116 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT *CHANDIGARH***

CRM-M-11568-2023 (O&M)
Date of Decision: 09.03.2023

MR. AMAL DATTKUMAR DHRU ...... PETITIONER

VS

M/S. YES BANK LTD. AND ORS. ... RESPONDENTS

<u>CORAM</u>: <u>HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL</u>

Present : Mr. Paramjit Singh Thiara, Advocate for the petitioner.

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<u>MANJARI NEHRU KAUL, J. (ORAL)</u>

The petitioner is seeking setting aside of the summoning order dated 24.07.2019 (Annexure P-1) under Section 138 of the Negotiable Instruments Act 1881, passed by learned Judicial Magistrate Ist Class, Gurugram in CC/138 NI/Act/32312/2018 dated 01.10.2018 pending in the court of Judicial Magistrate Ist Class Gurugram and the order dated 22.02.2022 (Annexure P-2) passed by Ld. Additional Sessions Judge, Gurugram dismissing the Criminal Revision No. 39 of 2020 (CIS No.CRR_55/2020) against the order dated 24.07.2022 wrongly mentioned as 17.09.2019 in the order Annexure P-2.

Learned counsel while inviting the attention of this Court to the copy of Form No. 32 annexed as Annexure P-3 submits that the petitioner was appointed as a nominee of M/s. Syntex Infra Project Limited to the board of respondent No.2-Company as its non-executive Director. Learned counsel has vehemently argued that the petitioner was neither an authorized signatory to the board meetings nor was he drawing any salary from respondent No.2 company and since he was non-executive Director, he had no role to play in the management or in the day to day affairs of respondent No.2-Company. Learned counsel has still further submitted that the petitioner had no role to play either at the time when the loan was obtained or even when the cheque in question was issued and subsequently dishonored. It was, thus, urged that in absence of any specific allegations qua the role of the petitioner, mere vague allegations that he was responsible for day to day affairs of the accused company would not be sufficient to proceed against him under Section 138 of the Negotiable Instruments Act. Therefore, in the aforesaid circumstances, since the petitioner was not a signatory of the cheque in question or even responsible for the affairs of the company, he could not be held vicariously liable under Section 141 of the Act. In support of his submissions, learned counsel has placed reliance upon "***Pooja Ravinder Devidasani Vs. State of Maharashtra and another decided on 17.12.2014 : 2014(16) SSC1 and Sunita Palita & Others Vs. M/s. Panchami Stone Quarry 2022(4) RCR (Criminal) 118"***

I have heard learned counsel and perused the relevant material on record.

It would be pertinent to refer to the following observations of Hon'ble the Supreme Court in '**Gunmala Sales Private Ltd. vs. Anu Mehta' 2015(1) RCR (Criminal) 54**':

> "30. *When in view of the basic averment process is issued the complaint must proceed against the Directors. But, 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 is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling uncontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be abuse of the process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because*

ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint it must be shown that no offence is made out at all against the Director."

It is thus, abundantly clear from the aforesaid observations of the Hon'ble Supreme Court that the petitioners cannot seek quashing of a complaint merely on the ground that the complainant had made basic averments only and not mentioned their individual and particular roles in the affairs of the Company.

Admittedly, the petitioner is a non-executive Director of respondent No.2-Company. This court does not concur with the submissions made by the learned counsel for the petitioner that since there were no specific or categoric allegations leveled in the complaint in question as to how and in what manner the petitioner was responsible for the conduct of the day to day affairs of the accused company, the summoning order (Annexure P-1) as well as complaint (Annexure P-4) deserved to be quashed.

It would also be apposite to refer to the observations made by the Hon'ble Supreme Court in **'SMS Pharmaceuticals Ltd. vs. Neeta Bhalla' 2005(4) RCR (Criminal) 141:**

"13. *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 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 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 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.*

14. A reference to sub-section (2) of Section 141 fortifies the above reasoning because sub-section (2) envisages direct involvement of any Director, Manager, Secretary or other officer of a company in commission of an offence. This section operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of these offices in a company. In such a case, such persons are to be held liable. Provision has been made for Directors, Managers, Secretaries and other officers of a company to cover them in cases of their proved involvement."

This Court also finds no force in the submissions made by learned counsel that the petitioner being a non-executive director cannot be prosecuted under Section 138 read with Section 141 of the Act. The respondent No.1 in its complaint Annexure P-4 has categorically alleged that the petitioner along with other accused had approached it for grant of auto loan facility, which prime facie reflects the involvement of the petitioner in the affairs of the company, therefore, even the case laws relied upon by the learned counsel would not come to the rescue of the petitioner. Further, this Court at this stage cannot be expected to conduct a mini trial and delve into the truthfulness or otherwise of the allegations leveled in the complaint.

As a sequel to the above, this Court does not find any merit in the instant petition, which is accordingly dismissed.

(MANJARI NEHRU KAUL)
JUDGE

09.03.2023
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*