs of the Company of accused No.1 cannot be accepted at this stage when specific averment is made in para Nos.4 and 5 that he is one of the partners of the firm and borrowed the loan. The principles laid down in the judgments referred supra are not applicable to the case on hand when the petitioner is one of the partners of the firm and as well, he has borrowed the loan along with other partners i.e., accused Nos.2 to 4.

7. Learned counsel would submit that he is not the signatory. The fact that whether he has signed or involved in availing the loan as a partner along with others has to be decided in trial. The petitioner is having liberty to raise those defence before the Trial Court. The powers under Section 482 of Cr.P.C. has to be exercised sparingly and in this petition, the defence of the petitioner cannot be considered. Hence, there is no merit in the petition.

8. In view of the discussions made above, I pass the following:-

ORDER

The petition is dismissed.

In view of the dismissal of the main petition, I.A.No.1/2020 does not survive for consideration and the same is dispose of.

**Sd/-
JUDGE**

PYR