IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-20173-2018
Reserved on 05.09.2024
Pronounced on :20.09.2024

Manish Goel

....Petitioner

V/s

Ms. Ekta Dhamija

....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr.Aditya Jain and Mr.Rahul Vohra, Advocates, for the petitioner.

Mr. Shiv Kumar, Advocate for the respondent.

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MANJARI NEHRU KAUL, J.

1. Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of impugned summoning order dated 08.09.2017 qua the petitioner (Annexure P-3) passed by the learned Judicial Magistrate Ist Class, Faridabad whereby the petitioner was summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act') in Complaint No.2562/2017 NACT/4396/2017 dated 07.09.2017 titled as "Ms. Ekta Dhamija Vs. M/s Piyush Colonisers Ltd. Etc." filed by the respondent.

2. Learned counsel for the petitioner contends that the petitioner has been erroneously summoned by the learned trial Court, despite the fact

that the essential ingredients of the alleged offences are not made out against him. Drawing the attention of this Court to Form No.DIR-11 (Annexure P-5), the learned counsel submits that the petitioner joined M/s Piyush Colonizers Limited (hereinafter referred to as 'the Company') as an independent Director on 30th of September 2015, and his resignation as Director was accepted with effect from 15th of June 2017. It is argued that the petitioner held the position of an independent Director in the company, and bare perusal of the cheques in question, annexed as Annexure P-1, clearly shows that they were issued not by the petitioner but by Manoj Kumar, the authorized signatory of the Company.

3. Furthermore, learned counsel, while referring to the complaint annexed as Annexure P-2, submits that a perusal of the same reveals that the petitioner has only been named in the memo of parties, and there are no specific averments, not even a whisper, to suggest that the petitioner was In-charge of the day-to-day affairs of the Company. Learned counsel argues that not every individual associated with the Company can automatically be held liable. For liability to arise under Section 141 of the NI Act, it must be demonstrated that the accused was overall In-charge and in control of the day-to-day operations of the Company. In the absence of specific allegations detailing how and in what manner the petitioner was responsible for the day-to-day management of the Company, no liability under Section 138 of the NI Act can be attributed to him.

4. In support of his submissions, learned counsel has drawn the attention of this Court to Annexure P-4, which contains the list of Directors

of the Company, and Form No. DIR-11 (Annxure P-5), which clearly reflects that the petitioner joined as an independent Director and resigned on 15th of June 2017. Additionally, learned counsel has placed reliance upon **Pooja Ravinder Devidasani vs. State of Maharashtra and another : (2014) 16 Supreme Court Cases 1**, wherein it was held that independent Directors stand on a different footing as compared to Executive Directors, and that specific allegations must be made against a Director, detailing how and in what manner he or she was responsible for the operations of the company, in order to hold them liable.

5. *Per contra,* learned counsel while opposing the plea and submissions made by the counsel opposite, has not disputed the status of the petitioner as an independent Director. It has also been submitted that the complaint contains averments indicating the association of the petitioner with the Company. Furthermore, it has been argued that the trial has now reached an advanced stage and the pleas raised by the petitioner can be appropriately addressed during final arguments.

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

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

> ***"141. Offences by companies. —***
>
> *(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.—*
>
> *For the purposes of this section,—*
>
> *(a) "company" means any body corporate and includes a firm or other association of individuals; and*
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> *(b) "director", in relation to a firm, means a partner in the firm.*

8. In this regard, it would be most pertinent to refer to refer to the following observations made by Hon'ble the Supreme Court in ***S.M.S. Pharmaceuticals Vs. Neeta Bhalla and another : 2005(8) SCC 89*** (supra):-

> "*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."*

9. It must be emphasized that under Section 141 of the NI Act, the company is recognized as the principle offender and vicarious liability may be imposed on persons associated with the company or firm. However, this liability only applies if the person is responsible for managing day-to-day affairs of the company/firm and actively conducting its business. This is a critical requirement for invoking vicarious liability. Without such responsibility, a person cannot be prosecuted under Section 138 of the NI Act. Simply holding the position of a director within the company/firm is insufficient to establish liability under Sections 138 and 141 of the NI Act, unless there are specific allegations or evidence demonstrating that the said director was in charge of and responsible for the daily operations of the company. It is well settled, as repeatedly affirmed by the Hon'ble the Supreme Court in a catena of judgments, that issuing process and summoning an accused in a criminal matter has serious repercussions on their line and social standing. Such actions should not be taken lightly or as a matter of routine.

10. Adverting to the instant case, upon perusal the complaint, it is evident that aside from being named as an accused in the memo of parties, there are no allegations levelled, much less by way of a whisper against the

petitioner. The cheques in question were issued by Manoj Kumar, who was an authorised signatory of the company. Therefore, the argument put forth by the learned counsel for the petitioner holds weight. Without any clear and specific allegations regarding the role of the petitioner in managing the daily operations of the company, no liability under Section 138 of the NI Act can be imposed upon him.

11. Furthermore, documentary evidence on record, specifically Form DIR-11 (Annexure P-5) shows that the petitioner was only an independent director of the company and had resigned well before the issuance of cheque in question. Although the learned counsel for the respondent argued that whether the petitioner had resigned prior to the issuance of cheque in question is a matter to be determined at trial, the undisputed fact remains that the petitioner held the position of an independent director. It is important to note that the responsibilities of an executive or independent director are significantly different from those of a managing director, as an independent director is not responsible for overseeing the daily operations of the company. In this regard, Hon'ble the Supreme Court in ***Pooja Ravinder Devidasani's case (supra)*** has 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 but only a non-executive Director of*

the Company. Non-executive Director is no doubt a custodian of the governance of the Company but does not involve in the day-to-day affairs of the running of its business and only monitors the executive activity. 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 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. In National Small Industries Corporation (supra) this Court observed:

> *"Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.*
>
> *A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141.*

18. In Girdhari Lal Gupta Vs. D.H. Mehta & Anr. (1971) 3 SCC 189, this Court observed that a person 'in charge of a business' means that the person should be in overall control of the day to day business of the Company.

> *19. A Director of a Company is liable to be convicted for an offence committed by the Company if he/she was in charge of and was responsible to the Company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned [See: State of Karnataka Vs. Pratap Chand & Ors. (1981) 2 SCC 335].*
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> *20. 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 N.I. 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."*

12. In the facts and circumstances as enumerated hereinabove, when appreciated in the light of the settled law, there is no hesitation in the mind of this Court that continuation of criminal proceedings against the petitioner would be an abuse of the process of law. Accordingly, the present petition is allowed and the complaint in question along with the summoning order dated 08.09.2017 (Annexure P-3) are quashed qua the petitioner only.

(MANJARI NEHRU KAUL)
JUDGE

20.09. 2024
Poonam/vinay

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