IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

264 **CRM M-3594 of 2022**
Date of Decision: 19.07.2024

Naresh Kumar @ Naresh Handa ...Petitioner

Versus

Parmod Kumar ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Preetwinder Singh Dhaliwal, Advocate
for the petitioner.

Mr. Ashok Paul Batra, Advocate
for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the Criminal Complaint No. NACT/341/2020, titled as "**Parmod Kumar Vs. M/s HGI Associates and another",** (Annexure P-1) and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner contended that a criminal complaint under Section 138 read with Sections 142 and 143-A of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') was filed against the petitioner by the respondent/complainant by wrongly showing the petitioner as Manager (Legal) of M/s HGI Associates, Pathankot. He further contended that in fact the proprietors of M/s HGI associates were

Vishal Handa and his wife Natasha Handa. By referring to the Partnership Deed dated 20.09.2017 (Annexure P-4), learned counsel for the petitioner contended that only Vishal Handa and Mrs. Natasha Handa were the only partners in the said firm. He further contended that the partnership firm can be represented only through partners or a person authorized by the partnership. He further contended that the petitioner was neither the partner nor the authorized representative of the firm. The petitioner was neither signatory to the cheque in question nor had any concern with the affairs of the partnership firm. Still by showing him as Manager (Legal) of M/s HGI Associates, the partnership firm is sought to be prosecuted through him. Learned counsel further contended that even there is no averment in the complaint (Annexure P-1) as to how the petitioner was connected with the firm. Moreover, it has not been specifically stated that the petitioner was incharge or had any concern with the day to day affairs of the partnership firm. Only in the head of the complaint, name of the petitioner has been mentioned and no specific or particular role had been assigned to him. Consequently, the petitioner could not be vicariously liable for the affairs of the firm and has been wrongly summoned by the trial Court.

3. On the other hand, learned counsel appearing on behalf of the respondent vehemently opposed the submissions made by the petitioner and submitted that the petitioner had been correctly arrayed as accused in the present case. However, he is not in a position to

controvert the submission made by the learned counsel for the petitioner that only Natasha Handa and Vishal Handa were the partners of the firm and the petitioner was not incharge and responsible for the affairs of the partnership firm, accused.

4. I have heard the rival submissions made by the learned counsel for the parties and perused the record.

5. The Hon'ble Supreme Court has held in the matter of ***S.M.S. Pharmaceutical Ltd. Vs. Neeta Bhalla: (2005) 8 SCC 89*** as under:-

> *"19. **K.P.G. Nair v. Jindal Menthol India Ltd. [2001(10) SCC 218]** was a case under the Negotiable Instruments Act. It was found that the allegations in the complaint did not in express words or with reference to the allegations contained therein make out a case that at the time of commission of the offence, the appellant was in charge of and was responsible to the company for the conduct of its business. It was held that requirement of Section 141 was not met and the complaint against the accused was quashed. Similar was the position in **Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd. and another, 2002(4) RCR (Criminal) 502 (SC) : [2002(7) SCC 655].** This was a case of a partnership. It was found that no allegations were contained in the complaint regarding the fact that the accused was a partner in charge of and was responsible to the firm for the conduct of business of the firm nor was there any allegation that the offence was made with the consent and connivance or that it was attributable to any neglect*

on the part of the accused. It was held that no case was made out against the accused who was a partner and the complaint was quashed. The latest in the line is the judgment of this Court in ***Monaben Ketanbhai Shah and another v. State of Gujarat and others, 2004(3) RCR (Criminal) 800 (SC) : [2004(7) SCC 15].*** *It was observed as under :*

"4. .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. If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hypertechnical approach should not be adopted so as to quash the same. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind. 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 issue of notice. It is also true that the power of quashing is required to be exercised very sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. All the same, it is also to be remembered that it is the duty of the court to discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking. The

present case falls in this category as would be evident from the facts noticed hereinafter."

It was further observed :

"6 ..The criminal liability has been fastened on those who, at the time of the commission of the offence, were in charge of and were responsible to the firm for the conduct of the business of the firm. These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint."

20. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the *person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That respondent falls within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.*

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."

6. While adverting to the facts of the present case, it is apparent that in the instant case, it has no where been pleaded in the complaint that at the time when the offence was committed, the present petitioner was Incharge of/and responsible for conduct of the business of the company. The petitioner has been just arrayed as an accused in the present case by referring to him as Manager(Legal). Apart from that, from the Partnership Deed (Annexure P-4), it is depicted that there were only two partners in the accused/firm M/s HGI Associates, i.e., Vishal Handa and Natasha Handa and the

respondent has failed to controvert the said position either by filing a reply or by placing any other documents to the contrary.

7. Keeping in view the aforesaid discussion and the law laid down by the Hon'ble Supreme Court, it can safely be concluded that the petitioner has been wrongly arrayed as an accused in the complaint. As a consequence, the present petition is allowed and the Criminal Complaint No. NACT/341/2020, titled as "**Parmod Kumar Vs. M/s HGI Associates and another",** (Annexure P-1) and the summoning order dated 22.07.2021 (Annexure P-2) passed by the Judicial Magistrate 1st Class, Sri Muktsar Sahib, are ordered to be quashed qua the present petitioner only.

19.07.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No