IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

201

CRM-M-55956-2018 (O&M)
Date of decision: October 28th, 2024

Manish Goyal

.....Petitioner

Versus

Sanjeev Gupta

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

Mr. Parveen Gaur, Advocate
for the respondent.

MANJARI NEHRU KAUL, J.

Petitioner is seeking quashing of order dated 17.01.2018 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Faridabad, whereby the petitioner was summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act') in Complaint No.6366 dated 13.12.2017 titled as 'Sanjeev Gupta Vs. M/s Piyush Colonisers Ltd. etc.'

2. Learned counsel for the petitioner argues that the petitioner served as an independent Director of M/s. Piyush Colonisers Limited (hereinafter referred to as 'the Company') and was not involved in issuing the cheques in question. These cheques were, in fact, issued by Manoj Kumar, who was the authorized signatory of the Company. While drawing the attention of this Court to the complaint annexed as Annexure P-2, learned counsel submits that a plain reading shows that the petitioner is merely named in the memo of parties, without any mention or implication that he was in charge of the day-to-day affairs of

the Company.

3. Learned counsel for the petitioner further asserts that under Section 141 of the Act, not all individuals associated with the Company can be held liable. Liability, as per the learned counsel, under this Section arises only if it is proven that the accused was responsible for overseeing and controlling the day-to-day affairs of the Company. In the absence of specific allegations demonstrating how the petitioner was in charge of these day-to-day operations of the Company, learned counsel contends that no liability under Section 138 of the Act can be imposed upon him. Furthermore, it is urged that the petitioner resigned as a Director with effect from 15.06.2017, as is evident on a perusal of Annexure P-4 (list of the Directors of the Company) and Form No.DIR-11 (Annexure P-5). The cheque in question was issued later, on 10.10.2017, and was subsequently dishonoured on 23.10.2017. Therefore, learned counsel argues, given that the resignation of the petitioner pre-dated both the issuance and dishonouring of the cheque, he cannot be held liable under Section 138 of the Act. In support, learned counsel has placed reliance upon Pooja Ravinder Devidasani Versus State of Maharashtra and another, 2014 (16) SCC 1, where Hon’ble the Supreme Court held that independent Directors are distinct from Executive Directors, and the complaint against a Director must include specific allegations detailing how they were responsible for the day-to-day affairs of the Company.

4. Learned counsel for the respondent, on the other hand, at the outset, does not contest the submissions made by the learned counsel

for the petitioner.

5. Upon a pointed query put to the learned counsel for the respondent with respect to the role of the specific petitioner, if any, attributed to the petitioner in the complaint in question, he concedes that the petitioner was only an independent Director and admittedly, no specific allegations have been levelled against him with respect to his involvement in the day-to-day affairs of the Company. It has also been conceded by the learned counsel for the respondent that the petitioner had indeed resigned from the Company before the cheque in question was issued.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. Before proceeding further, it would be pertinent to reproduce Section 141 of the Act, which provides as follows:-

> ***"141 Offences by companies —***
> *(i) 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.

(ii) 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."

8. In ***S.M.S. Pharmaceuticals Ltd. Versus Neeta Bhalla and another, 2001(10) SCC 218***, Hon'ble the Supreme Court laid down the parameters for assigning criminal liability under Section 141 of the Act. Hon'ble the Supreme Court held as under:-

"20. It will be seen from the above provisions that Section 138 casts criminal liability punishable with imprisonment or fine or with both on a person who issues a cheque towards discharge of a debt or liability as a whole or in part and the cheque is dishonoured by the Bank on presentation. Section 141 extends such criminal liability in case of a company to every person who at the time of the offence, was incharge of, and was responsible for the conduct of the business of the company. By a deeming provision contained in Section 141 of the Act, such a person is vicariously liable to be held guilty for the offence under Section 138 and punished accordingly.

> *Section 138 is the charging section creating criminal liability in case of dishonour of a cheque and its main ingredients are:*
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> *i) Issuance of a cheque. ii) Presentation of the cheque iii) Dishonour of the cheque iv) Service of statutory notice on the person sought to be made liable, and v) Non-compliance or non-payment in pursuance of the notice within 15 days of the receipt of the notice.*

9. Turning to the present case, as undisputed by the learned counsel or the respondent, a perusal of the complaint (Annexure P-2) confirms that beyond the name of the petitioner being mentioned in the memo of parties, there is no allegation or accusation, not even a slight reference, regarding his role in the management of the Company. The cheques in question were, in fact, issued by Manoj Kumar, the authorized signatory of the Company. Consequently, the arguments advanced by the learned counsel for the petitioner holds merit that, in the absence of explicit allegations regarding the involvement of the petitioner in the daily affairs of the Company, no liability under Section 138 of the Act can be fastened upon him.

10. Moreover, as not disputed by the learned counsel for the respondent, the documentary evidence on record indicates that the petitioner was only an independent Director and had resigned before the issuance of cheques in question, as substantiated by Form No.DIR-11 (Annexure P-5). It is important to emphasize that the role of an executive or an independent Director differs from that of a Managing Director, as they are not responsible for the day-to-day operations of the Company. Hon'ble the Supreme Court in

Pooja Ravinder Devidasani's case (supra) has observed as under:-

> *"17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company - M/S Elite International Pvt. Ltd. on 1st July, 2004 and had also executed a Letter of Guarantee on 19th January, 2005. The cheques in question were issued during April, 2008 to September, 2008. So far as the dishonor of Cheques is concerned, admittedly the cheques were not* signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a nonexecutive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the Company but does not involve 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 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 N.I. 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 N.I. Act. In National Small Industries Corporation (supra) this Court observed:
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> > *"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.*
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> *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."*

11. In view of the aforementioned facts, and the settled law in the said regard, there is no hesitation in the mind of this Court that continuation of criminal proceedings against the petitioner would constitute an abuse of process of law. Accordingly, the instant petition is allowed and the complaint (Annexure P-2) along with summoning order dated 17.01.2018 (Annexure P-3) is hereby quashed qua the petitioner.

October 28th, 2024 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes