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

CRM-M-16808-2019

Date of decision: 18.03.2024

Lavish Dewan

....Petitioner

Versus

M/s P.S. Maninder Singh Commission Agents and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Grover, Advocate
for the petitioner.

Ms. Sony, Advocate for
Mr. Rajeev Sharma, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

Respondents have preferred a complaint under section 138-141 & 142 of the Negotiable Instruments Act, 1881 (in short 'the Act') against M/s VIR Foods Limited and its Directors. Vide order dated 01.03.2018, learned Judicial Magistrate 1st Class, Patti has summoned the Company as well as its Directors/Proprietors for undergoing trial. This order is under challenge by the petitioner on the ground that (a) he is a minority shareholder in the accused/Company holding meagre 100 equity shares of Rs.10 each and for a short duration i.e. with effect from 20.02.2013 to 20.05.2013 had been non-working Director of the accused/Company, however, even at that time, had never participated in the day to day functioning of the accused/Company and accordingly is not responsible for running its affairs and (b) No specific allegation regarding his role has been made against him in the complaint and

thus, vicarious liability cannot be fastened upon him.

2. Petitioner is accused No.4 in the complaint. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court of India in 'National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and another', 2010(2) RCR (Criminal)122 and that of a single Bench judgment of this Court in 'Anil Puri Vs. M/s Makhan Lal Vindo Kumar and others', 2006(2) RCR (Criminal) 939. Relevant paragraphs of the complaint, are reproduced hereinbelow:

x x x x x x x x x

That Accused No.1 is a Limited Company and Accused No-2 to 6 are the Managing Director/Directors and accused No.-7 & 8 are the authorised signatory of the Accused No-1 and are incharge and responsible for the day to day conduct of the business of Accused No.1. That the Accused No.1 is a Limited company having its office at the address given here in above. The Accused No.-2 Mr. R.K. Sharma is Managing Director of Accused No.-1 and as such is overall incharge and responsible for the day to day affairs of the business of Accused No.-1 and has been dealing and negotiating with the complainant company for day to day conduct of the business of Accused No-1. Accused No-3 Vinay Sharma, Accused No.4 Aswini Sahoo, Accused No.5 Satyanarayan Nandi and Accused No.6 Ranganathan Srinivasan are also the directors of Accused no.1 and are looking after day to day affairs of the business of Accused No.-1 and as such are incharge and responsible for the conduct of the business of Accused company and have been dealing and negotiating with the complainant company for day to day conduct of the business of Accused No-1. All the accused persons were in constant touch with the Management of the Complainant Company and had been on their requests availing the services of the Complainant company. Accused No. 7 & 8 are the signatory(s) of the dishonoured cheques and as such are covered under the provisions of Negotiable Instruments Act. Accused No.2 to 6 also assured and undertook to the Complainant that the impugned cheques issued by Accused No.7

& 8 would be honoured on presentation. The dishonoured cheques have been issued with the knowledge and active connivance of the all the accused No.2 to 6 who are the Managing Director, Directors of the Accused Company and Accused No.7 and 8 are signatories of the impugned cheques and as such all the accused persons are liable to be prosecuted for the offence committed by them under the provisions of the Negotiable Instruments Act.

3. The above paragraphs of the complaint show that only general allegations regarding the petitioner being responsible for and incharge of the affairs in the Company, as mentioned in Section 141 of the Act, have been made. No specific role has been explained.

4. Learned counsel for the petitioner also refers to Form No.32 issued under Companies Act 1956, wherein it is stated that petitioner is the non-working Promoter Director of the accused/Company w.e.f 20.02.2013.

5. The aforementioned evidence supports the contentions of the learned counsel that the petitioner was not involved in the day to day running affairs of company.

6. In ***National Small Industries Corporation Limited (supra)***, it has been held by the Hon'ble the Supreme Court of India that to attract vicarious liability under section 141 of the Act, the role of a particular Director in running the affairs and business of a Company is to be specifically pleaded. General allegations in terms of section 141 is not sufficient. The ratio of this judgment supports the case of the petitioner. It has been established that the petitioner was non-working Promoter Director in the Company on the basis of being the minority shareholder in the accused/Company holding meagre 100 equity shares of Rs.10 each. Thus, he could not have been involved in its day to day business affairs. The allegations against him in the complaint, do not conform to

the test laid down in the *National Small Industries Corporation Limited case (supra)* and therefore, his summoning for an offence under section 138 of the Act, illegal.

7. The petition is accordingly allowed, complaint case No.403/2017 (Anneuxre P-3) alongwith summoning order dated 01.03.2018 (Anneuxre P-4), pending in the Court of Judicial Magistrate 1st Class, Patti and subsequent proceedings arising therefrom, are hereby quashed *qua* the petitioner.

8. Copy of this order be sent to the Court/successor Court of the trial Court Magistrate concerned, for compliance.

(HARPREET SINGH BRAR)
JUDGE

18.03.2024
Neha

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