



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

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Date of Decision:01.04.2024

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CRL.M.C. 734/2023 & CRL.M.A. 2822/2023

BODA VENKAT RAM

..... Petitioner

Through: Ms.Faguni, Advocate.

Versus

STATE (GOVT. OF NCT OF DELHI) AND ANR

..... Respondents

Through: Mr. Aashneet Singh, APP for State.

Mr. Devashish Bhadauria, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks quashing of the summoning order dated 28.11.2018 and complaint case being CC No.16201/2017 titled as 'Pec Ltd. vs K.S. Oils Ltd. & Ors.', arising out of the proceedings initiated under Section 138 and 141 of the Negotiable Instruments Act, 1881 ('*NI Act*') pending before learned MM-04, Patiala House Courts, New Delhi.

2. As per the factual matrix discernible from the material placed on record, the complaint proceedings were filed in relation to 16 cheques (all dated 08.11.2016) ('*subject cheques*') that were issued on behalf of the drawer/accused company/*K.S. Oils Ltd.*, which were dishonoured on presentation with the remarks 'funds insufficient' on 07.02.2017.

3. In the complaint, respondent No.2/*PEC Ltd.* has alleged that they were approached by accused persons (including the present petitioner), who expressed intention to import crude palm oil. In the course of the transaction



relating to the same, the subject cheques were issued to discharge their liability.

4. The present petition is premised on the ground that the present petitioner was an independent non-Executive Director of the accused company at the time when the subject cheques were dishonoured and further that he was not involved in any day-to-day affairs of the company and was not responsible for conduct of business of the company. It is further stated that similarly placed accused persons had approached this Court and the proceedings against them already stand quashed. Reference in this regard is made to the order dated 16.08.2022 passed by a Co-ordinate Bench of this Court in respect of co-accused Sourabh Garg in CRL.M.C.5799/2019 titled 'Sourabh Garg v. State & Anr.'

5. The petition is resisted by learned counsel for respondent No.2 who submits that at the relevant time, the petitioner was a Director in the accused company.

6. I have heard learned counsel for the parties as well as gone through the record.

7. The instant petition is accompanied by copy of Form-32 downloaded from the website of MCA, as per which the petitioner was appointed as a non-Executive Additional Director w.e.f. 14.08.2012.

8. This Court in Sunita Palta & Ors. v. KIT Marketing Pvt. Ltd. had the occasion to deal with similar facts, wherein this Court observed as under:-

“xxx

16. Admittedly, the petitioners are neither the Managing Directors nor the Authorized Signatories of the accused company. The accused company and the Managing Director are arrayed as accused No. 1 and 2 along with others in the



complaint pending before the concerned Metropolitan Magistrate. A perusal of the complaint filed under Section 138 r/w Sections 141/142 of NI Act filed by the complainant shows that except for the general allegation stating that the petitioners were responsible for control and management and day to day affairs of the accused company, no specific role has been attributed to the petitioners. To fasten the criminal liability under The Negotiable Instruments Act, 1881, the above generalised averment without any specific details as to how and in what manner, the petitioners were responsible for the control and management of affairs of the company, is not enough.

xxx”

9. In Pooja Ravinder Devidasani v. State of Maharashtra & Anr.¹, the Supreme Court, while following the ratio of the decision in National Small Industries Corp. Ltd. v. Harmeet Singh Paintal & Anr.², made the following observations with regard to fastening vicarious liability on directors who are not in charge of day-to-day affairs of the company:-

“xxx

17... 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

¹ (2014) 16 SCC 1

² (2010) 3 SCC 330



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.”

xxx”

10. Recently, the Supreme Court in Sunita Palita & Ors. v. Panchami Stone Quarry³, while considering the case of an independent non-executive Director, held as under:-

³ (2022) 10 SCC 152



“xxx

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. 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.

42. 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, non-executive Directors of the company. As held by this Court in *Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (supra)* 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.

xxx”

11. Coming to the facts of the present case, a reading of the complaint would show that the same is bereft of any specific allegations as to how



being an independent non-Execution Director, the petitioner (arrayed as accused No.8 in the complaint) was in charge of day-to-day affairs and conduct of the business of the accused company. The relevant extract of the complaint reads as under:

“xxx

2. That Accused No.1 is a company registered under the provisions of the Companies Act 1956. Accused Nos. 2 to 14 are the Directors of the Company who were in-charge of managing the day to day affairs of the Company. All the accused nos. 2 to 14 were at the helm of affairs of the Company at the time of its dealing with the Complainant and/or at the time when the subject matter cheques were issued to the Complainant and at the time of dishonour of cheques.

3. That in or around August 2012, Accused No.1 acting through the Accused persons approached the Complainant and expressed its intention to import Crude Palm Oil through the Complainant, while making assurances to the Complainant that you were in sound financial position assuring the Complainant of timely payment against such imports. That since the quantities of import was huge, several rounds of meetings took place between the representatives of the Complainant and Accused persons. Each of the accused persons had been dealing with the Complainant on behalf of Accused No.1.

xxx

14. That on 08.11.2016, Accused No.1 through Accused No.3, executed an undertaking assuring repayment of the due amount. Further, in order to discharge the above outstanding, Accused No.1 has issued the following cheques in favour of the Complainant...

xxx

18. That it was now clear that the accused had malafide intentions to avoid making the payment to discharge its liabilities towards the complainant as the same is evident from the conduct



of the accused, in as much as, on one hand the accused have all along been repeatedly assuring the complainant of the payments being cleared and the aforesaid cheque being honoured upon presentation, while on the other hand, the accused was aware that the amounts mentioned in the said cheque when presented for payment would be dishonoured by the bank.

xxx”

12. On a reading of the abovementioned extract of the complaint and in light of the case law extracted hereinabove, it is apparent that only general allegations have been made against the petitioner, without any specific/sufficient averments against him.

13. As has been observed by the Supreme Court, summoning of an accused in a criminal case is a ‘serious matter’⁴.

14. In view of the foregoing discussion, the petition is allowed and complaint case being CC No.16201/2017 titled ‘Pec Ltd. v. K.S. Oil Ltd. & Ors.’, arising out of the proceedings initiated under Section 138 and 141 NI Act pending before the Special Court (NI Act), Rouse Avenue Courts, New Delhi is hereby quashed. As a necessary sequitur, the summoning order dated 28.11.2018 is also set aside.

15. The petition alongwith pending application is disposed of in the above terms.

16. A copy of this order be communicated to the concerned Trial Court.

**MANOJ KUMAR OHRI
(JUDGE)**

APRIL 1, 2024/rd

⁴ Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors., (1998) 5 SCC 749