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

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Reserved on: 14.12.2022

Pronounced on: 19.12.2022

+ **CRL.M.C. 307/2020**

PRAKASH CHAND

..... Petitioner

Through: Mr. Sanjay Relan and Ms.
Smitee Relan, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Satish Kumar, APP for the
State.
Mr. Devashish Bhadauriya,
Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of the present petition filed under Section 482 of the Criminal Procedure Code, 1973, the petitioner seeks quashing of the summoning order dated 28.11.2018 passed by then Metropolitan Magistrate-04, Patiala House Courts, Delhi and the Criminal

Complaint no. 16201/2017 titled as “M/s PEC Ltd. v. M/s KS Oil Ltd. & Ors.” and all its consequent proceeding pending in the court of MM-04 (NI Act), or any successor court at Patiala House Courts, New Delhi.

2. Briefly stated, facts of the case, leading to the filing of present petition, are as under:

- a. That seven agreements (High Seas Sales contracts) were executed between the complainant and the accused no.1 company i.e., K.S. Oils Ltd. for importing crude oil through complainant company, on the respective dates: (i) Two agreements on 24.08.2012, (ii) Two agreements on 28.08.2012, (iii) One agreement on 03.09.2012, (iv) One agreement on 04.12.2012 , and (v) One agreement on 08.01.2013.
- b. The total amount of all the consignments arising from the contracts was a sum of Rs.1,06,77,37,316.50/- (Rupees One hundred and Six Crore, Seventy Seven Lacs, Thirty Seven Thousand, Three hundred sixteen and Fifty Paise only).
- c. On 11.11.2016, 16 cheques were issued in favour of the drawer company against the aforesaid seven agreements. On 07.02.2017, the cheques were drawn on account of Central Bank of India, Morena, MP maintained by the drawer company, and the same were returned dishonored with remarks showing ‘Funds Insufficient’.

- d. Thereafter, on 07.03.2017, statutory demand notice and another addendum notice dated 09.03.2017 was sent to the accused demanding payment of the said amount. However, upon not receiving any response from the side of the accused, a complaint was filed under Section 138/141 of Negotiable Instruments Act, 1881 (“NI Act”) bearing complaint no. 16201/2017 before CMM at Patiala House Courts, New Delhi on 27.04.2017. The complaint was filed against the company and 12 persons, who were directors between 2012 and 2017 (including past, non-executive and nominee directors).
 - e. Thereafter, by virtue of impugned order dated 28.11.2018, the petitioner as well as all other accused persons were summoned to appear by the learned Trial Court.
3. Learned counsel for the petitioner submits that grave miscarriage of justice has been caused by summoning the present petitioner in the complaint case filed by respondent no. 2. It is the case of the petitioner that he was an Independent/Non-Executive Director in the accused company at the time of commission of offence, the fact which is authenticated by the records of Registrar of Companies, and had no role in the transactions or business of the company or in any day to day affairs of the company. Further, petitioner is neither a signatory to any of cheques in dispute, nor were the cheques issued under his knowledge. It is argued by the learned counsel on behalf of the petitioner that the allegations against the petitioner are general and

vague and that respondent no. 2 in its complaint has not made any specific allegations against the petitioner to show as to how the petitioner had knowledge or was involved in the transaction alleged in the complaint. Mere statement that the petitioner being a director was incharge and responsible for the day to day affairs of the company cannot make her liable to face the trial. Reliance in this regard is placed on the following judgments: (i) ***Har Sarup Bhasin v. M/s Origo Commodities India Pvt Ltd*** 2020 SCC OnLine Del 11, (ii) ***Anoop Jhalani v. The State & Anr.*** 2007 SCC OnLine Del 1293, (iii) ***MCD v. Ram Kishan Rohatgi*** AIR 1983 SC 67, (iv) ***Gunmala Sales Private Limited v. Anu Mehta & Ors*** (2015) 1 SCC 103 (v) ***National Small Industries Corporation Limited v. Harmeet Singh Painwal*** (2010) 3 SCC 330, (vi) ***Sunita Palita v. Panchami Stone Quarry*** 2022 SCC OnLine SC 945, and (vii) ***Sudeep jain v. ECE Industries*** 2013 SCC OnLine Del 1804.

4. It is further averred by the counsel for petitioner that the impugned summoning order has been passed mechanically without giving any consideration to the facts of the case, and summoning of an accused is a serious affair and must be done after due application of mind. Reliance in this regard is placed on ***Mehmood UI Rehmand v. Khazir Mohammad Tunda*** (2016)1 SCC(Cri) 124.

5. Learned counsel for petitioner also states that respondent no. 2 did not even serve the present petitioner with the statutory legal notice, and hence it was within the knowledge of the complainant/respondent no. 2 that petitioner was neither incharge nor responsible for the day-to-day affairs of the accused company.

6. Controverting the contentions raised on behalf of the petitioner, learned counsel for respondent no. 2/complainant states that cheques in question were dishonoured in February 2017 whereas the petitioner had resigned from the accused company only in September 2017. It is further stated that the even as per the records, the petitioner was a director of the accused company and he is liable to face the trial. It is also averred that the petitioner's arguments cannot be considered at this stage and can be dealt with only during the trial.

7. Both the learned counsel for respondent no. 2 as well as learned APP for the State have stated that the amount in question is more than Rs.106 crores and trial is pending as of now, in view of which, the relief prayed for in the present petition may not be granted.

8. Before considering the facts of the present case, it will be relevant to consider the law as laid down in statutes and through precedents. It will be appropriate to first refer to Section 141 of the Negotiable Instruments Act, 1881, which is reproduced as under:

“141. Offences by companies. — (1) If the person committing an offence under section 138 is a company, every person 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 and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment

in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.] (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.]

9. It will also be relevant to consider Section 149 of the Companies Act, 2013 which deals with the aspect of independent and non-executive directors, since as per the case of petitioner, that was the position of the petitioner in the accused company. Relevant part of Section 149 is reproduced as under:

“149. Company to have Board of Directors.

(12) Notwithstanding anything contained in this Act,

(i) an independent director;

(ii) a non-executive director not being promoter or key managerial personnel,

shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently...”

10. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* (2005) 8 SCC 89, the Hon'ble Supreme Court of India discussed the meaning and purpose of Section 141 as well as the averments required to be made in the complaint under Section 138 r/w 141 of Negotiable Instruments Act, 1881 to fasten the vicarious liability on the persons associated with a company. The Apex Court held as under:

“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.

16. (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)...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 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...”

(emphasis supplied)

11. Reiterating the same view, the Apex Court in ***National Small Industries Corp. Ltd. v. Harmeet Singh Paintal*** (2010) 3 SCC 330 further held as under:

*“22. Therefore, this Court has distinguished the case of persons who are in charge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. **Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company.***

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 the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the 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 the accused is a Managing Director or a 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 the 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 the 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...

(emphasis supplied)

12. The Apex Court in **Anita Malhotra v. Apparel Export Promotion Council** (2012) 1 SCC 520, following the principles laid down in **National Small Industries Corp. Ltd.** (*supra*), held that:

“22. This Court has repeatedly held that in case of a Director, complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused Company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. [Vide National Small Industries Corporation Limited vs. Harmeet Singh Paintal and Another, (2010) 3 SCC 330]. In the

case on hand, particularly, in para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day to day affairs of the Company. We have verified the averments as regard to the same and we agree with the contention of Mr. Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day to day affairs of the Company. On this ground also, the appellant is entitled to succeed.”

(emphasis supplied)

13. In ***Pooja Ravinder Devidasani v. State of Maharashtra and Anr.*** (2014) 16 SCC 1, the Hon’ble Supreme Court, while following the ratio in case of ***National Small Industries Corp. Ltd.*** (*supra*), has made the following observations with regard to fastening vicarious liability on directors who are not in charge of day to day affairs of the company:

“17. ... Non-executive Director is no doubt a custodian of the governance of the company but is not involved in the day- to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the NI Act. Every person connected with the Company will not fall into the ambit of the provision. 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 NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd.

v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14)

“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 fulfilment of the requirements under Section 141.”

18. In Girdhari Lal Gupta v. D.H. Mehta [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162] , this Court observed that a person “in charge of a business” means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see State of Karnataka v. Pratap Chand [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.”

14. Recently, the Apex Court in ***Sunita Palita & ors. v. Panchami Stone Quarry*** 2022 SCC OnLine SC 945, in regard to fixation of vicarious liability on directors of a company under Section 141 of Negotiable Instruments Act, 1881, has held that:

“42. A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable under those provisions. As held by this Court in, inter alia, S.M.S. Pharmaceuticals Ltd. (supra), the liability under Section 138/141 of the NI Act 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. It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development) etc. into criminal proceedings under the NI Act, only because of their designation.

43. Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals Ltd. (supra). The materials on record clearly show that these Appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (supra) a non-Executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the Accused Company.

Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.

46. As held by this Court in National Small Industries Corporation Ltd. v. Harmeet Singh Painta quoted with approval in the subsequent decision of this Court in Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (supra) the impleadment of all Directors of an Accused Company 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, does not fulfil the requirements of Section 141 of the NI Act..."

15. Reliance was placed by learned counsel on behalf of the petitioner on the decision of ***Har Sarup Bhasin v. M/s Origo Commodities India Pvt Ltd*** 2020 SCC OnLine Del 11 wherein a Coordinate bench of this Court quashed proceedings against a director and held that:

31. As laid down by this Court in "Bhardwaj Thuiruvenkata Venkatavraghavan" (supra) and "Kanarath Payattiyath Balraj" (supra), the petitioner being an Independent and a Non-Executive Director, in the absence of any specific role attributed against the petitioner for his active participation in the day to day affairs of the company and of taking all decisions of the company, where the petitioner was not a signatory to the cheques in question, vicarious liability cannot be fastened on the petitioner in the absence of any specific role attributed to him, in as much as, the contentions that have been sought to be raised during the course of the arguments and in

the affidavit in reply to the petition on behalf of the respondent in relation to the petitioner being in a Key Managerial Person and the petitioner having participated in 100% all the meetings of the accused company, are not spelt out in the complaint that had been filed by the respondent. Furthermore, taking into account also the factum that even if the petitioner was a Key Managerial Person of the accused No. 1 company as per the reply affidavit of the respondent as filed on 08.07.2007, he was so for the period from 01.04.2015 to 31.03.2016 and the date of the drawing of the cheques in question are 01.06.2016 and 07.06.2016.

32. In view thereof, the impugned order dated 20.02.2017 of the Trial Court of the learned MM-01, New Delhi in CC No. 45442/2016 to the extent that summons are issued to the petitioner for an alleged commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 is thus, quashed."

16. In **Sudeep jain v. ECE Industries** 2013 SCC OnLine Del 1804., this Court was constrained to make certain observations and pass directions, which are as under:

9. The prime objective of this Court is to remind all the Metropolitan Magistrates in Delhi to carefully scrutinize all the complaint cases being filed under Section 138 r/w 141 of the Negotiable Instruments Act, 1881 against the accused companies at the pre-summoning stage and make sure that notice be directed only to those directors or employees of the company who satisfy the principles laid down in the aforesaid judgments. Summons must be issued only after giving due consideration to the allegations and the materials placed on record by the complainant. Undeniably, as per the aforesaid legal pronouncements, Managing Director and the Joint Managing Director are deemed to be vicariously liable for the offence committed by the company because of the position they hold in the company. Problem arises in cases where all the persons holding office in the company are sought to be prosecuted by the complainant, irrespective of whether they

played any specific role in the incriminating act. It is surprising to see that in plethora of cases, the complaint contains allegations even against those persons who might have been Directors at any point in time in the accused company, but had resigned from such company much prior to the period when the alleged offence was committed. Issuing summons to all persons named in the complaint mechanically, without ascertaining whether they played any actual role in the transaction, not only pesters the innocent directors/employees named in the complaint, but also upsurges the load on the High Courts as the Magistrates once issuing the summoning orders against the accused, are precluded from reviewing their summoning orders in view of the decision of the Apex Court in Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338. One can also not lose sight of the fact that once such innocent persons are summoned, they have no choice but to seek bail and face the ordeal of trial. Many of such persons also approach the High Court under Section 482 Cr.P.C. to seek quashing of the summoning order and the complaint filed against them and this further increases the burden on the already overburdened Courts.

10. With a view to ensure that the Metropolitan Magistrates dealing with the complaint cases filed under Section 138 r/w Section 141 of the Negotiable Instruments Act have a clear and complete picture of the persons arrayed by the complainant so as to hold them vicariously liable for the commission of the offence by the accused company, I am inclined to direct that the Magistrates must seek copies of Form-32 from the complainant to prima facie satisfy the Court as to who were the directors of the accused company at the time of commission of the alleged offence and on the date of filing of the complaint case. In addition to the above, the Magistrates must also seek information as given in the following table which is to be annexed by the Complainant on a separate sheet accompanying the complaint:-

- a. Name of the accused Company;*
- b. Particulars of the dishonoured cheque/cheques;*

- *Person/Company in whose favour the cheque/cheques were issued*
- *Drawer of the cheque/cheques*
- *Date of issuance of cheque/cheques*
- *Name of the drawer bank, its location*
- *Name of the drawee bank, its location*
- *Cheque No./Nos.*
- *Signatory of the cheque/cheques*
- c. *Reasons due to which the cheque/cheques were dishonoured;*
- d. *Name and Designation of the persons sought to be vicariously liable for the commission of the offence by the accused Company and their exact role as to how and in what manner they were responsible for the commission of the alleged offence;*
- e. *Particulars of the legal notice and status of its service;*
- f. *Particulars of reply to the legal notice, if any.*

11. The Registry is directed to send a copy of this order to all the Metropolitan Magistrates posted in various district courts of Delhi for necessary compliance. Registry is further directed to send a copy of this order to all the Bar Associations of various district courts of Delhi, so that they can apprise the members of the Bar about the aforesaid directions.

17. Coming to the facts of the present case, a perusal of Form No. DIR-11, dated 19.09.2019, of the accused company K.S. Oils Limited shows that the petitioner was an independent director at the time of commission of the offence. In view of Section 141 of Negotiable Instruments Act, 1881 and Section 149 of Companies Act, 2013 petitioner could have been held vicariously liable only if it was shown that he was incharge of and was responsible for the conduct of the business of the company at the time of commission of offence, and not otherwise.

18. As per settled legal propositions, it was to be specifically averred in the complaint as to how the petitioner, being an independent director, was incharge of day to day affairs of the company as well as the conduct of business. However, nothing of this sort can be inferred from the complaint filed before the learned Trial Court. The relevant para of the complaint casting allegations against all the directors of the accused company is as under:

“2. That Accused No.1 Is a company registered under the provisions of the Companies Act 1956. Accused Nos. 2 to 14 are the Directors of the Company who were incharge of managing the day to day affairs of the Company. All the accused nos. 2 to 14 were at the helm of affairs of the Company at the time of Its dealing with the Complainant and/or at the time when the subject matter SI cheques were issued to the Complainant and at the time of dishonour of cheques.

3. That in or around August 2012, Accused No.1 acting through the Accused persons approached the Complainant and expressed its intention to import Crude Palm Oil through the Complainant, while making assurances to the Complainant that you were in sound financial position assuring the Complainant of timely payment against such imports. That since the quantities of Import was huge, several rounds of meetings took place between the representatives of the Complainant and Accused persons. Each of the accused persons had been dealing with the Complainant on behalf of Accused No.1...”

19. It is clear from the aforesaid portion of the complaint that general allegations have been made against all the directors of the accused company. Such mere allegation or bald assertion may be sufficient to implicate the Managing directors as well as those who

are signatories to cheque, but not the other directors or persons, especially independent or non-executive directors, as held in catena of judgments.

20. However, a perusal of complaint shows that a general allegation was made against all the directors without any specific role alleged of any of them, including the past directors i.e., petitioners in Crl. M.C. 5852/2019 and Crl. M.C. 5799/2019 against whom the cases have been quashed by this Court. Thus, the same general allegation exists against the present petitioner also, who was an independent director in the accused company.

21. In absence of any specific averments or allegations carving out a specific role attributable to petitioner in relation to conduct of business of accused company, merely making bald statements that all the accused persons/directors were incharge and responsible for the day to day affairs of the company, does not suffice to make the petitioner herein vicariously liable for dishonouring of the cheques not signed by him and there being material on record to show that he was an independent director in the company.

22. As held in *S.M.S. Pharmaceuticals Ltd. (supra)*, and affirmed recently in *Sunita Palita (supra)* by the Apex Court, liability depends on the role one plays in the affairs of a company and not on designation or status alone. As also held by the Apex Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate and Ors. (1998) 5 SCC 749*, summoning an accused person cannot be resorted to as a matter of course and the order must show application of mind.

23. In view thereof, the impugned order dated 28.11.2018 passed by the learned MM-04, Patiala House Courts, New Delhi in CC No.16201/2017 is thus, quashed to the extent of issuing of summons to the present petitioner for alleged commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

24. The petition stands allowed in above terms.

SWARANA KANTA SHARMA, J

DECEMBER 19, 2022/zp

