IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Reserved ON: 09.02.2024
Date of Pronouncement: 12.03.2024

(1) CRM-M-920 of 2023 (O&M)

Anilbhai Ranchhodji Mehta .... Petitioner

Versus

G4S Secure Solutions (India) Pvt. Ltd. .... Respondent

(2) CRM-M-926 of 2023 (O&M)

Anilbhai Ranchhodji Mehta .... Petitioner

Versus

G4S Secure Solutions (India) Pvt. Ltd. .... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Suneet Pal Singh Aulakh, Advocate
for the petitioner (in both cases).

Mr. Pankaj Gupta, Advocate
for the respondent (in both cases).

****

HARKESH MANUJA, J.

1. This order of mine shall dispose of the aforesaid two petitions as common question of law and facts are involved therein. For convenience, facts are being taken from CRM-M-920-2023.

2. By way of present petition filed under Section 482 Cr.P.C., the petitioner prays for quashing of complaint case No. NACT-28586-2018 (P-1) besides seeking quashing of the summoning order dated 12.01.2021 *(P-4)* passed by learned Judicial Magistrate Ist Class, Gurugram.

3. Briefly stating, on account of dishonor of cheques bearing

Nos. (i) 509049, dated 10.04.2018 for Rs. 10,48,496/-; (ii) 509050, dated 10.05.2018, for Rs.10,62,476/-; (iii) 509799, dated 10.06.2018 for Rs.10,78,413/-; and (iv) 509800, dated 10.07.2018 for Rs.11,10,981/-, respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short "NI Act") against the petitioner with the averments that the petitioner happened to be the Director/Authorized Signatory of M/s. PME Power Solutions (India) Ltd., i.e. the drawer company and thus, was liable to be prosecuted for offence under Section 138 of NI Act.

4. Learned Judicial Magistrate Ist Class, Gurugram vide order dated 12.01.2021 summoned the petitioner besides others under Section 138 read with Section 141 of NI Act.

5. By way of present petition, the complaint as well as the summoning order has been challenged.

6. Learned counsel for the petitioner submitted that no notice of demand as required under Section 138 read with Section 141 of the NI Act, was served upon the petitioner before filing of the impugned complaint(s). He also submitted that the petitioner was not a signatory to the cheques in question and that even if the entire complaint(s) was read as a whole, it nowhere revealed any specific averment with regard to the role of the petitioner in the day to day affairs of M/s PME Power Solutions (India) Ltd. (the Company of which the petitioner is a Director) and in that circumstance, no vicarious liability can be imposed upon the petitioner. It was also submitted that petitioner being a senior citizen suffering from

"peripheral neuropathy" due to which he was not able to take any kind of professional duty. In support of his contentions, he placed reliance upon the following judgments:-

i. **"S.M.S. Pharmaceuticals Ltd. Versus Neeta Bhalla and Anr."**, reported as 2005(4) R.C.R. (CRIMINAL) 141
ii. **"National Small Industries Corp. Ltd. Versus Harmeet Singh Paintal & Anr."**, reported as 2010 (2) R.C.R. (Criminal) 122
iii. **"Central Bank of India Versus M/s Asian Global Ltd. & Ors"**, reported as 2010 (3) R.C.R. (Criminal) 625
iv. **"Pooja Ravinder Devidasani Versus State of Maharashtra and Another"**, reported as 2015 (1) R.C.R. (Criminal) 271
v. **"Sunita Palita & Others Versus M/s Panchami Stone Quarry"**, reported as 2022 (4) R.C.R. (Criminal) 118.

7. On the other hand, learned counsel for the respondent submitted that there was no legal requirement to serve the demand notice on each individual Director and once it was served on the company, it could be presumed that it was served to each Director. He further submitted that there were categoric averments in the complaint that petitioner was a Director/ authorized signatory as well as incharge of the Company and responsible for its day-to-day conduct of the business. He also submitted that apart from that there were specific averments as well in the complaint regarding the role of the petitioner and further substantiation of these could be made during trial and in that scenario, no fault can be found with the complaint or summoning order. In support of his contentions, he

placed the reliance upon the following judgments:-

i. **"Kirshna Export and Capital Markets"**, reported as (2015) 8 SCC 28
ii. **"S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan"**, reported as 2022 SCC Online SC 1238
iii. **"Ashutosh Ashok Parasrampuriya v. Gharrkul Industries Pvt. Ltd."**, reported as 2021 SCC L OnLine SC 915
iv. **"Gunmala Sales Pvt. Limited v. Anu Mehta"**, reported as (2015) 1 SCC 103
v. **"Rallis India Ltd. v. Poduru Vidya Bhushan"**, reported as (2011) 13 SCC 88
vi. **"N. Rangachari v. BSNL"**, reported as (2007) 5 SCC

8. I have heard learned counsel for the parties and gone through the paper book. I do not find substance in the submissions made on behalf of the petitioner.

9. A three judge bench of Hon'ble apex court in **S.M.S. Pharmaceuticals Ltd.'s** case (supra), reported as 2005(8) SCC 89, referred three questions, which are as below:

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

of the offence unless he proves to the contrary?

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

While interpreting Section 141 of the NI Act, these questions were answered by the Hon'ble Bench in the following manner:-

"21. In view of the above discussion, our answers to the questions posed in the Reference are as under :-

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of

Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

10. In accordance with **S.M.S. Pharmaceuticals Ltd's** case (supra), the only obligation upon the complainant is to make averment in the complaint that which Directors are incharge of and responsible for the conduct of the business of the company at the relevant time, and only those Directors can be made vicariously liable under section 141 of NI Act. Though, afterwards, in catena of judgments, as relied upon by the Id. Counsel for the petitioner as well, it was also held that apart from necessary averments, there is

also requirement of specific role being attributed to a director to make him liable under section 141 of NI Act and only then a director can be prosecuted. A perusal of the complaint shows that even this requirement has been fulfilled in the present case and a specific role has been attributed to the petitioner by recording that cheques were issued by accused No 2 on his instructions. Relevant para from the complaint having necessary averment is reproduced hereunder:

> *"That the Accused No. 1 is the company which has availed the services from the Complainant Company, Accused No. 2 is its Managing Director, Accused No. 3 and 4 are its Directors/ Authorized Signatories and Accused No. 5 is its Chief General Manager-Commercial. The Accused No. 2, 3, 4 and 5 are in-charge and responsible for running day to day affairs of the Accused No. 1 and have got the dishonored cheques issued for and on behalf of the Accused No. 1. The Accused No. 2 is the authorized signatory of the said cheques who has signed the cheques at the instructions of the Accused No.3 and 4."*

11. It has been argued by learned counsel for the petitioner that the petitioner was not even served the demand notice and as such summoning order could not have been issued against him. However, as relied upon by ld. counsel for the respondent, in **Kirshna Texport & Capital Markets Ltd.'s case (supra)**, it was held by the Hon'ble Apex Court that there was no legal requirement to serve the demand notice on each director and only requirement to serve demand notice in writing was towards the "the drawer of the

cheque". Relevant paras from this judgment are reproduced hereunder:-

> *"13. With these principles in mind, we now consider the provisions in question. According to Section 138, where any cheque drawn by a person on an account maintained by him is returned by the Bank unpaid for reasons mentioned in said Section such person shall be deemed to have committed an offence. The proviso to the Section stipulates three conditions on the satisfaction of which the offence is said to be completed. The proviso inter alia obliges the payee to make a demand for the payment of said amount of money by giving a notice in writing to "the drawer of the cheque" and if "the drawer of the cheque" fails to make the payment of the said amount within 15 days of the receipt of said notice, the stages stipulated in the proviso stand fulfilled. The notice under Section 138 is required to be given to "the drawer" of the cheque so as to give the drawer an opportunity to make the payment and escape the penal consequences. No other person is contemplated by Section 138 as being entitled to be issued such notice. The plain language of Section 138 is very clear and leaves no room for any doubt or ambiguity. There is nothing in Section 138 which may even remotely suggest issuance of notice to anyone other than the drawer.*
>
> *14. Section 141 states that if the person committing an offence under Section 138 is a Company, every director of such Company who was in charge of and responsible to that Company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability*

is plainly that a juristic entity i.e. a Company would be run by living persons who are in charge of its affairs and who guide the actions of that Company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the directors must individually be issued separate notices under Section 138. The persons who are in charge of the affairs of the Company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such Company. It is precisely for this reason that no notice is additionally contemplated to be given to such directors. The opportunity to the 'drawer' Company is considered good enough for those who are in charge of the affairs of such Company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of defence to be considered at the appropriate stage in the trial and certainly not at the stage of notice under Section 138.

15. If the requirement that such individual notices to the directors must additionally be given is read into the concerned provisions, it will not only be against the plain meaning and construction of the provision but will make the remedy under Section 138 wholly cumbersome. In a given case the ordinary lapse or negligence on part of the Company could easily be rectified and amends could be made upon receipt of a notice under Section 138 by the Company. It would be unnecessary at that point to issue notices to all *the directors, whose names the payee may not even be aware of at that stage. Under Second proviso to Section 138, the notice of demand has to be made within 30 days of the dishonour of cheque and the third proviso gives 15 days time to the drawer to make the payment of the amount and escape the penal consequences. Under clause (a) of Section 142, the complaint must be filed within one month of the date on which the cause of action arises under the third proviso to Section 138. Thus a complaint can be filed within the aggregate period of seventy five days from the dishonour, by which time a complainant can gather requisite information as regards names and other details as to who were in charge of and how they were responsible for the affairs of the Company. But if we accept the logic that has weighed with the High Court in the present case, such period gets reduced to 30 days only. Furthermore, unlike proviso to clause (b) of Section 142 of the Act, such period is non-extendable. The summary remedy created for the benefit of a drawee of a dishonoured cheque will thus be rendered completely cumbersome and capable of getting frustrated."*

12. It is not denied by the petitioner that he was the Director at the relevant period of time. No other unimpeachable, incontrovertible evidence has been brought to the notice of this Court which may indicate that the petitioner could not have been concerned with the issuance of cheques. Though it is submitted that petitioner is a senior citizen suffering from "peripheral neuropathy" due to which he is not able to take any kind of professional duty, however, apart

from bare averments, no other material has been brought on record to substantiate the same.

13. In view of the discussion made hereinabove, no interference is warranted in complaint NACT-28586-2018 & NACT-29849-2018 or in subsequent summoning order dated 12.01.2021, thus both the petitions are dismissed.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

March 12, 2024 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*