211 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48200-2023 (O&M)
Date of decision: 13.03.2024

Rahul Sood ....Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rakesh Nehra, Senior Advocate with
Mr. Sauhard Singh and Mr. Vikalp Hooda, Advocates
for the petitioner

Ms. Geeta Sharma, DAG Punjab

None for respondent No.2.

HARPREET SINGH BRAR, J.

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of criminal complaint No. NACT/525/16 dated 18.11.2016 (Annexure P-9) titled 'Ram Kumar Amit Kumar vs. Amira Pure Foods and others' filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) and the impugned order dated 21.01.2017 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Safidon vide which the petitioner along with other co-accused was summoned to face trial in the aforesaid complaint as well as for quashing of the impugned order dated 29.07.2023 (Annexure P-2) passed by learned Additional Sessions Judge, Jind in revision petition bearing No. CRR No. 21 of 2022 vide which the revision petition filed by the petitioner was dismissed.

FACTUAL MATRIX

2. The facts, in brief, are that the present petitioner is an advocate and actively practicing since 1993. The petitioner was hired by the accused company namely 'Amira Pure Foods Pvt. Ltd.' to give legal advice with respect to the business of the company. Thereafter, the petitioner was appointed as an Independent Director on the Board of the aforesaid company on 30.09.2011 for providing legal assistance to the company. Later, the petitioner resigned from the said company on 05.10.2015 vide resignation letter (Annexure P-5) which was accepted by the company on 16.10.2015 and his effective date of disassociation of the petitioner as the Director of the company reflecting in the Form No. DIR-12 (Annexure P-6) put up on the website of the Ministry of Corporate Affairs. After his resignation, the petitioner was requested by the company to again join the board for the purpose of completion of quorum required for holding statutory meetings and consequently, on 01.07.2016, the petitioner was brought on the Board of the company as an Independent Director for the second time as reflected in the Form No. DIR 12 (Annexure P-7). After conclusion of the aforesaid meeting, the petitioner again resigned on 01.09.2016 which came into effect from 30.09.2016 as reflected in the Form No. DIR 12 (Annexure P-8). Thereupon, respondent no.2-complainant firm 'M/s Ram Kumar Amit Kumar' through its proprietor Ram Kumar, filed the complaint (supra), wherein, it was alleged that the abovementioned accused company used to procure paddy from the complainant. In the course of their business transactions, the accused company issued a cheque No.347818 dated 20.06.2016 Rs.1,89,135.31/- drawn at Punjab National Bank, Minto Road, New Delhi in favour of respondent no.2-complainant firm, in order to discharge their

legal liability up to 31.03.2016. Upon the presentation of the aforesaid cheque for encashment, the same was dishonoured vide memo dated 14.09.2016 with remarks 'Payment Stopped by Drawer'. Respondent no.2-complainant issued a legal notice dated 04.10.2016 calling upon the accused to make the payment of the aforesaid cheque amount but to no avail. Aggrieved by the same, respondent no.2 filed the complaint (supra), wherein, he has prosecuted the accused company along with six other co-accused alleged to be the Directors of the accused company, including the present petitioner.

3. Learned trial Court, after considering the preliminary evidence where respondent no.2-complainant himself appeared as CW1-1, summoned the petitioner along with other co-accused vide the impugned order dated 21.01.2017 (Annexure P-1) to face trial for the commission of an offence punishable under Section 138 of the NI Act.

4. Aggrieved by the abovesaid summoning order, the petitioner preferred a revision petition before the Court of learned Additional Sessions Judge, Jind which was dismissed being devoid of any merit vide impugned order dated 29.07.2023 (Annexure P-2).

CONTENTIONS

5. The learned counsel for the petitioner, at the outset, submits that the petitioner has been wrongly summoned by the learned trial Court despite him being a Non-Executive and Independent Director, merely on the basis of bald and vague allegations made by the complainant qua him. He further submits that petitioner was never in-charge of the day-to-day affairs or the business of the accused company, i.e., procurement of paddy etc. and that his

work and responsibilities were only limited to providing legal advice to the company. Even the Income Tax documents of the petitioner, including Form 26AS (Annexure P-11) clearly establish that any amount received from the accused company was received as Professional Fee which shows that petitioner was on a Retainer as a professional and not a Salaried Director or employee of the accused company.

6. Learned counsel for the petitioner further submits that the accused company vide Board resolution dated 01.02.2010 (Annexure P-10) had appointed co-accused Rajesh Arora, Director as the person in-charge and responsible for the day to day affairs of the company. He further submits that petitioner is not a signatory to the cheque in question and the complainant himself averred in the impugned complaint (supra) that co-accused Aparna Puri, Director is the authorized signatory of the accused company. It is further submitted that the petitioner never had any financial powers as a Director and was never a bank signatory of the Company, thereby, never issued or signed any cheque for or on behalf of the company in his entire tenure. He further contends that in view of the aforesaid facts and provisions of Section 141 of the NI Act, it was mandatory for the complainant to have made specific allegations or averments against the petitioner in his complaint (supra) and the petitioner cannot be held liable for any alleged offences unless his role in committing the alleged offence is specifically stipulated in the complaint. In order to support the aforesaid contention, learned counsel for the petitioner places reliance on the judgements rendered by the Hon'ble Supreme Court in **Ashutosh Ashok Parasampuria vs. Gharrkul Industries, 2021 SCC On Line SC 915; B.Pooja Ravinder Devidasini vs. State of Maharashtra and another,**

2015(1) SCC 648 (SC); National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal & Anr., 2010(3) SCC 330.

7. Learned counsel for the petitioner further submits that a similar petition was filed in this Court by the then Director of the accused company Anil Chanana bearing No.CRM-M-36869-2018 as same allegations under Section 138 of NI Act were levelled against him, wherein, this Court observed that it would be appropriate for the concerned Magistrates to seek copies of latest annual returns filed by the company so that only those persons who are Directors on the date of commission of the offence are summoned. Thereafter, another similar petition bearing No.CRM-M-30487-2019 was filed by other Director namely Radhika Chanana of the accused company in this Court which was allowed considering the observations made in the case of Anil Chanana and this Court quashed all the summoning orders and consequential proceedings thereof against the petitioner Radhika Chanana.

8. There is no representation on behalf of respondent no.2-complainant despite of the fact that he was duly served on the last date of hearing.

9. Learned state counsel submits that the pleas made by the learned counsel for the petitioner are matter of trial and since the petitioner has been specifically named in the complaint as a Director of the accused company, he has been rightly summoned by the learned trial Court.

ANALYSIS & OBSERVATION

10. Before proceeding any further, it is pertinent discuss the provisions of Section 141 of the NI Act dealing with offences by Companies which reads as under:-

> *"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.*
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> *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."

11. The Hon'ble Supreme Court in the judgement rendered in the case of **National Small Industries (Supra)** while discussing Section 141 of the NI Act, has made the following observations: -

8.It is very clear from the above provision that what is required is that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, 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. Every person connected with the company shall not fall within the ambit of the provision. 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. It follows from the fact that if a Director of a Company 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 a criminal offence under the provisions. The liability 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.

9. 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 No.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.*

x…………………….....x……………………..x………………………..x

19. 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 the question posed in sub-para (b) has to be in the 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 the 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 the 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 the 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 the 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."

12. Similarly, a two-Judge Bench of Hon'ble Supreme Court in the case of **Sunita Palita & Others vs. M/s Panchami Stone Quarry, 2022(4) R.C.R.(Criminal) 118** speaking through Justice Indira Banerjee has made the following observations: -

> *"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.*
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> *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***., ***(2014) 16 SCC 1*** *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 fi led 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."

13. In the present case, the petitioner resigned from directorship on 05.10.2015 and his resignation was accepted by the accused company on 16.10.2015. Although, the petitioner again joined the company as a Director 01.07.2016 but the cheque in question was issued on 20.06.2016. Moreover, the petitioner has never been involved in the day-to-day affairs of the accused company and has never signed any cheque on behalf of the accused company including the cheque in question which has been signed by the authorized signatory Aparna Puri, Director of the accused company. Further, the petitioner, being a practicing advocate in the field of commercial law, was brought on the board of the accused company to solicit legal advice and even his relevant tax documents show that all remuneration paid to him by the accused company was received as 'Professional Fee'. The petitioner was never a salaried Director of the accused company. Further perusal of the minutes of meeting dated 01.02.2010 (Annexure P-10) of the accused company shows that co-accused Rajesh Arora was appointed as the person in-charge of the day-to-day affairs of the Company. Therefore, this Court finds there to be sufficient material on record to accept the prayer made by the petitioner.

CONCLUSION

14. In view of the above discussion, the present petition is allowed. The criminal complaint No. NACT/525/16 dated 18.11.2016 (Annexure P-9) titled 'Ram Kumar Amit Kumar vs. Amira Pure Foods and others' and the impugned order dated 21.01.2017 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Safidon as well as the impugned order dated 29.07.2023 (Annexure P-2) passed by learned Additional Sessions Judge, Jind, are hereby, quashed.

15. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

13.03.2024
Neha

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