IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M No.36139 of 2018 (O&M)

Sidhant Dhingra

… Petitioner

Versus

Neena Dhiman

… Respondent

2. CRM-M No.36052 of 2018 (O&M)

Sidhant Dhingra

… Petitioner

Versus

Neena Dhiman

… Respondent

3. CRM-M No.47067 of 2018 (O&M)

Sidhant Dhingra

… Petitioner

Versus

Vijay Kumar Sharma

… Respondent

4. CRM-M No.29725 of 2018 (O&M)

Sidhant Dhingra

… Petitioner

Versus

Neena Dhiman

… Respondent

5. CRM-M No.5335 of 2019 (O&M)

Ravi Dhingra

… Petitioner

Versus

Harpal

… Respondent

Date of decision: 27th February, 2023

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vineet Sehgal, Advocate for the petitioners.

Mr. Jagjot Singh, Advocate for the respondents.

MANJARI NEHRU KAUL, J.

CRM No.9378 of 2023 in
CRM-M No.36139 of 2018

In view of the averments made in the application and in the interest of justice, the same is allowed and Income Tax Returns for the Assessment Year 2016-17 (Annexure P-5) and employment record (Annexure P-6) of the petitioner are taken on record.

Main case

Since the issue involved in all the aforementioned petitions is similar, they are being taken up together for disposal by way of this common order. For brevity of reference, the facts are being taken from CRM-M No.36139 of 2018.

The petitioner is seeking quashing of complaint No.8442 of 2016 (Annexure P-1) titled as "Neena Dhiman vs. MS Silver Star Fashion Limited & others" filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act'), which is pending consideration before the learned Judicial Magistrate 1st Class, Gurugram. Besides this, the petitioner is also impugning the summoning order dated 02.08.2016 (Annexure P-2) as well as the order dated 03.05.2018 (Annexure P-3) passed by the learned Additional Sessions Judge, Gurugram vide which the revision petition filed by him was dismissed.

Learned counsel for the petitioner inter alia submits that the Trial Court while summoning the petitioner vide order dated 02.08.2016 (Annexure P-2) for facing trial under Section 138 of the

Act, had acted contrary to the provisions of Section 141 of the Act. The petitioner Sidhant Dhingra had resigned as Director of accused No.1 Company with effect from 12.09.2011 therefore, he could not be held vicariously liable as he was not responsible for the day to day affairs of the Company. Subsequently, the petitioner was indeed appointed as Vice President of the accused Company in the year 2012, however, he was working in the capacity of a mere employee and was not thus, responsible for the affairs of the accused Company. Learned counsel further submits that as far as petitioner Ravi Dhingra is concerned, he was working as Head (Operations) of the accused Company and could not be said to be responsible for the day to day affairs of the accused Company. It was still further vehemently argued that there were no specific averments made in the complaint (Annexure P-1) as to how and in what manner both the petitioners were in charge of, and responsible for the day to day affairs of the Company, and furthermore, the cheque in question was dishonoured on account of their involvement. Learned counsel, thus, submitted that simply because the petitioner Sidhant Dhingra was Vice President and petitioner Ravi Dhingra was Head (Operations) of the accused Company, they could not be held vicariously liable for commission of an offence punishable under Section 138 of the Act. In support of his submissions, learned counsel has relied upon **'N.K. Wahi vs. Shekhar Singh & others' (2007) 9 SCC 481.**

Per contra, learned counsel for the respondent while controverting the submissions made by the counsel opposite, contended that the petitioners were involved in the day to day affairs of the accused Company and were directly responsible for its affairs. While drawing the attention of this Court to the complaint (Annexure P-1), learned counsel for the respondent submitted that the petitioner Sidhant Dhigra had been and was still drawing salary as a Director of the accused Company. Even otherwise, both the petitioners being senior Executives, were responsible for the affairs of the accused Company.

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

A perusal of Annexure P-4, i.e. form No.32, reveals that the petitioner had resigned as Director of accused No.1 Company with effect from 12.09.2011. However, it is a matter of record that soon thereafter, he was appointed on 01.01.2012 as Vice President of the accused Company and had been holding the said office ever since then. Similarly, petitioner Ravi Dhingra was Head (Operations) of the accused No.1 Company on the date of issuance of cheque in question. The aforementioned facts and circumstances prima facie were indicative of both these petitioners being closely connected with the affairs of the accused Company.

This Court does not concur with the submissions made by learned counsel for the petitioner that since there were no specific allegations leveled in the complaint in question as to how and in what manner the petitioners were responsible for the conduct of the affairs of the accused Company, the summoning order (Annexure P-2 as well as complaint (Annexure P-1) deserved to be quashed.

Hon'ble the Supreme Court in **'Gunmala Sales Private Ltd. vs. Anu Mehta' 2015(1) RCR (Criminal) 54'** has held as under:

> *"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 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."

It is thus, abundantly clear from the aforesaid observations of the Hon'ble Supreme Court that the petitioners cannot seek quashing of a complaint solely 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.

In the aforesaid circumstances, the petitioners who admittedly are senior Executives of the accused Company, cannot seek quashing of the complaint in question, merely on the ground that they were not Directors or Managers of the accused Company. A perusal of the complaint in question reveals that the complainant has specifically pleaded the vicarious liability of both the petitioners. Needless to add, the veracity or otherwise of the allegations leveled against the petitioners would be put to test during trial. Therefore, at this stage this Court would not be inclined to quash the impugned complaint (Annexure P-1) as well as summoning order (Annexure P-2). The petitions being devoid of any merit, stand dismissed.

(MANJARI NEHRU KAUL)
JUDGE

February 27, 2023
rps

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