IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3920 OF 2022

Parmesh Balaji Patil .. Applicant

Versus

Qureshi Nurul Faher .. Respondent

Mr. Abhishek Singh, Advocate for the Applicant.
Mr. A. C. Pathan & Mr. R. O. Awasarmol, Advocate for Respondent.

WITH
CRIMINAL APPLICATION NO. 3377 OF 2022

Yogesh Ramesh Kulkarni .. Applicant

Versus

Qureshi Nurul Faher .. Respondent

Mr. Abhishek Singh, Advocate for the Applicant.
Mr. A. C. Pathan & Mr. R. O. Awasarmol, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 03rd March, 2023.

Date on which order pronounced : 12th April, 2023.

ORDER :-

. The applicants in both the applications are the accused in S.C.C. No. 6524/2020 filed by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act (for short "N.I. Act"). The applicant in Criminal Application No. 3920/2022 is original accused No. 1 whereas, the applicant in Criminal Application No. 3377/2022 is accused No. 3 in the said case. Both the applications are filed challenging an order dated 11.12.2020 passed by the learned J.M.F.C., 18th Court, Aurangabad issuing process. The applicant in Criminal Application No. 3920/2022 is shown to be Chief Executive Officer cum Manager of a company namely Denim Hub company. The applicant in Criminal Application No. 3377/2022 is shown to be a business head of Denim Hub Company. The complaint of the respondent in short is that the accused persons entered into an agreement to run showroom in the name and style as Denim Hub Showroom at Usmanpura, Aurangabad towards the consideration of showroom owned by the informant and was taken on rent. The cheque for an amount of Rs. 13,00,000/- (Rs. Thirteen Lakh only) was given. Towards transaction later on total five cheques were given as below :

Sr. No.	**Date**	**Cheque Number**	**Amount**
1	05/01/2020	515385	Rs. 3,00,000/-
2	16/01/2020	515271	Rs. 2,00,000/-
3	30/01/2020	515460	Rs. 2,00,000/-
4	07/02/2020	515459	Rs. 2,00,000/-
5	16/02/2020	515458	Rs. 2,00,000/-

2. All the cheques were presented in the bank of the complainant on 04.03.2020. However, all the cheques were bounced and the bank issued cheque return memo on 07.03.2020 with an endorsement as "funds insufficient". Notice was issued demanding the amount. However, it is alleged that, in spite of demand, no payment was made and hence, the complaint came to be lodged. In the entire complaint, the averment shows that the transaction was between the complainant and the company namely Denim Hub Company. The cheque was also issued in the name of Denim Hub Life Style Pvt. Ltd. The demand notice was also sent to the Manager Denim Hub Life Style Pvt. Ltd., Plot No. 21/A, I.D.A., Phase-2, Cheharapalli, Hyderabad, Telangana on 17.03.2020. The said notice was replied by communication dated 17.06.2020 by the authorized signatory of Denim Hub Life Style Pvt. Ltd. On presentation of the complaint, learned J.M.F.C., Aurangabad passed an order of issuing process. It is observed that, the accused company by name Denim Hub Life Style Pvt. Ltd. issued cheques for discharge of legal liability and accused Nos. 1 to 3 are responsible for the acts of the said company. After receiving the summons the applicants approached this Court. The main grounds of challenge are that the company is not made as party and secondly, though the addresses of all the accused persons are outside the local jurisdiction of the learned Magistrate, no enquiry under Section 202 of the Code of

Criminal Procedure (for short “Cr.P.C.”) is held by the learned Magistrate before issuance of process.

3. This Court has to therefore only examine as to whether the order of issuance of process is bad in law and deserves to be quashed and set aside on these two counts.

4. Learned advocate for the applicants submits that, all the accused persons are shown to be manager/directors of the company namely Denim Hub Company. It was therefore necessary to add company as accused. In absence of company as accused these applicants could not have been added as accused persons. He further submits that, both the applicants are residents of Hyderabad, that is beyond territorial jurisdiction of the Court issuing process and therefore, in view of judgment of the Hon’ble Apex Court in a case of **Re : Expeditious Trial of Cases under Section 138 of N. I. Act 1881 in Suo Motu Writ Petition (Crl.) No. 2 of 2020** reported in **2021 SCC Online 325** decided by the five Judges Bench of the Hon’ble Apex Court, it was necessary to hold an enquiry under Section 202 of the Cr.P.C. before issuance of process.

5. Learned advocate for respondent submits that, from the documents it is clear that, it is these accused persons who are responsible for the day to day affairs of the company and therefore,

they are rightly added as accused persons. The order reflects that the learned Magistrate has perused the complaint and the documents along with complaint. The affidavit that was filed in lieu of evidence was also seen by the learned Magistrate. Thus, the Court has rightly passed an order showing application of mind. He further submits that, from the contents of the complaint it is clear that, accused are shown to be responsible persons for the business of Denim Hub Company. Since the cheque was presented in Aurangabad and the showroom was also in Aurangabad, the learned Magistrate has the jurisdiction.

6. On going through the complaint it is seen that, the addresses of all the accused persons are shown as Denim Hub Life Style Pvt. Ltd. In paragraph No. 14 of the complaint there is mention of Section 142 of the N. I. Act also, however, the company is not added as a party. Secondly, though in the very opening paragraph it is stated that, the accused persons had taken the showroom for Denim Hub Company, still there is no averment that the accused persons are liable and responsible for day to day transactions of the company. From reading of the impugned order, the Court has issued process only under Section 138 of the N.I. Act and not under Section 420 of the I.P.C. Though, there is no averment in the complaint that the accused persons are responsible for the acts of the company, still in the impugned order the

Court has observed that the accused persons are responsible for acts of the said company. This order needs to be considered in the light of the judgment in a case of **Re : Expeditious Trial of Cases under Section 138 of N.I. Act** (supra). The Hon'ble Apex Court has held that in every case under Section 138 of the N.I. Act where the accused is resident of a place beyond territorial jurisdiction of the learned Magistrate, in such cases it is necessary to hold an enquiry under Section 202 of the Cr.P.C.

7. Next judgment relied upon by the learned advocate for the applicants is the judgment of the Hon'ble Apex Court in the case of **Pawan Kumar Goel Vs. State of U.P. & another** reported in **2022 SCC Online 1598**. It is in respect of a case arising out of proceeding under Section 138 of the N. I. Act wherein, the Hon'ble Apex Court has reiterated the pronouncement of the Hon'ble Apex Court in the case of **State of Haryana Vs. Brij Lal Mittal & Ors.** reported in **(1998) 5 SCC 343.** It is held that, it is necessary to see that, at the material time whether the person was in-charge and was also responsible to the company for the conduct of its business.

8. Learned advocate for respondent relied upon the following judgments.

(i) **Budhmal Bhansali @ B. Bhansali Vs. State of West Bengal & Anr.** reported in **2008 SCC Online Cal 115**.

(ii) **Fateh Chand Bhansali Vs. Hindusthan Development Corporation Limited and Ors.** reported in **2005 SCC Online Cal 170.**

(iii) **S. P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan** reported in **2022 SCC Online SC 1238.**

9. In the case of **S. P. Mani and Mohan Dairy** (supra), the Hon'ble Apex Court had summarized the conclusions after analyzing Section 141 of the N. I. Act. It is summarized that, it is the primary responsibility of the complainant to make specific averments in the complaint so as to make the accused vicariously liable. Paragraph No. 47 of the said judgment is reproduced as below :

> "47. Our final conclusions may be summarised as under :-
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> 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 sub-section (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.
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> 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 judgment 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.

10. Lastly, learned advocate for respondent relied upon the judgment of this Court delivered at Principal Seat at Bombay in Criminal Application No. 1168/2022 in the case of **Shamal Vijay Parab & Anr. Vs. The State of Maharashtra & Anr.** dated 02.12.2022.

11. Considering all the judgments and ratio in the judgments, this Court finds that, the judgments relied upon by the applicants are squarely applicable to the present case. Looking to the conclusions in the judgment of the Hon'ble Apex Court in the case of **S. P. Mani and Mohan Dairy** (supra) and on going through clause (a), it is clear that, it is the primary responsibility of the complainant to make specific averments in the complaint to show that the accused is liable for an action. It is only in such cases that the Director has to make a ground that he is really not concerned with the issuance of the cheque 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. In this case, in the complaint itself, there is no sufficient averment so as to fasten the liability upon the applicants and therefore, though the learned advocate for respondent has relied upon the judgment of the Hon'ble Apex Court in the case of **S. P. Mani and Mohan Dairy** (supra), however, the same would not be applicable in the facts of this case.

12. Taking into consideration all the judgments cited and the legal position as placed before this Court, this Court finds that, clearly a case is made out to quash the proceeding of S.C.C. No. 6524/2020 pending before the learned J.M.F.C., 18th Court, Aurangabad and to quash the order of issuance of process dated 11.12.2020 to the extent of applicants. Hence, the following order.

13. Both the criminal applications are allowed in terms of prayer clauses (C), (d) and (e) to the extent of the applicants.

14. Both the criminal applications stand disposed off.

(KISHORE C. SANT, J.)

P.S.B.