IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I. **CRM-M-3495-2023**

2024:PHHC: 051248

MR.AMAL DATT KUMAR DHRU

. . . . Petitioner

Vs.

M/S CAPRI GLOBAL CAPITAL LTD. AND OTHERS

. . . . Respondents

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II. **CRM-M-6240-2023**

2024:PHHC: 051251

MR.SATYANARYAN B. DANGAYACH @ SATYANARYAN BANWARILAL DANGAYACH

. . . . Petitioner

Vs.

M/S CAPRI GLOBAL CAPITAL LTD. AND OTHERS

. . . . Respondents

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III. **CRM-M-6306-2023**

2024:PHHC: 051252

MR.AMAL DATT KUMAR DHRU

. . . . Petitioner

Vs.

M/S CAPRI GLOBAL CAPITAL LTD. AND OTHERS

. . . . Respondents

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IV. **CRM-M-5801-2023**

2024:PHHC: 051259

MR.SATYANARYAN B. DANGAYACH @ SATYANARYAN BANWARILAL DANGAYACH

. . . . Petitioner

Vs.

M/S CAPRI GLOBAL CAPITAL LTD. AND OTHERS

. . . . Respondents

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V. **CRM-M-6290-2023**

2024:PHHC: 051263

MR.AMAL DATT KUMAR DHRU

. . . . Petitioner

Vs.

M/S CAPRI GLOBAL CAPITAL LTD. AND OTHERS

. . . . Respondents

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VI. **CRM-M-6321-2023**

2024:PHHC: 051266

MR.SATYANARYAN B. DANGAYACH @ SATYANARYAN BANWARILAL DANGAYACH

. . . . Petitioner

Vs.

M/S CAPRI GLOBAL CAPITAL LTD. AND OTHERS

. . . . Respondents

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Reserved on: 03.04.2024
Pronounced on : 15.04.2024

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr.P.S. Thiara, Mr.A.P.S. Virk and Mr.V.K. Aggarwal, Advocates for the petitioner(s).

Mr.Harsh Chopra, Advocate, for the respondents.

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DEEPAK GUPTA, J.

This order shall dispose of six petitions titled above, as of them have arisen out of the similar summoning orders passed in the three criminal complaints between same parties in respect of 3 cheques issued in same transaction.

2.1 Complainant- M/S Capri Global Capital Ltd. *(respondent No.1 herein in all the petitions)*; and accused, who include the petitioners and respondents No.2 & 3, are common in the three criminal complaints pending in the Court of ld. Judicial Magistrate, 1st Class, Gurugram.

2.2 Perusal of the paperbook of all the petitions would reveal that as per complainant-M/S Capri Global Capital Ltd., a company engaged in the business of finance and home loan etc., it advanced loan of ₹4.3 crore to the accused. In order to discharge their part liability, the accused issued three cheques of ₹50 Lacs each, all of which on presentation, were dishonoured. Necessary statutory notices were sent to the accused to pay the cheque amount within 15 days from the date of receipt of the notice but to no avail, compelling the complainant to file the three complaints to prosecute the accused under Section 138 read with Section 141 of the Negotiable

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Instruments Act, 1881 [for short 'the NI Act']. Following are the details of the cheques and the complaints:

Complaint No.	Cheque No.	Date	Amount (in ₹)	
4535 of 2018	548408	24.01.2018	50 lakh	All drawn on State Bank of India, Branch Overseas, Delhi
4545 of 2018	548409	24.01.2018	50 lakh	
4541 of 2018	548410	24.01.2018	50 lakh	

2.3 In all the aforesaid three complaints, following six persons were arrayed as accused: -

Accused N:	Name	Party in these petitions
1.	M/s Zillion Infra-projects Pvt. Ltd.	Respondent No.2
2.	Chandra Shekhar Saxena	
3.	Nawal Kishore Saxena	
4.	Anant Saxena	
5.	Amal Dattkumar Dhru	Petitioner in CRM-M Nos.3495; 6306 & 6290 all of 2023
6.	Satyanarayan Banwari Lal	Petitioner in CRM-M Nos. 6240; 5801 & 6321 all of 2023

2.4. After recording preliminary evidence in the three complaints, similar orders dated 29.05.2018 were passed by ld. Magistrate in all the three cases, whereby complaint qua accused No.2 & 3 - Chandra Shekhar Saxena and Naval Kishore Saxena was dismissed; whereas, process was directed to be issued against remaining accused No.1, and 4 to 6 to face prosecution under Section 138 read with Section 14I of the NI Act.

2.5 Separate revisions were filed by the petitioners (accused No.5 & 6 in the complaints) before the Court of Sessions, challenging the summoning orders of all the three cases, but all of them were dismissed by the ld. Additional Sessions Judge, Gurugram vide similarly worded orders dated 04.07.2022.

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3. Now, accused No.5 & 6 have approached this Court by way of these petitions. CRM-M-3495-2023, CRM-M-6306-2023 and CRM-M-6290-2023 have been filed by accused No.5-Amal Dutt Kumar Dhru; whereas CRM-M-6240-2023, CRM-M-5801-2023 and CRM-M-6321-2023 have been filed by accused No.6- Satyanarayan Banwari Lal, challenging the summoning order as well as the order passed by the revisional Court in all the three complaints, by pleading common grounds.

4.1 It is contended that order dated 29.05.2018 was passed by ld. Magistrate without due application of judicious mind, inasmuch it is observed in the order that there was no *prima facie* ground for summoning of accused No.3 Dwarkanath Ramaswamy Gupta, though there was no accused by the name of Dwarkanath Ramaswamy Gupta, as accused No.3 arrayed in the complaint, is Naval Kishore Saxena.

4.2 Further, despite the fact that similar allegations are pleaded against all the accused, complaint qua the accused No.2 and 3 - Chandra Shekhar Saxena and Naval Kishore Saxena, who are Directors of the accused N: 1 Company, has been dismissed without assigning any reason whatsoever.

4.3 It is further contended that legal notice prior to filing of the complaint is dated 10.02.2018, whereas affidavit of the authorized representative of the complainant, filed in support of the complaint, is dated 05.02.2018 i.e. even prior to the legal notice, but still ld. Magistrate ignored the said aspect.

4.4 Further, attention is drawn by ld. counsel towards the legal notice dated 10.02.2018, which was issued by the complainant prior to filing of the

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complaints, which is not at all addressed to the petitioners (Amal Datt Kumar Dhru and Satyanaryan Banwari Lal) and rather, the said notice is addressed only to the accused N: 1 company, i.e., M/S Zillion Infraprojects Pvt. Ltd., besides Chandra Shekhar Saxena, Naval Kishore Saxena, Anant Saxena and one Durha Vitran Pvt. Ltd..

4.5 Still further, it is contended that the two petitioners are the non-executive directors of the accused company, as were so appointed on 18.12.2012 as per Form No.32 (Annexure P3). Elaborating in this regard, it is contended that a company named Syntex Infraprojects Pvt. Ltd. had invested some amount in accused company - M/s Zillion Infra-projects Pvt. Ltd. (earlier known as M/s Dhura Construction Pvt. Ltd.) by purchasing some shareholding. A share purchase-cum-shareholding agreement was entered between M/s Syntex Infraprojects Pvt. Ltd. and respondent No.2-accused company and as per the agreement, M/s Syntex Infraprojects Pvt. Ltd. had appointed the petitioners as its nominees on the board of respondent No.2-accused company and thus, petitioners were appointed as non-executive directors in the accused company. Ld. counsel contends that being the non-executive directors, the petitioners were required only to attend board meetings and had no role to play in the management or to day-to-day affairs of the company or their loan liabilities. Petitioners used to visit the premises of the accused company only to attend the board meetings and that in all these circumstances, the summoning order is bad in the eyes of law.

5.1 Replying to the aforesaid contentions, ld. counsel for respondent No.1-complainant company contends that petitioners have admitted themselves to be the directors of the accused company and that complaint was

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filed after dishonour of the cheque and after completion of all the legal requirements; that summoning order has been upheld by the revisional court, wherein the contentions raised by the petitioners were duly considered; that once the legal notice was sent to the company, it was not necessary to mention names of all the directors therein, as the directors are vicariously liable for the company.

5.2 It is contended further that present petition under Section 482 CrPC is essentially a second revision, which is not permissible under law; that petitioners have been arrayed as accused being the director/authorized representative and that as per the legal position explained by Hon'ble Supreme Court in the case of ***S.P. Mani and Mohan Dairy Vs. Dr. Shehalatha Elangovan,*** *2022(4) RCR (Criminal) 743*, burden is on the directors or the officers of the company to establish at trial that at the relevant time, they were not in charge of the affairs of the company or the firm.

5.3 Attention is also drawn by ld. counsel for respondent No.1-complainant company towards the fact that though impugned order (Annexure P2) was passed by the revisional Court on 04.07.2022, but the present petitions have been filed after a gap of more than six months and thus, the same are beyond limitation. Ld. counsel has referred to ***Palwinder Raj Singh Vs. The State of Punjab,*** *2003(1) RCR (Criminal) 198.*

With these submissions, prayer is made for rejecting all the petitions.

6. I have considered submissions of counsel of both the sides and have appraised the record.

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7. Whether these petitions, which in fact are second revisions under the garb of Section 482 Cr.PC, maintainable? Section 397Cr.P.C. provides about the exercise of powers of revision by the High Court or the Sessions Judge.

> **"397. Calling for records to exercise powers of revision**.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.
>
> Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.
>
> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
>
> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

8. The language of Section 387 Sub-section (3) is quite clear with no ambiguity. If a person has chosen to file a revision either before the High Court or before the Sessions Court under sub-Section (1), said person cannot be allowed to prefer further application to the other Court. In other words, a person aggrieved by any order or proceedings can choose his remedy by way of revision either before High Court or the Sessions Court. Once he has availed the remedy before either of the Court, he is precluded from approaching the other forum.

9. In ***Rajan Kumar Manchanda v. State of Karnataka***, ***1990 (Supp) 1 SCC 132,*** it has been held Hon'ble Supreme Court, as under:

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> "A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted, every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld."

10. In ***Krishnan & Anr vs Krishnaveni & Anr, 1997 AIR 1997 SC 987,*** a three judges bench of Hon'ble Supreme Court, dealt with the issue and held as under:

> "The object of Section 483 and the purpose behind conferring the revisional power under section 397 read with section 401 upon the High court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to met out justice or to correct irregularity of the procedure or to met out justice. In addition, the inherent power of the High Court is preserved by Section 462 . The Power of the High court therefore is very wide, However, High Court must exercise such power sparingly and cautiously when the sessions judges has simultaneously exercised revisional power under Section 397 (1) however, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or tow correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order."

It was further held as under:

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> "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397 (1) or under inherent power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, **when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power** and would be justified, under such circumstance, to exercise the inherent power and in an appropriate case even revisional power and in appropriate case even revisional power under Section 397 (1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity or procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justices can be ensured only when expeditious trial is conducted."

[bold portion emphasized by this court]

11. This issue also came up for consideration before Delhi High Court in ***Surender Kumar Jain vs. State, 2012 SCC OnLine Delhi 572*** and it was observed as under;

> "5. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr.P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy inherent power under section 482 Cr.P.C. as well to entertain petitions even in those cases. But, that power was to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the

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> revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in **Madhu Limaye Vs. State of Maharashtra (1977) 4 SCC 551, State of Orissa Vs. Ram Chander Aggarwal, AIR SC 87, Raj Kapoor Vs. State (Delhi Administration) 1980 Cri.L.J. 202, Krishnan & Anr. Vs. Krishnaveni & Anr and Kailash Verma Vs. Punjab State Civil Supplies Corporation and Anr (2005) 2 SCC 571**."
>
> *[underlined & bold portion emphasized by this court]*

12. Thus, the legal position as above would make it clear that though High Court enjoys inherent power under Section 482 Cr.P.C. and supervisory power under Section 483 Cr.PC to entertain petitions even in those cases, where a revision has earlier been filed before the Court of Sessions but said power is to be exercised sparingly. It will depend upon facts and circumstances of each case, as to whether impugned order brings about a situation, which is an abuse of the process of Court, or there is serious miscarriage of justice, or where mandatory provisions of law were not complied with, or if there was some apparent mistake committed by the Revisional Court.

13. Coming to the facts of present case, in view of the issues raised by the petitioners, these petitions are held to be maintainable, as impugned summoning orders against petitioners and upholding of the same by revisional court, will result in serious miscarriage of justice, if the contentions raised by the petitioners are found to be correct.

14. Proceeding further, discussing the scope of Section 138 read with Section 141 of the NI Act, Hon'ble Supreme Court in the case of ***S.P. Mani and Mohan Dairy (Supra),*** referred to interrelationship between these

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provisions, as was explained in ***SMS Pharmaceuticals Vs. Neeta Bhalla,*** *AIR (2005) 3512* besides ***Sabhitha Ramamurthy Vs. RBS Channabasavaradhya,*** *AIR (2006) SC 3086.* Reference was then made to ***K.K. Ahuja Vs. V.K. Vora,*** *(2009) 10 SC 48,* in which Hon'ble Supreme court, discussed the principles of vicarious liability of the officers of the company in respect of dishonour of a cheque had held as under: -

> "The position under section 141 of the Act can be summarized thus:
> (i) If the accused is the **Managing Director or a Joint Managing Director**, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in− charge of and are responsible to the company, for the conduct of the business of the company.
> (ii) In the case of a director or an officer of the company **who signed the cheque on behalf of the company**, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub−section (2) of Section 141.
> (iii) In the case of a **Director, Secretary or Manager** (as defined in Section 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub− section.
> (iv) **Other Officers** of a company cannot be made liable under sub−section (1) of Section 141. Other officers of a company can be made liable only under sub−section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

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15. Hon'ble Supreme Court in ***S.P. Mani and Mohan Dairy (supra)*** then referred to ***Sunita Palita and others Vs. M/s Panchami Stone Quarry,*** *(2022) SC Online SC 647,* ***Ashutosh Ashok Parasrampuria v. Gharrkul Industries Pvt. Ltd.,*** *(2021) SCC Online SC 915*, ***S.K. Alagh v. State of Uttar Pradesh,*** (2008) 5 SCC 662**; *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.,*** *(2010) 10 SCC 479* **and *GHCL Employees Stock Option Trust v. India Infoline Limited*,** *(2013) 4 SCC 505* and summarized the final conclusion in para No.47 as under: -

> "47. Our final conclusions may be summarised as under:−
>
> a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub−section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.
>
> b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

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c.) Needless to say, the final judgement and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

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."

16. Adverting to the facts of the case, it will be apposite to reproduce the relevant portion of the complaint in which allegations against all the accused have made:

"3…….. The accused No. 2 to 6 is Director/Authorized signatory of accused no. 1 ie. M/s Zillion Infraprojects Pvt. Ltd. and is responsible for its day to day functioning/affairs of the Firm/company. The accused No.1 with Secretary/authorized Signatory through accused No. 2 to 6 approached the complainant company and requested for loan for business purposes……."

17. As will be evident from the aforesaid allegations, all the five accused i.e. accused No.2 to 6 in the complaint have been alleged to be the director/authorized signatories of accused No.1-company, without specifying about the specific role of any of the accused. Allegations against all of them are the same.

18. Now let us take note of the summoning order dated 29.05.2018 passed by the Ld. Magistrate (taken from complaint No.4535 of 2018 as the

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order in other cases is similar). The relevant portion of the said order is as under:

> *"Heard. Perusal of the documents placed on record reveals that the complainant had presented the cheque in question to the banker of the accused in time and further issued notice to the accused within a period of 30 days from the date of receipt of communication about dishonouring of cheque, but still the accused failed to make the payment. However, the documents placed on record reveals that there is no prima facie ground for summoning of accused no. 3 Dwarkanath Ramaswamy Gupta. Therefore, complaint qua* ***accused no. 2 & 3 Chandra Shekhar Saxena and Nawal Kishore Saxena stands dismissed.***
>
> *4. Keeping in view the aforesaid discussion there are sufficient prima facie grounds proceed against the accused no. 1, 4, 5 & 6 u/s138 of Negotiable Instruments Act. As a necessary corollary of the above discussion accused no.* ***1, 4, 5 & 6 M/s Zillion Infraprojects Pvt. Ltd., Anant Saxena, Amal Dattkumar Dhru & Satyanarayan Banwari Lal are hereby summoned for commission of offence u/s 138 read with Section 141 of Negotiable Instruments Act.*** *Summons be issued to the accused no. 4, 5 & 6 Anant Saxena, Amal Dattkumar Dhru & Satyanarayan Banwari Lal for 01.08.2018 on filing of process fees through registered cover/ Speed Post/Approved Courier Service/e-mail. Summon be taken dasti, if so desired."*

19. The aforesaid order clearly appears to have been passed by ld. Magistrate without due application of mind. As rightly pointed out by ld. counsel for the petitioners, there is no accused by the name of **Dwarkanath Ramaswamy Gupta** and still, there is observation by the Magistrate that there is no *prima facie* ground for summoning of the accused No.3- **Dwarkanath Ramaswamy Gupta.** The Magistrate then holds that complaint qua accused No.2 & 3-Chandra Shekhar Saxena and Naval Kishore Saxena stands dismissed, without assigning any reason whatsoever to do so and despite the fact that allegations against these two accused are similar to the other persons arrayed as accused.

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20. However, it has been conceded fairly by ld. counsel for respondent No.1-complainant that complainant did not file any revision against orders dated 29.05.2018 qua dismissal of the complaints against accused No.2 and 3. As such, this Court will confine its discussion about legality of the impugned order in respect of petitioners i.e. accused No.5 & 6.

21. Annexure P3 is the copy of Forum No.32, as is maintained by Registrar of the Companies and as obtained from the website of Ministry of Corporate affairs, as pointed out by ld. counsel for the petitioners. Copy of this Form 32 as produced in all the six petitions would clearly reveal that accused-petitioner Amal Datt Kumar Dhru was appointed as a non-executive director of accused company i.e. M/s Zillion Infraprojects Pvt. Ltd. on 18.12.2012; whereas accused-petitioner Satyanaryan B. Dangayach was so appointed as non-executive director in the said company on 14.04.2012. These documents have not been refuted by counsel for the respondent-complainant and his contention to the effect that petitioners have admitted themselves to be directors is absolutely not tenable, as petitioners nowhere admitted themselves to be directors and rather, clearly stated that they were appointed as non-executive directors. So much so, even the legal notices dated 10.02.2018, prior to filing of the complaints, were sent to accused company i.e. M/s Zillion Infraprojects Pvt. Ltd. besides Chandra Shekhar Saxena, Naval Kishore Saxena and Anant Saxena (arrayed as accused No.2 to 4 in the complaints); and not to accused No.5 & 6-petitioners.

22. No doubt that individual notice to the directors of the company is not required as has been held by Hon'ble Supreme Court in ***Krishna Texport***

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& Capital Markets Ltd. Vs. Ila A. Agrawal, *(2015) 8 SCC 28*, wherein it was held as under: -

> "In our view, Section 138 of the Act does not admit of any necessity or scope for reading into it the requirement that the Directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such Directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company under Section 138. Therefore, neither on literal construction nor on the touchstone of purposive construction such requirement could or ought to be read into Section 138 of the Act."

23. Thus, as per the legal position explained in the case of ***Krishna Texport & Capital Markets Ltd. (supra),*** only to the directors who are in charge of and responsible to the company for the conduct of its business that legal notice is not required to be given. However, in the present case, petitioners are neither the directors nor the in charge of day-to-day affairs of the company and rather, they are only the non-executive directors.

24. The position of non-executive directors has been discussed by Hon'ble Supreme Court in ***Pooja Ravinder Devidasani Vs. State of Maharashtra, 2015 (3) SCC (Civil) 384,*** wherein it was held as under: -

> 17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company— M/S Elite International Pvt. Ltd. on 1st July, 2004 and had also executed a Letter of Guarantee on 19th January, 2005. The cheques in question were issued during April, 2008 to September, 2008. So far as the dishonor of Cheques is concerned, admittedly the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director <u>but only a non-executive Director of the Company</u>. <u>Non-executive Director is no doubt a custodian of the governance of</u> <u>the Company but does not involve in the day-to-day affairs of the running of its business and only monitors the executive activity.</u> To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the Company, one who actively looks after the day-to-day activities of the

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Company and particularly responsible for the conduct of its business. Simply because a person is a Director of a Company, does not make him liable under the N.I. Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, 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 for an offence under Section 141 of the N.I. Act."

25. This legal position was reiterated by Hon'ble Supreme Court in the case of ***Sunita Palita (supra)*****.** In the latest judgment titled ***Susela Padmavathy Amma Vs. M/s Bharti Airtel Limited, 2024(2) RCR (Criminal) 273,*** Hon'ble Supreme Court referred to the case of ***Pooja Ravinder Devidasani (supra)*** and then held as under: -

"By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act."

12. It could thus clearly be seen that this Court has held that merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not ipso facto make the director vicariously liable.

13. A similar view has previously been taken by this Court in the case of **K.K. Ahuja vs. V.K. Vora and another (2009) 10 SCC 48.**

14. In the case of **State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi vs. Rajiv Khurana (2010) 11 SCC 469,** this Court reiterated the position thus:

"17. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of the company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is

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needless to emphasise that in the case of non- Director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable."

15. In the case of **Ashoke Mal Bafna (supra),** this Court observed thus:

"9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action. **(See Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675] .)**

10. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company."

16. A similar view has been taken by this Court in the case of **Lalankumar Singh and others vs. State of Maharashtra 2022 SC OnLine SC 1383** to which one of us (B.R. Gavai, J.) was a party."

26. In the light of the aforesaid legal position, it is held that once it is found that petitioners were the non-executive directors of the accused-company, who are not involved in day-to-day affairs of the company nor responsible for business of the same, they could not be held responsible for issuance of the cheques or dishonour thereof and therefore, summoning order qua them is bad in law.

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27. As such, the impugned summoning orders dated 29.5.2018 passed in all the three complaints; and the impugned revisional orders dated 04.07.2022 passed by Ld. ASJ, are hereby set aside, qua the two petitioners-accused N: 5 & 6 namely, Amal Datt Kumar Dhru and Satyanarayana Banwari Lal

28. Consequently, all the present petitions are allowed.

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

A photocopy of this order be placed on the file of other connected case.

15.04.2024 **(DEEPAK GUPTA)**
Vivek **JUDGE**

Whether speaking/reasoned? *Yes*
Whether reportable? *No*

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