265 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-4393-2019
Date of Decision:14.10.2024

Shivam Goyal …Petitioner

Vs.

M/s Indian Iron and Metals Pvt. Ltd. …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Aditya Grover, Advocate
for the petitioner.

Mr. Nayandeep Rana, Advocate
as Amicus Curiae for the respondent.

***

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the impugned complaint No. NACT 2169/2017 (Annexure P-1) titled as "M/s Indian Iron and Metal Pvt. Ltd. Vs. M/s Sham Udyog Limited and Ors., under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act") and the summoning order dated 06.11.2017 (Annexure P-2), passed by the Court of Sub-Divisional Judicial Magistrate, Amloh, whereby the petitioner has been summoned to face trial under Section 138 of the "Act".

2. While issuing notice of motion on 30.01.2019, this Court had noticed the following contentions:-

> *"The learned counsel for the petitioner submits that he is neither a Director of the company nor employee of the company and the learned Trial Court vide impugned order had erred in observing that the petitioner is proprietor and is managing the affairs of the firm and is responsible for its act and conduct. Learned counsel in this*

context has drawn the attention of this Court to master date maintained in the office of Ministry of Corporate Affairs annexed as Annexure P-3, as per which it is only Jai Parkash, Chhotto Devi and Prince Hans who are mentioned to be Directors of the company and the name of the petitioner does not figure anywhere".

3. Vide order dated 30.01.2019, this Court had stayed further proceedings before the Trial Court and notice was issued to the respondent/complainant. Initially, Mr. Neeraj Malhotra, Advocate represented the respondent on 04.02.2020 before this Court, however, on subsequent dates, there was no representation on behalf of the respondent and the case was repeatedly adjourned to await the appearance of learned counsel for the respondent. Ultimately, Mr. Nayandeep Rana, Advocate was appointed as Amicus Curiae to assist the Court on behalf of the respondent.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner contends that the petitioner was wrongly shown as Director of M/s Sham Udyog Limited, Nabha. Even the petitioner was wrongly described as proprietor of the firm and it was wrongly stated that he was managing the affairs of the firm and responsible for its act and conduct. Consequently, the petitioner was wrongly summoned by the Trial Court. Apart from that, only Jai Parkash, Chhotto Devi and Prince Hans were the Directors of the company and the petitioner had no concern with the company at all. During proceedings, before this Court, the respondent could not produce any evidence to show that that the petitioner was also proprietor or director or was managing the affairs of the company.

6. It was held by the Hon'ble Supreme Court in the matter of

"***National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal, (2010), 3 SCC,330*** as follows:-

> "*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 accused therein vicariously liable for offence committed by company along with averments in the petition containing that 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 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 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".

7. Similarly in the matter of "***S.M.S Pharmaceuticals Ltd. Vs. Neeta Bhalla,2005 8,SCC which is as follows:-***

> **"***It was held that that in order to array an accused for an offence under Section 138 of the N.I.Act who is not signatory to the cheque, specific averments have to be made in the complaint as to the role attributable to the said accused and as to how he was responsible for the conduct and affairs of the company. Hon'ble Supreme Court held:*
>
> *18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person 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.*
>
> *19. 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".

8. In the present case also, it is apparent that the petitioner was neither a director nor a proprietor nor he was responsible and in-charge of day to day affairs and conduct of the company. Even, the complainant did not attribute any act, conduct or omission on the part of the petitioner which would be sufficient to hold him vicariously liable for the act of the company. Consequently, the impugned summoning order dated 06.11.2017 (Annexure P-2) is liable to be set aside qua the petitioner only.

9. In view of the above discussion, the present petition is allowed and impugned complaint No. NACT 2169/2017 (Annexure P-1) titled as "M/s Indian Iron and Metal Pvt. Ltd. Vs. M/s Sham Udyog Limited and Ors., under Section 138 of the "Act" and the summoning order dated 06.11.2017 (Annexure P-2), passed by the Court of Sub-Divisional Judicial Magistrate, Amloh are liable to be quashed qua the petitioner only.

10. Ordered accordingly.

(N.S.SHEKHAWAT)
JUDGE

14.10.2024
hitesh

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