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

% **Reserved on: 25th September, 2023**
Decided on: 19th December, 2023

+ **CRL.M.C. 2359/2019 & CRL.M.A. 37450/2019**

KISHORE KANNA **Petitioner**

Through: Mr.M.P.Parthiban, Advocate.

V

STATE & ANOTHER **Respondents**

Through: Mr. Yudhvir Singh Chauhan,
APP for State/R-1.

Mr. Nishant Datta, Mr.
Pradeep Bhardwaj and Mr.
Chirag Rathi, Advocates for
R-2.

CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present petition is filed under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) to quash the criminal complaint titled as **Lava International Ltd. V Fanatic System Pvt. Ltd. & others** bearing CC no. 16578/2017 filed by the respondent no.2 under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “**NI Act**”) which was



stated to be pending in the court of Ms. Ambika Singh, Metropolitan Magistrate-02, Patiala House Courts, New Delhi/successor court (hereinafter referred to as the “**trial court**”).

2. The respondent no.2 filed a complaint titled as **Lava International Ltd. V Fanatic System Pvt. Ltd. & others** bearing CC no. 16578/2017 under section 138 of the NI Act implicating 5 accused therein including the petitioner as accused no.4. The respondent no.2 pleaded that the accused no.1 is a private limited company and is engaged in the business of trading and manufacturing of mobile handsets and the accused nos. 2, 3, 4 and 5 are the Directors/ Additional Directors of the accused no. 1 and are liable for the day to day affairs of the accused no. 1. The accused no.1 is having business relationship with the respondent no.2 being distributor for goods of the respondent no.2/company as per Modern Trade Agreement dated 12.11.2015. The respondent no.2 during the course of business had supplied goods as per various tax invoices bearing no. 1014217023, 1014217032, 1014217048, 1014217070 and 1014217094 at times to the accused. As per ledger account maintained



by the respondent no.2, Rs.1,03,92,798/- is due and payable by the accused to the respondent no. 2.

2.1 The accused issued five cheques bearing no. 000017-000021 each dated 23.08.2017 drawn on HDFC Bank amounting Rs.10,00,000/- (hereinafter referred to as **“the cheques in question”**) towards partial payment of goods in favour of the respondent no 2. The respondent no. 2 in pursuance of email dated 24.08.2017 deposited these cheques in its Bank for payment but they were returned unpaid on 25.08.2017. The accused requested sometime to arrange funds and assured the respondent no. 2 that the funds would be available in its bank after few weeks and accordingly the respondent no. 2 deposited these cheques but they again were returned as dishonoured on 25.09.2017. The accused asked the respondent no. 2 to represent these cheques after some weeks to enable them to arrange funds. The respondent no. 2 represented these cheques with its banker at Bank of Baroda, Sansad Marg, New Delhi-110001 Branch in account no. 25620200000406 but these cheques were again returned as dishonoured vide cheque memo dated 18.10.2017 with remarks "Funds Insufficient". The respondent no. 2 sent legal notice dated



24.10.2017. The respondent no. 2 received a reply dated 09.11.2017 on behalf of accused no. 4 i.e. the petitioner wherein the petitioner denied his liabilities towards the respondent no. 2. The accused despite notice dated 24.10.2017 did not pay cheque amount. Hence, the respondent no. 2 filed the present complaint. The court of Ms. Ambika Singh, Metropolitan Magistrate-02, Patiala House Courts, New Delhi vide order dated 04.10.2018 stated to have issued notice against the accused including the petitioner.

3. The petitioner being aggrieved filed the present petition. The petitioner pleaded that he joined the accused no. 1 on 28.09.2015 and was appointed as regional sales manager. The cheques in question were issued by the directors of the accused no. 1 and at that time, the petitioner was not the Additional Director of the accused no. 1. The petitioner did not sign the cheques in question and was not connected with the transaction between the accused no. 1 company and the respondent no. 2. The petitioner sent the reply dated 09.11.2017 to the legal notice dated 24.10.2017 wherein he denied allegations of the legal notice.



3.1 The petitioner challenged issuance of summons on grounds that the present complaint was filed without appreciating that the petitioner was not responsible for the conduct of the business of the Company at the relevant time. The complaint does not contain any specific allegation against the petitioner to attract sections 138 and 141 of the NI Act. The directors of the accused no.1 issued the cheques in question, not the petitioner. The petitioner never was the Additional Director of the accused no.1 company. The petitioner did not sign the cheques in question. There is no specific averment that the petitioner was in charge of and responsible for the conduct of the business of the accused no. 1. The petitioner was appointed as an employee of the accused no. 1 vide appointment order dated 28.09.2015. The accused nos. 2 and 3 were the original directors of the accused no. 1 company and were responsible for the conduct of the accused no. 1. The petitioner was promoted to the post of Additional Director only for the purpose of convenience and never managed the affairs of the accused no.1 and never played any vital role in the company. The petitioner does not have any share in the accused no. 1 company like the other directors i.e. the accused nos. 2 and 3. The accused no. 2 holds



99.99% shares and the accused no. 3 holds 0.1 % of the shares in the accused no. 1.

4. The counsel for the petitioner advanced oral arguments and also submitted written submissions. He argued that the petitioner was the Executive Director of the accused no. 1 but was never involved or responsible for day-to-day functioning of the accused no. 1. The petitioner was later given the post of Additional Director but was never involved in activities of the accused no. 1 and was working as per the instructions from the accused nos. 2 and 3. The counsel for the petitioner further argued that the petitioner was not the signing authority on the cheques in questions and cannot be held guilty under section 138 of the NI Act solely by virtue of being a Director. The cheques in questions were issued by the accused nos. 2 and 3. The Article of Association of the accused no. 1 stated that only 2 directors were appointed to take decisions regarding all financial and administrative matters. The counsel for the petitioner relied on **Mannalal Chamaria V State of West Bengal**, (2014) 13 SCC571; **A.K. Singhania V Gujarat State Fertilizer Company**, (2013)16 SCC 630; **National Small Industries Corporation Ltd. V Harmeet**



Singh Paintal, (2010) 3 SCC 330; **State of Haryana V Brij Lal Mittal**, (1998) 5 SCC 343; **Gunmala Sales Pvt. Ltd. V Anu Mehta & others**, (2015) 1 SCC 103; **State of Haryana V Bhajan Lal**, 1992 Supp (1) SCC 335; and **A.R. Radha Krishna V Dasari Deepthi**, (2019) 15 SCC 550.

5. The counsel for respondent no.2 also advanced oral arguments and submitted written submissions. He argued that the petitioner has not mentioned that who are the Managing Director, Director, Additional Director and/or Whole Time Director of the accused no. 1. The petitioner is named as Director of the accused no. 1 as per FORM 32 available on the website of Ministry of Corporate Affairs. The Company Master data also did not mention who are the Managing Director, Director, Additional Director and or Whole Time Director of the accused no. 1. The trial court *prima facie* came to the conclusion that the petitioner was holding the post of Director and was liable for the day to day affairs of the accused no. 1. The present petition is an abuse of process of law and is not maintainable. The counsel for the respondent no. 2 relied on **K.K. Ahuja V V.K. Vora & others**, (2009) 10 SCC 48.



6. Section 138 and section 141 of the NI Act 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 provisions 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 or other liability” means a legally enforceable debt or other liability.



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 anybody 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. This court in **K.S. Mehta V M/S Morgan Securities & Credits Pvt. Ltd**, CrI. M.C. no 1645/2019 decided on 23rd November, 2023 observed as under:-

Section 141 of NI Act extends criminal liability in case of a company to every person who at the time of the offence, was in charge of and was responsible for the conduct of the business of the company. A company is a juristic person and every person who at the time of commission of offence is in charge and responsible for the conduct of the business of the company is liable for the offence stated to be committed by the company. The criminal liability arises when the offence was committed and not on the basis of merely holding a designation or office in a company. Section 141 of the NI Act mandates that a person is criminally liable when at the time of commission of offence was in charge and responsible for the conduct of the business of the company and person connected with the company may not fall within the ambit of section 141 of the NI Act.

7.1 The Supreme Court in **SMS Pharmaceuticals Ltd. V Neeta Bhalla & another**, 2005 (8) SCC 89 held as under:-

The normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence under Section 138 is committed by a Company, extends criminal liability for dishonour of cheque to officers of the Company. Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the



provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable. In other words, persons who had nothing to do with the matter need not be roped in. A company being a juristic person, all its deeds and functions are result of acts of others. Therefore, officers of a Company who are responsible for acts done in the name of the Company are sought to be made personally liable for acts which result in criminal action being taken against the Company. It makes every person who, at the time the offence was committed, was incharge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company, liable for the offence. The proviso to the sub-section contains an escape route for persons who are able to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence.

While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. The key words which occur in the Section are "every person". These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words "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 etc." What is required is that the persons who are sought to be made criminally liable under Section 141 should be at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and



responsible for conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a Company 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 under the provision. The liability arises from being in charge of and responsible for conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for conduct of business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company and not on designation or status. If being a Director or Manager or Secretary was enough to cast criminal liability, the Section would have said so. Instead of "every person" the section would have said "every Director, Manager or Secretary in a Company is liable" etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action. A reference to sub-section (2) of Section 141 fortifies the above reasoning because sub-section (2) envisages direct involvement of any Director, Manager, Secretary or other officer of a company in commission of an offence. This section operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of these offices in a company. In such a case, such persons are to be held liable. Provision has been made for Directors, Managers, Secretaries and other officers of a company to cover them in cases of their proved involvement.

The conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person



and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable.

7.2 The Supreme Court in **Siby Thomas V M/s Somany Ceramics Ltd.**, Criminal Appeal no. 003139 of 2023 (arising out of Special Leave Petition (Crl.) no.12 of 2020) decided on 10th October, 2023 referred decision in **S.P. Mani and Mohan Dairy V Dr. Snehalatha Elangovan**, 2022 SCC OnLine SC 1238 and observed that it is the primary responsibility of the complainant to make specific averments in the complaint, so as to make the accused vicariously liable. The Supreme Court also referred observations made in **S.P. Mani** which are as under:-

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)

(c)



(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.

42. The principles of law and the dictum as laid in *Gunmala Sales Private Limited (supra)*, in our opinion, still holds the field and reflects the correct position of law."

It was further observed as under:-

11. In the light of the afore-extracted recitals from the decision in *Gunmala Sales Private Limited v. Anu*, (2015) 1 SCC 103 quoted with agreement in *S.P. Mani's case (supra)* and in view of sub-section (1) of Section 141 of the N.I. Act it cannot be said that in a complaint filed under Section 138 read with Section 141 of the N.I. Act to constitute basic averment it is not required to aver that the accused concerned is a person who was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed.

It is thereafter that in the decision in *S.P. Mani's case (supra)* in paragraph 47 (a) it was held that the primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable.

7.3 The Supreme Court in *Siby Thomas V M/s Somany Ceramics Ltd.* also referred *Anita Malhotra V Apparel Export Promotion*



Council & another,(2012) 1 SCC 520 wherein it was observed as under:-

22. This Court has repeatedly held that in case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. (Vide National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal). In the case on hand, particularly, in Para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day-to-day affairs of the Company. We have verified the averments as regards to the same and we agree with the contention of Mr. Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day-to-day affairs of the Company. On this ground also, the appellant is entitled to succeed.

7.4 The Supreme Court in Siby Thomas V M/s Somany Ceramics Ltd. also referred Ashok Shewakramani & others V State of Andhra Pradesh & another,2023 INSC 692wherein it was observed as under:-

19. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of subsection 1 of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the



offence under Section 138 of the NI Act. In the light of sub-section 1 of Section 141, we have perused the averments made in the complaints subject matter of these three appeals. The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day to day affairs of the company. It is further averred that they are also in charge of the company and are jointly and severally liable for the acts of the accused No.1 company. The requirement of sub-section 1 of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section 1 of Section 141 NI Act must be a 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. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of Section 141 of the NI Act. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of subsection 1 of Section 141 of the NI Act. The allegation that they are in charge of the company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act.

7.5 The Supreme Court in Siby Thomas V M/s Somany Ceramics

Ltd. after referring the above mentioned decisions observed as under:-



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 to be read conjunctively in view of use of the word "and" in between.

8. The counsel for the petitioner argued that the respondent no. 2 has not made necessary averments in complaint which can reflect that the petitioner was in charge and responsible for the conduct of the accused no. 1. The counsel for the petitioner cited **Mannalal Chamaria V State of West Bengal**, (2014) 13 SCC 571 wherein it was held that it is necessary for the complainant to state in the complaint that the accused was in charge of and responsible for the



conduct of the business of the company and **A.K. Singhania V Gujarat State Fertilizer Company**, (2013)16 SCC 630 wherein it was observed that in the case of offence by a company, to bring the Directors of the company within the ambit of section 138 of the NI Act, it shall be necessary to allege that the Directors were in charge and responsible for the conduct of the business of the company. The counsel for the petitioner also cited **National Small Industries Corporation Ltd. V Harmeet Singh Paintal**, (2010) 3 SCC 330.

8.1 It is accepted legal proposition in view of law laid down by the Supreme Court in above referred decision that it is the primary responsibility of the complainant to make specific averments in the complaint so as to make the accused vicariously liable. If the basic averment made in the complaint under section 138 of NI Act is 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, then the Magistrate can issue process against such Director. The complaint should specifically spell out how and in what manner the Director was in charge of or was responsible of the accused company for conduct of its business and mere bald statement



that he or she was in charge of and was responsible of the company for conduct of its business is not sufficient. The respondent no. 2 in complaint stated that the accused no. 1 is a private limited company and the accused nos. 2, 3, 4 (the petitioner) and 5 are the Directors/Additional Directors for accused no. 1 and hence are liable for day to day affairs of the accused no. 1. The respondent no. 2 also stated that the respondent no.2 during the course of business had supplied goods to the accused persons which also includes the petitioner and the outstanding amount is also payable by the accused persons and the respondent no. 2. The cheques in question were issued by the accused. The respondent no. 2 also issued legal notice dated 24.10.2017. The averments mentioned in the complaint reflect that the respondent no. 2 has made sufficient allegations to establish that the petitioner was involved in day to day affairs of the accused no. 1. The arguments advanced by the counsel for the petitioner is without any basis and cannot be factually sustained.

9. The petitioner alleged that he joined the accused no. 1 company on 28.09.2015 as regional sales manager. The petitioner never remained the Additional Director of the accused no. 1 and the cheques



in question were issued by the Directors of the accused no. 1 and were not signed by the petitioner. The petitioner was not responsible for the conduct of the business of the accused no. 1 company at the relevant time and the accused nos. 2 and 3 were responsible for the conduct of the accused no. 1 being the original Directors of the accused no 1. However, the petitioner stated that he was promoted to the post of Additional Director only for the purpose of convenience and never managed affairs of the accused no. 1. The accused no. 2 holds 99.99% shares and the accused no. 3 holds 0.1 % of the shares in the accused no. 1. The counsel for the petitioner argued that the petitioner was an Executive Director of the accused no. 1 but was later given the post of Additional Director and was working as per the instructions from the accused nos. 2 and 3. The counsel for the petitioner cited **State of Haryana V Brij Lal Mittal**, (1998) 5 SCC 343 wherein it was observed that vicarious liability of a person for being prosecuted under the NI Act by a company arises if at the material time he was in charge of and also responsible to the company for the conduct of its business and that simply because a person is a director of a company, it does not necessarily mean that he was responsible for conduct of the



business of the company. The counsel for the respondent no. 2 argued that the petitioner has failed to produce any document on the record such as DIR-12 and any other document/evidence in support of his contentions raised in the petition which are false and without any basis.

9.1 Section 141 of the NI Act provides for a constructive liability which is created by a legal fiction. Section 141 of the NI Act being a penal provision should receive strict construction and compliance. If the accused played insignificant role in the affairs of the company, it may not be sufficient to attract the constructive liability under section 141 of the NI Act. The petitioner is claiming that he was appointed as the Regional Sales Manager in the accused no. 1 with effect from 01.10.2015 vide offer letter dated 28.05.2015 at a monthly salary of Rs. 50,000/-. The accused nos. 2 and 3 are the first director of the accused no. 1 as per Memorandum of Association. The petitioner is claiming that he was later promoted as Additional Director for sake of convenience but he never managed the affairs of the accused no. 1. The petitioner as per the Company Master Data is the Director/Signatory of the accused no. 1 along with the accused no 5. If the petitioner was



not responsible for affairs of the accused no. 1 despite being promoted as Additional Director of the accused no. 1, it can only be established and proved in accordance with law during the trial of the complaint under section 138 of NI Act. The petitioner has not placed or submitted any document which can reflect that the petitioner has never participated in conduct of business of the accused no. 1. The petitioner cannot be absolved from his liability qua the cheques in question by merely pleading that he was not responsible for day to day affairs and conduct of the business of the accused no. 1. The arguments advanced by the counsel for the petitioner are without any legal support.

10. The present complaint cannot be dismissed qua the petitioner. The present petition alongwith pending application is accordingly dismissed. None of the observation on factual position in the present judgment shall be taken as opinion on final merits of the case.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

DECEMBER 19, 2023
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