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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>CRL.M.C. 68/2019, CRL.M.A. 339/2019, CRL.M.A. 34925/2019, CRL.M.A. 34926/2019, CRL.M.A. 26495/2023</u>**

CHETNA SAINI & ANR .....Petitioners

Through: Mr. Nidish Gupta, Adv. through V.C.

versus

STATE OF NCT OF DELHI & ANR .....Respondents

Through: Mr. Manoj Pant, APP for the State.
Mr. Vijay Singla with Mr. Dinesh Kumar Gulia, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>O R D E R</u>

% **28.11.2024**

1. The present petition is filed seeking quashing of the summoning order dated 20.03.2017 in CC No. 12003/2016 titled '*Sushila Devi v. M/s. R.K. Edutech & Others*'. The petitioners are also seeking the consequential relief of quashing of the aforesaid complaint case filed under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') read with Sections 141/142 of the NI Act.

2. The complaint was filed alleging that the cheque was issued by the accused company namely – M/s. R.K. Edutech Pvt. Ltd., for discharge of legally enforceable debt, however the same got dishonoured *vide* return memo dated 19.08.2016.

3. Consequently, the petitioners were impleaded as accused persons by virtue of being the Directors of the accused company.

4. The learned counsel for the petitioners submits that the

cheque was issued by a proprietorship concern namely– M/s. R.K. Edutech and not by M/s. R.K. Edutech Pvt. Ltd., as is evident from the bare perusal of the subject cheque.

5. He further submits that the petitioners, even if, are sought to be vicariously held liable, cannot be prosecuted for the dishonour of the cheque issued by the proprietorship concern. He submits that the dishonour of the cheque issued by the proprietorship concern makes the proprietor of that concern vicariously liable and the petitioners are not the proprietors but were directors of M/s R.K. Edutech Pvt. Ltd. till 31.05.2014 and 20.09.2014 respectively.

6. He further submits that without prejudice to the fact that no complaint could have been filed without impleading the proprietorship concern as an accused, the petitioners had even otherwise resigned from M/s. R.K. Edutech Pvt. Ltd. with effect from 31.05.2014 and 20.09.2014, whereas the cheque was concededly issued on 20.05.2016.

7. He submits that notice under Section 138 of the NI Act was issued to the accused company and its directors whereas the drawer of the cheque was a proprietary concern. Hence, the very genesis to initiate criminal proceedings under Section 138 of the NI Act is per-se illegal and ought to be quashed.

8. The petitioners rely on Form-32 in regard to their appointment as well as Form DIR-12 and Board Resolutions to show their date of resignation from M/s. R.K. Edutech Pvt. Ltd..

9. In terms of Section 141 of the NI Act, a person can be vicariously held responsible for the offence committed by a company if he is responsible for the conduct of the company's business at the relevant time.

10. It is not disputed that the petitioners were not the drawers

of the subject cheque and were not responsible for the conduct of M/s. R.K. Edutech Pvt. Ltd. at the relevant time, therefore, cannot be held to be vicariously liable under Section 141 of the NI Act. The complaint also does not state that the petitioners were proprietor of R.K. Edutech (proprietorship concern). The petitioners have placed unimpeachable material on record, in the form of Form 32 and Form DIR-12 of the accused company, filed with the Registrar of Companies, which reflect the appointment and tenure of the petitioners. The petitioners were directors in M/s. R.K. Edutech Pvt. Ltd. uptill 31.05.2014 and 20.09.2014 respectively, and the subject cheque was issued on 20.05.2016.

11. The Hon'ble Apex Court in the case of ***K.K. Ahuja Vs. V.K. Vora and Anr.*** **: MANU/SC/1111/2009**, relying on a catena of judgments, quashed the proceedings under Sections 138/141 of the NI Act against the appellants therein. The relevant portion of the aforesaid judgment is reproduced hereunder:

> *"6. A three-Judge Bench of this Court considered the scope of Section 141 of the Act in SMS Pharma (I) and held that it is necessary to specifically aver in a complaint under Sections 138 and 141 of the Act, that at the time when the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company and that in the absence of such averment, Section 141 cannot be invoked. This Court held:*
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> *"**What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and 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. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this 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 under the provision. The liability arises from being in charge of and responsible for the conduct of 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. *Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a Director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of 'every person' the section would have said 'every Director, manager or secretary in a company is liable' ..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.*

(emphasis supplied)

12. Further, a Coordinate Bench of this Court in ***Arun Garg v. Delhi Paints and Oil Traders*** **: 2013 SCC OnLine Del 5041**, held as under :

13.….However, if any other person is sought to be made liable on the ground that he is in charge and responsible for the conduct of the business of the company at the relevant time then it has to be averred as a fact as there is no deemed liability of a Director in such cases. Problem arises where all the persons holding office in the company are sought to be prosecuted by the complainant, irrespective of whether they played any specific role in the incriminating act. Issuing summons to all persons named in the complaint without ascertaining whether they played any actual role causes much harassment to the innocent Directors/employees named in the complaint. With a view to ensure that while issuing summons, the Metropolitan Magistrates dealing with the complaint cases filed u/s 138 read with Section 151 of the N.I Act have a clear and complete picture of the persons arrayed by the complainant so as to hold them vicariously liable for the commission of offence by the accused company, this Court in Sudeep Jain v. ECE Industries Ltd., 201 (2013) DLT 461 directed that the Magistrates must seek copy of Form 32 from the complainant to prima facie satisfy as to who were the Directors of the accused company at the time of commission of alleged offence and on the date of filing of the complaint case…..

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15….. Then in prescribed Form 32 the company informed the Registrar of Companies about the appellant's resignation. Thus on the date when the offence was committed by the company, *the appellant was not the Director; he had nothing to do with the affairs of the company. That being so, it was observed that if the criminal complaints are allowed to be proceeded against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of the process of the Court. Things are substantially the same in the instant case. Since the complaint itself was lacking in material particulars and in any case the petitioner had already resigned from the post of Director of the company much before the issuance of the cheques in question, which were dishonoured, continuance of criminal proceedings against him would be an abuse of process of Court.*

13. It is clear that a person cannot be made vicariously liable under the provisions of Section 141 of the NI Act, when he was not responsible for the conduct of the accused company at the relevant time when the offence was committed.

14. The subject cheque is even otherwise not issued by M/s. R.K. Edutech Pvt. Ltd., but by R.K. Edutech (proprietorship).

15. No reply has been filed by the respondent, leaving the facts uncontroverted. It is a settled legal principle that uncontroverted material placed before the Court cannot be disregarded, and the accused cannot be subjected to protracted trial.

16. In view of the uncontroverted facts of the case, that the petitioners were neither the Directors of the accused company at the relevant time when the offence was committed, nor were they the drawers of the subject cheque, this Court is of the opinion that continuance of the proceedings would amount to abuse of the process of the Court. The present case is a fit case to exercise discretionary jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

17. The present petition, to that extent, is allowed and the complaint case No. 12003/2016, under Section 138 of the NI Act, and all consequential proceedings arising therefrom are quashed *qua* the petitioners.

18. The present petition is allowed of in the aforesaid terms.

19. The pending applications also stand disposed of.

AMIT MAHAJAN, J

NOVEMBER 28, 2024
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