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

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CRM-M-60472-2023

Date of decision : 01.12.2023

Neeraj Goel

..... Petitioner

versus

M/s. Raj Trading Co.

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Fateh Saini, Advocate
for the petitioner.

PANKAJ JAIN, J. (Oral)

1. Prayer is for grant of quashing of complaint No.2354 of 2019 dated 18.10.2019 under Section 138 of Negotiable Instruments Act, titled as 'M/s. Raj Trading Co. vs. Richi Rich Agro Foods Private Limited and others as well as summoning order.

2. Petitioner has been ordered to be summoned in a complaint filed under Section 138 of Act assailing the order of summoning the petitioner as well as the complaint itself.

3. Counsel representing the petitioner submits that from bare perusal of the complaint, it is evident that the same is totally bereft of the role of the petitioner and thus, without there being any role assigned to the petitioner, trial Court ought not have summoned the present petitioner when he was not signatory to the cheque. Heavy reliance has been placed upon law laid down by Apex Court in the case of ***Siby Thomas vs. M/s/ Somany Ceramics Ltd.*** passed in ***Special Leave Petition (Cri.) No.12 of 2020***, wherein the Apex Court held as under:-

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“16. Thus, in the light of the dictum laid down in Ashok Shewakramani's case (supra), it is evident that a vicarious liability would be attracted only when the ingredients of section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of section 141(1) of the NI Act, would reveal that only that 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 alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. In such circumstances, paragraph 20 in Ashok Shewakramani's case (supra) is also relevant. After referring to the section 141(1) of NI Act, in paragraph 20 it was further held thus:

“20 On a plain reading, it is apparent that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between.”

4. I have heard counsel for the petitioner and have carefully gone through the records of the case.

5. In order to appreciate the argument being raised by the counsel representing the petitioner, it will be apt to peruse Section 141 of the Act which reads as under:-

“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

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knowledge, or that he had exercised all due diligence to prevent the commission of such offence: ²²[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.

6. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, 2005(8)*

SCC 89, it was held as under:-

“1. This matter arises from a reference made by a two Judge Bench of this Court for determination of the following questions by a larger Bench :

“(a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company?

(b) whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the

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company and, therefore, deemed to be guilty of the offence unless he proves to the contrary ?

(c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors of Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against ?”

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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

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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.”

7. The debate refuses to settle. Similar issue was again raised before Apex Court in the case of ***Rallis India Ltd. v. Poduru Vidya Bhusan, 2011(13) SCC 88***. It was held that:-

“xx xx xx

12. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, proviso to Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his knowledge or he had exercised due diligence to prevent the commission of such offence, he will not be liable of punishment. Needless to say, final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners "qua" the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced - if they are eventually found to be not guilty, as a necessary consequence thereof would be acquitted.

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13. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless parties are given opportunity to lead evidence, it is not possible to come to definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the Respondents ceased to be the partners of the firm.

14. Before concluding the present discussion, we also take this opportunity to strike a cautionary note with regard to the manner in which High Courts ought to exercise their power to quash criminal proceedings when such proceeding is related to offences committed by companies. The world of commercial transactions contains numerous unique intricacies, many of which are yet to be statutorily regulated. More particularly, the principle laid down in Section 141 of the Act (which is pari materia with identical sections in other Acts like the Food Safety and Standards Act, the erstwhile Prevention of Food Adulteration Act etc. etc.) is susceptible to abuse by unscrupulous companies to the detriment of unsuspecting third parties. In the present case, there are several disputed facts involved - for instance, the date when the partnership came into being, who were the initial partners, if and when the Respondents had actually retired from the partnership firm etc.

15. Strictly speaking, the ratio of the SMS Pharmaceuticals (supra) can be followed only, after the factum that accused were the Directors or Partners of a Company or Firm respectively at the relevant point of time, stands fully established. However, in cases like the present, where there are allegations and counter-allegations between the parties regarding the very composition of the firm, the above rule of 'specific averment' must be broadly construed. Indeed, it would be nothing short of a travesty of justice if the Directors of a Company or Partners of a Firm, who, having duped a third-party by producing false documents (like a fake partnership deed) or making false statements (that some others were in charge of the Company/Firm), at a subsequent stage, seek protection from prosecution on the ground that

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they were not directly indicted in the complaint - such a proposition strikes against one of the very basic tenets of the law of natural justice, which is, that none shall be allowed to take advantage of his own default. Of course, the above observation is of a general nature, and has no bearing on the present case, but nonetheless, the power to quash a criminal proceeding with respect to an offence under Section 141 of the Act, must be exercised keeping this advisory note and caveat in mind.”

8. The law was further elaborated in the case of ***National Small Industries Corp. Ltd. v. Harmeet Singh Paintal, 2010(3) SCC 330***, wherein the Supreme Court concluded as under:-

“xx xx xx

24. From the above discussion, the following principles emerge :

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must

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be pleaded and proved and not inferred.

(v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) 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.”

9. Again the same question arose in ***Gunmala Sales Private Limited vs. Anu Mehta, 2015(1) SCC 103***, wherein Apex Court after analysing series of precedents on the point concluded as under:-

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33. We may summarise our conclusions as follows :

a) Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed under section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do

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so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers under section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.”

10. In *S.P. Mani and Mohan Dairy vs. Dr. Snehalatha*

Elangovan, 2022 AIR (Supreme Court) 4883, the law was again seived

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and the Apex Court concluded as under:-

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47. Our final conclusions may be summarised as under:-

a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant

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time they were not in charge of the affairs of the company or the firm.”

11. Thereafter in *Siby Thomas’s case (supra)*, the Apex Court held that vicarious liability would be attracted when the ingredients of Section 141 of the N.I. Act are satisfied reiterating and relying upon law laid down by earlier precedents in *Gunmala Sales and S.P. Mani’s case (supra)*.

12. In view of aforestated proposition of law, it is evident that the test is whether the complainant has raised basic ingredients of Section 141 to drive home vicarious liability of the accused serving as Director/Partner of the Company/partnership firm i.e. that the accused was responsible and incharge of day to day affairs of the accused company? When the present case is gazed through prism of the aforestated proposition of law, this Court finds that following contents of para 2 of the complaint are relevant and need to be perused:-

“2. That accused No.1 is a Private Limited Company and indulged in the business of sale and purchase of rice crops. Accused No.2 & 3 are the Directors/authorized Person of accused No.1, hence accused No.2&3 are jointly and severally looking day to day business of accused No.1, as such, the present notice is sent against all, accused No.1&3 are being responsible persons relating to each other.”

13. Thus, the complainant has raised specific plea that the petitioner is one of the Directors/authorized person of accused No.1-private limited company. It has also been averred that petitioner alongwith the other Directors is looking after day to day business of accused No.1.

14. Consequently, this Court does not find any reason to conclude that the complaint is so bereft of the basic ingredients of

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Section 141 that jurisdiction under Section 482 Cr.P.C. can be exercised to quash the same at this nascent stage.

15. In view of above, the present petition is dismissed.

(PANKAJ JAIN)
JUDGE

01.12.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes