

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

Reserved on: 11th February, 2013
Pronounced on: 12th February, 2013

- + CRL.M.C. 2386/2012 & Crl.M.A.12582/2012
BHUPINDER SINGH Petitioner
Through: Mr.R.M.Bagai & Ms.Damini Kaira,
Advocates
versus
TARUN PURI & ANR Respondent
Through: Mr.Vikas Arora, Mr.Manish Sharma &
Mr.Mohit Taneja, Advocates
- + CRL.M.C. 2387/2012 & Crl.M.A.12584/2012
BHUPINDER SINGH Petitioner
Through: Mr.R.M.Bagai & Ms.Damini Kaira,
Advocates
versus
TARUN PURI & ANR Respondent
Through: Mr.Vikas Arora, Mr.Manish Sharma &
Mr.Mohit Taneja, Advocates
- + CRL.M.C. 2388/2012 & Crl.M.A.12586/2012
BHUPINDER SINGH Petitioner
Through: Mr.R.M.Bagai & Ms.Damini Kaira,
Advocates
Versus
TARUN PURI & ANR Respondent
Through: Mr.Vikas Arora, Mr.Manish Sharma &
Mr.Mohit Taneja, Advocates

+ CRL.M.C. 2792/2012 & CrI.M.A.14013/2012
BHUPINDER SINGH Petitioner
Through: Mr.R.M.Bagai & Ms.Damini Kaira,
Advocates

versus

KULWANT RAI KANWAL RETD.BRIGADIER
..... Respondent
Through: Mr.Vikas Arora, Mr.Manish Sharma &
Mr.Mohit Taneja, Advocates

+ CRL.M.C. 2793/2012 & CrI.M.A.14015/2012
BHUPINDER SINGH Petitioner
Through: Mr.R.M.Bagai & Ms.Damini Kaira,
Advocates

versus

KULWANT RAI KANWAL RETD. BRIGADIER
..... Respondent
Through: Mr.Vikas Arora, Mr.Manish Sharma &
Mr.Mohit Taneja, Advocates

+ CRL.M.C. 2794/2012 & CrI.M.A.14017/2012
BHUPINDER SINGH Petitioner
Through: Mr.R.M.Bagai & Ms.Damini Kaira,
Advocates

versus

KULWANT RAI KANWAL RETD. BRIGADIER
..... Respondent
Through: Mr.Vikas Arora, Mr.Manish Sharma &
Mr.Mohit Taneja, Advocates

- + CRL.M.C. 2795/2012 & CrI.M.A.14019/2012
 BHUPINDER SINGH Petitioner
 Through: Mr.R.M.Bagai & Ms.Damini Kaira,
 Advocates
 versus
 KULWANT RAI KANWAL RETD.BRIGADIER Respondent
 Through: Mr.Vikas Arora, Mr.Manish Sharma &
 Mr.Mohit Taneja, Advocates
- + CRL.M.C. 2796/2012 & CrI.M.A.14021/2012
 BHUPINDER SINGH Petitioner
 Through: Mr.R.M.Bagai & Ms.Damini Kaira,
 Advocates
 versus
 KULWANT RAI KANWAL RETD. BRIGADIER Respondent
 Through: Mr.Vikas Arora, Mr.Manish Sharma &
 Mr.Mohit Taneja, Advocates
- + CRL.M.C. 2797/2012 & CrI.M.A.14023/2012
 BHUPINDER SINGH Petitioner
 Through: Mr.R.M.Bagai & Ms.Damini Kaira,
 Advocates
 versus
 KULWANT RAI KANWAL RETD. BRIGADIER Respondent
 Through: Mr.Vikas Arora, Mr.Manish Sharma &
 Mr.Mohit Taneja, Advocates
- + CRL.M.C. 2798/2012 & CrI.M.A.14025/2012
 BHUPINDER SINGH Petitioner
 Through: Mr.R.M.Bagai & Ms.Damini Kaira,
 Advocates
 versus
 KULWANT RAI KANWAL RETD. BRIGADIER Respondent
 Through: Mr.Vikas Arora, Mr.Manish Sharma &
 Mr.Mohit Taneja, Advocates

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. In these ten Petitions, the Petitioner Bhupinder Singh who is one of the directors of Incentive Travels Pvt. Ltd. seeks quashing of the ten complaints on the grounds:
 - (i) The cheque in question were dated 20.02.2010, whereas the Petitioner had tendered his resignation on 27.11.2009 and the same was accepted by the Respondent No.2(the Managing Director of the company) on 28.11.2009 and
 - (ii) That the complaints lack averments as to how the Petitioner was in charge of and responsible for the conduct of the business to the company, that is, Incentive Travels Pvt. Ltd.
2. By an order dated 29.07.2010, the Petitioner and the other accused persons were ordered to be summoned to face prosecution for an offence under Section 138 of the Negotiable Instruments Act, 1881, (the Act).
3. It is urged by the learned counsel for the Petitioner that normal rule in criminal offences is against vicarious liability. The provisions of Section 141 of the Act are an exception to the general rule and to make a director liable for the act of the company the requirement of the section must be

strictly satisfied. He argues that in order to make a director vicariously liable under Section 138 of the Act for dishonour of the cheque mere averments in the complaint that the director was in charge of and responsible for the conduct of the business of the company will not be enough. To make a director liable, it has to be stated as to how the director who is sought to be prosecuted was in charge of and responsible for the conduct of the business. The learned counsel places reliance on paras 8 and 10 of the judgment of Supreme Court in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr.*, (2005) 8 SCC 89, which are extracted hereunder:

“8. ...There is a whole chapter in the Companies Act on directors, which is Chapter II. Sections 291 to 293 refer to powers of Board of Directors. A perusal of these provisions shows that what a Board of Directors is empowered to do in relation to a particular company depends upon the role and functions assigned to Directors as per the Memorandum and Articles of Association of the company. There is nothing which suggests that simply by being a director in a Company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about day-to-day functioning of the company. As a director he may be attending meetings of the Board of Directors of the Company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the Company who may be made responsible for day-to-day functions of the Company. These are matters which form part of resolutions of Board of Directors of a Company. Nothing is oral. What emerges from this is the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a

company is in charge of its everyday affairs. We have discussed about the position of a Director in a company in order to illustrate the point that there is no magic as such in a particular word, be it Director, Manager or Secretary. It all depends upon respective roles assigned to the officers in a company. A company may have Managers or Secretaries for different departments, which means, it may have more than one Manager or Secretary. These officers may also be authorised to issue cheques under their signatures with respect to affairs of their respective departments. Will it be possible to prosecute a Secretary of Department-B regarding a cheque issued by the Secretary of Department-A which is dishonoured? The Secretary of Department-B may not be knowing anything about issuance of the cheque in question. Therefore, mere use of a particular designation of an officer without more, may not be enough by way of an averment in a complaint. When the requirement in Section 141, which extends the liability to officers of a company, is that such a person should be in charge of and responsible to the company for conduct of business of the company, how can a person be subjected to liability of criminal prosecution without it being averred in the complaint that he satisfies those requirements? Not every person connected with a Company is made liable under Section 141. Liability is cast on persons who may have something to do with the transaction complained of. A person who is in charge of and responsible for conduct of business of a Company would naturally know why the cheque in question was issued and why it got dishonoured.

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10. While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. The key words which occur in the section are “every person”. These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words:

“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, etc.”

What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of “every person” the section would have said “every director, manager or secretary in a company is liable”..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.”

4. The learned counsel for the Respondent No.1 also relies para 4 of the judgment in *S.M.S. Pharmaceuticals* earlier referred to by the learned counsel for the Petitioner, which is extracted hereunder:

“4. In the present case, we are concerned with criminal liability on account of dishonour of cheque. It primarily falls on the drawer company and is extended to officers of the Company. The normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence under Section 138 is committed by a Company, extends criminal liability for dishonour of cheque to officers of the Company. Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable. In other words, persons who had nothing to do with the matter need not be roped in. A company being a juristic person, all its deeds and functions are result of acts of others. Therefore, officers of a Company who are responsible for acts done in the name of the Company are sought to be made personally liable for acts which result in criminal action being taken against the Company. It makes every person who at the time the offence was committed, was incharge of and was responsible to the Company for the conduct of business of the Company, the Company, liable for the offence. The proviso to the sub-section contains an escape route for persons who are able to prove that the offence was committed without their knowledge or that they

had exercised all due diligence to prevent commission of the offence.”

5. The learned counsel for the Respondent No.1 states that there were sufficient averments in the complaints to show as to how the Petitioner was in charge of and responsible for the conduct of the business of the company. He draws my attention to the averments made in the complaints and contends that the authenticity of these averments is to be tested only during the course of the trial. He submits that the power under Section 482 Cr.P.C. can be used to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The learned counsel pleads that the Petitioner has utterly failed to prove that on the basis of the averments made, the Petitioner cannot be prosecuted.

PLEA OF RESIGNATION:

6. The Petitioner has placed on record a copy of Form 32 which shows that the Petitioner resigned from the directorship of the company w.e.f. 27.11.2009. The authenticity of the Form 32 is disputed by the Respondent No.1 saying that the resignation was ante-dated. The alleged resignation was received in the office of Registrar of Companies only on 01.07.2010. The resignation will take effect only from the date of its receipt in the office of Registrar of Companies. The cheque issued by Incentive Travels Pvt. Ltd. was dishonoured much before the receipt of Form 32. Thus, it will be a matter of trial as to when exactly the Petitioner had resigned and the effect of its communication to the ROC

on 01.07.2010. The complaints, therefore, cannot be quashed on this ground.

7. Turning to the alternative plea of the Petitioner of not being in charge of and responsible for the conduct of the business of the company which is strongly refuted by the Respondent No.1, it would be worthwhile to extract some of the paragraphs of the complaints which are the subject matter of the instant Petitions. Paras 2, 3, 5 and 9 of the complaints reads as under:

“2. That the accused Nos.2 to 5 are the Directors of the Incentive Travels Pvt. Ltd. i.e. accused No.1 having its office at 189, Flyover Market, Defence Colony, New Delhi. The accused Nos.2 to 5 are in charge and responsible for the day to day conduct and affairs of the company at the relevant time and also at present.

3. That the accused Nos.2 to 5 introduced themselves as the Directors of the Incentive Travels Pvt. Ltd. i.e. accused No.1 and painted a wonderful business prospect in the business of accused no.1. To further their plan to gain the trust of the complainant, the accused persons also showed financial results of the Incentive Travels Pvt. Ltd. i.e. accused No.1 and created an impression that the business got good past and is sure to have better future.

5. That feeling concerned the complainant started approaching the accused persons for the return of his money but the accused persons kept on delaying the same on one pretext or the other. However, finally to again make fool of the complainant, and to commit further fraud and cheating with the complainant, the accused persons executed a deed of settlement with the complainant and also issued cheques to return the loan amount to the complainant. The complainant insisted to pay either through cash or through draft but the accused persons again assured the complainant that the

cheques would be encashed on presentation. Again believing the words of the accused persons, the complainant accepted the cheques. The cheques were signed by the accused NO.2 being the authorized signatory of M/s. Incentive Travels i.e. accused No.1. Copy of deed of settlement is annexed herewith as Annexure A.

9. That the accused persons have cheated and defrauded the complainant by deceiving the complainant by their false promises and assurances and without having any intention to repay. It is to mention here that the accused no.2 to 5 were responsible to ensure sufficient balance or other arrangements in the bank account of the accused No.1 company to ensure the encashment of the cheques on presentation but the accused persons have miserably failed to do so which further clearly show mala fide intentions of the accused persons from the very beginning to cheat and defraud the complainant and to cause wrongful loss to the complainant and wrongful gain to themselves. Further by not returning the money advanced to the accused persons despite repeated demands by the complainant, the accused persons have also committed breach of trust.”

8. Thus, it may be seen that in para 2 of the complaint, it was averred that accused Nos.2 to 5 were in charge of and responsible for the day to day conduct of the affairs of the company at the relevant time. The Petitioner is accused No.4 in the complaint. It is then alleged that accused Nos.2 to 5 painted a rosy picture about the business of the accused company and lured the Respondent No.1 to advance loan to Incentive Travels Pvt. Ltd. In para 5 of the complaint, the allegations are the complainant approached the accused persons for return of money, but they kept delaying the same on one pretext or the other. It is stated that ultimately, the accused persons executed a deed of settlement with the complainant and issued

cheques to return the loan amount to the complainant, that is, Respondent No.1. It is further stated in the complaint that the accused persons(which includes the present Petitioner) assured the complainant that the cheques would be encashed on presentation. In para 9 of the complaint, it is averred that accused Nos.2 to 5 were responsible to ensure that there is sufficient balance and make arrangement for the same in the bank account of the accused company to ensure encashment of the cheque on presentation.

9. All these allegations, taken together, would be enough to conclude that there were ample averments against the Petitioner to hold at this stage that there were sufficient grounds for proceeding against him and holding that he was in charge of and responsible for the conduct of business of Incentive Travels Pvt. Ltd.
10. The Petitions are devoid of any merit; the same are accordingly dismissed.
11. Pending applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 12, 2013

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