



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:03.07.2023

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CRL.M.C. 1192/2022 & CRL.M.A. 5199/2022**RAJEEV JAIN AND OTHERS**

...Petitioners

versus

ASHTECH INDUSTRIES PVT. LTD.

.... Respondents

Advocates who appeared in this case:

For the Petitioners : Ms. Amrita Panda, Adv.

For the Respondents :Mr. Sudhir Naagar, Mr. Vikrant Mehta
and Mr. Digvijay Chaudhary, Adv.

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HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed seeking quashing of the order dated 18.10.2019, passed by the learned MM-01 (Shahdara, Karkardooma Court Complex, New Delhi), in Complaint Case bearing number 4728/2019, titled as *Ashtech Industries Pvt. Ltd v. M/s RCC Infra Ventures and others*, taking cognizance for offence under Section 138 of the Negotiable Instrument Act (hereinafter referred as “**NI Act**”).

2. The complaint was filed by the Respondent, alleging that M/s RCC Infra Ventures Ltd, (hereinafter referred to as ‘accused company’) through Accused No. 2 to 9, approached the Respondent (hereinafter referred to as ‘complainant’) for the deployment of One Hydraulic Piling Rig MAIT HR-180 machine on monthly rental basis at their Via-Duct Mumbai Project Site.

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3. It was alleged that the accused company, through the accused placed a Work Order/Agreement dated 11.02.2019 pursuant to which the machinery was deployed on 16.02.2019 at their Mumbai Site by the Complainant company at a monthly rental value of ₹13,75,000/- (not inclusive of all taxes and duties), for a duration of 12 months.

4. Pursuant to the signing of the Work Order/Agreement dated 11.02.2019, and in furtherance to Clause 13.2, the accused persons handed over 3 pre-filled cheques to the complainant as a security, amounting to ₹16,22,500 (Sixteen Lacs Twenty Two Lacs Five Hundred Only) each, which also included the liability towards GST. It is submitted that it was agreed upon by the complainant as well as the accused persons that in the event of default of any payment, the cheques shall be presented by the complainant company.

5. It has been further alleged by the complainant that even though several invoices/bills were raised by them, the accused company has not made any payment towards rent since April 2019. The details provided by the complainant in regard to the invoices is given below:

S.No	Tax Invoice	Date	Amount
1.	18191000068	16.03. 2019	16,22,500/-
2.	18191000069	31.03. 2019	8,11,250/-
3.	19201000004	30.04.2019	16,79,444/-
4.	19201000008	31.05.2019	16,74,420/-



5.	19201000012	30.06.2019	16,79,444/-
6.	19201000019	31.07.2019	16,74,420/-
7.	19201000029	03.09.2019	17,86,048/ -

6. Accused failed to pay the dues against Invoice bearing no. 19201000004, for the month of April 2019. It is stated that the complainant received categorical instructions, and specifically from Accused No. 5 (Santosh Kumar Singhal) to present the cheque bearing number 001404 dated 31.05.2019 of ₹16,22,500/- towards discharge of partial liability towards the Invoice No. 19201000004 of ₹16,79,444/-. However, the cheque upon presentation got dishonored for the reasons “*funds insufficient*” vide cheque return memo dated 03.08.2019. It is stated that the accused persons were giving excuses on several pretexts, for the dishonor of cheques. It is further stated that the accused persons requested the complainant to present cheques bearing number 001404 and 001405 dated 31.05.2019 and 01.08.2019 towards the realization of part payment of the Invoice bearing number 19201000004 of ₹ 16,79,444 and Invoice No. 19201000008 of ₹ 16,74,420 raised for the month of April and May 2019 (for a sum of ₹16,22,500). However, both cheques on presentation were dishonored vide return memo dated 03.08.2019. Several attempts were allegedly made by the complainant with the Accused to resolve the issue and the complainant was finally constrained to terminate the work order vide email dated 03.08.2019, in furtherance to which the accused company



permitted the complainant to take possession of the Hydraulic Piling Rig MAIT HR 180 from the site of the accused company.

7. The complainant in furtherance of the dishonor of cheques, sent a Legal Demand Notice dated 18.09.2019 in terms of Sections 138, 141 and 142 of the NI Act, asking the accused to pay a sum of ₹ 48,67,500/- (Rupees Forty-Eight Lakhs Sixty Seven Thousand Five Hundred Only), out of a total outstanding amount of ₹ 69,03,726/- (Rupees Sixty Nine Lakhs Three Thousand Seven Hundred Twenty Six Only) within 15 days of receipt of notice. The same was not paid by the accused even after due service of Legal Notice via all modes, that is through speed post and email.

8. The complaint under Section 138 of NI Act was filed against M/s. R.C.C Infra Ventures Limited, Mr. Ravi Kumar Jain (Managing Director) and seven others who were arrayed as Accused No.1 to 9 respectively. Petitioners were arrayed as accused No. 3 to 9.

9. It is significant to note that in relation to the role of the petitioners throughout the complaint, it is averred that the accused No. 1 company acted through accused No. 2 to 9 being Directors of the accused company. These accused persons include the seven petitioners who have filed the present petition. Petitioners are sought to be made vicariously liable for the cheques issued by the company for the reason that they are holding the position of a Director in the company.

10. It is submitted by the learned counsel for the petitioner that no specific allegations have been made against the petitioners and only bald and general allegations have been averred. He submitted that the petitioners are neither responsible for the conduct of the company nor



are in-charge of the day-to-day affairs of the company. The petitioners are also not signatories of the cheques in question.

11. In addition, it is contended that on the date of dishonor of cheques in question. **Petitioner No. 2 (Padmachand Jain)** was associated merely as a Non-Executive Director which is apparent from the relevant Form No. 32 annexed with the present petition. **Petitioner No. 6 (Vinay Awasthi)** as is evident from the Form No. 32 filed with the present petition was merely an additional Director. **Petitioner No. 5 (Santosh Kumari Singhal)** and **& 7 (Manoj Kumar)** were merely independent Additional Directors which is clearly reflected from the Form No. 32. **Petitioner No. 4 (Neeru Jain)** is merely a housewife and had agreed to join the company as a Director on account of her relationship with the Managing Director of the company. No specific averments have been made against any of the petitioners and it has not been stated in any manner as to how they were responsible for the conduct of the business of the company.

12. Learned counsel for the respondent opposed the grant of any relief to the Petitioners and contented that the arguments advanced by the petitioner are to be considered during the trial and ought not be considered by this Court exercising powers under Section 482 of CrPC.

Analysis

13. In relation to a person to be prosecuted under Section 138 of the NI Act, the Hon'ble Supreme Court in *Alka KhanduAhvad v. Amar*



Syamprasad Mishra and Anr. in Criminal Appeal No. 258 of 2021,
held as under:

“7. On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:

- i) that the cheque is drawn by a person and on an account maintained by him with a banker;*
- ii) for the 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; and*
- iii) the said cheque 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.*

Therefore, a person who is the Signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been able to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.”

14. In the present case it is not disputed that the impugned cheques are issued by the accused company and the Petitioners are arrayed as accused being directors of the accused company. Section 141 of the NI Act deals with offences committed by the companies. In terms thereof, every person, who at the time of the offence, was in-charge of and was responsible to the company in the conduct of the business, is liable to be proceeded against and punished accordingly. Issue with



regard to holding any person to be vicariously liable for an offence under Section 138 of the NI Act, has been dealt by the Hon'ble Apex Court in a number of cases. It has been noted that the complainants unnecessarily implead all the Directors of the accused company irrespective of whether they were actually involved or responsible for the commission of the alleged offence. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla : (2007) 4 SCC 70***, it was observed as under:

“9. Requirements of law for proceeding against the Directors of the Company for their purported constructive liability came up for consideration in this case before a Division Bench of this Court, wherein the following questions were posed:

“(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 fulfils the requirements of the said section and it is not necessary to specifically state in the complaint that the person 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 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 or 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.

16. Section 141 of the Act does not say that a Director of a company shall automatically be vicariously liable for commission of an offence on behalf of the Company. What is necessary is that sufficient averments should be made to show that the person who is sought to be proceeded against on the premise of his being vicariously liable for commission of an offence by the Company must be in charge and shall also be responsible to the Company for the conduct of its business.”



15. The Supreme Court, thus, held that a director of a company would not, automatically be held guilty only for the reason of him/her being holding a position of a director. It is necessary to show that the person sought to be made vicariously liable was in-charge and was also responsible to the company for the conduct of its business.

16. Hon'ble Supreme Court in a recent decision in the case of ***Sunita Palita v. Panchami Stone Quarry*, 2022 SCC OnLine SC 945**, while interpreting Section 141 of NI Act and the liability of directors of the accused company observed as under:

“When the accused is the Managing Director or a Joint Managing Director of a company, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of the company. This is because the prefix “Managing” to the word “Director” makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an Officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under sub-section (2) of Section 141 of the NI Act by averring in the complaint, their position and duties, in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

It was, therefore, held by the Hon'ble Apex Court that in the case of Managing Director, it is not even necessary to make any averment in the complaint to the effect that he is in-charge of and is responsible to the company for the conduct of the business of the company. The prefix 'Managing' to the word 'Director' itself makes it clear that the said Director was in-charge of and responsible to the company for the conduct of the business of the company.



17. In another recent decision in the case of ***S.P Mani and Mohan Dairy v. Dr. Snehalata Elangovan*** 2022 SCC Online SC 1238, the Hon'ble Apex Court examined the judgements passed from time to time in relation to vicarious liability of a director. Hon'ble Apex Court had the occasion to discuss in detail the issue of vicarious liability in terms of Section 138 & 141 of the NI Act. In the said case, the High Court had quashed the criminal proceedings instituted against the partner of the accused company on the ground that there was nothing to indicate as to how and in what manner the said partner was incharge and responsible for the conduct of the accused company at the relevant time. The High Court held that merely reciting the words used under Section 141 of the NI Act will not fasten the vicarious liability on the partner of the firm. The Apex Court analyzed the provisions of Section 138 and 141 of the NI Act and held that the drawer of the cheque shall be deemed to have committed offence when the cheque drawn by him is returned as unpaid. If the drawer is a company, the offence is primarily committed by the said company and by virtue of the Section 141, the liability is extended to every person, who at the time the offence was committed, was incharge and had responsibility of the company for the conduct of its business; irrespective of whether such person is a director, manager, secretary or other officer of the company. It was held as under:

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

(a) Vicarious liability can be fastened on those who are in-charge of and responsible to the company or firm for the



conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;

(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.

(f) These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within the statutory period even after the issue of notice.

(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.

(h) The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking.

(Emphasis supplied)

41. In *Gunmala Sales Private Limited (supra)*, this Court after an exhaustive review of its earlier decisions on Section 141 of the NI Act, summarized its conclusion as under:—

“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 so having come across some unimpeachable, incontrovertible 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, incontrovertible 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.”



43. In the case on hand, we find clear and specific averments not only in the complaint but also in the statutory notice issued to the respondent. There are specific averments that the cheque was issued with the consent of the respondent herein and within her knowledge. In our view, this was sufficient to put the respondent herein to trial for the alleged offence. We are saying so because the case of the respondent that at the time of issuance of the cheque or at the time of the commission of the offence, she was in no manner concerned with the firm or she was not in-charge or responsible for day-to-day affairs of the firm cannot be on the basis of mere bald assertion in this regard. The same is not sufficient. To make good her case, the respondent herein is expected to lead unimpeachable and incontrovertible evidence. Nothing of the sort was adduced by the respondent before the High Court to get the proceedings quashed. The High Court had practically no legal basis to say that the averments made in the complaint are not sufficient to fasten the vicarious liability upon the respondent by virtue of Section 141 of the NI Act.

44. We may also examine this appeal from a different angle. It is not in dispute, as noted above, that no reply was given by the respondent to the statutory notice served upon her by the appellant. In the proceedings of the present type, it is essential for the person to whom statutory notice is issued under Section 138 of the NI Act to give an appropriate reply. The person concerned is expected to clarify his or her stance. If the person concerned has some unimpeachable and incontrovertible material to establish that he or she has no role to play in the affairs of the company/firm, then such material should be highlighted in the reply to the notice as a foundation. If any such foundation is laid, the picture would be more clear before the eyes of the complainant. The complainant would come to know as to why the person to whom he has issued notice says that he is not responsible for the dishonour of the cheque. Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned.

45. Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet



and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the noticee. In such circumstances what more is expected of the complainant to say in the complaint.

46. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner 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 incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of 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 or Partner.

47. Our final conclusions may be summarized 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 time they were not in charge of the affairs of the company or the firm.

c.) Needless to say, the 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 acquittal.

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. Thus, in terms of Section 141 of the Act, every director of the company does not automatically become vicariously liable for commission of an offence by the company. It is required that sufficient averments are made to show that the person who is alleged to be made vicariously liable, was in-charge and was also responsible to the company for conduct of its business.

19. The Hon'ble Apex Court also categorically held that while considering the complaint, the Courts ought not to adopt a hyper-technical approach. The Courts have to keep in mind the laudable object behind the NI Act, that is, sustaining the credibility of commercial transactions.

20. The provisions create a statutory presumption of dis-honesty in case payment is not made within the statutory period even after the issuance of notice. The Court, at the preliminary stage, has to take everything pleaded in the complaint as correct and is required to liberally construe the allegations in favour of the complainant. However, in case the Court comes across unimpeachable and incontrovertible evidence, which is beyond suspicion or doubt and clearly indicate that the director sought to be made vicariously liable could not have been concerned with the issue in subject, it is the Court's duty to interfere. Therefore, if the Court is convinced that such prosecution is merely an arm-twisting tactics, the proceedings can be quashed. However, at the same time, in the absence of any unimpeachable and incontrovertible evidence, pointing out towards the fact that the concerned director being sought to be made



vicariously liable for the issuance of cheques, is not responsible, the proceedings ought not to be quashed.

21. The complainant, at the time of filing of the complaint, or at the time of issuance of the cheque, is not supposed to be aware as to the exact role of person in-charge or responsible for day-to-day affairs of the company. The complainant is only to aver generally as to who is incharge of the affairs of the Company since the administrative matters could not be within its knowledge. The accused, therefore, when approaches the Court, seeking exercise of power under Section 482 of Cr.P.C., has to adduce some unimpeachable and incontrovertible evidence, beyond suspicion or doubt, pointing out towards his non-involvement. The burden is on the directors to show that they are not liable to be proceeded against. It is not in doubt that the criminal liability is attracted only on those officials, who at the time of commission of offence, were in-charge and responsible for conduct of the business of the company. The same, however, is a matter of trial. The Court, at this stage, is only concerned whether they should be proceeded against.

22. The Supreme Court has categorically held that the High Court should not interfere while exercising powers under Section 482 of the Code of Criminal Procedure, 1973 (hereafter “Cr.P.C.”) at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the director/partner of a firm could not have been concerned with the issuance of cheques. The Hon’ble Apex Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made



out against the particular director/partner provided the director/partner is able to produce some unimpeachable and incontrovertible evidence beyond suspicion and doubt.

23. From the analysis of the law as laid down by the Hon'ble Apex Court, it is, thus, clear that the issuance of process cannot be faulted even if the complainant makes basic averments against the director. However, if such director approaches the High Court under Section 482 of Cr.P.C., for quashing of the complaint, alleging that he is not concerned with the issuance of the cheque, he has to furnish some sterling incontrovertible evidence or acceptable circumstances to substantiate his contention and that making him stand the trial would be an abuse of the process of the Court. The complaint cannot be quashed on the ground that no particulars are given in the complaint about his specific role and the basic averments are sufficient for the Magistrate to proceed for trial.

24. This Court is conscious of the fact that the High Court is not to conduct a mini trial by considering the defence of the accused or holding an inquiry into the merits of the matter at hand. However, if, on the face of the documents which are beyond suspicion or doubt, the accusations against the accused are found to be frivolous, in order to prevent the injustice and abuse of the process of law, it is incumbent that appropriate relief is granted by exercising power under Section 482 of the Cr.P.C.

25. It has been held time and again that the power of quashing criminal proceedings while exercising power under Section 482 of the Cr.P.C., should be exercised very sparingly and with circumspection.



The Court, at this stage is not to embark upon an inquiry as to the reliability or genuineness of the allegations made in the complaint. The Court is also not to go into the merits of the complaint to reach a conclusion that there was any existing debt or liability. Furthermore, the burden of proving that there was no existing debt or liability is on the accused which is required to be discharged at the time of trial unless some evidence of unimpeachable and uncontroverted in nature is produced before the Court to take a different view. The presumption envisaged under Section 139 of the NI Act is a rebuttable presumption at the time of trial.

26. The Hon'ble Apex Court in the case of ***M.M.T.C Ltd. Vs. Medchl Chemicals & Pharma (P) Ltd.*** 2002 1 SCC 234 held as under:

“13. The learned Judge has next gone into facts and arrived at a conclusion that the cheques were issued as security and not for any debt or liability existing on the date they were issued. In so doing the learned Judge has ignored the well-settled law that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability.”

27. Similarly, in the case of ***HMT Watches Ltd. Vs. M.A. Abida***, 2015 11 SCC 776, the Hon'ble Apex Court held as under :

“10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court,



taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplined with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.”

28. It is contended that the petitioners, in the present case, are Managing Directors, Non-Executive Director(s), Executive Director(s) and Additional Directors of the accused company.

29. The role of a Director is well-defined in the Companies Act, 2013. Section 161 of the Companies Act, 2013, provides for appointment of an Additional Director. The Additional Director holds an office during the absence of a director, when the director is not in India for at least a period of three months. In terms of Section 149(12) of the Companies Act, 2013, Non-executive directors are external professionals and are not involved in the everyday activities of the company whereas as per rule 2(k) of The Companies (Specification of Definition Details) Rules 2014, Executive Director means a whole-time director as defined in Section 2(94) of the Companies Act, 2013.



30. In so far as the Managing Directors are concerned, they cannot contend to be not responsible for the day-to-day functioning of the company and no specific role is required to be assigned *qua* them in the complaint [Ref. ***Sunita Palita v. Panchami Stone Quarry; 2022 SCC OnLine SC 945***]. Whether they are liable to be convicted for the offence, if any, would be a matter of trial and the complaint *qua* them, cannot be quashed at this stage.

31. The Hon'ble Supreme Court, in the case of ***Pooja Ravinder Devidasani v. State of Maharashtra : (2014) 16 SCC 1***, had held that even though non-executive Director is a custodian of the governance of a company but is not involved in the day-to-day affairs of the running of its business and only monitors the executive activity. A company may have a number of Directors, however, not all of them could be subjected to the prosecution only on the statement that they are in-charge of and are responsible for the conduct of the business of the company. In the absence of any specific role being assigned to the Director, who is otherwise a non-executive Director, no vicarious liability can be assigned.

32. In the present case, the general allegations have been made against all the petitioners that they are responsible for the conduct of the business of the accused company. The document filed along with the petitions, have not been controverted by the respondents, which show that Petitioner No. 1 and Petitioner No. 3 are Managing Directors of the accused company. Petitioner No. 2 is a Non-



Executive Director, Petitioner No. 4 is an Executive Director, whereas Petitioners 5, 6 and 7 are Additional Directors.

33. Petitioner No. 2 (Padam Chand Jain) is a Non- Executive Director, which can be seen from the perusal of the documents submitted by the Petitioner, and neither does he hold a role in the day to day functioning of the company, nor has any role been assigned to him specifically.

34. Petitioner No. 4 (Neeru Jain) is an Executive Director of the accused company, and also the wife i.e., Ravi Kumar Jain (who is a Managing Director, although not present before this court). If an Executive Director wants the process to be quashed, on the ground that only a bald averment has been made, the onus of providing unimpeachable and incontrovertible evidence, or acceptable circumstances to substantiate the contentions lies on him/her. In my opinion, the petitioner no. 4 has failed to provide any evidence of sterling quality which may point to her innocence at this stage.

35. Petitioner number 5 (Santosh Kumari Singhal), 6 (Vinay Awasthy) and 7 (Manoj Kumar), are Independent Additional Directors of the accused company, and have no role in the day-to-day operation of the company. It has not been stated by the complainant in his complaint whether petitioner no. 5 to 7 are in charge of the independent head which may be related to the transaction which led to the dishonour of the cheques, nor has it been stated that either of these petitioners were incharge of the finances. Moreso, no specific



allegation has been made against them. Even though it is alleged that Petitioner No. 5 gave specific instructions to deposit the cheques, it cannot be assumed that he was in charge of the day-to-day functioning of the company as his role is that of an Independent Additional Director.

36. As mentioned above, Additional Director acts as a Director of the Company in the absence of a Regular Director, therefore, both the Director and Additional Director cannot be accused of the same offence.

37. It is a settled law that the powers of quashing should be used sparingly, and where the factual matrix in a complaint is laid down clearly and not in a routine manner where bald and unspecified averments are made against the accused persons, the complaint ought not to be quashed. However, where ingredients of an offence are lacking against an accused, it is the duty of the Court to discharge such accused. Holding a Trial against the petitioner no. 2,5,6, and 7 under Section 138 read with Section 141 of the NI Act would be an abuse of the process of law.

38. Consequentially, the present petition is partially allowed and the impugned order dated 18.10.2019 and complaint case no. 4728/2019 in so far as it relates to the petitioner no. 2,5,6, and 7 are set aside, and the proceedings against petitioner no. 2, 5, 6 and 7 are quashed.

AMIT MAHAJAN, J

JULY 3, 2023/SK / KDK/ "SS"

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 03.07.2023
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