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

\+ **CRL.M.C. 480/2024 & CRL.M.A. 1917/2024**

MAHALINGA NARAYANAN ..... Petitioner

Through: Mr. Yajur Bhalla, Adv. through V.C.

versus

STATE NCT OF DELHI AND ANR. ..... Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for the State.
Mr. S.S. Ahluwalia, Mr. Yuvraj Jaiswal & Ms. Saniya Advs. for R-2.

\+ **CRL.M.C. 544/2024 & CRL.M.A. 2186/2024**

MAHALINGA NARAYANAN ..... Petitioner

Through: Mr. Yajur Bhalla, Adv. through V.C.

versus

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

Through: Mr. Yudhvir Singh Chauhan, APP for the State.
Mr. S.S. Ahluwalia, Mr. Yuvraj Jaiswal & Ms. Saniya Advs. for R-2.

\+ **CRL.M.C. 580/2024 & CRL.M.A. 2379/2024**

MAHALINGA NARAYANAN ..... Petitioner

Through: Mr. Yajur Bhalla, Adv. through V.C.

versus

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

Through: Mr. Yudhvir Singh Chauhan, APP for the State.
Mr. S.S. Ahluwalia, Mr. Yuvraj Jaiswal & Ms. Saniya Advs. for R-2.

CORAM:

ORDER

% **20.05.2024**

1. The present petitions are filed under Section 482 of the Code of the Criminal Procedure, 1973 ('**CrPC**') seeking quashing of the common summoning order dated 26.08.2019, passed by the learned Trial Court, in CC No. 16622/2019, CC No.16623/2019 and CC No.16624/2019. The petitioner is also seeking the consequential relief of quashing of the aforesaid complaint cases filed under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') read with Sections 141/142 of the NI Act.

2. The complaints were filed alleging that M/s. Cox & Kings Limited (hereafter '**the accused company**') approached the complainant/ Respondent No.2, that is, M/s. Tourism Finance Corporation of India, for availing a loan of ₹50,00,00,000/- in February, 2017; for a loan of ₹25,00,00,000/- in November, 2017; and for a loan of ₹25,00,00,000/- in November, 2018 respectively.

3. On the basis of the representations and warranties of the accused company, the complainant sanctioned loans to the accused company through the following Loan Agreements:

- Loan Agreement dated 14.02.2017 for ₹50,00,00,000/-
- Loan Agreement dated 14.12.2017 for ₹25,00,00,000/-
- Loan Agreement dated 27.12.2018 for ₹25,00,00,000/-

4. Pursuant to the sanctioning of the loans for the said amounts, the accused company paid the instalments for some time. However, from May, 2019 onwards, the accused company started defaulting in repayment of the Loan as per the agreed

payment schedule.

5. Thereafter, the accused company issued:

- four cheques towards repayment of the financial facility availed by it through Loan Agreement dated 14.02.2017 *(subject matter of CC No. 16624/2019)*;
- four cheques towards repayment of the financial facility availed by it through Loan Agreement dated 14.12.2017 *(subject matter of CC No. 16622/2019)*; and
- two cheques towards repayment of the financial facility availed by it through Loan Agreement dated 27.12.2018 *(subject matter of CC No. 16623/2019)*.

6. It is alleged that on presentation for clearance, all the cheques were returned with the remark- "insufficient funds". Separate complaints were filed by the complainant for the dishonour of the cheques under the respective Loan Agreements.

7. It is alleged that the arrayed accused persons apart from the accused company, including the petitioner, were in-charge of the accused company and responsible for its day-to-day affairs.

8. The learned counsel for the petitioner submits that the petitioner has been unnecessarily arrayed as an accused in the complaint cases.

9. He submits that the cheques in dispute were not signed by the petitioner and he has been arrayed as an accused person merely on account of him being a Director of the accused company.

10. He submits that only a bald allegation is made that the petitioner was a Director of the accused company and was in-charge of the affairs of the accused company, however, the complaints are silent on the role of the petitioner that would warrant his inclusion as an accused person.

11. He submits that in total absence of any proof whatsoever of the petitioner's involvement in the day-to-day affairs of the company, the petitioner ought not to be arrayed as an accused merely on account of the bald averment of the complainant.

12. He submits that the petitioner was a non-executive independent Director of the accused company and was thus not in-charge of the day-to-day administration, control and affairs of the company. He submits that the petitioner's association with the accused company was purely advisory in nature.

13. The main ground pressed by the petitioner is thus that he was merely a non-executive independent Director of the accused company and the complainant has sought to implicate him by making a bald allegation that the petitioner was involved in the day-to-day activities of the accused company.

14. It is not disputed that the petitioner is merely a non-executive independent Director of the accused company. The petitioner has placed impeachable material on record, in the form of Form 32 of the accused company, filed with the Registrar of Companies, that clearly shows that the petitioner was appointed on 13.06.2007 in the capacity of an Independent Additional Director and that he was a non-executive Director.

15. The petitioner is sought to be implicated in the present case under Section 141 of the NI Act. Section 141 of the NI Act 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."*

16. 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.

17. It is trite law that a person cannot be arrayed as an accused person merely due to association with the accused company in capacity of a Director. In ***S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla* : (2005) 8 SCC 89**, the Hon'ble Apex Court analysed Section 141 of the NI Act and observed as under:

> "*10. While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. The key words which occur in the section are "every person". These are general words and take every person connected with*

a company within their ken. Therefore, these words have been rightly qualified by use of the words:

'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, etc.'

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. ***<u>Every person connected with the company shall not fall within the ambit of the provision.</u> 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. <u>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.</u>*** *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.* ***<u>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.</u>*** *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)

18. A bare perusal of the complaints show that the complainant has made a bald averment in regard to a number of

accused persons, including the petitioner, that he was in-charge and responsible for the day-to-day-conduct of the accused company at the relevant time when the offence was committed. It is trite law that the complainant is required to spell out as to how the accused director was involved in the day-to-day functions of the company.

19. In the case of ***National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal* : (2010) 3 SCC 330**, the Hon'ble Apex Court had emphasised the necessity to detail the role of the director accused on account of the penal nature of Section 141 of the NI Act and held as under:

> "**13.** *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.* ***<u>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.</u>***
>
> **14.** *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 fulfilment of the requirements under Section 141.*
>
> ***15. In a catena of decisions, this Court has held that for making Directors liable for the offences committed by the company under Section 141 of the Act, <u>there must be specific averments</u> against the Directors, showing as to how and in what manner the Directors were responsible for the conduct of the business of the company.***
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> xxx xxx xxx

19. *A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see State of Karnataka v. Pratap Chand [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).*

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, ***there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.***"

(emphasis in original and supplied)

20. In view of the uncontroverted material placed on record, it is apparent that the petitioner at the relevant time was an independent, non-executive director of the company.

21. The Hon'ble Apex Court in the case of ***Sunita Palita v. Panchami Stone Quarry*** **: (2022) 10 SCC 152**, relying on a catena of judgments, quashed the proceedings under Sections 138/141 of the NI Act against the appellants therein who were independent, non-executive directors of the accused company. The relevant portion of the aforesaid judgment is reproduced hereunder:

"***41.*** *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….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.*

42.… *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 [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] 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 filed 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.***

44…*The High Court observed that in the petition it had specifically been averred that all the accused persons were responsible and liable for the whole business management of the accused Company, and took the view that the averments in the complaint were sufficient to meet the requirements of Section 141 of the NI Act.*

45. *As held by this Court in National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] quoted with approval in the subsequent decision of this Court in Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] the impleadment of all Directors of an accused Company 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, does not fulfil the requirements of Section 141 of the NI Act.*

46. *In any event there could be no justification for not dispensing with the personal appearance of the appellants, when the Company had entered appearance through an authorised officer. As held by this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] summoning an accused person cannot be resorted to as a matter of course and the order must show application of mind."*

(emphasis supplied)

22. From the precedents mentioned above, it is clear that a person cannot be made vicariously liable under the provisions of Section 141 of NI Act, merely by stating that he was in-charge and responsible for the day-to-day-conduct of the accused company at the relevant time when the offence was committed. Mere mechanical repetition of the requisites under Section 141(1) of the NI Act will not suffice in bringing the petitioner under the ambit of the said provision.

23. In view of the uncontroverted fact that the petitioner was an independent, non-executive Director and that the complaints lack the necessary averments to endorse as to what was the active role of the petitioner and as to how the petitioner was guilty or responsible for the offence, 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 482 of the CrPC.

24. In view of the above, CC No. 16622/2019, 16623/2019 and 16624/2019 and all consequential proceedings arising therefrom are quashed *qua* the petitioner.

25. copy of this order be placed in all the matters.

AMIT MAHAJAN, J

MAY 20, 2024