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

201 **CRM M-32548 of 2018**
Date of Decision: 11.12.2023

Parveen Gupta ...Petitioner

Versus

Manoj Aggarwal ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Deepender Singh, Advocate for the petitioner.
Mr. Deepak Gupta, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the criminal complaint No. 1964 of 05.05.2017/NACT No. 2632 of 2016 (CNR No. HRFB03-011769-2016) under Sections 138, 139 and 141 of the Negotiable Instruments Act, 1881 (Annexure P-1) (hereinafter to be referred as '**the Act**') titled as **"Manoj Aggarwal Vs. SRS Real Estate Limited and others"** as well as summoning order dated 11.8.2016 (Annexure P-2) passed by the Court of learned JMIC Faridabad and order dated 03.05.2018 (Annexure P-4) passed by the learned Additional Sessions Judge, Faridabad (Revisional Court), whereby, the revision filed by the present petitioner was ordered to be dismissed.

2. The brief facts of the case are that the complainant filed the complaint under Section 138 of the Act against the present

petitioner and other accused with the averments that the accused in discharge of their existing liability towards the complainant had issued cheque bearing No. 175934 dated 24.04.2016 for a sum of Rs. 50,00,000/- drawn on Union Bank of India, Faridabad. However, when the respondent presented the said cheque for collection, it was dishonoured with the remarks “payment stopped by the drawer”. Despite issuance of legal notice, the petitioner and other accused did not honour the cheque amount and the complaint was filed against the petitioner and others. It was also alleged that accused No. 3 to 23 had acted on behalf of accused No. 1 and 2 and had alleged that the cheque would not be dishonoured and the accused No. 3 to 23 had personally represented that all the accused were incharge and were responsible for day to day affairs and business of accused No. 1 and 2 and the company would ensure that the cheque does not get dishonor on presentation.

3. Learned counsel for the petitioner contended that the petitioner was arrayed as accused No. 18 in the complaint, which had been primarily filed against the company. As per him, the petitioner was appointed as the Additional Director (independent category) vide Form No. 32 on 15.02.2010 in the company and he was a non executive Director in the company, which was evident from the Form No. 32 annexed with the register (Annexure P-5). Still further, the

petitioner has resigned from the company w.e.f. 06.10.2016 and Form No. DIR- 11 as per the records of ROC was annexed as (Annexure P-6). Learned counsel further contended that the petitioner was only and independent (Non Executive Additional Director) of SRS Limited and could not be held liable for day to day affairs of the Company. Moreover, he was not even a signatory to the disputed cheque (Annexure P-7). He further contended that the petitioner never acted as Director and has no authorization to represent the company in any manner for managing the day to day affairs and even never acted as authorized signatory on behalf of the complainant. Learned counsel further contended that both the Courts had committed the error for summoning the petitioner as an accused in the present case, in the absence of any material/document showing the involvement of the petitioner in running the day to day affairs of the company as well as his involvement in the dishonor of the cheque. As per the learned counsel, the Revisional Court had misinterpreted the law laid down by the Hon'ble Supreme Court of India in the matter of **National Small Industries Corporation Vs. Harmeet Singh Paintal 2010(3) SCC 330 and Bhardwaj Thuiruvenkata Venkataraghvan Vs. Ashok Aror, 2017 SCC Online Del. 7416.**

4. Learned counsel further submitted that Section 2(47 of the Companies Act, 2013 recognizes different categories of directors

and creates a distinction in the status of independent and nominee directors. Still further, Section 149(6) of the Companies Act 2012 prescribes the qualification of an independent director as under:-

> ***"149. Company to Have Board of Directors***
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> *(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,--*
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> *(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;*
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> *(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;*
>
> *(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company"*

5. Learned counsel further submitted that the petitioner was appointed as non executive Director (independent category) on account of his legal expertise being an Advocate and he could not have been summoned under Section 138 of the Act. The petitioner had nothing to do with the day to day affairs of the company.

6. Learned counsel for the petitioner has further relied upon the provisions of Section 149(12) of the Companies Act, which provides as under:-

> *"Notwithstanding anything contained in this Act,-*

(i) an independent director;

(ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently."

7. Learned counsel submitted that in view of the provisions contained in Section 149(12) of the Companies Act, the petitioner has been summoned in the present case without there being anything on record to show that the case of the petitioner was covered under Section 149(12) of the Companies Act. Learned counsel further submitted that even otherwise, the cheque was issued towards a debt, which may have become payable in future upon the contingent event, which was evident from the Buy Back Investment Agreement dated 07.03.2016 (Annexure P-9). Still further, the summoning order has been passed by completely ignoring the mandatory provisions of Section 141 of the Act.

8. On the other hand, learned counsel appearing on behalf of the respondent submitted that the petitioner had wrongly placed reliance on Section 149(6) and Section 149(12) of the Companies Act 2013. As per Section 149(6) and Section 149(12) of the Companies Act, proceedings cannot be initiated against an independent Director,

who has/had no pecuniary relationship with the company. In the present case, the petitioner had not pleaded that he had no pecuniary relationship with the company or had not taken any pecuniary benefits of the company. Still further, it is not the case of the petitioner that the cheque in question was issued without his consent or knowledge. Apart from that, as per Form No. 32 (Annexure P-5), the date of joining of the petitioner was 05.02.2010 and his date of appointment and role are subject matters of evidence before the trial Court. Apart from that, a Buy Back Agreement dated 07.03.2016 (Annexure P-9) was executed by the Director of the accused-company and it included its respective Directors, Shareholders, Heirs, Successors, Representatives and Administrators and the petitioner was well aware of the terms and conditions of the agreement, which are binding on the petitioner as well. Thus, he prayed for dismissal of the present petition.

9. I have heard learned counsel for the parties and perused the record.

10. The Hon'ble Supreme Court in the matter of **Pooja Ravinder Devidasani Vs. State of Maharashtra & Another 2015(3) SCC (Civil) 384, 2015(3) SCC (Cri) 378 and 2014(16) SCC 1** has held as follows:-

17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company-M/S Elite International Pvt. Ltd. on 1st July, 2004 and had also executed a Letter of Guarantee on 19th January, 2005. The cheques in question were issued during April, 2008 to September, 2008. So far as the dishonor of Cheques is concerned, admittedly the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the Company but does not involve in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the Company, one who actively looks after the day-to-day activities of the Company and particularly responsible for the conduct of its business. Simply because a person is a Director of a Company, does not make him liable under the N.I. Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by *this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, 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 for an offence under Section 141 of the N.I. Act. In National Small Industries Corporation (supra) this Court observed :*

"Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141.

18. In ***Girdhari Lal Gupta v. D.H. Mehta & Anr. (1971) 3 SCC 189,*** *this Court observed that a person 'in charge of a business' means that the person should be in overall control of the day to day business of the Company.*

19. A Director of a Company is liable to be convicted for an offence committed by the Company if he/she was in charge of and was responsible to the Company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned [See: ***State of Karnataka v. Pratap Chand & Ors., (1981)2 SCC 335****].*

20. In other words, the law laid down by this Court is that for making a Director of a Company liable for the *offences committed by the Company under Section 141 of the N.I. Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.*

21. In ***Sabitha Ramamurthy & Anr. v. R.B.S. Channbasavaradhya, 2006(4) RCR (Criminal) 296 : (2006) 10 SCC 581,*** *it was held by this Court that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. [pic]Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. By verbatim reproducing the wording of the*

Section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the N.I. Act.

11. Still further, the Hon'ble Supreme Court also considered the issue of summoning independent/non executive Director in a complaint under Section 138/141 of the Act in the matter of **Preeti Vs. State and Another 2023(1) DCR 56: 2023(1) JCC 320** and held as follows:-

> *14. Recently, the Apex Court in **Sunita Palita & ors. v. Panchami Stone Quarry 2022 SCC Online SC 945,** in regard to fixation of vicarious liability on directors of a company under section 141 of Negotiable Instruments Act, 1881, has held that:*
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> *"42. A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable under those provisions. As held by this Court in, inter alia, S.M.S. Pharmaceuticals Ltd. (supra), the liability under Section 138/141 of the NI Act arises from being in charge of and responsible for the conduct of the 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. It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development) etc. into criminal proceedings under the NI Act, only because of their designation.

*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.

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*46. As held by this Court in **National Small Industries Corporation Ltd. v. Harmeet Singh Paintal** quoted with approval in the subsequent decision of this Court in **Pooja Ravinder Devidasani v. State of Maharashtra and Anr.** (supra) the impleadment of all Directors of an Accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of section 141 of the NI Act..."*

*15. Reliance was placed by learned counsel on behalf of the petitioner on the decision of **Har Sarup Bhasin v. M/s Origo Commodities India Pvt Ltd 2020 SCC Online Del 11** wherein a Coordinate bench of this Court quashed proceedings against a director and held that:*

31. As laid down by this Court in "Bhardwaj Thuiruvenkata Venkatavraghavan" (supra) and

"Kanarath Payattiyath Balraj" (supra), the petitioner being an Independent and a NonExecutive Director, in the absence of any specific role attributed against the petitioner for his active participation in the day to day affairs of the company and of taking all decisions of the company, where the petitioner was not a signatory to the cheques in question, vicarious liability cannot be fastened on the petitioner in the absence of any specific role attributed to him, in as much as, the contentions that have been sought to be raised during the course of the arguments and in the affidavit in reply to the petition on behalf of the respondent in relation to the petitioner being in a Key Managerial Person and the petitioner having participated in 100% all the meetings of the accused company, are not spelt out in the complaint that had been filed by the respondent. Furthermore, taking into account also the factum that even if the petitioner was a Key Managerial Person of the accused No. 1 company as per the reply affidavit of the respondent as filed on 08.07.2007, he was so for the period from 01.04.2015 to 31.03.2016 and the date of the drawing of the cheques in question are 01.06.2016 and 07.06.2016.

> *32. In view thereof, the impugned order dated 20.02.2017 of the Trial Court of the learned MM01, New Delhi in CC No. 45442/2016 to the extent that summons are issued to the petitioner for an alleged commission of an offence punishable under section 138 of the Negotiable Instruments Act, 1881 is thus, quashed."*
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> *XXXX*
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> *17. Coming to the facts of the present case, a perusal of Form No. DIR-12, dated 16.01.2017, of the accused company K.S. Oils Limited shows that the petitioner was an independent director at the time of commission of the offence. In view of section 141 of Negotiable Instruments Act, 1881 and section 149 of Companies Act, 2013 petitioner could have been held vicariously liable only if it was shown that she was incharge of and was responsible for the conduct of the business of the company at the time of commission of offence, and not otherwise".*

12. In the present case, it is not in dispute that the petitioner was appointed as Additional Non-Executive Director (independent category). In fact, Section 149(12) of the Companies Act also provides that an independent Director/a non executive Director shall

be held liable only with regard to such acts or omission or commission by a Company, which had occurred with his knowledge, attributable through processes and with his consent and connivance or where he had not acted diligently. In the absence of a specific averment, mentioning, specific role attributable to the petitioner in regard to conduct of business of the accused/company, the independent non-executive Director cannot be prosecuted for the offence under Section 138 of the Act. In the present complaint, it has been generally pleaded that the accused persons/directors were incharge and responsible for the day to day affairs of the Company. In fact, this was never the requirement of law to held the accused vicariously liable for dishonouring the cheque. Rather, in fact, it has to be specifically pleaded and shown that the petitioner had the specific knowledge about the issuance of the said cheque and the offence was committed with his active participation and connivance. A perusal of the averments made in the complaint (Annexure P-1), it is evident that general and vague averments have been made by the respondent-Company against the 23 accused. Even, the petitioner was not a signatory to the cheque and there is no averment in the entire complaint that the cheque was signed by his co-accused with the consent of the petitioner or at any point of time, the petitioner had knowledge with regard to the issuance/dishonor of the said cheque. In fact, the petitioner is an expert in the legal field being an Advocate and on account of his expertise, he was made an independent Director/non-executive Director and could not have been summoned under the provisions of Section 138 of the Act.

13. Still further, from a perusal of the complaint, it is clear that it has been stated that the accused No. 3 to 23 were incharge and were responsible for running the affairs of the accused/Company. No role of each of the accused has been mentioned nor it has been shown that in what manner/capacity, the petitioner was involved in the day to day affairs of the company or was incharge and responsible for the affairs of the accused/company. As per Section 141 of the Act, only those persons, who at the time of commission of the offence, were incharge of and were responsible to the company for the conduct of the business of the company, shall be liable to be prosecuted. However, no such averment has been made by the respondent/complainant in the present case and omnibus allegations have been levelled by him in the complaint in this regard.

14. Still further, the learned Courts relied upon the judgment passed by the Hon'ble Supreme Court in the matters of **National Small Industries Corporation Vs. Harmeet Singh and Bhardwaj Thuiruvenkata Venkataraghvan Vs. Ashok Arora (supra).** The learned Courts below completely failed to appreciate that only vague

allegations had been levelled by the respondent/complainant in the complaint against the petitioner.

15. In view of the above referred discussion, the petition stands allowed and the criminal complaint No. 1964 of 05.05.2017/NACT No. 2632 of 2016 (CNR No. HRFB03-011769-2016) Annexure P1) under Sections 138, 139 and 141 of the Negotiable Instruments Act, 1881 titled as "Manoj Aggarwal Vs. SRS Real Estate Limited and others" as well as summoning order dated 11.8.2016 (Annexure P-2) passed by the Court of learned JMIC Faridabad and order dated 03.05.2018 (Annexure P-4) passed by the learned Additional Sessions Judge, Faridabad (Revisions Court), are ordered to be quashed qua the petitioner only.

11.12.2023 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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