

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

202

CRM-M-6376-2018

Date of Decision: September 20, 2018

Aswani Kumar Sahoo

.....Petitioner(s)

versus

State of Haryana and another

.....Respondent(s)

202/2

CRM-M-6540-2018

Aswani Kumar Sahoo

.....Petitioner(s)

versus

State of Haryana and another

.....Respondent(s)

202/3

CRM-M-6549-2018

Aswani Kumar Sahoo

.....Petitioner(s)

versus

State of Haryana and another

.....Respondent(s)

202/4

CRM-M-6603-2018

Aswani Kumar Sahoo

.....Petitioner(s)

versus

State of Haryana and another

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Deepanshu Mehta, Advocate
for the petitioner.

Mr. D.R. Singla, DAG, Haryana.

Sudhir Mittal, J. (Oral)

The respondent No.2 has preferred a complaint under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') against M/s Techno Mach Company Limited and its Directors. Vide order dated 06.12.2013, learned Judicial Magistrate Ist Class, Gurgaon has summoned the Company as well as its Director for undergoing trial. This order is under challenge by the petitioner on the ground that (a) he is the legal adviser of the Company and in such capacity is a professional Director thereof and accordingly is not responsible for running its affairs and (b) No specific allegation regarding his role has been made against him in the complaint and thus, vicarious liability cannot be fastened upon him.

2. Petitioner is accused No.4 in the complaint. Learned counsel for the petitioner has relied upon Judgment of the Supreme court of India in ***National Small Industries Corporation Limited Vs. Harmeet Singh Paintal & anr., 2010(2) RCR (Criminal)122*** and that of a single Bench judgment of this Court in ***Anil Puri Vs. M/s Makhan Lal Vindo Kumar and others, 2006(2) RCR (Criminal) 939***. Relevant paragraphs of the complaint, are reproduced hereinbelow:-

X X X X X X X X X

That Accused No.1 is a Limited Company and Accused No-2 to 6 are the Managing Director/Directors and accused No.-7 & 8 are the authorised signatory of the Accused No-1 and are incharge and responsible for the day to day conduct of the business of Accused No.1.

That the Accused No.1 is a Limited company having its office at the address given here in above. The Accused No.-2 Mr. R.K. Sharma is

Managing Director of Accused No.-1 and as such is overall incharge and responsible for the day to day affairs of the business of Accused No.-1 and has been dealing and negotiating with the complainant company for day to day conduct of the business of Accused No-1. Accused No-3 Vinay Sharma, Accused No.4 Aswini Sahoo, Accused No.5 Satyanarayan Nandi and Accused No.6 Ranganathan Srinivasan are also the directors of Accused no.1 and are looking after day to day affairs of the business of Accused No.-1 and as such are incharge and responsible for the conduct of the business of Accused company and have been dealing and negotiating with the complainant company for day to day conduct of the business of Accused No-1. All the accused persons were in constant touch with the Management of the Complainant Company and had been on their requests availing the services of the Complainant company. Accused No. 7 & 8 are the signatory(s) of the dishonoured cheques and as such are covered under the provisions of Negotiable Instruments Act. Accused No.2 to 6 also assured and undertook to the Complainant that the impugned cheques issued by Accused No.7 & 8 would be honoured on presentation. The dishonoured cheques have been issued with the knowledge and active connivance of the all the accused No.2 to 6 who are the Managing Director, Directors of the Accused Company and Accused No.7 and 8 are signatories of the impugned cheques and as such all the accused persons are liable to be prosecuted for the offence committed by them under the provisions of the Negotiable Instruments Act.

3. The above paragraphs of the complaint show that only general allegations regarding the petitioner being responsible for and incharge of the affairs in the Company, as mentioned in Section 141 of the Act, have been made. No specific role has been explained.

4. Learned Senior counsel for the petitioner also refers to certificate dated 22.09.2017 issued by the Secretary of the high Court Bar Association of Orissa

wherein it is stated that the petitioner is a regular member of the Bar Association and appears before the High Court regularly. Form No.32 issued under Companies Act 1956 has also been referred to wherein it is stated that petitioner is an Additional Director-Professional w.e.f 02.11.2011.

5. The aforementioned evidence supports the contentions of the learned Senior counsel that the petitioner was not involved in the day to day running affairs of company.

6. In National Small Industries Corporation Limited(supra), it has been held by the Hon'ble the Supreme Court of India that to attract vicarious liability under section 141 of the Act, the role of a particular Director in running the affairs and business of a Company is to be specifically pleaded. General allegations in terms of section 141 is not sufficient. The ratio of this judgment supports the case of the petitioner. It has been established that the petitioner was an Additional Director in the Company on the basis of his professional qualifications. Thus, he could not have been involved in its day to day business affairs. The allegations against him in the complaint, do not conform to the test laid down in the National Small Industries Corporation Limited's case (supra) and therefore, his summoning for an offence under section 138 of the Act, illegal.

7. The petitions are accordingly allowed; complaint cases No.2064 dated 25.04.2016 (Anneuxre P-3) alongwith summoning order dated 06.12.2013 (Anneuxre P-4), subject matter of **CRM-M-6376-2018**; No. 2135, dated 29.04.2016 (Annexure P-3) alongwith summoning order dated 28.11.2016 (Annexure P-4), subject matter of **CRM-M-6540-2018** ; No.2134 dated 29.04.2016 (Anneuxre P-3) alongwith summoning order dated 28.11.2016 (Anneuxre P-4), subject matter of **CRM-M-6549-2018** and No. 2154 dated 02.05.2016 (Anneuxre P-3) alongwith

summoning order dated 12.03.2015 (Anneuxre P-4), which is the subject matter of CRM-M-6603-2018 pending in the Court of Judicial Magistrate Ist Class, Gurugram and subsequent proceedings having arisen therefrom, are quashed.

8. Copy of this order be sent to the Court/successor Court of the trial Court Magistrate concerned, for compliance.

September 20, 2018
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes