

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.42855 of 2022 (O&M)
Date of decision : 06.12.2022

Sandeep Aggarwal

..... Petitioner

versus

M/s Innovative Infra Developers
Pvt. Ltd., & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. M.Z.Chaudhary, Advocate
Mr. Tabarak Hussain, Advocate and
Ms. Rupa Pathania, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed for quashing of Criminal Complaint No.46338/2019 dated 23.09.2019 (Annexure P-9) and the order dated 04.03.2020 (Annexure P/1) passed by the Judicial Magistrate First Class, Gurugram, Haryana whereby the petitioner has been summoned to face trial for offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (for short 'the Act').

Present complaint has been filed with the following memo of parties :-

M/S Innovative Infra Developers (Pvt.) Ltd, Corporate office at 422, 4th Floor, DLF Star Tower, Sector-30, Gurugram-122001, through its Authorized representative Mr. Manish Gupta,

.....Complainant

Versus

1. Rabinder Kumar Sahoo Resident of Tower B -801, Victory Cross Road, Sector 143 B, Gautam Budh Nagar, Noida-201301 U.P. Director of M/S Bemco Contracting (Pvt.) Ltd.

2. Sandeep Agarwal Resident of House No B-36, Sector-51, Gautam Budh Nagar-201301, U.P. Managing Director of M/S Bemco Contracting Pvt. Ltd
3. Eappen Kondoor Oommen Resident of KONDOOR HOUSE, PUTHUSSERRY KALLOPPARA Village, Kerala-689602 KL Director of M/S Bemco Contracting Pvt. Ltd
4. Sanjay Agarwal Resident of C-43, Sector-49 Gautam Budh Nagar, Noida 201301 U.P. Director of M/S Bemco Contracting (Pvt.) Ltd
5. M/S Bemco Contracting (Pvt.) Ltd, -Corporate office at D-181 Sector-10 Noida-201301 U.P and Registered office at B-46 (New No 210) New Ashok Nagar, Delhi-1100096

Accused

Learned counsel for the petitioner submits that though admittedly the petitioner has been arraigned as an accused No.2 in his capacity as Managing Director of accused No.5-Company, yet in the contents of the complaint the only allegation levelled against accused Nos.1 to 4 collectively reads as under :-

“6. That As it was agreed by the accused company, the accused company issued a Cheque of Federal Bank, Noida Branch, Gautam Budh Nagar, bearing no.246867 dated 28.06.2019 for Rs. 20,89,943 drawn in favour of complainant company towards refund (Indemnity) of received the advance money by the alleged accused company M/S Bemco Contracting (Pvt.) Ltd. This cheque was signed by Mr Rabinder Kumar Saho, Director of the accused company and also by the another Director Mr Eappen Kondoor Oommen. that the accused No. 5 is a company and accused No.1 to 4 are the director of the company and involved in day to day working of the company and all are jointly and severally liable under section 141 of N.I. Act.”

He has drawn attention of this Court to the affidavit filed by the complainant in evidence wherein again the aforesaid averments have been reiterated in para 6 of the affidavit. By referring to the aforesaid contents of the complaint as well as the affidavit tendered in evidence, learned counsel for the petitioner submits that the same cannot be read to hold that the

petitioner being Managing Director can be summoned as accused to face trial especially in the light of the fact that the petitioner is enjoying Directorship of the company as an Independent/Non-Executive Director. He refers to Form 32 part of document Annexure P-12 which is appended with complaint as well and in part of record of the trial Court. In support of his contention strong reliance is being placed upon ***Sunita Palita & ors. Vs. M/s Panchami Stone Quarry, 2022 (11) SCALE 463.*** He further contends that there is nothing on record to show that the petitioner was ever designated as Managing Director and the complaint is devoid of any such pleadings. Thus he asserts that it will be a case for this Court to exercise jurisdiction under Section 482 Cr.P.C. to quash the complaint and all proceedings subsequent thereto including the order of summoning.

I have heard learned counsel for the petitioner and have gone through the records of the case.

As is evident from the memo of parties reproduced hereinabove the petitioner has been arraigned in his capacity as Managing Director of the Company. No specific proforma of the complaint is prescribed under law. Memo of parties is part of the complaint and therein the petitioner has been arraigned as Managing Director. Apart from that even in ***Sunita Palita's case (supra)***, Apex Court held that :-

“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.”

Thus at this stage while exercising jurisdiction under Section 482 Cr.P.C. there is no material before this Court to hold that the petitioner is not the Managing Director of the company as is required as per the law laid down in ***National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and another (2010) 3 SCC 330***. In ***K.K.Ahuja Vs. V.K.Vora & anr., 2009(10) SCC 48*** it has been held as under :-

“20. The position under [section 141](#) of the Act can be summarized thus :

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of [Section 141](#).

(iii) In the case of a Director, Secretary or Manager (as defined in Sec. 2 (24) of the [Companies Act](#)) or a person referred to in clauses (e) and (f) of [section 5](#) of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under [section 141 \(1\)](#). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable

under section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other Officers of a company can not be made liable under sub-section (1) of section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

Apex Court in ***S.P.Mani & Mohan Dairy Vs. Dr. Snehalatha***

Elangovan, 2022 (4) RCR (Criminal) 743 held as under :-

“47. Our final conclusions may be summarised as under:-

a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to subsection (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Adherence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their

knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

c.) Needless to say, the final judgement and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court."

(emphasis supplied)

Thus the question as to whether the petitioner has been designated as Managing Director or not will be a matter of trial and cannot be ventured into while exercising jurisdiction under Section 482 Cr.P.C. at this stage in the absence of any material to substantiate the plea raised by the petitioner. At this stage this Court cannot foreclose the complaint especially in light of the fact that the petitioner has been impleaded and arraigned as accused in his capacity as Managing Director of the Company.

Petition stands dismissed.

(PANKAJ JAIN)
JUDGE

06.12.2022

Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No