2023:PHHC:146099

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

CRM-M-52090-2018
Decided on : 14.11.2023

Manish Goyal ...... Petitioner

Versus

Ram Kumar ...... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Aditya Jain, Advocate
for the petitioner.

Mr. S.K.Gupta, Advocate and
Mr. Ram Bilas Gupta, Advocate for the respondent.

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<u>Manjari Nehru Kaul, J.(Oral)</u>

Instant petition has been filed under Section 482 Cr.Pc for quashing of the order dated 01.02.2018 qua the petitioner (Annexure P-3) passed by learned JMIC, Faridabad vide which the petitioner was summoned to face trial under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. Learned counsel for the petitioner has argued that the petitioner was simply an independent Director in M/s Piyush Colonisers Ltd. (hereinafter referred to as 'Company'). The cheques in question had been issued, not by the petitioner, but by Puneet Goyal, who was also the authorized signatory of the company. While drawing the attention of this Court to the complaint, which has been annexed as Annexure P-2, it has been submitted that a bare perusal of the same reveals that the petitioner has only been named in the memo of parties and

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no averments much less by way of a whisper have been made qua the petitioner being incharge of the day-to-day affairs of the company. It has also been argued that every person associated with the company could not be automatically held liable as liability under Section 141 of the Act would arise only if it is shown that the accused was overall incharge and in control of the day-to-day affairs of the company; furthermore, in the absence of any specific averments showing as to how and in what manner the petitioner was incharge of the day-to-day affairs of the company, no liability under Section 138 of the Act could be fastened upon him. It has still further been submitted that even otherwise it is a matter of record that the petitioner had ceased to be a Director of the Company w.e.f. 15.06.2017 whereas cheque in question was issued on 17.11.2017, which in turn was dishonoured subsequently on 29.11.2017. In support of his submissions, learned counsel has drawn the attention of this Court to Annexure P-4, which is a list of Directors of the Company and Form No.DIR-11 (Annexure P-5) wherein it stands reflected that the petitioner had resigned on 15.06.2017. Learned counsel has asserted that since the resignation of the petitioner had come into operation prior to the issuance of cheque in question coupled with the fact that it had also been dishonoured by the bank, after his resignation, no liability under Section 138 of the Act could be fastened upon him. In support, learned counsel has placed reliance upon ***Pooja Ravinder Devidasani vs. State of Maharashtra and another, 2014 (16) SCC 1*** wherein it was held that independent Directors would stand on a different footing viz-a-viz Executive Directors, and there had to be specific averments in the question against the Director showing as to how and in what manner he or she was responsible for

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the conduct of the company.

3. Per contra, learned counsel for the respondent while opposing the prayer made by the counsel opposite though has not disputed the factum of there being no specific averments made against the petitioner in the complaint in question. He has, however, submitted that a perusal of Form No.DIR-11 relied upon by the petitioner reflects that though the petitioner had tendered his resignation online; it had not been communicated directly to the Registrar of Companies by the Company and instead had been directly communicated only by the petitioner himself to the Registrar of Companies. It has been submitted that it would be a matter of trial as to whether or not the petitioner had ceased to be a Director of the Company on the date when the cheque in question was issued, and it being a disputed question of fact, could not be looked into at this stage.

4. Heard learned counsel for the parties and perused the relevant material available on record.

5. Before proceeding further, it would be apposite to reproduce Section 141 of the Act, which is as under:

> "141 **Offences by companies** —
>
> *(i) If the person committing an offence under section 138 is a company, every person 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 and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment*

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if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(ii) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

6. While laying down the parameters for fastening criminal liability under Section 141 of the Act, Hon'ble the Supreme Court in S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another, 2001(10) SCC 218 has held as under:

"20. It will be seen from the above provisions that Section 138 casts criminal liability punishable with imprisonment or fine or with both on a person who issues a cheque towards discharge of a debt or liability as a whole or in part and the cheque is dishonoured

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by the Bank on presentation. Section 141 extends such criminal liability in case of a Company to every person who at the time of the offence, was incharge of, and was responsible for the conduct of the business of the Company. By a deeming provision contained in Section 141 of the Act, such a person is vicariously liable to be held guilty for the offence under Section 138 and punished accordingly. Section 138 is the charging section creating criminal liability in case of dishonour of a cheque and its main ingredients are :

i) Issuance of a cheque.
ii) Presentation of the cheque
iii) Dishonour of the cheque
iv) Service of statutory notice on the person sought to be made liable, and
v) Non-compliance or non-payment in pursuance of the notice within 15 days of the receipt of the notice.

21. Section 138 and 141 of the Act form part of Chapter XVII introduced in the Act by way of an amendment carried out by virtue of Act 66 of 1988 effective from 1st April, 1989. These provisions were introduced with a view to encourage the culture of use of cheques and enhancing the credibility of the instruments. The legislature has sought to inculcate faith in the efficacy of banking operations and use of negotiable instruments in business transactions. The penal provision is meant to discourage people from not honouring their commitments by way of payment through cheques. Section 139, occurring in the same Chapter of the Act creates a presumption that the holder of a cheque receives the cheque in discharge, in whole or in part, of any debt or other liability."

7. Adverting to the case in hand, perusal of the complaint indicates that other than being simply named as an accused in the memo of parties, there is no averment made or allegation levelled, much less by way of a whisper

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against the petitioner. The cheques in question were indeed issued by Puneet Goyal, who not only was an authorized signatory of the Company but was also serving as its Managing Director. Consequently, the argument raised by learned counsel for the petitioner holds weight that without there being any explicit accusations concerning the role of the petitioner in managing the daily affairs of the company, no liability under Section 138 of the Act could be fastened upon him.

8. Moreover, the documentary evidence on record shows that the petitioner was only an independent Director of the Company as per Form No.DIR-11 (Annexure P-4) and had resigned well before the issuance of cheques in question. No doubt, learned counsel for the respondent contended that the resignation of the petitioner had not been officially communicated by the Company to the Registrar of Companies but directly by the petitioner himself, however, the undisputed fact remains that the status of the petitioner was that of an independent Director. It would also be crucial to observe that the role of an Executive or an independent Director is clearly distinct from that of the Managing Director, as he is not incharge of the day-to-day affairs of the Company. In this regard, Hon'ble Supreme Court in *Pooja Ravinder Devidasani's case(supra)* has held as under:

> *"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*

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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*

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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 Vs. 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 Vs. 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."

9. In the facts and circumstances as enumerated hereinabove, when appreciated in the light of the settled law, there is no hesitation in the mind of

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this Court that continuation of criminal proceedings against the petitioner would be an abuse of process of law. Accordingly, the present petition stands allowed and the complaint in question along with summoning order dated 01.02.2018 (Annexure P-3) are quashed qua the petitioner only.

(MANJARI NEHRU KAUL)
JUDGE

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

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