IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-32495-2022 (O&M)
Reserved on 24.05.2023
Pronounced on: 25.05.2023

Veenu Rana .....Petitioners

Versus

Surindra Milk Chilling Centre Pvt. Ltd. .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Gaurav Datta, Advocate
for the petitioner.

Ms. Jasleen Kaur, Advocate
for the respondent.

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MANJARI NEHRU KAUL, J.

1. The petitioner-accused (hereinafter referred to as 'accused') has invoked the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. for quashing of Complaint No.COMA/1126/2022 dated 11.04.2022 titled as 'Surindra Milk Chilling Centre Vs. Rana Milk Food' under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), pending in the Court of learned Judicial Magistrate 1st Class, Bathinda along with all consequential proceedings arising therefrom, including the summoning order dated 11.04.2022.

2. The brief facts of the complainant company may be noticed as thus.

The respondent-complainant company (hereinafter referred to as 'complainant') was engaged in the manufacture of *desi ghee* and other milk products at its own manufacturing units. The accused placed an order with the complainant for *desi ghee,* which was then supplied to her. In order to discharge its legal liability towards the purchase of *desi ghee*, the accused issued cheques bearing No.645368 dated 30.12.2021, No.645369 dated 30.01.2022 and No.645370 dated 28.02.2022 in the sum of ₹8 lakhs, ₹9 lakhs and ₹9 lakhs respectively drawn on Punjab National Bank, Branch Khanna in favour of the complainant as part payment of dues. On presentation of the cheques, they were returned with remarks "**payment stopped vide memo dated 02.03.2022 by the banker of the accused to the banker of complainant**". Resultantly, the complaint in question was filed, which led to the summoning of the accused vide impugned order dated 11.04.2022 passed by learned Judicial Magistrate 1st Class, Bathinda.

3. Learned counsel appearing for the petitioner has submitted that the petitioner was simply a non-executive director in Rana Milk Food Private Limited (hereinafter referred to as 'the company'). The cheques in question had not been issued by the petitioner but by her husband, Prem Singh Rana, who was also the Managing Director of the company. Learned counsel for the petitioner has argued that every person associated with the company could not automatically be held liable as the liability under Section 141 of the NI Act would arise only if the accused was shown to be in overall control of the day to day affairs and business of the company. While drawing the attention of this Court to the complaint in question (Annexure P-1), learned counsel has further vehemently argued that totally vague and false allegations have been levelled against the petitioner, only because she happened to be the wife of Prem Singh Rana, who had allegedly issued the cheques in question. Learned counsel has further invited the attention of this Court

to Form No.DIR12 (Annexure P-4) wherein it stands reflected that the petitioner is a non-executive director of the company. Learned counsel has thus vehemently contended that since the petitioner was just a non-executive director of the company, hence evidently she was neither at the helm of affairs of the company nor was responsible for issuance of the cheques in question. Therefore, the complaint in question was liable to be quashed moreso, when it was a matter of record that the petitioner had not even signed any of the cheques, in question, which were the subject matter of the complaint in question. In support, he has placed reliance upon ***Pooja Ravinder Devidasani Vs. State of Maharashtra and another : (2014) 16 Supreme Court Cases 1; National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and another : (2010) 3 Supreme Court Cases 330; Sabitha Ramamurthy and another Vs. R.B.S. Channabasavaradhya : (2006) Supreme Court Cases 581; Sunita Palta and others Vs. M/s Kit Marketing Pvt. Ltd. : 2020(2) RCR (Criminal) 366*** and ***Criminal Application No.74 of 2021, titled as 'Mr. Satvinder Jeet Singh Sodhi and another Vs. State of Maharashtra and another' decided on 01.07.2022***.

4. Per contra, learned counsel appearing for the respondent has vehemently opposed the prayer and submissions made by the counsel opposite. Learned counsel has submitted that Section 141 of the NI Act only requires a person to be in charge of the day to day affairs of the company and there was enough documentary evidence in the form of photographs wherein the petitioner could be seen interacting with different clients of the company. Learned counsel has submitted that in the circumstances, the petitioner could not derive any

benefit of being a non-executive director of the company, moreso, when there were specific allegations levelled against the petitioner in the complaint in question (Annexure P-1) that she was responsible for all the acts of the company. Learned counsel has also submitted that once a specific averment had been made in the complaint qua the role of the petitioner, the burden to prove to the contrary would be on the petitioner during trial. Learned counsel has further submitted that Form No.DIR 12 attached by the petitioner is merely her defence which cannot be considered at the stage of summoning. In support, learned counsel has placed reliance upon ***Malwa Cotton & Spinning Mills Ltd. Vs. Virsa Singh Sidhu and others : 2008(4) RCR (Criminal) 25*** and ***SP Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan : 2022 LiveLaw (SC) 772.***

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

6. Before proceeding further, it would be apposite to reproduce Sections 138 and 141 of the NI Act which read as under:-

> *"**138. Dishonour of cheque for insufficiency, etc., of funds in the account.**—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless—*

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

139. XXX XXX XXX

140. XXX XXX XXX

***141. Offences by companies**.—(1) 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 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.

(2) 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."

7. A perusal of the above provisions reveal that though the natural persons mentioned under Section 141 of the NI Act can be made vicariously liable for an offence committed by the company, however, the extent and manner to which they would be vicariously liable has been settled by the Superme Court in a catena of judgments. The Supreme Court in ***S.M.S. Pharmaceutical Ltd. Vs. Neeta Bhalla : (2005) 8 SCC 89*** has held as under:-

"20. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That respondent falls within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

21. In view of the above discussion, our answers to the questions posed in the Reference are as under :

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the

person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.”

8. Adverting to the case in hand, the main contention raised by the learned counsel for the petitioner is that since the petitioner was a non-executive director, she was not responsible for the day to day affairs of the company and hence could not be held liable under Section 141 of the NI Act.

9. The two questions which, thus, arise for the consideration of this Court are (i) when would the liability of a non-executive director arise for the purpose of summoning her, and (ii) whether on a bare reading of the complaint in question, the necessary ingredients to

warrant the summoning of the petitioner to face trial under Section 138 of the NI Act are made out or not?

10. As far as the first question is concerned, it has to be borne in mind that a non-executive director cannot be kept on the same pedestal as a Managing Director or a whole time executive director. In this regard, Section 149(12) of the Companies Act, 2013 provides that a non-executive director, not being promoter or key managerial personnel, can only be held liable on behalf of a company for the act in question committed with his consent or on account of his failure to exercise due diligence. The relevant provision is reproduced hereinunder:-

> *"149(12).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."*

11. The roles of an executive and non-executive director in looking after the affairs of the company are clearly distinct as the latter is not in charge of the day to day affairs of a company. In this regard, the Supreme Court in ***Pooja Ravinder Devidasani's case (supra)*** has held as under:-

> *"17.....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."

12. It would also be relevant to refer to observations of the Supreme Court in ***Sabitha Ramamurthy's case (supra)*** wherein it was held as under:-

> *"A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. It may be true 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 are vicariously liable. 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. Before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted. Not only the averments made in paragraph 7 of the complaint petitions does not meet the said statutory requirements, the sworn statement of the witness made by the son of Respondent herein, does not contain any statement that Appellants were in charge of the business of the company. In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist strict compliance of the statutory requirements. In terms of Section 200 of the Code of Criminal procedure, the complainant is bound to make statements on oath as to how the offence has been committed and how the accused persons are responsible therefor. In the event, ultimately, the prosecution is found to be frivolous or otherwise mala fide, the court may direct registration of case against the complainant for mala fide prosecution of the accused. The accused would also be entitled to file a suit for damages. The relevant provisions of the Code of Criminal Procedure are required to be construed from the aforementioned point of view."*

13. Thus, what emerges as an upshot to the above discussion is

that in case of a non-executive director a mere vague averment, that he/she was in charge and responsible for the day to day affairs of the company, without detailing his/her specific role, and the manner in which he/she was responsible, would not be sufficient to meet the statutory requirement for the purpose of summoning him/her under Section 141 of the NI Act.

14. The documents on record show that the petitioner, admittedly, is a non-executive director of the accused company as per Form No.DIR 12 (Annexure P-4). Though the learned counsel for the respondent has asserted that the petitioner's status as a non-executive director would be a matter of trial, however, this Court does not find any merit in the said assertion. Form No.DIR 12, being a public document and more particularly being a part of the record of the Registrar of Companies is an incontrovertible piece of evidence. In this regard, reference may be made to the observations of the Supreme Court in ***Gunmala Sales Pvt. Ltd. Vs. Anu Mehta and others : 2015 (1) SCC 103*** wherein it was held that the High Court may quash the complaint despite the basic averment if it comes across some unimpeachable evidence or acceptable circumstances which may in its opinion lead to a conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time and therefore making him stand the trial would be abuse of the process of court as no offence is made out against him.

15. Coming to the second question whether the complaint in question contains the necessary ingredients warranting summoning of

the petitioner to face trial under Section 138 of the NI Act, it is evident that other than the averments made in para 3 of the complaint that "*the accused namely Prem Singh Rana and Veenu Rana are responsible person and authorised persons of Rana Milk and is fully responsible for all acts done on behalf of his company*", there is no averment qua her specific role in the transaction in question and thus, it would not be sufficient to warrant her summoning to face trial in the criminal complaint.

16. The cheques in question were, admittedly, issued by Prem Singh Rana, who was not only the authorised signatory but also the Managing Director of the company. Merely because some photographs are in the possession of the complainant wherein the petitioner can be seen interacting with some persons would not imply that she was responsible for the day to day affairs and business of the company.

17. 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 this Court to hold that continuation of criminal proceedings against the petitioner would be an abuse of the process of law. The complaint in question along with all consequential proceedings arising therefrom including summoning order dated 11.04.2022, therefore, deserve to be and are accordingly quashed qua the petitioner.

18. Accordingly, the instant petition stands allowed.

25.05.2023 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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