

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Decided on: 05.03.2020

1. CRM-M No.40532 of 2019 (O&M)

Rohan Rajan		Petitioner
	Versus	
Jagmeet S. Soin		Respondent

2. CRM-M No.40503 of 2019 (O&M)

Rohan Rajan		Petitioner
	Versus	
Jagmeet S. Soin		Respondent

3. CRM-M No.42148 of 2019 (O&M)

Rohan Rajan		Petitioner
	Versus	
Jagmeet S. Soin		Respondent

4. CRM-M No.42149 of 2019 (O&M)

Rohan Rajan		Petitioner
	Versus	
Jagmeet S. Soin		Respondent

5. CRM-M No.42151 of 2019 (O&M)

Rohan Rajan		Petitioner
	Versus	
Jagmeet S. Soin		Respondent

6. CRM-M No.42155 of 2019 (O&M)

Rohan Rajan		Petitioner
	Versus	
Jagmeet S. Soin		Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Sangram S. Saron, Advocate
and Ms. Shubreet Kaur, Advocate
for the petitioner (in all the petitions)

Mr. R.K. Kapoor, Advocate
for the respondents (in all the petitions)

ARVIND SINGH SANGWAN, J.

Vide this common order, I intend to dispose of CRM-M Nos.40532, 40503, 42148, 42149, 42151 and 42155 of 2019, as identical questions of law and facts are involved for adjudication. For brevity, facts are taken from CRM-M No.40532 of 2019.

The prayer in all these petitions is for quashing of complaints No. 4661 of 2018, 4663, 4665, 4666, 4668 and 4664 of 2018 dated 06.03.2018 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act') (Annexure P-1) and for setting-aside the summoning order dated 07.04.2018 (Annexure P-2) and all other subsequent proceedings arising therefrom.

Counsel for the petitioner has argued that the respondent – Jagmeet S. Soin, has filed 06 identical complaints under Section 138 of the NI Act with similar allegations relating to different cheques which were allegedly dishonoured. In all these complaints, accused No.1 is M/s. Concept Horizon Infra Private Limited (hereinafter to be referred to as 'the Company') through the authorized signatory Jeevesh Sabharwal, Director, accused No.2 is Jeevesh Sabharwal, Director and authorized signatory, accused No.3 is Suninder Sandha, Director and authorized signatory and accused No.4 is Rohan Rajan, authorized signatory (present petitioner) of accused No.1 – Company.

Counsel for the petitioner has argued that in all the complaints, it is stated in para Nos.1 to 3 as under:-

“1. That the complainant had a MEMORANDUM OF UNDERSTANDING (hereinafter to be referred as MOU) with the accused persons which was executed on 11th of January 2016, at Delhi. In pursuance of the terms of the MOU the details of which has been mentioned in the subsequent paragraphs, certain cheques were issued by the accused no.1, through the authorized signatories, who are accused Nos.2 & 3. Since the cheques issued by the accused persons, the details of which has been mentioned in the subsequent paragraphs, have been dis-honoured on account of insufficient funds, the complainant has filed the present complaint against the accused persons in view of the provisions of section 142 R/w Section 138 of the Negotiable Instruments Act 1881. Copy of the Memorandum of Understanding dated 11.01.2016 is annexed herewith and marked as Annexure C/1.

2. I say that the MOU was executed at Delhi and present registered office of the accused no.1 being at M/s Concept Horizon Infra Pvt. Ltd. 8/13, 1st Floor, Hospital Road, Jangpura Extension, New Delhi-110014. Since the complainant has the regular bank account in HDFC Bank, Corporate Sewa Park, MG Road, Gurugram, Haryana, 122001 where he deposited the cheque dated 11th of January, 2018 bearing cheque number 019086, which was dishonoured, therefore, this Hon'ble Court has the jurisdiction to take cognizance in the present case against the accused persons for the offence punishable under Section 138 read with 142 of the Negotiable Instruments Act 1881, and also under section 420 IPC.

3. That the accused no.2, 3 and 4 have been made parties since the accused persons no.2 and 3 have

*been Directors as well as signatories to the cheques which got dishonoured and “**the accused no.4 being in-charge of the affairs of accused no.1.**”*

Counsel for the petitioner has further submitted that the very basis of filing the complaints is a Memorandum of Understanding (MOU) between the complainant and accused Nos.2 and 3 and the petitioner is not a signatory of the Memorandum of Understanding on the basis of which some business transactions started between them. It is further argued that the petitioner is neither an authorized signatory on the cheques nor, he is the Director of accused No.1 – Company. It is also submitted that the petitioner has been arrayed as accused in the present complaints only because he is brother-in-law of accused No.2 and at no point of time, he has any business dealing with complainant. It is further submitted that the only allegations in all the complaints is in para 3 wherein it is stated that accused Nos.2 and 3 are the Directors and accused No.4 is In-charge of the affairs of accused No.1 – Company.

Counsel for the petitioner in support of his arguments has referred to the Memorandum of Understanding dated 11.01.2016, which is entered between the accused No.1 – Company through its Director Suninder Sandha as first party and the complainant – Jagmeet S. Soin as the second party.

Counsel for the petitioner has further referred to Clause (4) of this Memorandum of Understanding wherein the disputed cheques numbers are given. It is further submitted that all these cheques are drawn on Punjab and Sind Bank and accused Nos.2 and 3 are the

signatories of the cheques and the petitioner/accused No.4 is not a signatory.

Counsel for the petitioner has also referred to one of the cheque bearing No.01908 for Rs.10,000,000/-, which is signed by accused Nos.2 and 3 only. It is further argued that even, in the legal notice issued by the complainant on 25.01.2018, there are no direct allegations against the petitioner that he was In-charge of the day-to-day business of the Company or is one of the signatory of the cheques.

Counsel for the petitioner has lastly, relied upon the list of Director of accused No.1 – Company, to submit that the petitioner is not a Director of accused No.1 – Company.

Counsel for the petitioner has also relied upon the judgment ***“National Small Industries Corporation Limited vs Harmeet Singh Paintal and another”***, 2010(3) SCC 330, wherein the Hon’ble Supreme Court has held as under:-

“12. It is very clear from the above provision that what is required is that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, 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. Every person connected with the company shall not fall within the ambit of the provision. 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. It follows from the fact 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 for a criminal offence under the provisions. The liability arises from being in-charge of and responsible for the conduct of the 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.

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 No.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.

15. In a catena of decisions, this Court has held that for making Directors liable for the offences committed by the company under Section 141 of the Act, there must be specific averments against the Directors, showing as to how and in what manner the Directors were responsible for the conduct of the business of the company.

16. In the light of the above provision and the language used therein, let us, at the foremost, examine the complaints filed by National Small Industries Corporation

Limited and the DCM Financial Services Ltd.

17. In the case of National Small Industries Corpn. Ltd., the High Court has reproduced the entire complaint in the impugned order and among other clauses, clause 8 is relevant for our consideration which reads as under:

"8. That the accused No. 2 is the Managing Director and accused No. 3 is the Director of the accused company. The accused No. 2 and 3 are the in-charge and responsible for the conduct of the business of the company accused No.1 and hence are liable for the offences."

18. In the case of DCM Financial Services Ltd., in complaint- Annexure-P2 the relevant clause is 13 which reads as under:

"13. That the accused No. 1 is a Company/Firm and the accused Nos. 2 to 9 were in charge and were responsible to the accused No. 1 for the conduct of the business to the accused No. 1 at the time when offence was committed. Hence, the accused Nos. 2 to 9 in addition to the accused No. 1, are liable to be prosecuted and punished in accordance with law by this Hon'ble Court as provided by Section 141 of the N.I. Act, 1881. Further the offence has been committed by the accused No. 1 with the consent and connivance of the accused Nos. 2 to 9."

Hon'ble Supreme Court in Para 37 to 39 of this judgment has laid down the following principles :-

37. A combined reading of Sections 5 and 291 of Companies Act, 1956 with the definitions in clauses (24), (26), (30), (31) and (45) of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:

(a) the Managing Director(s);

(b) the whole-time Director(s);

(c) the Manager;

(d) the Secretary;

(e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;

(f) any person charged by the Board of Directors with the responsibility of complying with that provision;

Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

38. *But if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in-charge of the business of the company" or by stating that "he was in-charge of the day-to-day management of the company" or by stating that "he was in-charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and*

connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act.

39. *From the above discussion, the following principles emerge :*

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) 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.”

Counsel for the petitioner has, thus, argued that in view of the principles laid down in the aforesaid judgment it is the primary responsibility of the complainant to make specific averment against the accused, who are vicariously liable whereas in the present case, no such allegations are there in the complaint. It is also submitted that in view of the judgment ***National Small Industries Corporation Limited’s supra***, as per Section 141 of the NI Act, all the Directors cannot be held liable for the offence and the criminal liability can be fastened only on those Directors, who at the time of commission of offence, were the In-charge of and were responsible, for the business and conduct of the Company. Lastly, it is argued by counsel for the petitioner that a person sought to be made liable, should be In-charge and responsible for the conduct of the business of the Company at the relevant time and the impugned complaints do not meet any of the ingredients of the principles laid down by the Hon’ble Supreme Court.

Counsel for the respondent, on the basis of the reply filed by the respondent/complainant has submitted that the petitioner is also In-charge of the Company, however, counsel for the respondent has fairly conceded that there is no document to support the contention of the complainant that either the petitioner is a signatory of Memorandum of Understanding or is a signatory of the cheques and therefore, the

arguments of the petitioner on these points could not be disputed by counsel for the respondent.

Counsel for the respondent has further argued that the allegations against the other two accused i.e. accused Nos.2 and 3 are that they are Directors, In-charge of business and signatories of the cheques.

After hearing the counsel for the parties and going through all the complaints as well as the reply filed by the complainant, I find merit in the present petition for the following reasons:-

(a) The complaint is based on a Memorandum of Understanding, which is not signed by the petitioner and is rather signed by accused No.3 – Suninder Sandha. The dishonoured cheques were given to the complainant at the time of signing of the Memorandum of Understanding.

(b) The cheque numbers of the disputed cheques are duly mentioned in the body of the Memorandum of Understanding signed by accused No.3 – Suninder Sandha, which show that he was the person In-charge of the Company as he entered into a Memorandum of Understanding on behalf of accused No.1 – Company and had issued the cheques in favour of the complainant.

(c) Even the cheques are not signed by the petitioner and the same are signed by accused Nos.2 and 3.

(d) In the complaints, the only allegation in

(e) There is nothing on record to support the complaints that the petitioner is one Director of accused No.1 – Company as it is the case of the petitioner that he never remained the Director of accused No.1 – Company at any stage and this fact is not disputed in the reply.

(ARVIND SINGH SANGWAN)
JUDGE

Yes/No