IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-30487-2019, CRM-M-29871-2019, CRM-M-30513-2019, CRM-M-30552-2019, CRM-M-30559-2019, CRM-M-30567-2019, CRM-M-30577-2019, CRM-M-30585-2019, CRM-M-30603-2019, CRM-M-30626-2019, CRM-M-30627-2019, CRM-M-54968-2019, CRM-M-54989-2019, CRM-M-55003-2019, CRM-M-55004-2019, CRM-M-55023-2019, CRM-M-55025-2019, CRM-M-55034-2019, CRM-M-55036-2019, CRM-M-55039-2019, CRM-M-55040-2019, CRM-M-55041-2019, CRM-M-55046-2019, CRM-M-55048-2019, CRM-M-55049-2019, CRM-M-55053-2019, CRM-M-55058-2019, CRM-M-55066-2019, CRM-M-55069-2019, CRM-M-55087-2019, CRM-M-55097-2019, CRM-M-55098-2019, CRM-M-55099-2019, CRM-M-55497-2019, CRM-M-55498-2019, CRM-M-55500-2019, CRM-M-55501-2019, CRM-M-55503-2019, CRM-M-55523-2019, CRM-M-55525-2019, CRM-M-55526-2019, CRM-M-55527-2019, CRM-M-55529-2019, CRM-M-55538-2019, CRM-M-55539-2019

CRM-M-6-2020, CRM-M-80-2020, CRM-M-114-2020, CRM-M-116-2020, CRM-M-120-2020, CRM-M-122-2020, CRM-M-127-2020, CRM-M-130-2020, CRM-M-132-2020, CRM-M-307-2020, CRM-M-312-2020, CRM-M-84-2020, CRM-M-86-2020, CRM-M-87-2020, CRM-M-88-2020 and CRM-M-93-2020

Date of decision: 21.07.2022

RADHIKA CHANANA

....Petitioner(s)

Versus

STATE OF HARYANA AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present : Mr. Amit Jhanjhi, Sr. Advocate with
Mr. H.S. Sidhu, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

Mr. Alok Mittal, Advocate
for respondent No.2.

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<u>VINOD S. BHARDWAJ. J. (ORAL)</u>

The instant judgment shall dispose of the above-mentioned 61 criminal miscellaneous petitions as common question of fact and law arise amongst the same parties.

2. The instant batch of petitions raises a challenge to the orders of summoning as well as complaint against the petitioner along with others under Section 138 of the Negotiable Instruments Act, 1881. It was mentioned in the petition that the controversy involved in the present petitions is covered by the judgement passed by this Court in the matter of ***Anil Chanana Versus M/s Gyani Ram Ruliya Ram*** passed in CRM-M-36869-2018 decided on 30.10.2018.

3. Notice of motion was issued in the present case on 22.07.2019, whereafter an appearance on behalf of the respondents had been entered on 30.01.2020, when they sought time to file response. The matter was thereafter taken up on 14.03.2022 when the counsel for respondent No.2 further sought time to file reply. The same was accepted and the case was adjourned to 16.05.2022. On the said date of hearing, a request was again made on behalf of respondent No.2 to file response and advance arguments, whereupon the case was adjourned to 23.05.2022. No response was filed even on the said date and some more time was prayed for by the counsel representing respondent No.2 to file reply. It was specifically ordered that the said opportunity shall be the last opportunity to file response, failing which, the matter shall be decided on merits without affording any further opportunity and a period of eight weeks was granted to respondent No.2 to file the response.

4. The matter was thus taken up today, however, no response has been filed by respondent No.2 to the submissions advanced in the present petition. Learned counsel appearing on behalf of respondent No.2 however urges that he is ready and willing to argue the matter without filing the reply. Accordingly the

parties were heard.

Facts of the case. (Extracted from CRM-M-30487-2019)

5. That the respondent No.2-complainant had instituted the complaint against M/s Amira Pure Foods Private Limited, wherein the petitioner Radhika Chanana was arrayed as accused being a director of the said company. It had been alleged in the said complaint that respondent No.2-complainant is a commission agent and a proprietor of the firm and that the company namely M/s Amira Pure Foods Private Limited deals in business of purchasing and exporting of the paddy crops and rice and all the accused are in-charge of the day-to-day affairs of the company. It was contended that the accused company purchased paddy crops from the complainant and that various amounts were due against certain bills. It was alleged that upon successive demands cheque bearing No.024219 dated 24.05.2017 for a sum of Rs. 9,31,500/- drawn on HDFC Bank was issued in favour of respondent No.2-complainant and that upon presentation of the same for encashment with the Bank, the same was returned dishonoured vide Bank memo dated 22.08.2017 with a remarks “account closed”. A statutory notice was served and that on failure of the company to repay the amount, the proceedings under Section 138 of the Negotiable Instruments Act, 1881 were instituted, wherein the petitioner has been summoned.

Arguments on behalf of the petitioner:

6. Learned Senior counsel for the petitioner contends that case of the petitioner is duly covered by the judgement of this Court passed in a batch of petitions filed by other accused Director of M/s Amira Pure Foods Private Limited namely Anil Chanana in CRM-M-36869-2018, whereby a batch of 132 petitions was decided by a common judgement dated 30.10.2018. He contends that the

complainant does not make any specific allegations against the petitioner and does not even demonstrate as to how and under what manner the petitioner was responsible for the affairs of the company. He further contends that the petitioner was an additional Director of the company namely M/s Amira Pure Foods Private Limited for a period of one month commencing from 18.06.2008 to 25.07.2008 and has drawn attention to the documents appended as Annexure P-3 obtained from the Ministry of Corporate Affairs to supplement the same. Learned Senior counsel further contends that the cheque in question is alleged to have been issued in the year 2017 and that the petitioner had no concern with the affairs of the said company, since she was not a Director of the company at the time of issuance of the said cheque or a signatory to any of the cheques. He further submits that the petitioner was not even residing in India at the relevant point of time. She had no role in the commission of the aforesaid offence and that she had no obligation to make any payment. Even the supplies qua which the payment has not been made, are related to a period after the petitioner ceased to be an additional Director of the company. He contends that in the absence of any document to show that the petitioner was a Director of the said company at the time of commission of the offence; was a signatory to the dishonoured cheques; was in any manner responsible and in-charge of the affairs of the company, she cannot be prosecuted for dishonour of the cheques in question.

Arguments on behalf of respondent No.2

7. Learned counsel for respondent No.2-complainant submits that the petitioner was a former Director of the company and that the complaint specifically mentions that she was the Director and was responsible for the affairs of the company. There is no error in the order of summoning. He further contends

that the aspect as to whether the petitioner was responsible or not as on the date of the commission of the offence, is a matter of evidence and that the same is to be determined by the trial Court.

8. The counsel for respondent No.2 was confronted with the documents appended as Annexure P-3 relating to the Ministry of Corporate Affairs and to make an affirmative statement as to whether the said information so appended was incorrect, to which the counsel for respondent No.2 could not respond satisfactorily qua disputing the validity of the said document or dispelling the genuineness thereof. He also could not dispute the fact that the petitioner remained an additional Director of M/s Amira Pure Foods Private Limited only for a period of one month commencing from 18.06.2008 to 25.07.2008 as well as the fact that the petitioner is not the signatory to any of the cheques that have been dishonored. He was also called upon to respond to the submission of the counsel for the petitioner whether the case was covered by the judgement of this Court in the matter of ***Anil Chanana Versus M/s Gyani Ram Ruliya Ram*** *(supra)*, he could not point out any error in the judgement or any factual or legal aspect of the case on the basis whereof the case of the petitioner could be distinguishable from the case of the said co-accused Anil Chanana.

9. The Single Judge of this Court had allowed the petitions filed by the co-accused of the petitioner Anil Chanana and had quashed the order as well as the complaint that was the subject matter of the respective petitions along with consequential proceedings qua the petitioner. The relevant extract of the said judgement is reproduced here in after below:-

> *9. The question, therefore, is regarding the liability of a person who admittedly ceased to be a Director w.e.f. 10.02.2006 and*

against whom no specific averment has been made in the complaint regarding the manner in which he was incharge of and responsible to the Company for conduct of its business. In the paragraph of the complaint reproduced hereinabove, it is only mentioned that the petitioner alongwith other Directors was incharge of and responsible to the Company for the conduct of its business, which is a mere reproduction of the words of Section 141 of the Act.

10. Learned Senior counsel for the petitioner submits that it is settled law that before a summoning order is issued by the trial Court, it should feel prima facie satisfied that the persons being summoned have committed an offence. In the present case, the petitioner had ceased to be a Director in the Company long before the cheque was issued and being an ex-Director, to make him liable, it was necessary to aver in the complaint regarding the manner in which he was incharge of the affairs of the Company but no specific averment regarding the involvement of the petitioner, has been made in the complaint. Thus, it can not be said that there was any material on record to show that prima facie the petitioner had committed any offence. Under the aforementioned circumstances, summoning of the petitioner is an abuse of the process of law and the complaint and summoning order deserve to be quashed. Reliance has been placed upon judgment of the Hon'ble Supreme Court in Harshendra Kumar D. vs. Rebatilata Koley and others, 2011(1) RCR(Criminal) 887, Mrs. Anita Malhotra vs. Apparel export Promotion Council and another, 2011(4) RCR(Criminal) 835, Pooja Ravinder Devidasani vs. State of Maharashtra and another, 2015(1) RCR(Criminal) 271, Ashoke Mal Bafna vs. M/s Upper India Steel Mfg. & Engg. Co. Ltd., 2017(3) Crl. CC 848 and judgment dated 28.04.2018 passed in Crl. Appeal Nos. 586-594/2018 Ajay Aggarwal vs. M/s Integrated Finance Company Limited. Reliance has also *been placed upon judgment of Delhi High Court in Sudeep Jain vs. M/s ECE Industries Ltd. Crl.M.C. No. 1821/2013 decided on 06.05.2013.*

11. In Harshendra Kumar D. (supra), the facts were that the accused – Company had issued certain cheques, which were dishonored. The complaints under Section 138 of the Act were filed and it was averred that the Managing Director and two Directors of the accused-Company, including the appellant, were responsible for its day to day affairs. Upon summons being issued, the appellant challenged the complaint and the summoning order on the ground that he had resigned from the post of Director more than a month before the date of issuance of cheques and this fact is recorded in Form No. 32 filed by the accused-Company.The High Court rejected the petition filed by the appellant on the ground that resignation by a Director of the accused-Company is a matter for consideration in defence during the course of the trial. The Supreme Court, after referring to the statutory provisions, referred to three Judge Bench decision in S.M.S. Pharmaceutical Ltd. vs. Neeta Bhalla, 2005(4) RCR(Criminal) 141 and various other cases decided by two Judge Benches and held that documents like Form No. 32, are in the nature of public documents and are beyond suspicion and can be looked into at the prima facie stage and the criminal proceedings initiated under Section 138 of the Act can be quashed thereupon. The judgment of the High Court was, thus, set aside.

12. In Anita Malhotra (supra), the appellant before the High Court had resigned from the Directorship of the accused-Company w.e.f. 31.08.1999 and this information was submitted to the Registrar of the Companies through statutory Form No. 32. Notice under Section 138 of the Act, was dated 10.12.2004, which was replied to by her. She was summoned by the trial Court. The petition filed for quashing of the summoning order *and the complaint was rejected by the High Court. The Supreme Court placed reliance upon Harshendra Kumar D. (supra) and other cases and held that Form No. 32 and annual returns filed by Companies were public documents in terms of Section 74(2) of the Indian Evidence Act, 1872 and such documents can be looked into for the purposes of quashing of criminal proceedings. Again, the judgment of the High Court was set aside.*

13. In Pooja Ravinder Devidasani (supra) the facts were similar to the earlier two cases. The appellant before the Supreme Court had resigned before the date of issuance of cheque and this information had been submitted to the Registrar of the Companies through Form No. 32 and it was also contained in the annual return. Again it was held by the Supreme Court, that a document like Form No. 32 and Annual Return of a Company, can be looked into for ascertaining whether an accused person was a Director in the Company on the date of commission of the offence and that even for making a Director liable for an offence under Section 138 of the Act, there must be specific averment against him showing the manner in which he was responsible for the conduct of the business of the Company.

14. In Ashoke Mal Bafna (supra) the appellant was a Director in the accused Company, when the cheque was issued. However, the cheque was not presented during the period of its validity. Subsequently, the cheque was replaced and presented. But, by then, the appellant before the Supreme Court had resigned from the post of the Director. It was held that after his resignation, the appellant had ceased to play any role in the activity of the accused-Company and, thus, could not be made liable.

15. In Ajay Aggarwal (supra) the judgment in Anita Malhotra (supra) has been relied upon and followed.

16. Learned counsel for the complainant has placed strong reliance upon judgments of the Supreme Court in Gunmala Sales Private Ltd. vs. Anu Mehta and others, 2015(1) RCR(Criminal) 54 and Standard Chartered Bank vs. State of Maharashtra and others etc. 2016(2) RCR(Criminal) 778.

17. In Gunmala Sales Private Ltd. (Supra) the High Court had quashed the proceedings initiated under Section 138 of the Act on the ground that reproduction of the words of Section 141 of the Act, is not sufficient to make a Director vicariously liable and the manner in which he was conducting the affairs of the Company, must be specifically averred. The complainant challenged this judgment and contended that the role played by an individual Director in conducting the affairs of the Company is an internal issue and it would be unreasonable to expect the complainant to elaborate thereupon. The only requirement of law is that an averment should be made in terms of the language of Section 141(1) of the Act. The Supreme Court held that in a situation as existing in the facts of this case, the High Court should have quashed the complaint only after the concerned Director provided sterling evidence that he was infact not responsible for conduct of business of the Company. Thus, the exposition of law, that details regarding the manner in which a person, being a Director was responsible for the conduct of its affairs, has not been declared bad. Further, in this case, the concerned Director had not resigned.

18. In Standard Chartered Bank (supra) the accused–Company issued cheques for repayment of loan extended by a Bank, which were dishonored. The trial Court summoned the accused persons which was challenged by way of revision but was dismissed. Consequently the said orders was challenged before the High Court. The petition filed by two of the accused Directors, was allowed on the ground that no specific assertion *regarding the role of the said Directors, had been made in the complaint. In this backdrop, the Supreme Court held that - (a) the complaint must contain material to enable the Magistrate to make up his mind for issuing process as the Magistrate can not issue process in each and every case; (b) vicarious liability under Section 141 of the Act arises only when it is shown that an accused person was incharge of and responsible for the conduct of business of the Company at the relevant time; (c) Since the liability is on account of the nature of work being done by the accused person, it is necessary to disclose the appropriate facts for making him liable; (d) in the case of a Managing Director or Joint Managing Director or authorized signatory of the cheque there is no requirement of making an averment that he was incharge of and responsible to the Company for the conduct of its business; and (e) for making any other officer of the Company liable specific averment regarding his role and duty in the Company is necessary. Thus, it was held that the Chairman, Managing Director and authorized signatories of the cheques were liable for the offence even in the absence of any averment regarding their involvement in the conduct of the business of the Company. The whole time Directors were also liable as in their capacity as such Directors they would be involved in the conduct of the business of the Company even on daily basis and, thus, the averment in terms of language of Section 141 of the Act, was sufficient. The judgment of the High Court was, thus, set aside. This judgment is not on the point in issue in the present case. In fact, even in this judgment, it has been reiterated that for making any other person liable it is necessary to plead the necessary facts.*

20. Thus, there is no ambiguity in the law on the subject.

21. Reverting to the facts of this case, it is clear that the petitioner had resigned w.e.f. 10.02.2006. The cheque in *dispute had been issued much later. Form No. 32 and the annual return of the Company have been placed on record and the same have not been denied. For imposing vicarious liability upon the petitioner, as a person responsible for the business of the company, it was necessary to make specific averments in the complaint regarding his role in the conduct of the business of the Company. No such averment having been made in this case, the Magistrate was not justified in summoning the petitioner. At the stage of summoning of an accused person, the trial Court/Magistrate must be satisfied on the basis of material produced before it that prima facie the accused persons have committed an offence. The material being referred to by the complainant by way of its reply can not be looked into at this stage because the same has not been referred to or relied upon in the complaint.*

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22. This case is being taken up separately as learned counsel representing the complainant has submitted that specific averments regarding the manner in which the petitioner was responsible for conducting the business of the Company have been made in the complaint.

23. The complaint is on record as Annexure P-1. The petitioner has been arrayed as accused No. 3. A perusal thereof does not support the contention of the learned counsel.

24. Faced with this situation, learned counsel for the complainant has drawn my attention to the notice issued under Section 138 of the Act, which is Annexure P-6 on the record. He submits that the said notice is a part of the complaint and necessary averments have been made therein. Thus, there is no error in the order of summoning.

25. The petitioner is noticee No. 3. The averment made regarding him is as follows:- "You address No. 3 being Chairman/Director of addressee No. 1 are also being incharge *and being responsible person of address No. 1 company for conduct to the business of the Company are also liable for the punishment prescribed under the Act ibid."*

26. Contention of learned counsel for the petitioner cannot be accepted because the averments made in the legal notice under Section 138 of the Act can not be construed to be averments made in the complaint. That apart, even the averments made in the legal notice, do not fulfill the requirement of law. Thus, the contention of learned counsel for the complainant, is misplaced and is rejected.

27. The petitions are, accordingly, allowed; summoning orders as well as Complaints, which are subject matter of the respective petitions alongwith consequential proceedings having arisen therefrom, are quashed qua the petitioner.

28. At this stage, it would be appropriate to refer to the judgment of the Delhi High Court in Sudip Jain (supra). Delhi High Court has held that in order to reduce litigation it would be appropriate for the concerned Magistrates to seek copies of Form No. 32 and the latest Annual Return filed by the Company so that only those persons who are Directors on the date of commission of the offence are summoned.

29. I respectfully agree with the observations made by the Delhi High Court. It is, thus, directed that in all cases where the accused is a 'Company', before issuing summons to the accused persons the trial Court/Magistrate shall direct the complainant to produce a copy of Form No. 32 and the annual Return filed by the Company in order to determine the persons, who were Directors on the date of commission of the offence. In cases where the accused–Director is the Chairman or Managing Director or Joint Managing Director or authorized signatory of the cheque, they may be summoned without any averment regarding their role in the conduct of the affairs of the Company. For summoning of any other Director or officer

> *of the Company the necessary averment regarding their role in the conduct of the business of the Company, must be insisted upon. In respect of whole time Directors, mere reproduction of the words of Section 141 of the Act would be sufficient.*

10. The only distinguishing factor as against the present petitioner's case with co-accused Anil Chanana is that the said co-accused ceased to be a Director during the year 2006, whereas the present petitioner was an additional Director of the company from 18.06.2008 to 25.07.2008. It is also noticed from the complaint that no specific allegation had been levelled against the petitioner and the only averments stated qua the petitioner are reproduced as under:-

> *2. That accused above notices are Chairman and Directors of the Company namely Amira Pure Foods Private Limited Vill Harsru Gadi 21 Mile Stone Pattoudi Road Distt. Gurgaon Haryana and deals in the business of purchasing and exporting of the paddy crops and rice. Accused all are incharge of day to day works of accused company and responsible and liable for all the acts and conducts of the company as accused all are actively participated in all the affairs of the company.*
>
> *3. That accused was always purchasing paddy crop from complainant previously and always paid amount partly but this time accused have not given due amount of the following against bill through I Form No. 72 dated 25.11.2013.*
>
> *4. That despite of repeated requests and demands made by complainant accused did not make the payment of the above said amount and lingered on the matter under one pretext or the other and finally to discharge accused liability, accused issued cheques bearing no. 024219 dated 24.05.2017 for Rs.9,31,500.00/- drawn on HDFC Bank Branch EP-17 OLD*

RAILWAY ROAD SADAR BAZAR, GURGAON and while issuing the said cheques accused assured complainant that the said cheques will definitely be encashed as and when it will be presented in the bankers by complainant.

5. That as per accused assurance and good faith, complainant presented the above said Cheque to its Bankers i.e. Punjab National Bank, Madlauda Panipat A/c no. 4680002100005435 for encashment, but complainant was astonished to know when the said cheques along with bank memos dated 22.08.2017 with the remarks "Account Closed" was returned back to complainant un-cashed.

6. That complainant contacted accused and informed about the fate of the said cheque and again requested accused to pay the said cheque amount but accused showed accused inability.

7. That accused have intentionally and malafide cheated complainant as since beginning accused were having bad intention to cheat complainant, thus accused have made accused self liable to be punishable under 138 of Negotiable Instrument Act as well as u/s 420 IPC.

9. That the accused have committed offence punishable u/s 138/142 of the negotiable Instruments Act because since beginning the intention of the accused was to cheat the complainant and to grab the cheque amount. Thus all the accused are liable to be punished u/s 138/142 NI Act as well as u/s 420 IPC, according to provision of law.

11. Perusal of the same shows that the allegations set out in the complaint are general and non-specific. Even the order of summoning passed by the Court fails to mention any specific allegation against the petitioner or to identify the role or liability of the petitioner. The operative part of the said order read thus:-

"In preliminary evidence the complainant has himself

appeared as CW1 and has also tendered the certain documents. In view of the evidence and documents, a prima facie case for the commission of offence punishable under Section 138 of the Negotiable Instrument Act is made out against the accused. Let accused be summoned for the commission of offence punishable under Section 138 of the Negotiable Instrument Act on filing of PF, copy of complaint and list of witnesses etc. within 15 days for 17.05.2018. Summons be issued Dasti/regular or registered A.D. Long date is given due to priority of old cases and heavy pendency."

In view of the above, I have no hesitation to hold that the case of the petitioner is duly covered by the judgement of this Court rendered in the matter of ***Anil Chanana Versus M/s Gyani Ram Ruliya Ram*** passed in CRM-M-36869-2018 decided on 30.10.2018. Accordingly the present petitions are allowed. The respective complaints in the respective petitions along with the respective order of summoning qua the petitioner are quashed along with all consequential proceeding arising therefrom.

Petitions are allowed.

(VINOD S. BHARDWAJ)
JUDGE

July 21, 2022
S.Sharma(syr)

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No