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

% ***Date of Decision: 22nd January, 2024***

73

\+ CRL.M.C. 499/2024

MR. LALIT BHASIN ..... Petitioner

Through: Mr. Pramod Kumar Dubey, Senior Advocate with Mr. Gautam Khazanchi, Ms. Suruchi Jaiswal, Mr. Anuj Aggarwal, Mr. Kaustubh Chauhan and Mr. Vaibhav Kapur, Advocates

versus

PAWAN TRADE CONNECT PVT LTD. ..... Respondent

Through: Mr. Piyush Singh, Mr. Akshay Shrivastava, Mr. Suryansh Vashisth, Advocates along with Mr. Anuj Agrawal, Authorized Representative of Respondent.

74

\+ CRL.M.C. 500/2024

LALIT BHASIN ..... Petitioner

Through: Mr. Pramod Kumar Dubey, Senior Advocate with Mr. Gautam Khazanchi, Ms. Suruchi Jaiswal, Mr. Anuj Aggarwal, Mr. Kaustubh Chauhan and Mr. Vaibhav Kapur, Advocates

versus

ADDIES INNOVATION PVT LTD ..... Respondent

Through: Mr. Piyush Singh, Mr. Akshay Shrivastava, Mr. Suryansh Vashisth, Advocates along with Mr. Anuj Agrawal, Authorized Representative of Respondent.

75
+ CRL.M.C. 503/2024

MR. LALIT BHASIN ..... Petitioner

Through: Mr. Pramod Kumar Dubey, Senior Advocate with Mr. Gautam Khazanchi, Ms. Suruchi Jaiswal, Mr. Anuj Aggarwal, Mr. Kaustubh Chauhan and Mr. Vaibhav Kapur, Advocates

versus

PAWAN TRADE CONNECT PVT LTD. ..... Respondent

Through: Mr. Piyush Singh, Mr. Akshay Shrivastava, Mr. Suryansh Vashisth, Advocates along with Mr. Anuj Agrawal, Authorized Representative of Respondent.

76
+ CRL.M.C. 504/2024

LALIT BHASIN ..... Petitioner

Through: Mr. Pramod Kumar Dubey, Senior Advocate with Mr. Gautam Khazanchi, Ms. Suruchi Jaiswal, Mr. Anuj Aggarwal, Mr. Kaustubh Chauhan and Mr. Vaibhav Kapur, Advocates

versus

HIMMATSINGKA EXPORTS PVT LTD ..... Respondent

Through: Mr. Piyush Singh, Mr. Akshay Shrivastava, Mr. Suryansh Vashisth, Advocates along with Mr. Anuj Agrawal, Authorized Representative of Respondent.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CRL.M.A. 1974/2024 (exemption) in CRL.M.C. 499/2024
CRL.M.A. 1976/2024 (exemption) in CRL.M.C. 500/2024
CRL.M.A. 1988/2024 (exemption) in CRL.M.C. 503/2024
CRL.M.A. 1989/2024 (exemption) in CRL.M.C. 504/2024

1. Allowed, subject to all just exceptions.

2. Applications stand disposed of.

CRL.M.C. 499/2024 & CRL.M.A. 1973/2024 (stay)
CRL.M.C. 500/2024 & CRL.M.A. 1975/2024 (stay)
CRL.M.C. 503/2024 & CRL.M.A. 1987/2024 (stay)
CRL.M.C. 504/2024 & CRL.M.A. 1990/2024 (stay)

3. These petitions have been filed on behalf of the Petitioner under Section 482 Cr.P.C. seeking quashing and setting aside of summoning orders passed by learned Metropolitan Magistrate (NI Act), Digital Court-02/SED, Saket Courts, New Delhi, summoning the Petitioner under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') as well as for quashing the complaints. Due to commonality of facts and legal issues, all four petitions have been taken up together and are being decided by the present judgment.

4. CRL.M.C. 499/2024 has been filed challenging summoning order dated 04.07.2022 passed in CC No.5294/2021 titled *'M/s Pawan Trade Connect Private Limited v. Leading Hotels Limited',* in respect of cheque bearing no.837828 dated 29.03.2021 for Rs. 30,00,000/- and cheque bearing no. 837825 dated 29.03.2021 for Rs. 7,93,303/- (ICD of Rs. 80,00,000/-).

5. CRL.M.C. 500/2024 has been filed challenging summoning order dated 04.07.2022 passed in CC No.5295/2021 titled *'M/s Addies Innovation Private Limited v. Leading Hotels Limited',* in respect of cheque bearing no.837783 dated 31.03.2021 for Rs. 20,00,000/- and cheque bearing no. 837785 dated 31.03.2021 for Rs. 5,92,965/- (ICD of Rs. 60,00,000/-).

6. CRL.M.C. 503/2024 has been filed challenging summoning order dated 15.03.2022 passed in CC No.4313/2021 titled *'M/s Pawan Trade Connect Private Limited v. Leading Hotels Limited',* in respect of cheque bearing no.837827 dated 28.02.2021 for Rs. 25,00,000/- (ICD of Rs. 80,00,000/-).

7. CRL.M.C. 504/2024 has been filed challenging summoning order dated 04.07.2022 passed in CC No.569/2022 titled *'M/s Himmatsingka Exports Private Limited v. Leading Hotels Limited',* in respect of cheque bearing no.837779 dated 31.03.2021 for Rs. 80,00,000/- and cheque bearing no. 837780 dated 31.03.2021 for Rs. 23,71,857/- (ICD of Rs. 2,40,00,000/-).

8. Issue notice.

9. Mr. Piyush Singh, learned counsel appearing on behalf of the Respondents accepts notice.

10. Brief facts necessary to decide the present petitions are that the aforementioned complaints were filed by the respective Respondents herein under Sections 138/141 and 142 of the NI Act against Leading Hotels Limited ('LHL'), accused No. 1 along with its Directors, accused Nos. 2 to 5 with Petitioner being accused No. 4. It is alleged in the complaints that LHL had approached the Respondents for Inter Corporate Deposit of different amounts under the different complaints and when the cheques issued towards repayment of the ICDs were presented, the same were returned

unpaid by the Bank with the remarks 'Account Closed'. When the legal notice elicited no response, present complaints were filed.

11. Learned Senior Counsel appearing on behalf of the Petitioner submits that the summoning orders issued against the Petitioner cannot be sustained in law since Petitioner was appointed as an independent Non-Executive Director of LHL on 29.03.2013, in accordance with Section 149 of the Companies Act, 2013 and other applicable provisions and ceased to be the Non-Executive Director on 25.06.2021. In support of this submission, it is stated that copy of Form-32 has been placed on record. It is further submitted that throughout the period between 29.03.2013 and 25.06.2021, Petitioner had no role or involvement in the day-to-day affairs and management of LHL other than limited to what was assigned to him in his capacity as an independent Director. Learned Senior Counsel argues that the Supreme Court in ***Siby Thomas v. Somany Ceramics Limited, 2023 SCC OnLine SC 1299***, has held that a bare perusal of Section 141(1) of NI Act would reveal that only that 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 alone, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

12. It is further contended that the learned Trial Court failed to apply Section 149(12) of the Companies Act in its letter and spirit, inasmuch as it provides that an independent Director or a Non-Executive Director can only be held liable for acts of omission or commission that are in his knowledge or done through his consent or connivance and in the present case, no such specific act has been alleged against the Petitioner in the complaints.

Dishonoured cheques were not issued by the Petitioner and there is not an iota of averment in the complaints, from which even a reasonable inference can be drawn that Petitioner was either liable in his personal capacity or vicariously. Reliance is placed on the judgment of the Supreme Court in ***Pooja Ravinder Devidasani v. State of Maharashtra and Another, (2014) 16 SCC 1,*** wherein the Supreme Court has held that non-Executive Director is no doubt a custodian of the governance of the company but is not involved in 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 NI Act on a person, at the material time that person should have been at the helm of affairs of the company, one who actively looks after day-to-day activities and is particularly responsible for the conduct of his business. It is further argued that this Court in a petition being CRL.M.C. No. 7843/2023 titled '*Lalit Bhasin v. M/s. Himmatsingka Exports Pvt. Ltd.*' filed by the Petitioner seeking quashing of summoning order in a complaint filed under Section 138 of the NI Act, has quashed the complaint vide order dated 30.10.2023, on a statement made by the Complainant that he had no objection to the petition being allowed, as the Complainant rightly understood that the Petitioner has no role in the day-to-day functioning of the company.

13. Mr. Piyush Singh, learned counsel for the Respondents, on instructions, submits that Respondents have no objection if the petitions are allowed and the complaints are quashed qua the present Petitioner only. Authorised representative of the Respondents is present in Court and endorses that Respondents do no object to the quashing of the summoning orders and/or the complaints insofar as the Petitioner herein is concerned.

14. I have heard the learned Senior Counsel for the Petitioner and the counsel representing the Respondents.

15. First and foremost, submission of the Petitioner is that he was appointed as a Non-Executive Independent Director in the Board of LHL on 29.03.2013 and continued in that capacity till he ceased to be the Non-Executive Director on 25.06.2021. Form-32 has been filed along with the petition, which supports and evidences that this plea is factually correct. Petitioner avers that he was never involved in the day-to-day affairs of the company and has nothing to do with the alleged transactions. Petitioner was neither a whole-time Director nor the Managing Director nor Signatory to the cheques in question. It is highlighted that there is not even a whisper in the complaints that the Petitioner was responsible for the alleged transactions or the dishonour of cheques or that there is any vicarious liability. These facts are uncontroverted as the Respondents fairly concede that they have no objection to the quashing of the complaints *qua* the Petitioner herein. This Court has independently perused and analysed the complaints and finds merit in the submission of the Petitioner that there is only a general statement in the complaints that '*accused No. 3 to 5 are involved in day-to-day affairs of the company*'. The Supreme Court in ***Anita Malhotra v. Apparel Export Promotion Council and Another, (2012) 1 SCC 520,*** held as follows:-

> *"**22.** This Court has repeatedly held that in case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. (Vide National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal [(2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] .) In the case on hand, particularly, in Para 4 of the*

complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day-to-day affairs of the Company. We have verified the averments as regards to the same and we agree with the contention of Mr Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day-to-day affairs of the Company. On this ground also, the appellant is entitled to succeed."

16. Provisions of Sections 138 and 141 of the NI Act have been the subject matter of examination in the past in several judgments and to avoid prolixity, I may usefully allude to some of them. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another, (2005) 8 SCC 89,*** while dealing with the manner in which the averments must be specifically made against the Accused in a complaint under Section 138 read with Section 141 of NI Act, the Supreme Court observed as under:—

"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

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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."

17. The same view was reiterated by the Supreme Court in ***National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another, (2010) 3 SCC 330***, wherein it was observed that:

> *"38. ...if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in-charge of the business of the company" or by stating that "he was in-charge of the day-to-day management of the company" or by stating that "he was in-charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under Sub-section (2) of Section 141 of the Act."*

18. The Supreme Court thereafter summarised and culled out the following principles shedding light on the legal position:-

> *"(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.*
>
> *(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.*
>
> *(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition,*

are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position, they are liable to be proceeded with.

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) 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."

19. In this context, relevant it would be to quote a few passages from the judgment of this Court in ***Sudeep Jain v. M/s. ECE Industries Ltd., 2013 SCC OnLine Del 1804,*** which are as follows:-

"9. The prime objective of this Court is to remind all the Metropolitan Magistrates in Delhi to carefully scrutinize all the complaint cases being filed under Section 138 r/w 141 of the Negotiable Instruments Act, 1881 against the accused companies at the pre-summoning stage and make sure that notice be directed only to those directors or employees of the company who satisfy the principles laid down in the aforesaid judgments. Summons must be issued only after giving due consideration to the allegations and the materials placed on record by the complainant. Undeniably, as per the aforesaid legal pronouncements, Managing Director and the Joint Managing Director are deemed to be vicariously liable for the offence committed by the company because of the position they hold in the company. Problem arises in cases 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. It is surprising to see that in plethora of cases, the complaint contains allegations even against those persons who might have been Directors at any point in time in the accused company, but had resigned from such company much prior to the period when the alleged offence was committed. Issuing summons to all persons named in the

complaint mechanically, without ascertaining whether they played any actual role in the transaction, not only pesters the innocent directors/employees named in the complaint, but also upsurges the load on the High Courts as the Magistrates once issuing the summoning orders against the accused, are precluded from reviewing their summoning orders in view of the decision of the Apex Court in Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338. One can also not lose sight of the fact that once such innocent persons are summoned, they have no choice but to seek bail and face the ordeal of trial. Many of such persons also approach the High Court under Section 482 Cr. P.C. to seek quashing of the summoning order and the complaint filed against them and this further increases the burden on the already overburdened Courts.

10. With a view to ensure that the Metropolitan Magistrates dealing with the complaint cases filed under Section 138 r/w Section 141 of the Negotiable Instruments 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 the offence by the accused company, I am inclined to direct that the Magistrates must seek copies of Form-32 from the complainant to prima facie satisfy the Court as to who were the directors of the accused company at the time of commission of the alleged offence and on the date of filing of the complaint case. In addition to the above, the Magistrates must also seek information as given in the following table which is to be annexed by the Complainant on a separate sheet accompanying the complaint:—

a. Name of the accused Company;

b. Particulars of the dishonoured cheque/cheques;

•Person/Company in whose favour the cheque/cheques were issued

•Drawer of the cheque/cheques

•Date of issuance of cheque/cheques

•Name of the drawer bank, its location

•Name of the drawee bank, its location

•Cheque No./Nos.

•Signatory of the cheque/cheques

c. Reasons due to which the cheque/cheques were dishonoured;

d. Name and Designation of the persons sought to be vicariously liable for the commission of the offence by the accused Company and their exact role as to how and in what manner they were responsible for the commission of the alleged offence;

e. Particulars of the legal notice and status of its service;

f. Particulars of reply to the legal notice, if any."

20. Recently a Co-ordinate Bench of this Court in ***Alibaba Nabibasha v. Small Farmers Agri-Busines Consortium and Others, 2020 SCC OnLine Del 1250,*** following the judgments referred to above quashed the complaint pending before the Trial Court under Section 138 of the NI Act including the summons and held as under:—

> *"20. It is also settled law that mere repetition of the phraseology of Section 141 of NI Act that the accused is In-charge and responsible for the conduct of the day-to-day affairs of the Company may not be sufficient and facts stating as to how the accused was so responsible must be averred. It is the case of the respondent No. 1 that the petitioner was involved in the discussion and represented the respondent No. 2 before the agreement was executed on March 03, 2011 but that does not mean even after his resignation he continues to be responsible for the actions of the Company including the issuance of cheques and dishonour of the same which then attracts proceedings under Section 138 of the NI Act against him.*
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> *xxx xxx xxx*
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> *22. This Court is conscious of the settled position of law that the High Court while entertaining a petition of this nature shall not consider the defence of the accused or conduct a roving inquiry in respect to the merits of the accusation/s but if the documents filed by the accused/petitioner are beyond suspicion or doubt and upon consideration, demolish the very foundation of the the accusation/s levelled against the accused then in such a matter it is incumbent for the Court to look into the said document/s which are germane even at the initial stage and grant relief to the person concerned under Section 482 CrPC in order to prevent injustice or abuse of process of law. In my opinion the present petition would fall within the aforesaid parameters.*
>
> *23. I must state that the learned counsel for the petitioner is justified in relying upon the judgment of a Coordinate bench of this Court in the case of J.N. Bhatia (supra), wherein it was held as under;*
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> > *"16. However, difficulty arises when the complainant states that the concerned accused was Director and also makes averment that he was in charge of and responsible for the conduct of its day-to-day*

business, but does not make any further elaboration as to how he was in charge of and responsible for the day-today conduct of the business. The question would be as to whether making this averment, namely, reproducing the language of Sub-section (1) of Section 141 would be sufficient or something more is required to be done, i.e. is it necessary to make averment in the complaint elaborating the role of such a Director in respect of his working in the company from which one could come to a prima facie conclusion that he was responsible for the conduct of the business of the company.

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24. Thus, what follows is that more bald allegation that a particular person (or a Director) was responsible for the conduct of the business of the company would not be sufficient. That would be reproduction of the language of Sub-section (1) of Section 141 and would be without any consequence and it is also necessary for the complainant to satisfy how the petitioner was so responsible and on what basis such an allegation is made in the complaint.

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32. It can, therefore, be safely concluded that the view, which is now accepted by the Supreme Court, is that more repetition of the phraseology contained in Section 141 of the NI Act, i.e. "the accused is in charge of and responsible for the conduct of the day-to-day affairs of the company", may not be sufficient and' something more is to be alleged to show as to how he was so responsible.

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48. In this petition specific averment is made by the petitioner that he was neither a Director of the company nor at all incharge of the company nor involved in day-to-day running of the company at the time of commission of the alleged offence in February and March, 1999 when the cheques were dishonoured. What is stated is that the petitioner had resigned from the company on 4.2.1998 and copy of Form 32 was also submitted with the Registrar of Companies. Certified copy of Form 32 issued by the office of the Registrar of Companies is enclosed as per which, the petitioner resigned with effect from 4.2.1998. Cheques in question are dated 31.12.1998, which were issued much after the resignation of the petitioner as the Director and were dishonoured subsequently and notice of demand is also dated 8.2.1999 on which date the petitioner was not the Director, as certified copy of Form 32 obtained from the Registrar of Companies is filed indicating that the resignation was also intimated on 26.2.1998, which can be acted upon in view of judgment of this Court in Sarla Kumar Dr. (Mrs.) v. Srei International Finance Ltd.

(supra). The summoning order qua the petitioner is liable to be quashed. It is accordingly quashed and the complaint qua him is dismissed.

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76. Summoning orders are issued in all these cases. Sh. Mukhesh Punjwani, who is accused No. 4, has filed these petitions raising similar plea that he had tendered his resignation on 1.3.2002, which was accepted on 10.3.2002 and thereafter, Form 32 was filed with the Registrar of Companies. Cheques were allegedly issued on 20.3.2002, namely, after his resignation and were dishonoured much thereafter when he was not the director. It is further contended that apart from bald allegation that he was in charge of the affairs of the company, nothing is stated as to how he was in charge of and/or responsible for the conduct of the day-to-day business of the accused No. 1 company. The averments qua the petitioner herein contained in all these complaints are as under:

> *"The accused Nos. 2 to 4 are the Directors and accused No. 5 is the General Manager Finance, who are responsible for the day-today affairs of accused No. 1 company and are jointly and severally liable for the acts and liabilities of the accused No. 1 company."*

77. On the basis of these bald averments, I am afraid, proceedings could not have been maintained against the petitioner herein, as it is not specifically stated as to how the petitioner was in charge of and responsible for the affairs of the company. The summoning orders qua the petitioner are hereby quashed and the complaints qua him are dismissed.

24. Additionally, in the judgment of *Kamal Goyal (supra)* on which reliance has been placed, this Court has held as under:

"12. In the case before the Hon'ble Supreme Court, the respondent No. 1 had resigned from the Directorship of the Company under intimation to the complainant and in these circumstances, the Hon'ble Supreme Court was of the view that a person who had resigned with the knowledge of the complainant in the year 1996, could not be a person in charge of the Company in the year 1999 when the cheque was dishonoured as he had no say in the matter that the cheque is honoured and he could not have asked the Company to pay the amount. In my view even if resignation was not given by the petitioner under intimation to the complainant, that would not make any difference, once the Court relying upon certified copy of Form 32 accepts his plea that he was not a director of the Company, on the

date the offence under Section 138 of Negotiable Instruments Act was committed. He having resigned from the directorship much prior to even presentation of the cheque for encashment, he cannot be vicariously liable for the offence committed by the Company, unless it is alleged and shown that even after resigning from directorship, he continued to control the affairs of the company and therefore continued to be person in charge of and responsible to the company for the conduct of its business."

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27. Even in the recent judgment in the case of Ashoke Mal Bafna (supra,) the Hon'ble Supreme Court has held as under:

"9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action. (See Pooja Ravinder Devidasani v. State of Maharashtra).

10. 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 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.

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12. Before summoning an accused under Section 138 of the Act, the Magistrate is expected to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and then to proceed further with proper application of mind to the legal principles on the issue. Impliedly, it is necessary for the courts to ensure strict compliance with the statutory requirements as well as settled principles of law before making a person vicariously liable.

13. The superior courts should maintain purity in the administration of justice and should not allow abuse of the process of court. Looking at the facts of the present case in the light of settled principles of law, we are of the view that this is a fit case for quashing the complaint. The High Court ought to have allowed the criminal miscellaneous *application of the appellant because of the absence of clear particulars about the role of the appellant at the relevant time in the day-to-day affairs of the Company."*

21. In ***Ashok Shewakramani and Others v. State of Andhra Pradesh and Another, (2023) 8 SCC 473***, the Supreme Court held as follows:-

> *"**21.** Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section (1) of Section 141 are satisfied. The section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company shall be deemed to be guilty of the offence under Section 138 of the NI Act."*

22. In ***Siby Thomas (supra),*** the observations of the Supreme Court are as follows:-

> *"18. Thus, in the light of the dictum laid down in Ashok Shewakramani case [Ashok Shewakramani v. State of A.P., (2023) 8 SCC 473 : (2023) 4 SCC (Civ) 116 : (2023) 3 SCC (Cri) 568 : 2023 INSC 692] , it is evident that a vicarious liability would be attracted only when the ingredients of Section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of Section 141(1) of the NI Act, would reveal that only that 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 alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.*
>
> *19. In such circumstances, para 24 in Ashok Shewakramani case [Ashok Shewakramani v. State of A.P., (2023) 8 SCC 473 : (2023) 4 SCC (Civ) 116 : (2023) 3 SCC (Cri) 568 : 2023 INSC 692] is also relevant. After referring to Section 141(1) of the NI Act, in para 24 it was further held thus : (SCC p. 480)*
>
> > *"24. … On a plain reading, it is apparent that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and the same ought to be read conjunctively in view of use of the word "and" in between."*

20. The upshot of the aforesaid discussion is that the averments in the complaint filed by the respondent are not sufficient to satisfy the mandatory requirements under Section 141(1) of the NI Act. Since the averments in the complaint are insufficient to attract the provisions under Section 141(1) of the NI Act, to create vicarious liability upon the appellant, he is entitled to succeed in this appeal. We are satisfied that the appellant has made out a case for quashing the criminal complaint in relation to him, in exercise of the jurisdiction under Section 482CrPC. In the result the impugned order [Siby Thomas v. Somany Constructions Ltd., 2019 SCC OnLine P&H 7919] is set aside and the subject criminal complaint filed by the respondent and pending before the learned CJ (JD) JMIC, Bahadurgarh, in the matter titled as Somany Ceramics v. Tile Store vide COMA-321-2015 (CNRNO: HRJRA1004637-2015), stand quashed only insofar as the appellant, who is Accused 4, is concerned. The appeal stands allowed as above. There will be no order as to costs."

23. It would be useful to refer to the observations of the Andhra Pradesh High Court in this context in the case of ***Secunderabad Health Care v. Secunderabad Hospitals***, ***1998 SCC OnLine AP 338,*** which are as follows:-

*"**14.** ……there must be clear, unambiguous and specific allegations against the persons who are impleaded as accused that they were incharge of and responsible to the company in the conduct of its business at the material time when the offence was committed …."*

24. To the same effect are the observations of the Andhra Pradesh High Court in ***V. Sudheer Reddy v. State of Andhra Pradesh and others, 1999 SCC OnLine AP 863***, and are extracted hereunder, for ready reference:-

"7. *The purpose of section 141 of the Negotiable Instruments Act would appear to be that a person on the basis of merely being a director of the company cannot be fastened with criminal liability for an offence under section 138 of the Negotiable Instruments Act unless it is shown that he was involved in the day-to-day affairs of the company and was responsible to the company………."*

25. There is thus unanimity in judicial opinion that necessary, specific and unambiguous averments ought to be mentioned in a complaint under Section 138 of the NI Act, before the person accused of the offence is

subjected to criminal prosecution and it is not enough to make a general allegation that the person was in-charge of the day-to-day affairs of the company. The least that is required is to ascribe a specific role to a person before any criminal liability can be fastened on him/her and from the complaint itself a reasonable and plausible inference must be discernible that the person accused was in-charge of and responsible to the firm for the conduct of its business, with a caveat that a hyper-technical approach should not be adopted in quashing the complaints since the laudable object is to prevent dishonour of cheques and sustain the credibility of commercial transactions, for which Legislature has enacted Sections 138 and 141 of the NI Act.

26. In ***Sabitha Ramamurthy and Another v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581,*** the Supreme Court restated the requirements of Section 141 of the NI Act and held that the complainant must make a clear statement of fact to enable the Court to arrive at a *prima facie* opinion, even if the allegations are that the accused is vicariously liable. Section 141 of the NI Act raises a legal fiction where a person although not personally liable for commission of an offence, would be vicariously liable but before a person can be made vicariously liable, strict compliance with statutory requirements is to be insisted. In ***Krishna Lal Chawla and Others v. State of Uttar Pradesh and Another, (2021) 5 SCC 435,*** the Supreme Court held that the power conferred on the Magistrate under Section 202 Cr.P.C. to postpone the issue of process pursuant to a private complaint also provides an important avenue for filtering out frivolous complaints and this power must be fully exercised. On receipt of a private complaint, the Magistrate must first scrutinize it to examine if the

allegations made in the private complaint, *inter alia,* smack of an instance of frivolous litigation and then examine and elicit the material that supports the case of the complainant.

27. Reading of the complaints in the present case in light of the provisions of Sections 138/141 of the NI Act and the conspectus of the aforesaid judgments, it is clear that the impugned summoning orders cannot be sustained. The averments in the complaints are not sufficient to satisfy the mandatory requirements of the applicable provisions. Save and except a general statement that Petitioner was in-charge of the day-to-day business of the Company, there are no averments ascribing any role to the Petitioner leading to an inference that he was involved in the day-to-day functioning of the company or in-charge of its business and there is no denial to the fact that he was an independent Non-Executive Director. There are no allegations that Petitioner was involved in the alleged transactions and/or the dishonour of the cheques. No vicarious liability has been imputed to the Petitioner. In ***Pooja Ravinder Devidasani (supra),*** the Supreme Court 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 (P) Ltd. on 1-7-2004 and had also executed a letter of guarantee on 19-1-2005. The cheques in question were issued during April 2008 to September 2008. So far as the dishonour 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 non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the company but is not involved 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 is 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 NI 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 NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14)

> *"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. 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.*
>
> *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."*

28. Since the contents and averments in the complaints are insufficient to attract the provisions under Section 141(1) of the NI Act, the complaints itself are liable to be quashed. Perhaps, it is for this reason that the Respondents have candidly not objected to the petitions being allowed. Accordingly, the impugned summoning orders dated 15.03.2022 and 04.07.2022, along with complaints being CC No.4313/2021, CC No.5294/2021, CC No.5295/2021, and CC No.569/2022 filed under Sections 138/141 of the NI Act are quashed qua the Petitioner only including proceedings emanating therefrom. It is made clear that this

Court is not expressing any opinion on the merits of the complaints and the proceedings pending before the Trial Court in respect of the other accused.

29. Petitions are accordingly allowed and disposed of along with pending applications.

JYOTI SINGH, J

JANUARY 22, 2024/kks/*DU/shivam*