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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 07.07.2023**Pronounced on: 12.07.2023**

+ CRL.M.C. 557/2020 & CRL.M.A. 2303/2020
 ASHOK KUMAR MITTAL & ORS. Petitioners

Through: Mr. Sanjeev Kumar and Mr.
 Roshan, Advocates

versus

THE STATE NCT OF DELHI & ORS. Respondents

Through: Mr. Naresh Kumar Chahar,
 APP for the State.
 Mr. Gulshan Chawla, Mr.
 Samriti Kumar, Mr. Manish
 Kumar, Advocates

+ CRL.M.C. 558/2020 & CRL.M.A. 2305/2020
 MR. ASHOK KUMAR MITTAL & ORS. Petitioners

Through: Mr. Sanjeev Kumar and Mr.
 Roshan, Advocates

versus

STATE & ORS. Respondents

Through: Mr. Naresh Kumar Chahar,
 APP for the State.
 Mr. Gulshan Chawla, Mr.
 Samriti Kumar, Mr. Manish
 Kumar, Advocates



+ CRL.M.C. 737/2020 & CRL.M.A. 3018/2020
ASHOK KUMAR MITTAL & ORS. Petitioners

Through: Mr. Sanjeev Kumar and Mr.
Roshan, Advocates

versus

THE STATE NCT OF DELHI & ORS. Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Gulshan Chawla, Mr.
Samriti Kumar, Mr. Manish
Kumar, Advocates

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. This judgment shall govern the disposal of CRL.M.C. 557/2020, 558/2020 and 737/2020, along with pending applications, arising out of similar set of facts, contentions and prayers.
2. By way of above-captioned petitions filed under Section 482 of the Code of Criminal Procedure, 1973, the following reliefs have been sought:

- i. In CRL.M.C. 557/2020, the petitioners seek quashing of summoning order dated 06.07.2018 passed by learned Metropolitan Magistrate-03, Patiala House Courts, New Delhi and proceedings pursuant thereto in Complaint Case No. 7100/2018 titled as "M/s. Indo Rama Synthetics Ltd. vs. M/s. GPI Textiles Ltd. & Ors."



- ii. In CRL.M.C. 558/2020, the petitioners seek quashing of summoning order dated 06.07.2018 passed by learned Metropolitan Magistrate-03, Patiala House Courts, New Delhi and proceedings pursuant thereto in Complaint Case No. 7099/2018 titled as “M/s. Indo Rama Synthetics Ltd. vs. M/s. GPI Textiles Ltd. & Ors.”
 - iii. In CRL.M.C. 737/2020, the petitioners seek quashing of summoning order dated 06.07.2018 passed by learned Metropolitan Magistrate-03, Patiala House Courts, New Delhi and proceedings pursuant thereto in Complaint Case No. 7101/2018 titled as ‘M/s. Indo Rama Synthetics Ltd. vs. M/s. GPI Textiles Ltd. & Ors.’
3. The petitioner nos. 1, 2, 3 and 4 before this Court in all three petitions have been arraigned as accused no. 5, 8, 9 and 10 in the three complaint cases filed by the respondent/complainant ‘M/s. Indo Rama Synthetics Ltd.’ under Section 138 of Negotiable Instruments Act, 1881 (*hereinafter ‘NI Act’*).
4. A perusal of the complaints filed under Section 138 of NI Act reveals that the accused company had approached the complainant, who was engaged in the business of manufacturing, marketing and supply of Polyester Staple Fibre, Partially Oriented Yarn, etc., for purchase of polyester staple fibre, and both the companies had entered into several transactions with each other. It was alleged that the complainant had supplied goods to the accused company as per its requirements from time to time at the desired destination and the same was recorded in the books of accounts kept and maintained in regular course of business.



However, it was alleged that the accused had failed to pay the outstanding amount on or before the due dates. The case of complainant was that as per books of accounts regularly maintained by it, a total sum of Rs.3,79,45,617/-, including amount of interest, was due from the accused. It was stated that towards payment of outstanding dues and in partial discharge of its legal liability, the accused had issued cheques bearing number 528901, 528902, 528903, 528904, 528905, 528906, and 528907, all dated 21.09.2017, for an amount of Rs.50,00,000/- each, drawn on State Bank of India, Chandigarh-160017, in favour of the complainant company. Thereafter, these cheques were presented for encashment by the complainant with its bank account maintained with ICICI Bank, Connaught Place, New Delhi for encashment, however, the same had returned unpaid with the cheque return memo dated 01.12.2017 with the remarks 'Account Closed'. The statutory legal notice dated 15.12.2017 was sent on behalf of complainant to the accused persons, calling upon them to make the payment of the dishonoured cheque amount within 15 days from the date of receipt of notice. As per complainant, the legal notice sent through registered post to accused no. 1, 5, 9 and 10 were served at the address, but the legal notice sent to other accused were received back from postal authorities. It is the case of complainant that since the accused company had issued the cheques in question with consent, knowledge and connivance of all the accused persons towards discharge of legal liability and the same had been dishonoured upon being presented for encashment, the accused persons were liable to face action under Section 138/141 of NI Act. Upon failure to receive any payment, the complainant had filed the



Complaint Cases bearing numbers 7099, 7100 and 7101 of 2018 before Patiala House Courts, New Delhi. The complainant had also mentioned in the complaint that these cheques were earlier deposited in the month of October 2017, and had got dishonoured on 03.10.2017, and legal notices were sent to the accused. However, due to inadvertence, the address of the accused company was wrongly mentioned and therefore, these fresh complaints were being filed after due service of notice on the accused at the correct address. The learned Metropolitan Magistrate, *vide* order dated 06.07.2018 had issued summons to all the accused persons.

5. Aggrieved by the issuance of summons, the petitioners have approached this Court.

6. The case set out by the petitioners is that they are former Directors of the accused company and were only the Professional Nominee Directors of Investors. It is stated that accused company and the complainant company were engaged in business transactions for a long time and the accused company had issued blank undated cheques to the complainant as security cheques for future transactions on 30.12.2013. It is stated that after reviewing all the undated/post-dated cheques issued by the accused company to different parties, it had taken a policy decision on 20.04.2015 and had issued stop payment letter to SBI for cheques issued to all parties including complainant herein. It is stated that SBI had acknowledged the stop payment letter on 21.04.2015 and on the same date, the accused company had sent an intimation to the all the parties, including complainant herein, by email as well as post. It is stated that the present petitioners had joined the accused



company only on 23.09.2015 as professional nominee directors of investors and had no role to play in day to day functioning of the accused company. It is stated that the current account of accused company was closed by SBI on 18.03.2016 after complying with all directions issued by RBI regarding the same. It is contended that the accused company had informed complainant on 21.12.2016 about supply of lower quality of Indorma fiber and had also intimated it about quality claims being received by the accused from its buyer. On 11.09.2017 also, a meeting was held with the complainant where quality issues were discussed. It is the case of petitioners that only after the accused company had raised quality issues, the complainant had mischievously filled the blank undated cheques and had presented the same for encashment. It is also stated that since the complainant could not file the complaint under Section 138 NI Act within the limitation period, the cheques were again presented with the bank and they had got dishonored on 01.12.2017.

7. Learned counsel for the petitioners argues that the erstwhile directors of the accused company have preferred the present petition seeking quashing of summoning order dated 06.07.2018 as well as complaint cases filed by the complainant qua them, which are pending adjudication before learned Metropolitan Magistrate-03, Patiala House Courts, New Delhi. It is stated that the petitioners were appointed as Professional Nominee Directors of Investors in the accused company on 23.09.2015 whereas the cheques in question were issued on 30.12.2013. It is stated that as per the case of company, these were blank cheques given as security and the instructions for stop payment were issued on



20.04.2015 and intimation to the other side was given through letter and email on 21.04.2015 i.e. about five months prior to the petitioners joining the accused company. It is also argued that the signatory to the cheques is the whole time director (accused no. 4) and the Chief Financial Officer (accused no. 11), and not the petitioners. It is also stated that in the complaint filed under Section 138 of NI Act, there are no specific allegations against the present petitioners other than regular bald allegations leveled against all the directors. Learned counsel for the petitioners also argues that though the complainant has averred that the cheques in question were issued with consent and connivance of all the accused persons, the petitioners were not even a part of the company at the time when blank/undated cheques were issued by the accused company. Thus, it is stated that the petitioners who were complete strangers to the company when cheques were issued and instructions for stop payment were given must not be compelled to undergo trial when no case is made out against them. On behalf of petitioners, reliance has been placed on the following case laws: *National Small Industries Corp. Ltd. v. Harmeet Singh Paintal* (2010) 3 SCC 330, *N.K. Wahi v. Shekhar Singh* (2007) 9 SCC 481, *SMS Pharmaceuticals Ltd. v. Neeta Bhalla* 2005 8 SCC 89.

8. Learned counsel for the respondent/complainant, on the other hand, argues that the complainant has complied with all the mandatory and statutory requirements under the NI Act while issuing legal notice and filing complaint under Section 138 NI Act. It is stated that in the legal notice as well as the complaint, specific allegations have been made against the present petitioners also. It is stated that petitioners



were directors of the company when the cheques in question were issued, presented for encashment and dishonoured i.e. in the year 2017. It is further stated that contentions regarding petitioners being nominee directors of investors or the cheques being blank security cheques or not, are all triable issues and thus, the complaint qua petitioners ought not be quashed at this stage. On behalf of respondent/complainant, reliance has been placed on the following case laws: *Sunil Todi v. State of Gujarat* 2021 SCC OnLine SC 1174, *HMT Watches Ltd. v. M.A. Abida* (2015) 11 SCC 776, *S.P. Mani & Mohan Diary v. Dr. Snehalatha Elangovan* 2022 SCC OnLine SC 1238, *Womb Laboratories Pvt. Ltd v. Vijay Ahuja* 2019 SCC OnLine SC 2086, *Standard Chartered Bank v. State of Maharashtra* (2016) 6 SCC 62.

9. This Court has heard arguments addressed on behalf of both sides and has perused the material on record.

10. Before advertng to the merits of the case, this Court deems it necessary to refer to Section 138 and 141 of NI Act, which are extracted 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,"

141. Offences by companies. - (1) If the person committing an offence under section 138 in 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 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."

11. While analysing Section 141 of the Act, the Hon'ble Apex Court in *SP Mani & Mohan Dairy v. Dr. Snehalatha Elangovan*, 2022 SCC Online SC 1238, had expressed as under:

"26. While the essential element for implicating a person under sub-section (1) is his or her being in charge of and responsible to the company in the conduct of its business at the time of commission of the offence, the emphasis in sub-section (2) upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. **Thus, the important and distinguishing feature in sub-section (1) is the control of a responsible person over the affairs of the company rather than his holding of an office or his designation, while the liability under sub-section (2) arises out of holding an office and consent, connivance or neglect.** While all the persons covered by sub-section (1) and subsection (2) are liable to be proceeded against and also punished upon the proof of their being either in charge of and responsible to the company in the conduct of its business or of their holding of the office and having been guilty of consent, connivance or neglect in the matter of commission of the offence by the company, the person covered by sub-section (1) may, by virtue of the first proviso, escape only punishment if he proves that the offence was committed without his knowledge or despite his due diligence."

(Emphasis supplied)

12. In the present case, learned counsel for the petitioners had argued that the petitioners had joined the accused company as directors on 23.09.2015, whereas the cheques in question had been issued on



30.12.2013 i.e. about two years prior to their joining. It was also argued that the instructions for stop-payment of the cheques were issued in April, 2015 i.e. about five months prior to the joining of petitioners as directors in the accused company. In this regard, this Court notes that the cheques in question are all dated 21.09.2017 i.e. about two years after the petitioners had joined the accused company as directors and had been dishonored on 01.12.2017. As regards the contention that the cheques were blank and undated when issued in the year 2013, and the same had later been filled and presented for encashment by the complainant, this Court notes that whether or not the cheques in question were undated or blank or issued as security cheques are all triable issues, to be decided upon leading evidence, and the same cannot be gone into by this Court at this stage. Further, with respect to cheques being issued as security cheques or not, this Court deems it appropriate to refer to the decision of Hon'ble Apex Court in case of ***Sunil Todi v. State of Gujarat*** 2021 SCC OnLine SC 1174, whereby it has been held as under:

“29. The order of this Court in *Womb Laboratories* holds that the issue as to whether the cheques were given by way of security is a matter of defence. This line of reasoning in *Womb Laboratories* is on the same plane as the observations in *HMT Watches*, **where it was held that whether a set of cheques has been given towards security or otherwise or whether there was an outstanding liability is a question of fact which has to be determined at the trial on the basis of evidence.** The rationale for this is that a disputed question of this nature cannot be resolved in proceedings under Section 482 CrPC, absent evidence to be recorded at the trial.”

(Emphasis supplied)



13. Similarly, on the aspect of cheques being blank or undated, a reference can be made to the decision of Hon'ble Supreme Court in case of *Bir Singh v. Mukesh Kumar* (2019) 4 SCC 197, whereby it has been observed as under:

“33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

35. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

(Emphasis supplied)



14. Further, it was also argued on behalf of petitioners that they were not incharge of the day-to-day affairs of the accused company and had been appointed only as Professional Nominee Directors of Investor, which was disputed by the learned counsel for complainant. In this regard, this Court has examined the documents placed on record, however, nothing has been filed on behalf of petitioners to support such contention. It has been stated in the petition that Annexure P-4 relates to appointment of present petitioners, but a perusal of the same reveals that the said annexure contains Form No. DIR-12 filed with the Registrar of Companies in relation to resignation of the petitioners from the accused company in the year 2019 and even in this form, the petitioners have been only been mentioned as 'directors'.

15. As apparent from the records of the case, the complainant in the complaint under Section 138 of NI Act has specifically averred that the accused company had issued the cheques in question and accused no. 2 to 10 were its directors and accused no. 11 was the company secretary, all of whom were in charge of and responsible for the conduct and affairs of accused company and the cheques in question had been issued with the consent, knowledge and connivance of all the accused, as all of them had been taking part in day-to-day activities of accused company.

16. As observed in preceding discussion, the cheques in question are all dated 21.09.2017, i.e. when the petitioners were undisputedly the directors in the accused company. The petitioners have failed to bring on record any unimpeachable material or material of sterling quality to show that they were not responsible for day-to-day affairs of the company when the cheque was issued or dishonored or that the



dishonoring of cheque in question was not attributable to any negligence or connivance or consent on their part. The role of each petitioner in commission of offence, if any, can become clear only during the course of trial, and cannot be examined in detail by this Court while exercising jurisdiction under Section 482 Cr.P.C.

17. While observing so, this Court is guided by the observations made by the Hon'ble Apex Court in *S.P. Mani & Mohan Dairy v. Dr. Snehalatha Elangovan* 2022 SCC OnLine SC 1238, which read as under:

“33. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:—

(b) It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;

(c) If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed in regards the law.

(d) In construing a complaint **a hyper-technical approach should not be adopted so as to quash the same.**

(e) The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141 respectively should be kept in mind by the Court concerned.

(g) The **power of quashing should be exercised very sparingly** and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed...

* * * *

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.

d.) 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/she is really not concerned with the issuance of the cheque, **he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention.** He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.”

(Emphasis supplied)

18. In view thereof, having found no reasons to interfere with the impugned summoning order, the present petitions stand dismissed. Pending applications, if any, are also dismissed accordingly.

19. It is however clarified that the observations made herein-above are for the sole purpose of deciding the present petitions and the same shall not have any effect on the merits of the case during trial.

20. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 12, 2023/kss