

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: 15.02.2024
Date of Decision: 05.03.2024

CRM-M No.20230 of 2023 (O&M)

SANJIV KAVALJIT SINGH AND ANOTHER
.....Petitioner(s)
Vs
M/S SHIV SHAKTI STEEL AND METALS
....Respondent(s)

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Sharan Sethi, Advocate
for the petitioners.

Ms. Pranjal P. Chaudhary, Advocate
for the respondent.

HARKESH MANUJA, J.

- [1]. By way of present petition filed under Section 482 Cr.P.C., the petitioners prayed for quashing of Complaint CIS No. NACT/4269/2019, dated 01.07.2019, titled "*M/s Shiv Shakti Steel & Metals vs M/s Leel Electrical Limited and others*" under Sections 138, 141, and 142 of the Negotiable Instruments Act, 1881 (referred to as the "1881 Act") as well as summoning Order dated 01.07.2019 passed by the Judicial Magistrate First Class, Faridabad (referred to as "JMIC") along with all subsequent proceedings arising therefrom.
- [2]. The facts of the case are that Petitioner Nos.1 and 2 served as additional Directors of "M/s Leel Electrical Limited" (referred to as the "Company") from 22.04.2019 to 29.07.2019 and 22.04.2019 to 21.07.2019 respectively. The Respondent/complainant firm engaged in regular business

transactions with the Company and supplied Iron and Steel goods on a credit basis. In order to fulfill its legal liability, the Company issued two cheques, amounting to Rs.5,00,000/- each , bearing no. 760932 dated 28.02.2019, and bearing no. 760933 dated 2.03.2019, drawn on State Bank of India, Bhiwadi, Alwar Branch, in favour of the respondent. Both cheques were dishonoured on 4.05.2019, with the reason stated as "payment stopped by the drawer". Thereafter, the respondent firm served a legal notice dated 29.05.2019, under Sections 138, 141, and 142 of the 1881 Act, via Registered A.D Post on 31.05.2019, to the last known address of the Company as well as on the petitioners/accused vide delivery report dated 06.06.2019. Subsequently, the respondent filed a Complaint CIS No. NACT/4269/2019 dated July 1, 2019, before the Judicial Magistrate of First Class (hereinafter referred to as "JMIC") and vide Order dated 18.11.2019 the Ld. JMIC summoned the petitioners besides the Company and other directors to face trial under Sections 138 and 142 of the 1881 Act. Being aggrieved thereof the present petition has been filed.

[3]. Learned Counsel for the petitioners asserted that their inclusion as accused in the aforementioned complaint was erroneous. He emphasized that, at the time of dishonour of the aforementioned cheques, the petitioners held the post(s) of additional directors in the Company and were not involved in its day-to-day operations. It was highlighted that the petitioners were not even on the board of Directors of the Company when the cheques in question were issued on 28.02.2019 and 02.03.2019, having joined only on 22.04.2019, as per documents from the Registrar of Companies, Ministry of Corporate Affairs (Annexures P-4 and P-5). He even argued that the petitioners were not even signatories to the said cheques.

[4]. Learned counsel also argued that the complaint (supra) inaccurately stated that the petitioners frequently visited the respondent firm for goods inspection, falsely implying their direct involvement in the daily affairs of the Company. It was stressed that, at the time of issuance of the cheques in question, the petitioners had not even assumed their roles as Non-Executive Directors. Consequently, it was asserted that the petitioners ought not to be held accountable for any alleged lapse on the part of the Company in fulfilling its legal obligations under the 1881 Act.

Placing reliance upon the decision of the Hon'ble Supreme Court's decision in the case of "**Sunita Palita and Others vs M/s Panchami Stone Quarry, 2022(4) R.C.R (Criminal) 118**" Ld. counsel argued that merely holding the post of Director does not suffice to establish liability under Section 141 of the 1881 Act. Relying upon another decision of the Hon'ble Supreme Court in the case of "**S.P Mani and Mohan Diary vs Dr. Snehalatha Elangovan, 2022(4) R.C.R (Criminal) 743**" it was emphasized that the legal position under the 1881 Act differs significantly based on the role of accused, distinguishing between Managing Director ("MD")/Joint MD or a Director/officer who has signed the dishonored cheque and those in other office-holding positions like the petitioners in the present case. It was further contended that individuals in the latter category cannot be held liable unless their specific roles have been explicitly outlined in the issuance or dishonour of cheque(s).

[5]. Conversely, learned Counsel for the respondent contested the plea presented on behalf of the petitioners while submitting that the inclusion of petitioners as accused in the Complaint, along with their summoning Order by learned JMIC, was justified and within the domain of law. Learned Counsel argued

that the petitioners were rightly implicated as they actively participated in managing day-to-day operations of the Company and possessed full awareness of the legal obligations owed to the respondent/complainant firm at the time of dishonour of cheques in question.

[6]. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made by learned counsel for the petitioners.

[7]. Upon a thorough examination of record, it is evident that petitioner No.1 assumed the role of an Additional Director on the Board of the Company on 22.04.2019 and continued on that position until 29.07.2019 (**Annexure P-4**). Similarly, petitioner no. 2 joined the board of the Company as an Additional Director on 22.04.2019 and held that position until 21.07.2019 (**Annexure P-5**). The cheques in question, issued by the Company and signed by its authorized signatories, bear dates of 28.02.2019 and 02.03.2019, and were subsequently dishonoured on 04.05.2019 and the roles of the petitioners has been delineated in paragraph No.2 of the complaint which reads as under: -

“2. That the Accused no. 2 to 4 being the Directors and persons responsible for the day to day affairs of accused no.1 approached the complainant along with Accused No. 5 & 6 being Authorised Signatories and persons responsible for the day to day affairs of accused no.1 and placed various orders for supply of iron & steel goods - Sheets, Plates, Angles etc. in the name of the Accused no.1 on credit basis. The Accused no.2 to 6 came to the complainant's office from time to time and after inspection of goods and after being satisfied regarding its quality and quantity took delivery of goods. Accordingly, the complainant supplied goods more particularly detailed in the bills and raised its bills in the name of accused no.1 which were handed over to the accused persons for payment.”

[8]. Before dealing with the merits of the present case it would be beneficial to read relevant Section 141 under 1881 Act which is reproduced as under: -

“Section 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.”

[9]. In the humble opinion of this Court, following a thorough review of the record and considering the facts and circumstances of the present case including the averments made in the complaint, learned Counsel for the petitioners appropriately relied upon "**Sunita Palita's**" and "**Mohan Diary's**" cases (supra) to contend that the petitioners ought not to be subjected to prosecution under Sections 138 and 141 of the 1881 Act. The relevant excerpts thereof are as follows : -

“ Sunita Palita’s case(supra)

29. In Pooja Ravinder Devidasani v. State of Maharashtra and Anr., (2014) 16 SCC 1 this Court held as under:-

"17.Non-executive Director is no doubt a custodian of the governance of the company but is not involved 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 is 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 NI 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 NI Act. In National Small Industries Corpn. [National Small Industries

Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14)

"13. 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.

14. 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 fulfilment of the requirements under Section 141."

18. In Girdhari Lal Gupta v. D.H. Mehta [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162], 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** [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

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 NI 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."

30. As held in **K.K. Ahuja v. V.K. Vora** (supra) when the accused is the Managing Director or a Joint Managing Director of a company, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of the company. This is because the prefix "Managing" to the word "Director" makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an Officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under sub-section (2) of section 141 of the NI Act by averring in the complaint, their position and duties in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

42. A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable under those provisions. As held by this Court in, inter alia, **S.M.S. Pharmaceuticals Ltd.** (supra), the liability under Section 138/141 of the NI Act arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was

committed, and not on the basis of merely holding a designation or office in a company. It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development) etc. into criminal proceedings under the NI Act, only because of their designation.

*43. Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals Ltd. (supra). The materials on record clearly show that these Appellants were independent, non-executive Directors of the company. As held by this Court in **Pooja Ravinder Devidasani v. State of Maharashtra and Anr.** (supra) a non-Executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the Accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.*

Mohan Diary's Case (supra)

39. In yet one another recent pronouncement in the case of Ashutosh Ashok Parasrampur v. Gharrkul Industries Pvt. Ltd. reported in (2021) SCC Online SC 915, this Court after due consideration of the decisions in the case of SMS Pharmaceuticals (supra); S.K. Alagh v. State of Uttar Pradesh (2008) 5 SCC 662; Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd., (2010) 10 SCC 479, and GHCL Employees Stock Option Trust v. India Infoline Limited, (2013) 4 SCC 505, observed as under:-

"In the light of the ratio in SMS Pharmaceuticals Ltd. (supra) and after judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and they are in-charge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of section 141 of the NI Act has been made, it may not open for the High Court to interfere under section 482 CrPC, 1973 unless it comes a.cross some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abused of process of Court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons." [Emphasis supplied]

40. The principles discernible from the aforesaid decision of this Court in the case of Ashutosh Ashok Parasrampuriya (supra) is that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made out against the particular Director/ partner provided the Director/partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt."

[10]. Recently as well, the Hon'ble Supreme Court while dealing with somewhat similar issue in case of **"Ashok Shewakramani & Ors vs State of Andhra Pradesh & Anr., 2023(3) SCC (Cri) 568**, held that in order to fasten

liability under Sections 138 and 141 of the 1881 Act, mere averments made in the complaint that accused were Directors and in charge of day-to-day operations is not enough when the said Directors were not even signatories to the dishonoured cheque(s). The Hon'ble Apex Court in this case emphasized on the fact that accused Directors must be in-charge and responsible for company's operations/business conjunctively at the relevant time. Relevant excerpts are as under: -

“9. Sub-section 1 of section 141 of the NI Act required the complainant to aver that the present appellants at the time of the commission of the offence were in charge of, and were responsible to the company for the conduct of the business of the company. In the present case, all that the second respondent has alleged is that the appellants were liable for transactions of the company and that they were fully aware of the issuance of the cheques and dishonour of the cheques.

*10. Therefore, even if we decide to take a broad and liberal view of the pleadings in the complaint, **we are unable to draw** a conclusion that compliance with the requirements of sub-Section 1 of Section 141 N.I. Act was made by the second respondent. The most important averment which is required by sub-Section (1) of section 141 of the NI Act is that the directors were in charge of, and were responsible for the conduct of the company. The appellants are neither the signatories to the cheques nor are whole time directors. The decision in the case of **"S.P. Mani and Mohan Diary v. Dr. Snehalatha Elangovan "** will have no application as in the present case, the statutory notice was admittedly not served to the accused. Obviously, the High Court has not adverted to aforesaid two glaring deficiencies in the complaint.*

19. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section 1 of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the company, as well as

the company shall be deemed to be guilty of the offence under section 138 of the NI Act. In the light of sub-section 1 of Section 141, we have perused the averments made in the complaints subject matter of these three appeals. The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day to day affairs of the company. It is further averred that they are also in charge of the company and are jointly and severally liable for the acts of the accused No.1 company. The requirement of sub-section 1 of section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section 1 of section 141 NI Act must be a 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. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of section 141 of the NI Act. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of sub-section 1 of section 141 of the NI Act. The allegation that they are in charge of the company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of section 141 of the NI Act.....

20. On a plain reading, it is apparent that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between."

[11]. In the present case, it is crucial to note that neither the petitioners held the position of Managing Director, nor were they signatories to the dishonored

cheques. Moreover, considering the additional factor that they were not even on the Board of the Company at the time when the aforementioned cheques were issued, besides there being no averment to the effect that at the time when the offence was committed, petitioners were in-charge and responsible to the Company for the conduct of the business of the Company as well as the Company, permitting the proceedings against the petitioners to continue would amount to grave injustice and subject them to a prolonged trial in the absence of their culpability and, thus would be unjust and untenable.

[12]. Accordingly, in view of the discussion made hereinabove, this petition is allowed and Complaint CIS No. NACT/4269/2019, dated 01.07.2019 as well as the summoning Order dated 01.07.2019 passed by Judicial Magistrate First Class, Faridabad, along with all subsequent proceedings arising therefrom qua the petitioners are hereby quashed.

[13]. Pending miscellaneous application(s) if any, shall also stand disposed of.

March 05, 2024	(HARKESH MANUJA)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No