IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

104 (I) CRM-M-48069-2023 (O&M)
Date of Decision: November 18, 2024

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(II) CRM-M-13599-2024

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(III) CRM-M-13702-2024

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(IV) CRM-M-13775-2024

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(V) CRM-M-13832-2024

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(VI) CRM-M-13842-2024

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(VII) CRM-M-13848-2024

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(VIII) CRM-M-13853-2024

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(IX) CRM-M-13858-2024

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(X) CRM-M-25606-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XI) CRM-M-25485-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XII) CRM-M-25547-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XIII) CRM-M-25552-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XIV) CRM-M-25561-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XV) CRM-M-25563-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XVI) CRM-M-25566-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XVII) CRM-M-25579-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XVIII) CRM-M-25604-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XIX) CRM-M-25605-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XX) CRM-M-25610-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXI) CRM-M-25614-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXII) CRM-M-25615-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXIII) CRM-M-25617-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXIV) CRM-M-25618-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXV) CRM-M-25621-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXVI) CRM-M-25626-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXVII) CRM-M-25629-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXVIII) CRM-M-25631-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXIX) CRM-M-25632-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXX) CRM-M-25633-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXXI) CRM-M-25636-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXXII) CRM-M-25641-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXXIII) CRM-M-25646-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXXIV) CRM-M-25647-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXXV) CRM-M-25649-2024 (O&M)

RAHUL -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXXVI) CRM-M-25652-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXXVII) CRM-M-25653-2024 (O&M)

RAHUL SOOD -PETITIONER

V/S

STATE OF HARYANA AND ANOTHER -RESPONDENTS

(XXXVIII) CRM-M-25657-2024 (O&M)

RAHUL SOOD **-PETITIONER**

V/S

STATE OF HARYANA AND ANOTHER **-RESPONDENTS**

(XXXIX) CRM-M-25663-2024 (O&M)

RAHUL SOOD **-PETITIONER**

V/S

STATE OF HARYANA AND ANOTHER **-RESPONDENTS**

(XL) CRM-M-48217-2023 (O&M)

RAHUL SOOD **-PETITIONER**

V/S

STATE OF HARYANA AND ANOTHER **-RESPONDENTS**

(XLI) CRM-M-699-2024

RAHUL SOOD **-PETITIONER**

V/S

STATE OF HARYANA AND ANOTHER **-RESPONDENTS**

(XLII) CRM-M-82-2024 (O&M)

RAHUL SOOD **-PETITIONER**

V/S

STATE OF HARYANA AND ANOTHER **-RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Rakesh Nehra, Sr. Advocate with
Mr. Saransh Sabharwal, Advocate
Mr. Sumit Singh, Advocate
Mr. Sauhard Singh, Advocate and
Mr. Ankit Yadav
for the petitioner(s).

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Mr. Sushil Jain, Advocate
for the respondent No.2 (in CRM-M-13599-2024,
CRM-M-13842-2024, CRM-M-13702-2024,
CRM-M-13832-2024 and CRM-M-13858-2024).

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KULDEEP TIWARI, J. (ORAL)

1. Since all these petitions encompass common question(s) of law, besides encompassing common prayer(s), therefore, they are amenable for being decided through a common verdict. For the sake of convenience, the facts are being extracted from CRM-M-48069-2023.

2. Through the instant petition cast under Section 482 of the Cr.P.C., the petitioner seeks, *qua* him, quashing of the:- (i) Criminal Complaint No. NACT/299/2016 (Annexure P-9), titled as "Arun Kumar Vs. Amira Pure Foods and others"; (ii) Summoning order dated 12.10.2016 (Annexure P-1); and (iii) Order dated 29.07.2023 (Annexure P-2).

FACTUAL MATRIX

3. The impugned complaint enclosed in Annexure P-9 has been filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act') against the petitioner and six others. The petitioner has been arrayed as an accused in the impugned complaint in the capacity of one of the Directors of Amira Pure Foods Pvt. Ltd. (hereinafter referred to as the 'accused company').

4. Consequent upon filing of the impugned complaint, the learned Magistrate concerned drew the order dated 12.10.2016, thereby summoning the petitioner and his co-accused for commission of offence under Section 138 of the N.I. Act.

5. It would be apt to record here that, separate private complaints

alike to the one impugned herein have been filed against the petitioner, whereupon, separate summoning orders have also been drawn thereon. In some of those private complaints, the petitioner filed revision petitions against the impugned summoning orders, however, the same did not yield the desired fruits, rather met the fate of dismissal.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER

6. The learned senior counsel for the petitioner submits that, in fact, the petitioner is an advocate by profession and initially he was hired by the accused company to give legal advice in respect of the latter's business. Subsequently, the petitioner was appointed as an Independent Director on the Board of the accused company on 30.09.2011 for providing legal assistance. However, as is evident from the resignation letter enclosed in Annexure P-5, the petitioner resigned from the accused company on 05.10.2015 and his resignation was accepted on 16.10.2015. To substantiate this submission, he draws attention of this Court towards Annexure P-6, wherein becomes enclosed the Form No. DIR-12, thus reflecting the disassociation of the petitioner as Director of the accused company.

7. The learned senior counsel further submits that, although the petitioner resigned from the accused company, however, merely for the purpose of completion of Quorum for holding statutory meeting, he was requested to again join the Board, whereupon, on 01.07.2016, he was again brought on the Board as an Independent Director, as is apparent from the Form No. DIR-12 (Annexure P-7). After conclusion of the meeting, the petitioner again tendered his resignation on 01.09.2016 and his resignation

came into effect from 30.09.2016. The copy of the Form No. DIR-12 in this regard is enclosed as Annexure P-8.

8. While emphasizing his above made submissions and the allegations voiced in the impugned complaint, the learned senior counsel submits that, neither the petitioner was associated as Director with the accused company on the date of issuance of the cheque in dispute, nor he was signatory to the said cheque. Moreover, the petitioner remained associated with the accused company merely as an Independent/Non Executive Director, and that too, only for the period depicted hereinabove. The petitioner was not involved in the day to day affairs of the accused company. The allegations narrated in the impugned complaint that, the petitioner is also one of the Directors, who actively participated in the day to day affairs of the accused company, are bald allegations and contrary to the record.

9. Concluding his arguments, the learned senior counsel for the petitioner places reliance upon the order dated 13.03.2024, as became drawn by a Co-ordinate Bench of this Court upon CRM-M-48200-2023, and wherethrough, relief(s) alike to the one craved in these petitions was granted to the petitioner therein.

SUBMISSIONS OF THE LEARNED STATE COUNSEL, AND, LEARNED COUNSEL FOR THE RESPONDENT NO.2

10. The relief(s) yearned by the petitioner is vociferously opposed by the learned State counsel and learned counsel for the respondent No.2. They submit that, the issue(s) raised before this Court is purely disputed question of fact(s), therefore, the same cannot be adjudicated in the instant proceedings. Nonetheless, they further submit that, in some of these peti-

tions, the petitioner has already availed the statutory remedy of revision, whereupon, the learned revisional court concerned examined the issue(s) and declined to grant the yearned relief to the petitioner. Therefore, under the garb of the instant petitions, the petitioner has, in fact, now filed second revision petition.

<u>REASONS FOR ALLOWING THE INSTANT PETITIONS</u>

11. This Court has heard the respective submissions made by the learned counsels for the parties and also perused the record. This Court is of the opinion that, for the hereinafter extracted reasons, the instant petitions deserve to be allowed.

12. First of all, this Court posed a specific query to the learned counsel for the respondent No.2, *"as to whether the issue(s) raised in the instant petitions has already been considered by the Co-ordinate Bench of this Court while drawing the order dated 13.03.2024 (supra)"*, to which the latter fairly responded in affirmative.

13. Apart from the above, it is not under dispute that, at the time of issuance of the cheque in dispute, the petitioner was not the Director of the accused company. Moreover, it is also not under dispute that, the petitioner is not even a signatory to the cheque in dispute.

14. Furthermore, the Co-ordinate Bench of this Court has, in the hereinafter extracted relevant portion of its order dated 13.03.2024 (supra), already considered the issue(s), as raised now before this Court, and thereupon, proceeded to quash the private complaint, summoning order and the declining order passed on the apposite revision petition.

> "**<u>ANALYSIS & OBSERVATION</u>**
>
> 10. Before proceeding any further, it is pertinent discuss the provi-

sions 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.
>
> 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.

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, nonexecutive 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 is-

sued 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."

15. In summa, since the issue(s) now raised before this Court is squarely covered by the order (supra) rendered by the Co-ordinate Bench of this Court on 13.03.2024 and this fact is not even disputed by the learned counsel for the respondent No.2, therefore, in view of the discussion made hereinabove and the order (supra), all these petitions are **allowed.** The impugned complaint(s), summoning order(s) and the declining order(s) passed on the apposite revision petitions are hereby set aside qua

the petitioner.

16. Pending application(s) stand disposed of accordingly.

17. A photocopy of this order be placed on file of each connected case.

(KULDEEP TIWARI)
JUDGE

November 18, 2024
devinder

Whether speaking/reasoned	**:**	**Yes/No**
Whether Reportable	**:**	**Yes/No**