...

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

**1. CRM-M-6555-2017 [O&M]**
**Date of Decision : May 14 , 2019**

Renu Nigam and others .... Petitioners

Versus

Suminder Pal Kaur .... Respondent

**2. CRM-M-6557-2017 [O&M]**

Renu Nigam and others .... Petitioners

Versus

Gurmeet Singh Nagra .... Respondent

**3. CRM-M-6568-2017 [O&M]**

Renu Nigam and others .... Petitioners

Versus

Balbir Singh .... Respondent

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

Argued by Mr. Padamkant Dwivedi, Advocate,
for the petitioners.

Mr. J.S. Lalli, Advocate,
for the respondents.

...

**SHEKHER DHAWAN, J.**

By filing the above titled three petitions under Section 482 of the Code of Criminal Procedure, petitioners have sought quashing of Criminal Complaints filed by the respondent(s) under Sections 138 of the Negotiable Instruments Act, 1881 (for short, "**the Act**") and the summoning orders passed by learned trial Magistrate, Jalandhar. As common questions of law and fact are involved in all these three petitions, with the consent of the parties, those are being disposed of by this common judgment. However, for facility of reference, facts relevant for the purpose of decision of these present petitions are being taken from **CRM-M-6555-2017** – Renu Nigam and others Vs. Suminder Pal Kaur.

2. Criminal Complaint No.1687/16 dated 28.04.2016 (Annexure P/1) titled – **Suminder Pal Kaur Vs. Mrs. Renu Nigam and others,** under Section 138 of the Act was filed by respondent-complainant, Suminder Pal Kaur. M/s Renu Creations Pvt. Ltd. (hereinafter referred to as "the Company") was arrayed as accused No.5 and the present petitioners, namely, Renu Nigam, Dr. S.C. Nigam, Ravi Nigam and Runa Nigam were arrayed as accused Nos.1 to 4. Respondent had alleged that cheque in question was issued from the account of M/s Renu Creations Private Limited (for short, "the Company") and the petitioners are liable for the alleged dishonour of cheque No. 119505 dated 4.2.2016 for a sum of Rs.45,00,000/- in their capacity as Directors/responsible persons of the Company. In fact, the Company has already been wound up.

3. Learned counsel for the petitioners mainly contended that petitioner No.2, namely Dr. S. C. Nigam has been unnecessarily

impleaded as accused though he had never been director of the Company and his is permanent physically handicapped to the extent of 50%.

4. Petitioner No.4, namely, Mrs. Runa Nigam had resigned from the post of Director of the Company on 3.10.2012 and her resignation was duly forwarded to the Registrar of Companies, which was duly accepted. Copy of Form No. 32 indicating the change among the Directors of the Company is at Annexure P/5. The cheque in question was issued on 4.2.2016. As such, petitioner No. 4 had no concern with the affairs of the Company w.e.f. 3.10.2012. Petitioners No.1 and 3 were the Directors of the company. Learned counsel for the petitioners also contended that the liquidation proceedings were in the knowledge of the respondent-complainant. Hence, the proceedings against the petitioners deserve to be quashed. In support of the arguments, reliance was placed upon the judgment from Hon`ble Apex Court in cases **National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal & Anr. 2010(2) R.C.R. (Criminal) 122** and **Dhariwal Tabaco Products Ltd. and others Vs. State of Maharashtra and another, 2011 AIR (SC) (Crl.) 1846.**

5. While arguing on this point, learned counsel for the respondents contended that while exercising powers under Section 482 Cr.P.C., this Court cannot look into all the material and evidence and all these aspects can be looked into by learned trial Magistrate during the course of trial and there are no grounds for setting aside the said order. On this point, reliance was placed on the judgment from Hon`ble Apex Court in case **N. Rangachari Vs. Bharat Sanchar Nigam Ltd. 2007(2) R.C.R. (Criminal) 875** and **Malwa Cotton & Spinning Mills Ltd. Vs.**

...

**Virsa Singh Sidhu and Ors, 2008 (4) R.C.R. (Criminal) 25.**

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the present petitions have been filed by four petitioners. It is not disputed that petitiones No.1 and 3 namely, Renu Nigam and Ravi Nigam respectively were directors of the Company at the relevant time and petitioner No.1 was signatory to the cheque in question, which is evidence from form No. 20-B copy of which is available on the file as Annexure P/4, whereas respondents No. 2 and 4, namely, Dr. S. C. Nigam and Mrs. Runa Nigam respectively were not the directors of the Company at the relevant time nor they were signatories to the cheque in question.

7. While dealing with identical matter, Hon`ble Apex Court in **Pooja Ravinder Devidasani Vs. State of Maharashtra and another, (2014) 1 SCC 1,** observed as under:-

> "Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, 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 for an offence Under Section 141 of the N.I. Act. In National Small Industries Corporation (supra) this Court observed:
>
> 13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything

more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements Under Section 141."

8. Similar matter was also before Hon`ble Apex Court in **Harshendra Kumar D. Vs. Rebatilata Koley and Others, (2011) 3 SCC 351,** wherein Hon`ble Apex Court observed as under:-

"10. The legal position concerning the vicarious liability of a director in a company which is being prosecuted for the offence under Section 138 NI Act has come up for consideration before this Court on more than one occasion. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, the following questions were referred to a Three-Judge Bench for determination:

(a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.

(b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

...

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors or Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against.

11. The three-Judge Bench of this Court answered the aforesaid questions thus:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a Director of a company is not sufficient to make the person liable under Section 141 of the Act. A Director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get

...

> covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under Sub-section (2) of Section 141."

9. Applying the same principles of law to the facts of the present cases, as per documents available on the file, petitioners No.2 and 4 were not the Directors of the Company at the relevant time and had already ceased to be the Director of the company much before the date of issuance of the cheques in question. The same is evident from Annexure P/5 i.e., Form 32. If that be the position and the proceedings against petitioners No. 2 and 4 are allowed to continue on the basis of impugned summoning orders where all these facts have not been considered absolutely, the same shall be mis-carriage of justice and the Complaint (Annexure P/1) and the summoning orders passed by learned trial Magistrate, Jalandhar are liable to be set at rest as per law while invoking the provisions of Section 482 of the Code of Criminal Procedure.

10. Resultantly, all the above titled three petitions, bearing Nos. **CRM-M-6555-2017; CRM-M-6557-2017 and CRM-M-6568-2017** are partly accepted and the impugned summoning orders and Criminal Complaints are hereby quashed **qua** petitioners No. 2 and 4 **only.**

**(SHEKHER DHAWAN)**
**JUDGE**

**May 14, 2019**
*komal/som*

Whether speaking/reasoned? : Yes
Whether reportable? : Yes