IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-20172-2018 (O&M)
Date of decision: 28.08.2024

Manish Goel .....Petitioner

Versus

Suman Bala .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Aditya Jain, Advocate and
Mr. Rahul Vorha, Advocate
for the petitioner.

Mr. Sandeep Panwar, Advocate
for the respondent.

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MANJARI NEHRU KAUL, J.

1. The petitioner is seeking quashing of order dated 09.01.2017 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Faridabad, vide which he was summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') in Complaint No.68/2017 dated 09.01.2017 titled as 'Mrs. Suman Bala Vs. Piyush Colonisers Ltd. etc.' filed by the respondent.

2. Learned counsel for the petitioner submits that a perusal of the allegations levelled in the complaint reveals that the ingredients necessary to constitute the attract the mischief of Sections 138 and 141 of the NI Act are conspicuously missing as there is no allegation or any averment, much less specific, against the petitioner of being in charge or being accountable for the day to day affairs of M/s Piyush Colonisers Ltd. (hereinafter referred to as 'Company'). In the absence of any specific averments made in the complaint against the petitioner, no

criminal liability could be fastened upon him merely because he has been alleged to be a director. In support of his submissions, learned counsel has placed reliance upon ***S.M.S. Pharmaceuticals Vs. Neeta Bhalla and another : 2005(8) SCC 89***. It has still further been submitted that it was also a matter of record that the petitioner was not even the authorized signatory to the cheque in question. The petitioner, in fact, had no connection with the Company at the time when the disputed cheque was issued. Upon learning of the summoning order (Annexure P-3), the petitioner requested the list of directors from the Company, which is annexed as Annexure P-4 and a perusal of the same reveals that the petitioner had resigned as a director on 15.06.2017, i.e. well before the alleged transaction date, and obtained a certified copy of his resignation also.

3. Learned counsel for the petitioner has, thus, vehemently argued that the petitioner was appointed as a director on 30.09.2015 which is much after the date of the alleged transaction on 11.02.2015. Therefore, the petitioner had no liability for the payment of the disputed amount when the cheque was issued. It has been further argued that the petitioner had no association with the Company or its business, and thus, there is no basis for any liability or obligation on his part to pay the amount in question.

4. It has been further argued by learned counsel for the petitioner that moreover under Section 138 of the NI Act, liability arises only when the person in question is the drawer of the cheque on an account maintained by him, and the cheque is issued in discharge of

debt or liability. The petitioner was neither the drawer of the cheque nor did he maintain the relevant account.

5. While referring to the ratio of law laid down by Hon'ble the Supreme Court in ***P.J. Agro Tech Limited and others Vs. Water Base Limited : (2010) 12 SCC 146***, learned counsel has argued that it has been clarified by Hon'ble the Apex Court that for liability under Section 138 of the NI Act to be attracted, the cheque must be drawn on an account maintained by the drawer. Since the petitioner had no role in drawing the cheque, therefore, he could not be held liable under this section.

6. It has been still further submitted by learned counsel for the petitioner that Section 141 of the NI Act specifies that every person in charge of, and responsible to, the Company for the conduct of its business at the time the offence was committed, along with the Company itself, is deemed guilty of the offence. However, as the petitioner had no involvement at all with the Company during the relevant period, the conditions for liability under Section 141 of the NI Act, are not satisfied. Thus, it is evident that the petitioner had no connection with the Company at the time of issuance of the cheque in question. Therefore, a prayer has been made for setting aside the summoning order dated 09.01.2017 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Faridabad.

7. Per contra, learned counsel appearing for the respondent has vehemently opposed the prayer and submissions made by the counsel opposite, by submitting that the respondent filed a complaint

under Section 138, 141 and 142 of the NI Act before the Illaqa Magistrate, Faridabad. As per the allegations, Puneet Goyal, an authorized signatory of M/s Piyush Colonisers Ltd., approached the respondent, requesting for a loan of Rs.11 lakhs as his company was facing a financial crisis. Due to familial and close personal ties, the respondent agreed and issued a cheque for Rs.11 lakhs on 11.02.2015, which was duly encashed by the Company. In discharge of its liability, the Company, through its authorized person, issued a cheque dated 15.10.2016 for Rs.11 lakhs, drawn on Punjab National Bank. However, when the respondent presented the cheque for payment, it was returned by the bank on 24.11.2016 due to 'Funds Insufficient'. Learned counsel has drawn the attention of this Court to a copy of dishonoured cheque annexed as Annexure P-1. Subsequently, on 14.12.2016, the respondent served a legal notice on the petitioner, demanding payment within the prescribed time. When the demand was not met, the respondent filed the complaint in question before the Illaqa Magistrate, Faridabad, annexed as Annexure P-2. He has further argued that although admittedly the complaint in question did not contain any specific allegations/averments against the petitioner, there was a specific allegation against the petitioner that he along with other directors had assured the complainant that cheque would be encashed upon presentation. Furthermore, the issue of whether the petitioner was a director of the Company or not on the date the cheque was issued, is a matter of trial; since it is a disputed fact, it cannot be delved into at this stage. However, learned counsel for the respondent has also not been able to dispute that the petitioner was not the authorized signatory of the accused Company.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. Before proceeding further, it would be apposite to reproduce Section 141 of the NI Act which reads as under:-

> *"**141. Offences by companies.** —*
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> *(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.—*
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> *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."*

10. In this regard, it would be most pertinent to refer to the observations made by Hon'ble the Supreme Court in ***S.M.S. Pharmaceuticals's case (supra)*** reproduced as under:-

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

11. It has to be borne in mind that Section 141 of the NI Act recognizes the company as the principal offender and fixes vicarious liability on its behalf on a person connected with the company/firm, on the condition that the said person must be in-charge of day to day affairs of the company/firm and conducting its business. This condition is fundamental for invoking vicarious liability against a person, in absence thereof, he cannot be prosecuted under Section 138 of the NI Act. Merely holding the position as a director of the company/firm cannot automatically attract the mischief of the offences under Section 138, 141 of the NI Act in the absence of any allegation/material to show that the said director was in charge and responsible for the day to day affairs of the company. It is trite law and as has been reiterated by Hon'ble the Supreme Court in a catena of judgments, that issuance of

process and summoning of an accused in a criminal case has significant consequences on his life as well as his social standing, and the same cannot be set into motion as a matter of course.

12. Adverting to the facts of the instant case, as has not been disputed by the learned for the respondent, a perusal of the complaint reveals that it lacks any averment, even by way of a whisper that the petitioner was responsible in any manner for the day to day affairs of the Company at the time of the issuance of the cheque in question and the date of its dishonour. It has also not been disputed by the learned counsel for the respondent that the cheque in question does not bear the signature of the petitioner. Mere allegation that the petitioner had assured the complainant that the cheque in question would be encashed would fall short the yardstick laid down by Hon'ble the Supreme Court for attracting criminal prosecution under the NI Act.

13. In the circumstances, coupled with the law laid down by Hon'ble the Supreme Court, this Court is of the opinion that the complaint in question along with all consequential proceedings arising therefrom including summoning order deserve to be quashed against the petitioner.

14. Accordingly, the instant petition is allowed and complaint in question along with all consequential proceedings arising therefrom including summoning order are quashed, qua the petitioner.

28.08.2024 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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