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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 28.07.2023**Pronounced on: 21.08.2023*+ **CRL.M.C. 24/2020 & CRL.M.A. 102/2020**

RAVI DHINGRA

..... Petitioner

Through: Mr. Pramod Kumar Dubey, Sr.
Advocate along with Mr.
Kamal Behal, Mr. Prince
Kumar, Mr. Shivam Kumar,
Mr. Satyam Sharma and Ms.
Aditi, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Murari Kumar and Mr.
Achint Kumar, Advocates for
R-2.

+ **CRL.M.C. 1334/2020 & CRL.M.A. 5085/2020**

RAVI DHINGRA

..... Petitioner

Through: Mr. Pramod Kumar Dubey, Sr.
Advocate along with Mr.
Kamal Behal, Mr. Prince
Kumar, Mr. Shivam Kumar,
Mr. Satyam Sharma and Ms.
Aditi, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Murari Kumar and Mr.
Achint Kumar, Advocates for



R-2.

- + **CRL.M.C. 1335/2020 & CRL.M.A. 5087/2020**
RAVI DHINGRA Petitioner
Through: Mr. Pramod Kumar Dubey, Sr.
Advocate along with Mr.
Kamal Behal, Mr. Prince
Kumar, Mr. Shivam Kumar,
Mr. Satyam Sharma and Ms.
Aditi, Advocates
versus
STATE & ANR. Respondents
Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Murari Kumar and Mr.
Achint Kumar, Advocates for
R-2.
- + **CRL.M.C. 1336/2020 & CRL.M.A. 5090/2020**
RAVI DHINGRA Petitioner
Through: Mr. Pramod Kumar Dubey, Sr.
Advocate along with Mr.
Kamal Behal, Mr. Prince
Kumar, Mr. Shivam Kumar,
Mr. Satyam Sharma and Ms.
Aditi, Advocates
versus
STATE & ANR. Respondents
Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Murari Kumar and Mr.
Achint Kumar, Advocates for
R-2.
- + **CRL.M.C. 1366/2020 & CRL.M.A. 5238/2020**
RAVI DHINGRA Petitioner



Through: Mr. Pramod Kumar Dubey, Sr.
Advocate along with Mr.
Kamal Behal, Mr. Prince
Kumar, Mr. Shivam Kumar,
Mr. Satyam Sharma and Ms.
Aditi, Advocates

versus

STATE & ANR. Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Murari Kumar and Mr.
Achint Kumar, Advocates for
R-2.

+ **CRL.M.C. 5965/2022 & CRL.M.A. 23398/2022**

RAVI DHINGRA Petitioner

Through: Mr. Pramod Kumar Dubey, Sr.
Advocate along with Mr.
Kamal Behal, Mr. Prince
Kumar, Mr. Shivam Kumar,
Mr. Satyam Sharma and Ms.
Aditi, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Murari Kumar, Advocate
for R-2.

+ **CRL.M.C. 5975/2022 & CRL.M.A. 23438/2022**

RAVI DHINGRA Petitioner

Through: Mr. Pramod Kumar Dubey, Sr.
Advocate along with Mr.
Kamal Behal, Mr. Prince
Kumar, Mr. Shivam Kumar,



Mr. Satyam Sharma and Ms.
Aditi, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Murari Kumar, Advocate
for R-2.

+ **CRL.M.C. 5980/2022 & CRL.M.A. 23446/2022**
RAVI DHINGRA Petitioner
Through: Mr. Pramod Kumar Dubey, Sr.
Advocate along with Mr.
Kamal Behal, Mr. Prince
Kumar, Mr. Shivam Kumar,
Mr. Satyam Sharma and Ms.
Aditi, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Murari Kumar, Advocate
for R-2.

+ **CRL.M.C. 5981/2022 & CRL.M.A. 23448/2022**
RAVI DHINGRA Petitioner
Through: Mr. Pramod Kumar Dubey, Sr.
Advocate along with Mr.
Kamal Behal, Mr. Prince
Kumar, Mr. Shivam Kumar,
Mr. Satyam Sharma and Ms.
Aditi, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents



Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Murari Kumar, Advocate
for R-2.

+ **CRL.M.C. 5982/2022 & CRL.M.A. 23450/2022**

RAVI DHINGRA

..... Petitioner

Through: Mr. Pramod Kumar Dubey, Sr.
Advocate along with Mr.
Kamal Behal, Mr. Prince
Kumar, Mr. Shivam Kumar,
Mr. Satyam Sharma and Ms.
Aditi, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Murari Kumar, Advocate
for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The petitioner before this Court, by way of above-captioned petitions, seeks quashing of summoning orders in five complaint cases instituted under Section 138 and 142 of Negotiable Instruments Act, 1881 ('NI Act') arraigning him as an accused, by the complainant/respondent no. 2, as well as setting aside of orders in these cases by way of which the applications seeking discharge filed by the petitioner before the concerned Magistrate were dismissed.

2. This judgment shall govern the disposal of all the above-



mentioned petitions filed under Section 482 and 483 of the Code of Criminal Procedure, 1973 ('Cr.P.C.').

3. Brief facts of the case, as disclosed from the complaint filed under Section 138 read with Section 141 of NI Act, are that the complainant company was engaged in the business of rendering financial services in India as a registered non-banking financial company, and the accused company namely M/s. Silverstar Fashions Private Limited was engaged in the business of manufacturing and exporting ready-made garments. It was stated that the accused company had approached the complainant in March, 2015 with a request to advance loan/financial assistance to meet its working capital requirements to cater to the purchase order received by the accused company and the accused persons namely Ravi Dhingra and Bharat Makkar, for and on behalf of accused company, had negotiated the terms and conditions, thereby giving assurances that the loan amount would be repaid on due date and the same would be secured through the purchase orders. It was further stated that the complainant company acting on such representation and warranties had entered into an arrangement dated 18.04.2015 and subsequently, the same was further amended on 23.06.2015 wherein it was mutually agreed that the complainant would pay advance to the accused in order to complete the purchase orders. It was also stated that during the period after execution of the master loan agreement, the accused persons had approached the complainant for enhancement of the limit of credit facility and accordingly total 8 addendum agreements had been executed on different dates and the total sanction amount was ultimately increased



to Rs.11.75 crores. It was further stated that the accused company had started defaulting in making repayments of the loan from February 2016 onwards and after repeated requests made by the complainant to repay the amount, the accused persons had issued total five cheques, including cheque bearing number 089768, 089769, 089770 and 089771, all dated 22.08.2016 drawn on Axis Bank Limited, Sector 10A, Gurgaon, each amounting to Rs.2.5 crores as well as a cheque bearing number 103970, also dated 22.08.2016, drawn on the same bank for Rs.1.75 crores. Thereafter, the complaint had deposited the aforesaid cheques with its banker i.e. HDFC Bank, Kailash building, KG Marg, New Delhi but to the utter surprise of the complainant, all the cheques had been dishonoured for the reason "signature not as per the mandate". Cheque bearing number 089768, 089769 and 089771 had got dishonoured on 23.08.2016 whereas cheque number 089770 and 103970 had got dishonoured on 01.09.2016. Thereafter, the complaint company had issued statutory legal notices dated 31.08.2016 as well as 17.09.2016 seeking repayment of the loan amounts, however, upon failure of the accused to make the payment, the complainant had filed the present complaints under Section 138 and 141 of NI Act. The details of the complaint cases filed by the complainant/respondent no. 2 are as under:

Complaint Case Number	Cheque Number
48700/2016	089700
49307/2017	103970
49308/2017	089768



49309/2017	089769
49310/2017	089770

4. Learned Metropolitan Magistrate-02, Patiala House Courts, New Delhi had summoned the accused persons, after which, the present petitioner had moved applications seeking discharge/dropping of proceedings against him in all the complaint cases.

5. Aggrieved by the orders dated 23.11.2019, dismissing the application seeking discharge in all five complaint cases, the petitioner has preferred the petitions i.e.Crl.M.C. No. 24/2020, 1335/2020, 1336/2020, 1334/2020 and 1366/2020 seeking setting aside of such orders. Further, petitions i.e. Crl.M.C. No. 5965/2022, 5981/2022, 5982/2022, 5980/2022 and 5975/2022 have been filed seeking quashing of the summoning orders issued against the petitioner in the five complaint cases instituted by the complainant which are pending before the Court of learned MM.

6. Learned Senior counsel for the petitioner argues that summoning of an accused in a criminal case is a serious matter and the criminal law cannot be set into motion in a routine manner. It is argued that the petitioner in the present case was not in charge of or responsible for the conduct of the business of the accused company at the time when the offence had been committed and thus he could not have been made liable under Section 141 of NI Act. In this regard, it is argued that the petitioner had joined the accused company as Director on 01.06.2016 and had resigned from the company on 22.08.2016, whereas the cheques in question were all dated 22.08.2016 and three of



the cheques had got dishonoured on 23.08.2016 while two of the cheques had got dishonoured on 01.09.2016. It is stated that the offence of dishonour of cheque takes place only after non-payment of the amount of cheque within statutory period after service of notice of demand and thus the cause of action had arisen on 17.09.2016 when the petitioner had already resigned. It is further argued that petitioner is neither the signatory of the master loan agreement nor the cheques in question. It is also stated that he was not the managing director of the accused company and co-accused Bharat Makkar was the signatory of both loan agreement as well as the cheques. It is further contended that there are no specific averments in the complaint ascribing the role of the petitioner as to how and in what manner he was responsible for the day-to-day affairs of the company and the allegations in the complaint qua the petitioner are bald and vague. Thus it is prayed that in all these petitions, the summoning order against the petitioner be quashed as well as the orders vide which the applications seeking discharge filed by the petitioner were rejected be also set aside. In support of these contentions, reliance has been placed on several decisions of Hon'ble Apex Court as well as this Court.

7. Vehemently opposing the relief prayed in these petitions, learned counsel for respondent no. 2 submits that the petitioner had been looking after the affairs of the accused company even before being appointed as a director and had continued to do so even after his purported resignation from the accused company, and the signatory of the cheques in question was only an employee of the petitioner who had been made a scapegoat, despite the petitioner being the real beneficiary



of the accused company. It is stated that there are certain emails of the month of April and May, 2016 which would show that the petitioner was looking after the affairs of the company even before joining the company as a director in June, 2016. It is argued that the cheques in question had been presented on 22.08.2016 and had been dishonoured on the same day and the bank return memo is dated 23.08.2016 whereas as per records of ROC, it was informed about the resignation of the petitioner on 23.08.2016. It is also stated that the petitioner in connivance with other directors had obtained loan on the basis of forged purchase orders and had diverted the funds to his another company including M/s. Loop and Style Exports Pvt. Ltd. where his son is one of the directors and had siphoned off the amount obtained from the complainant company. It is also submitted that petitioner, his son, his wife and the companies owned by the petitioner had given a personal guarantee on behalf of accused company i.e. M/s. Silverstar Fashion Pvt. Ltd. on 27.03.2014 which is even prior to availing loan from the complainant. It is argued that in March, 2015 the petitioner along with co-accused Bharat Makkar, representing the accused company, had approached the complainant with a request to advance financial assistance to meet working capital requirements in order to cater to the purchase orders received by the accused company and the complainant company acting on the representation and warranties of the petitioner, had entered into agreements and had sanctioned amount to the tune of Rs.11.75 crores, against the which the cheques issued by the accused had dishonoured. It is thus stated that present petitions be dismissed.



8. This Court has heard arguments addressed by both sides and has perused the material placed on record.
9. In a nutshell, the case set out by the petitioner is that he had resigned from the accused company on the date of issuance of cheques in dispute and before the same had got dishonoured and the cause of action had arisen for filing impugned complaints.
10. Necessary for the adjudication of present case, Sections 138 and 141 of NI Act are extracted as under for reference:

“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 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.”

11. The Hon’ble Apex Court in *National Small Industries Corp. Ltd. v. Harmeet Singh Paintal* (2010) 3 SCC 330 had carved out the following principles with respect to Section 141 of NI Act:

"39. From the above discussion, the following principles emerge:

- (i) The primary responsibility is on the complainant to make



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

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

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

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

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

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

(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases..."

12. In *S.P. Mani & Mohan Dairy v. Dr. Snehalatha Elangovan* 2022 SCC OnLine SC 1238, the Hon'ble Apex Court had explained the provision of Section 141 of NI Act in the following manner:

"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) is



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...”

13. In the present case, the complainant/respondent no. 2 in his complaints filed under Section 138 and 141 of NI Act had made the following averments against the present petitioner:

- i. the petitioner and co-accused, representing the accused company, had approached the complainant company in March, 2015 with request to advance loan/financial assistance to meet the working capital requirements to cater to the purchase order received by the accused company;
- ii. the petitioner and co-accused, for and on behalf of accused company, had negotiated the terms and conditions with assurance that the loan amount would be repaid on due date and the same was secured through purchase orders;
- iii. the petitioner and co-accused had induced the complainant company to enhance the limit of credit facility;
- iv. the petitioner and co-accused had exchanged various emails related



to the transaction in question;

- v. the cheques in dispute were handed over by the petitioner and co-accused, representing the accused company, to the complainant company and the complainant company had accepted the same on the representation and assurances of the accused who assured that the account contained sufficient balance and the cheques had been issued towards the discharge of their liability for availing the financial assistance by the complainant company.

14. The respondent no. 2 has also relied upon certain documents including several emails exchanged between the parties during the period April-May, 2016, to show that the petitioner had been looking after the affairs of the accused company, including the transactions in question, even before being appointed as a director on 01.06.2016.

15. Though the primary contention raised on behalf of petitioner is that he had resigned prior to the dishonoring of cheques, even the case set out by the petitioner is also that he was the Director of the accused company when the cheques had been issued on 22.08.2022 and he had tendered his resignation on the very same day in the evening and some of the cheques in question had got dishonored on 23.08.2022. The respondent no. 2 contends, on the basis of records of the Registrar of Companies, that the resignation was communicated to the ROC on 23.08.2022, only after the cheques had got dishonored. Be that as it may, this Court also takes note of the fact that except Form DIR-11, nothing has been placed on record to show that after the resignation was forwarded to the accused company by the petitioner, any Board Meeting had taken place or any Board Resolution was passed to accept



his resignation. As regards the reliance placed on behalf of petitioner on decision of Hon'ble Apex Court in *Harshendra Kumar D. v. Rebatilata Koley & Ors. (2011) 3 SCC 351*, this Court notes that the same is distinguishable on the facts and circumstances as in that case, the petitioner therein had resigned two months prior to the issuance of cheque and the petitioner had placed on record several documents such as his letter of resignation sent to the company, the board resolution of the company accepting the resignation letter and the information sent by the company to the ROC in prescribed form (Form 32) and such documents had not been disputed by the complainants. Similarly, as regards reliance placed upon decision in *DCM Financial Services Ltd. v. J.N. Sareen (2008) 8 SCC 1*, the concerned Director in this case had resigned from the accused company in May, 1996 and intimation about his resignation had also been given to the complainant, whereas the cheque in question had got dishonored in June, 1998 i.e. more than two years after the resignation of the Director concerned, which is also clearly distinguishable from the facts of present case.

16. In the case at hand, considering the proximity of time in alleged resignation of the petitioner and issuance of cheque in question and its dishonor, absence of other details and material such as appointment of any new director in place of present petitioner, any board resolution to strengthen the case of petitioner and in view of other reasons mentioned in preceding paragraphs, this Court, at this stage, cannot come to a conclusion, with utmost certainty, as to when had the petitioner actually resigned from the office of Director of accused company and as to whether or not he was involved in dishonoring of the cheques in



question, amounting to Rs.11.75 crores, especially when there are specific averments to the effect that he was involved in the process of obtaining loans from the complainant and issuing the cheques in question.

17. In this background, this Court also takes note of the observations of the Hon'ble Apex Court in case of *S.P. Mani & Mohan Dairy (supra)*, 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:—

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 this Court’s opinion, the material placed on record by the petitioner is not sterling incontrovertible material or unimpeachable material to show that petitioner was not involved either in day-to-day activities of the company or had no role in issuance of cheque in question or its dishonoring.

19. Accordingly, the present petitions, alongwith pending applications if any, are dismissed.

20. However, all the contentions raised before this Court regarding date of resignation of the petitioner and as to whether or not he had any role in commission of offence can be raised before the learned Trial Court at an appropriate stage and the same shall be dealt with as per law by the Court concerned.

21. It is also clarified that the observations made hereinabove are for the sole purpose of the deciding the present petitions and the same shall not be construed as expression of opinion of this Court on merits of the case.

22. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 21, 2023/ns