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

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CRL.M.C. 5248/2022**

Between:-

**SH. SHIV RAJ SINGH
S/O SH. MURKHILYA SINGH
R/O VILL. SAWARI GAWAS,
RUDRAPRAYAG, (UTTRAKHAND)**

.....PETITIONER NO.1

**SH. PUSHKAR SINGH
S/O SH. HARI SINGH
R/O LADONI,
RUDRAPRAYAG, (UTTARAKHAND)**

.....PETITIONER NO.2

(Through: Ms. Isha Khanna, Advocate.)

AND

**ALLIED BLENDERS & DISTILLERS PVT. LTD.
B-12 9, OKHLA INDUSTRIAL AREA PHASE-I,
SUMANPURI, SAHASHRADHARA ROAD
DEHRADUN, UTTRAKHAND** **..... RESPONDENT**

(Through: None.)

+ **CRL.M.C. 5249/2022**

Between:-

**SH. SHIV RAJ SINGH
S/O SH. MURKHILYA SINGH
R/O VILL. SAWARI GAWAS,
RUDRAPRAYAG, (UTTRAKHAND)**

.....PETITIONER NO.1

**SH. PUSHKAR SINGH
S/O SH. HARI SINGH**

**R/O LADONI,
RUDRAPRAYAG, (UTTARAKHAND)**

.....PETITIONER NO.2

**MANVENDRA SINGH
S/O SHRI JAIKRITSINGH
R/O VILL. DEVAR KHANDORA,
THANE CHAMOLI, (UTTRAKHAND)**

.....PETITIONER NO.3

**MUKESH ASWAL
S/O SH. RAJENDERA SINGH ASWAL,
R/O VILL. SINJI SIROW,
CHAMOLI, (UTTRAKHAND)**

.....PETITIONER NO.4

(Through: Ms. Isha Khanna, Advocate.)

AND

**ROCK AND STORM DISTILLERIES PVT. LTD.
A-62/4, FIRST FLOOR, G.T. KARNAL ROAD,
INDUSTRIAL AREA,
AZADPUR, DELHI-110033**

..... RESPONDENT

(Through: None.)

% Pronounced on : 31.10.2022

J U D G M E N T

1. These two petitions involve similar issue, therefore, the same are being decided by this common order. The facts are taken from CRL.M.C. 5248/2022.

2. Learned counsel appearing on behalf of the petitioners submits that the impugned order of summoning is in ignorance of the settled legal position, inasmuch as, the court below has failed to consider that no specific averments have been made with respect to the present petitioners as to how they are responsible for the day-to-day functioning of the partnership firm. While placing reliance on various

pleadings and documents, it has been submitted that the present petitioners are not responsible for the day-to-day functioning of the accused firm and, therefore, the order of summoning suffers from legal infirmity. According to her, the cheque in question had been drawn and issued by partners, namely, Basant Bhandari and Rajeev Pratap and was not issued by the petitioners. The ingredients of Section 138 of the Negotiable Instruments Act, 1881 (in short, 'the NI Act') are therefore not fulfilled. Section 138 of the NI Act does not speak about the joint liability. Section 141 of NI Act does not make all partners liable for the offence. Criminal liability would fasten on those who, at the time of commission of offence, were in charge and were responsible for the day-to-day conduct of the business of the firm. It is further stated that it is very much in the knowledge of the respondent that no liability can be fastened upon the petitioners in view of the supplementary partnership deed dated 01.05.2018 and agreement dated 28.06.2018. The present petitioners have been unnecessarily arrayed in the complaint. The reliance is placed on the decisions of the Hon'ble Supreme Court in the matters of ***Monaben Ketanbhai Shah and Ors. v. State of Gujarat and Ors.***¹ and ***Dilip Hariramani v. Bank of Baroda***².

3. I have heard the learned counsel appearing on behalf of the petitioners and perused the record.

4. The petitioners are arrayed as respondents in the complaint as accused Nos.15 and 16, respectively. A perusal of complaint indicates that the complainant in paragraph No.2, thereof, had stated that the accused No.1 is a partnership firm and accused Nos.2 to 16 are its partners. The averments made in the complaint further goes on to state that the accused approached the complainant *inter alia* representing

¹ (2004) 7 SCC 15

² 2022 SCC OnLine SC 579

that they are partners and carrying out business of sale of IMFL, under the name and style of *M/s Trimurti Associates & Ors.* It is also stated that the accused, further represented that the Excise Department, Government of Uttarakhand had issued license in favour of accused No.10, 11, 12, 14, 15 and 16 to deal in the sale of IMFL products in the State of Uttarakhand. It is thus seen that with respect to the present petitioners, specific averments have been made in the complaint not only with respect to the fact that they are partners of the accused firm but with respect to holding of license that was issued by the State of Uttarakhand in their name. Paragraph No.11 of the complaint reiterates the same allegation and it states that the accused are jointly and severely dealing with the complainant from time to time and amongst the accused, two of the partners are the signatories of the cheque in question. Learned Metropolitan Magistrate *vide* impugned order has taken into consideration various pronouncements of the Hon'ble Supreme Court.

5. Having considered the material available on record, learned Metropolitan Magistrate found that accused No.5 and 12 were the signatories of the cheque and the accused No.10, 11, 12, 14, 15 and 16 are the license holder on behalf of the accused firm. The learned Metropolitan Magistrate did not find any specific role, so far as, other accused are concerned and, accordingly, he dropped the complaint against the remaining accused except to direct for issuance of summon against accused No.1, 5, 10, 11, 12, 14, 15 and 16.

6. It is settled that in terms of explanation of Section 141 of the NI Act, the expression "company" would mean any body corporate and includes a firm or other association of individuals. Sub-section 1 of Section 141 postulates that where an offence is committed under Section 138 by a company, the company as well as every person who,

at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business shall be deemed to be guilty of the offence. It is also necessary in terms of Section 141 of the NI Act to specifically state in the complaint that the accused was in charge of and responsible for the conduct of the business of the company. The aforesaid legal position is not doubted. In the instant case specific averments have been made with respect to the present petitioners which have been considered by the concerned Metropolitan Magistrate. So far as the arguments advanced by the learned counsel appearing on behalf of the petitioners are concerned, the same would not require to be considered at the stage of summoning the petitioners.

7. The Hon'ble Supreme Court in the matter of ***S. P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan***³ in criminal Appeal No.1586/2022 dated 16.09.2022 has dealt with the issue extensively, where, the High Court of Madras in exercise of its power under Section 482 of Cr.P.C allowed the petition and quashed the complaint under Section 138 of the NI Act on the ground of non-fulfillment of the requirement of Section 141 of the NI Act. The high court in that case held that merely by reciting the words used under Section 141 of the NI Act in the complaint, no vicarious liability can be fastened on the partners of the firm.

8. The Hon'ble Supreme Court in paragraph No.47 summarized its conclusion which reads 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. Advertence 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.”

Finally, the Hon’ble Supreme Court came to the conclusion that the primary responsibility of the complainant is only 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 partners of the firm were aware about each and every transaction. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or the firm as the case may be. It has also been stated that on the other elements of an offence under Section 138 of the NI Act, being satisfied, the burden is on the board of directors or on the officers in charge of affairs of the company/partners of the firm to show that they were not liable to be convicted. The final judgment and order would depend on the evidence adduced. Criminal liabilities are attracted only on those, who at the time of commission of the offence, were in charge or responsible for the conduct of the business of the firm. But vicarious criminal liability can be incurred 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. It has been clearly held that if director wants the process to be quashed by filing the petition under Section 482 of the Cr.P.C. on

the ground that only bald averment is made in the complaint and he/she is not really 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 the process of court.

9. Having considered the submissions made by the learned counsel appearing on behalf of the petitioners and on the premise of the specific averments made in the compliant and in the absence of any sterling circumstances/evidence being produced by the petitioners, this court does not find it appropriate to exercise its power under Section 482 of the Cr.P.C. to quash the instant complaint.

10. So far as the decision in the case of *Dilip Hiraramani (supra)* relied upon by the learned counsel appearing on behalf of the petitioners is concerned, primarily the same does not relate to the scope of exercise of power under Section 482 of the Cr.P.C. and, therefore, does not have any application at the present stage. Similarly, another decision in the case of *Monaben Ketanbhai Shah (supra)* is concerned, a perusal of paragraph No.7 thereof would clearly indicates that in the complaint there were no averments against the accused in that case. In the instant case, this court has noted that there are specific allegations not only with respect to the fact that petitioners are the partners of the firm but it is also stated that they were holding the license in their name on behalf of the firm.

11. In view of the aforesaid, this court does not find any substance in Crl.M.C.5248/2022, the same is, therefore, dismissed.

12. So far as other case i.e. Crl.M.C.5249/2022 is concerned, the complaint in the said case has also been carefully perused. Paragraph

No.2, 11 and 13 thereof would clearly demonstrate that specific averments with respect to the petitioners in that case have been made. Since the legal issue has been dealt with and the facts in this case are also similar, therefore, for the reasons mentioned in order passed, CrI.M.C.5249/2022 also deserves to be dismissed and the same is hereby dismissed.

13. It is made clear that this court has only examined the facts to test the validity of the impugned summoning order and the trial court is free to decide the complaint on its own merits uninfluenced by the observations made in this order.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 31, 2022

Priya

