

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

Date of Decision: 29.04.2024

Vs.

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Vs.

Mr. Maninder Arora, Advocate, for the respondent.

N.S.Shekhawat J. (Oral)

AMIT RANA
2024.05.03 09:30
I attest to the accuracy and
authenticity of this order/judgment
Chandigarh

Magistrate 1st Class, Panchkula, District Panchkula, by respondent/complainant as well as for quashing of the order dated 29.05.2019 (Annexure P-3) passed by the Court of Judicial Magistrate 1st Class, Panchkula, whereby, the petitioners have been summoned to face trial for the offences punishable under Section under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**'))

2. Learned counsel for the petitioners submits that all the petitioners are senior citizens and have been falsely implicated in a complaint (Annexure P-1), which was filed at the instance of respondent/complainant alleging the commission of the offence punishable under Section 138 of the Act. From the complaint (Annexure P-1), it was apparent that the respondents had arrayed a Company by the name of Dolphin Offshore Enterprises (India) Limited (hereinafter to be referred as '**the Company**') and the petitioners were also arrayed as accused by referring to them as Directors of the accused/company, even though, they were only Non-Executive Directors. Learned counsel further contends that the respondents had concealed the material facts from the Court and ultimately, vide order dated 29.05.2019, the trial Court summoned the petitioners alongwith other accused to face trial under Section 138 of the Act.

3. Learned counsel for the petitioners contends that Manjit Kirpal Singh (petitioner in CRM M-20721 of 2022) joined the accused company as “Additional Director” on 11.09.2018 and as per the Form DIR-12 (Annexure P-5), her category of directorship was mentioned as “Non-Executive” and “Independent”. She further resigned from the Directorship of the Company on 08.08.2019 and the corporate filings in this regard were duly made on the concerned portal of the Ministry of Corporate Affairs. She also annexed the “page of the official website” of Bombay Stock Exchange dated 18.04.2022, clearly depicting the details of directorship of all the directors of the Company as Annexure P-6.

4. Learned counsel further contends that the Manjit Kirpal Singh aged about 90 years (petitioner No.1 in CRM M-20721 of 2022) had joined the accused/company as one of the “Promoter-Directors) on 25.05.1985. On account of change in the regulatory regime, her designation was categorized on 21.09.2016. Even, the category of her Directorship at the time of alleged commission of the offence was “Non-Executive”, which is established from Form DIR-12 (Annexure P-5) pertaining to her appointment. Even, she resigned from the Directorship of the company on 21.02.2020. Similarly, Sabyasachi Hajra aged about 70 years (petitioner No. 2 in CRM M-20721-2022) joined the company as “Director” on 06.08.2014 and w.e.f. 18.09.2014, her Directorship was also

categorized as “Non-Executive’ and “Independent”, which is established from the Form DIR-12 (Annexure P-6), pertaining to her appointment. Even, she had resigned from the Directorship of the company w.e.f. 09.09.2019 and the relevant corporate filings in this regard were duly made on the concerned portal of the Ministry of Corporate Affairs (Annexure P-7). Learned counsel for the petitioners contends that the petitioners were merely “Non-Executive Directors” of the Company and could never be held responsible for day to day affairs of the accused/company in any manner whatsoever. Apart from that, the cheque in question was never signed by any of the petitioners in both the petitions nor they had any concern with the issuance or dishonour thereof in any manner. Apart from that, it was also apparent from the record that the cheque in question was signed by the Managing Director of the Company, who was also arrayed as one of the accused in the impugned complaint.

5. Additionally, it was pleaded by the respondent in the impugned complaint, that no complaint was made with regard to the role played by the petitioners in the day to day affairs of the main accused. Even, bald and omnibus averments have been made against the present petitioners and they had been wrongly shown as Directors of the Company. Still further, to prosecute the Directors in terms of Section 141(2) of the Act, it would necessarily have to be satisfied before any such “Director” could be held liable vicariously for the

offence allegedly committed by the main accused/company that the offence had been committed with the consent or connivance of any such “Director”.

6. Learned counsel for the petitioners has also placed reliance on the law laid down in **Pooja Rani Devidasani Vs. State of Maharashtra and another: (2014) 16 SCC 1; National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and another: (2010) 3 SCC 330; Sabitha Ramamurthy and another Vs. R.B.S. Channabasavaradhya:(2006)SCC 581; Sunita Palta and others Vs. M/s Kit Marketing Pvt. Ltd.:2020(2) RCR (Criminal) 366 and Criminal Application No. 74 of 2021, titled as ‘Mr. Satvinder Jeet Singh Sodhi and another Vs. State of Maharashtra and another’ decided on 01.07.2022.**

7. On the other hand, learned counsel for the respondent vehemently opposed the submissions made by the learned counsel for the petitioners and submitted that there was enough documentary evidence to indicate that the petitioners had actively participated in the commission of the crime. He further contends that no benefit could be extended to the petitioners only on the ground that they were acting as “Non-Executive Directors” of the Company. Even, specific averment was made in the complaint with regard to the role of each of the petitioners and the petitioners had raised several disputed questions of fact, which could never be adjudicated in a quashing

petition. Learned counsel for the respondent had also placed reliance on the law laid down by the Hon'ble Supreme Court in the matter of *Gunmala Sales Pvt. Ltd. Vs. Anu Mehta and others; 2015(1) SCC 103, Standard Chartered Bank Vs. State of Maharashtra and others 2016(6) SCC 62 and A.R. Ratha Krishna Vs. Dasari Deepthi and Others 2019 SCC Online SC 357* and contended that the petitioners were equally, jointly and severally liable for the dishonour of the cheque in question.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. In the present case, the arguments raised by learned counsel for the parties revolve around the interpretation of Sections 138 and 141 of the Act, which have been reproduced below:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this

Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

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

(b) “director”, in relation to a firm, means a partner in the firm.”

10. The above said provisions of Section 141 of the Act has been interpreted by the Hon'ble Supreme Court in the matter of

S.M.S. Pharmaceutical Ltd. Vs. Neeta Bhalla: (2005) 8 SCC 89 and
has held 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.

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.”

11. In fact, the main argument raised by the learned counsel for the petitioner is that since the petitioners are 'Non-Executive Directors', they cannot be equated with “Managing Director” or any other whole time “Executive Director”. Learned counsel for the petitioner has referred to the provisions of Section 149(12) of the Companies Act, which clearly provides that a “Non-Executive Director”, not being promoter or key managerial personal, can only be held liable on behalf of a company for the act in question committed with his consent or on account of his failure to exercise due diligence. Section 149(12) of the Companies Act has been reproduced as under:-

“149(12).Notwithstanding anything contained in this Act,-

(i) an independent director;

(ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.”

12. While discussing the terms “Executive Director” and “Non-Executive Director”, the Hon'ble Supreme Court in the matter

of **Pooja Rani Devidasani Vs. State of Maharashtra and another**
(2014) 16 SCC 1; held as follows-

“17.....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 v. 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 v. Pratap Chand & Ors., (1981)2 SCC 335**].*

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.”

13. The Hon’ble Supreme Court has also observed in the matter of **Sabitha Ramamurthy and another Vs. R.B.S. Channabasavaradhya: (2006)SCC 581** and held as follows:-

“A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted. Not only the averments made in paragraph 7 of the complaint petitions does not meet the

said statutory requirements, the sworn statement of the witness made by the son of Respondent herein, does not contain any statement that Appellants were in charge of the business of the company. In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist strict compliance of the statutory requirements. In terms of Section 200 of the Code of Criminal procedure, the complainant is bound to make statements on oath as to how the offence has been committed and how the accused persons are responsible therefor. In the event, ultimately, the prosecution is found to be frivolous or otherwise mala fide, the court may direct registration of case against the complainant for mala fide prosecution of the accused. The accused would also be entitled to file a suit for damages. The relevant provisions of the Code of Criminal Procedure are required to be construed from the aforementioned point of view”.

14. From the above referred discussion, it is clear that only vague averments have been made against the present petitioners that they were incharge and responsible for the day to day affairs of the Company, without detailing their specific roles and they can individually be summoned by invoking the provisions of Section 141 of the Act. Even the documents on record, which remained unrebutted, would clearly show that the petitioners in both the petitions were “Non-Executive Directors” of the accused/company as per the Form No. DIR-12, which is a basic document and being a part

of record of the Registrar of the Company, which is an incontrovertible piece of evidence.

15. Thus, keeping in view the above discussion and the law laid down by the Hon'ble Supreme Court, this Court has no hesitation to hold that the proceedings arising out of the criminal complaint in the present case are an abuse of process of the law. Consequently, the Complaint bearing No. 560 dated 07.05.2019 (Annexure P/1) and summoning order dated 29.05.2019 (Annexure P-3) are ordered to be quashed, qua the petitioners only.

29.04.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No