

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

**Reserved on 1st of December, 2023
Pronounced on 4th of March, 2024**

- 1. CRM-M-8340-2018 (O&M)
SHAKTI VIG V/S M/S RAJ KUMAR SANJEEV KUMAR AND ORS.**
- 2. CRM-M-8511-2018 (O&M)
SHAKTI VIG V/S SEEMA GOYAL AND ORS.**
- 3. CRM-M-8513-2018 (O&M)
SHAKTI VIG V/S M/S SHRI SAI TRADERS AND ORS.**
- 4. CRM-M-8514-2018 (O&M)
SHAKTI VIG V/S NIRMAL SINGH AND ORS**
- 5. CRM-M-53163-2018 (O&M)
SHAKTI VIG V/S M/S WATALIA JUGAL KISHORE AND ORS**
- 6. CRM-M-53470-2018 (O&M)
SHAKTI VIG V/S GURMEJ SINGH AND OTHERS**
- 7. CRM-M-53479-2018 (O&M)
SHAKTI VIG V/S M/S DURGA RICE & GENERAL MILL AND OTHERS**
- 8. CRM-M-53488-2018 (O&M)
SHAKTI VIG V/S JAGIR SINGH AND OTHERS**
- 9. CRM-M-53491-2018 (O&M)
SHAKTI VIG V/S M/S KALA AFGANA COMMISSION SHOP AND ORS**
- 10. CRM-M-53495-2018 (O&M)
SHAKTI VIG V/S M/S NISHANT COMMISSION SHOP AND OTHERS**

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Aalok Jagga, Advocate
for the petitioner(s).

Mr. B.B.S. Randhawa, Advocate
for the respondent(s) in CRM-M-53163, 53470,
53479, 53488, 53491 & 53495 of 2018.

PANKAJ JAIN, J.

This bunch of petitions filed under Section 482 Cr.P.C. are being taken up together for adjudication as they involve identical question and are at the behest of the same petitioner.

2. Petitioner served as Director of respondent No.2/Company i.e. M/s Shiva Shakti Grains (India) Pvt. Ltd. In all the complaints filed against the said company which are subject matter of these petitions, the petitioner has been summoned to face trial for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as ‘the N.I. Act’) being Director of the said company.

3. The issue raised in all these petitions by the petitioner is that he resigned as Director of the company on 2nd of January, 2012 and the cheques pertain to the year 2017 and thus he is not liable for offence punishable under Section 138 of the N.I. Act being Director of the company by invoking Section 141 of the N.I. Act.

4. The following table narrates the dates of the cheque in each of the petition:

S. No.	Case No.	Date of Resignation	Date of cheque issuance
1	CRM-M-8340-2018	02.01.2012	18.08.2017
2	CRM-M-8511-2018	02.01.2012	17.08.2017
3	CRM-M-8513-2018	02.01.2012	18.08.2017
4	CRM-M-8514-2018	02.01.2012	16.08.2017
5	CRM-M-53163-2018	02.01.2012	25.12.2017

6	CRM-M-53470-2018	02.01.2012	27.12.2017
7	CRM-M-53479-2018	02.01.2012	27.12.2017
8	CRM-M-53488-2018	02.01.2012	27.12.2017
9	CRM-M-53491-2018	02.01.2012	26.12.2017
10	CRM-M-53495-2018	02.01.2012	25.12.2017

5. In order to prove his resignation, the petitioner has placed on record Form No.32 which shows his date of resignation to be 2nd of January, 2012. Though the complainants have alleged in the complaints that the petitioner along with accused No.2 and 3 was incharge of and responsible for the conduct of the business of the company and its day to day affairs. However, the question is: *‘Whether in the light of Form 32 placed on record which shows that the petitioner resigned from the Company on 2nd of January, 2012, the petitioner can be held to be liable by invoking Section 141 of the N.I. Act?.* The issue is no more *res integra*.

6. After visiting the whole set of precedents Apex Court in the case of **Gunmala Sales Private limited vs. Anu Mehta, (2015) 1 SCC 103** held as under:

“xx xx xx

33. We may summarise our conclusions as follows :
- a) Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed under section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible 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 abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers under section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the

process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.”

(emphasis supplied)

7. Same principle has been reiterated by Apex Court in the case of **S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan, 2022 AIR (Supreme Court) 4883** and **Siby Thomas vs. M/s. Somany Ceramics Ltd., (2024) 1 SCC 348**.

8. In **Rajesh Viren Shah vs. Redington (India) Limited, 2024 INSC 111**, Apex Court observed as under:

“5. Coming to the judicial position, we notice a judgment of this Court in *Monaben Ketanbhai Shah v. State of Gujarat (2004) 7 SCC 15* wherein it was observed that:-

"...The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when the complainant makes necessary averments in the complaint and establishes that fact..."

6. A Bench of three learned Judges in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. (2005) 8 SCC 89* observed:-

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. ...A clear case should be spelled out in the complaint made 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 the respondent falls within the parameters of Section 141 has to be spelled out..."

7. We also notice this Court to have observed, in regards to the exercise of the inherent powers under section 482, CrPC, 1973 in cases involving negotiable instruments that interference would not be called for, in the absence of "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 abuse of process of Court." This principle as held in *S.M.S Pharmaceuticals (supra)* was followed in *Ashutosh Ashok Parasrampuriya and Anr. v. Gharrkul Industries Pvt. Ltd. and Others 2021 SCC OnLine SC 915.*"

9. Petitioner has placed on record Form 32 to demonstrate that he resigned as Director of the Company on 2nd of January, 2012. The document from the records of the Ministry of Corporate Affairs is of unimpeachable character. No counter has been offered by the respondents. There is nothing on record to rebut the aforesaid evidence. Thus, in view of settled principle of law and considering the fact that the petitioner already resigned from the

post of Director of respondent No.2/Company prior to the commission of offence, he cannot be held liable by invoking Section 141 of the N.I. Act.

10. Consequently, the present petitions are allowed. Summoning order *qua* the petitioner impugned in all the present petitions, are hereby quashed.
11. A copy of this order be kept on the files of other connected cases.

March 04, 2024
Dpr

Whether speaking/reasoned :
Whether reportable :

(Pankaj Jain)
Judge
Yes/No
Yes/No