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

CRM-M No.20415 of 2018
Reserved on : 5th September, 2024
Pronounced on : 20th September, 2024

Manish Goel

… Petitioner

Versus

Payal Dhamija

… Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Aditya Jain & Mr. Rahul Vohra,
Advocates for the petitioner.

Mr. Shiv Kumar, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking quashing of order dated 27.11.2017 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 (hereinafter referred to as, 'the Act') in Complaint No.2868/2017 NACT/5909/2017 dated 24.11.2017 filed by the respondent.

2. Learned counsel for the petitioner submits that the trial Court had erroneously summoned the petitioner, despite the fact that the essential ingredients of the alleged offences are not made out against him. While drawing the attention of this Court to Form DIR-11 (Annexure P-5), learned counsel asserts that the petitioner had joined M/s Piyush Colonisers Ltd. (hereinafter referred to as, 'the Company') as an independent Director on 30.09.2015, and that his resignation from

the position of Director was accepted on 15.06.2017. Further, the cheque in question (Annexure P-1) was issued much later on 30.09.2017, and was subsequently dishonoured on 23.10.2017.

3. In light of the above facts, it has been argued by the learned counsel that since the resignation of the petitioner became effective well before the issuance of the cheque and its subsequent dishonour, the petitioner cannot be held liable for an offence under Section 138 of the Act. To support this contention, the learned counsel has drawn the attention of this Court to Annexure P-4, which is a list of Directors reflecting that the petitioner ceased to be a Director of the Company with effect from 15.06.2017. Moreover, it is submitted that under these circumstances, the petitioner neither managed nor was responsible for the day-to-day affairs of the Company at the relevant time. Therefore, it has been argued that he cannot be held vicariously liable under Section 138 of the Act. Additionally, it is contended that a perusal of the complaint also reveals that it lacks any specific averments or allegations that the petitioner was in charge of the daily operations of the Company.

4. In support, learned counsel has placed reliance upon **'Pooja Ravinder Devidasani vs. State of Maharashtra & others' 2014 (16) SCC 1,** wherein it was held that there must be specific averments against a Director showing as to how and in what manner he/she was responsible for the conduct of the business of the Company.

5. Per contra, learned counsel for the respondent has opposed the submissions made by the petitioner by asserting that while the complaint may not contain specific averments against the petitioner, the question whether the petitioner had resigned before the cheque in question was issued is a matter to be determined during trial. Learned

counsel has argued that this is a disputed question that cannot be decided at this preliminary stage. Moreover, learned counsel has contended that the complaint does allege that the petitioner was associated with the Company. Further, it has been submitted that the case is at an advance stage before the trial Court and the petitioner can raise all his arguments during final arguments.

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

7. Before proceedings further, it would be apposite to reproduce Section 141 of the Negotiable Instruments Act, 1881, which reads thus:

> *"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."

8. It would also be pertinent to refer to the observations made by the Hon'ble Supreme Court in **'S.M.S. Pharmaceuticals Vs. Neeta Bhalla and another' : 2005(8) SCC 89,** which read as follows:

"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 is important to reiterate that Section 141 of the Act identifies the Company as the principal offender while imposing vicarious liability on persons associated with the Company. However, such liability can only be imposed on a person, who is in charge of, and responsible for, the day-to-day operations, and conduct of the business of a Company. This is a fundamental condition for invoking vicarious liability, and without it no prosecution under Section 138 of the Act can be sustained. Merely holding the title of "Director" does not automatically render a person liable under Sections 138 and 141 of the Act coupled with the fact that there is absence of specific allegations or evidence showing that the Director was responsible for the daily operations and management of the Company.

10. It is well settled and has been reiterated by the Hon'ble Supreme Court in a catena of judgments that issuing process and summoning an accused in a criminal case has serious implications for his life and social standing. Therefore, such actions cannot be taken casually or as a matter of routine.

11. Adverting to the present case, a reading of the complaint reveals that there are no averments, even indirectly, suggesting that the petitioner was responsible for the day-to-day operations of the Company at the time of the issuance of the cheque or even its dishonour. It is also

not disputed by the learned counsel for the respondent that the cheques in question do not bear the signature of the petitioner. Furthermore, the mere allegation that the petitioner had assured the complainant that the cheque would be honoured falls short of the yardstick required to attract criminal liability under the Act as has also laid down by the Hon'ble Supreme Court.

12. In view of the facts and the submissions coupled with the law laid down by Hon'ble the Apex Court, it is evident that the petitioner cannot be held liable under Section 138 of the Act in the considered opinion of the Court. The trial Court's order summoning the petitioner deserves to be quashed and is unsustainable.

13. The petition stands allowed qua the petitioner.

(MANJARI NEHRU KAUL)
JUDGE

September 20, 2024
rps

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