$~30

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

\+ **CRL.M.C. 390/2022 & CRL.M.A. 1782/2022**

RAJENDER SINGH & ANR. .....Petitioners

Through: Mr. Ajay Fatyal, Adv.

versus

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

Through: Mr. Manoj Pant, APP for the State.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **18.11.2024**

1. The present petition is filed for quashing of the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (‘**NI Act**’) on the ground that no vicarious liability could be fastened on the petitioners as they were the Non-Executive Directors of the accused company when the subject cheque was issued.

2. Petitioner No. 2 expired during the pendency of the present proceedings and the proceedings stand abated against him. The present petition is now being contested on behalf of Petitioner No. 1.

3. The petitioner relies upon the Form DIR-12 indicating that Petitioner No.1 was appointed as Non-Executive Additional Director from 10.01.2018.

4. No reply has been filed to controvert the said averment.

5. The Hon’ble Apex Court in the case of ***Sunita Palita & Others v. M/s. Panchami Stone Quarry*** **: (2022) 10 SCC 152** held as under :

*"**27.** In K.K. Ahuja v. V.K. Vora [K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181] this Court discussed the principles of the vicarious liability of the officers of a company in respect of dishonour of a cheque and held : (SCC pp. 61-62, para 27)*

"27. The position under Section 141 of the Act can be summarised thus:

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

***29.** As held in K.K. Ahuja v. V.K. Vora [K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181] when the accused is the Managing*

Director or a Joint Managing Director of a company, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of the company. This is because the prefix "Managing" to the word "Director" makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under sub-section (2) of Section 141 of the NI Act by averring in the complaint, their position and duties in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

*33**.** Section 482CrPC protects the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the CrPC or to prevent abuse of the process of any Court or otherwise secure the ends of justice.*

34. While it is true that inherent jurisdiction under Section 482 should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specially laid down in the section, the Court is duty-bound to exercise its jurisdiction under Section 482CrPC when the exercise of such power is justified by the tests laid down in the said section. Jurisdiction under Section 482CrPC must be exercised if the interest of justice so requires.

***35.** The High Court rightly held that when a complaint was filed against the Director of a company, a specific averment that such person was in charge of and responsible for the conduct of business of the company was an essential requirement of Section 141 of the NI Act. The High Court also rightly held that merely being a Director of the company is not sufficient to make the person liable under Section 141 of the NI Act. The requirement of Section 141 of the NI Act was that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company. This has to be averred as a fact.*

***40.** There can be no doubt that in deciding a criminal revision application under Section 482CrPC for quashing a proceeding under Sections 138/141 of the NI Act, the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of the said sections has to be borne in mind. The provisions of Sections 138/141 of the NI Act create a statutory presumption of dishonesty on the part of the signatory of the cheque, and when the cheque is issued on behalf of a company, also those persons in charge of or* *responsible for the company or the business of the company. Every person connected with the company does not fall within the ambit of Section 141 of the NI Act.*

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 [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , the liability under Sections 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 [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] . 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."*

6. It is a settled law that a Managing Director or a Joint Managing Director would admittedly be the person Incharge of the company and responsible for the conduct of the company. At the same time, the signatory of the cheque is also clearly liable

under Section 138 of the NI Act.

7. In terms of Section 141 of the NI Act, when a cheque is issued on behalf of the company, all those persons who are Incharge of and are responsible for the conduct of the company shall be deemed to be guilty of the offence under Section 138 of the NI Act and proceeded against accordingly. However, every person connected to the company cannot be held vicariously liable in terms of Section 141 of the NI Act.

8. A person cannot be prosecuted solely for the reason that he was holding a designation as an Additional Director in the company. Every Director cannot be dragged in a protracted litigation, who was not connected with the issuance of cheque or its dishonour.

9. The Hon'ble Apex Court in the case of ***Pooja Ravinder Devidasani v. State of Maharashtra and Anr.*** **: (2014) 16 SCC 1**, has categorically held that a Non Executive Director is not involved in the day to day affairs of the company or in the running of its business. Such directors can in no way be held responsible for the day to day running of the accused company.

10. Petitioner No.1 is also not alleged to be the signatory of the subject cheque. The only averment made against Petitioner No.1 in the complaint was that the Accused Nos. 2 to 7, including Petitioner No.1, are the in charge and responsible for the conduct and day to day affairs of the accused No. 1 company and are thus jointly and severely liable.

11. In addition, it is mentioned that Accused Nos. 2 to 7 always assured that they are actively working for Accused No. 1 and are responsible for its working.

12. From a bare perusal of the complaint, it is evident that only standard allegations have been levelled against Petitioner No.1.

13. Petitioner No.1 has based his case relying upon the Form DIR-12 which clearly showing that he was a Non- Executive Director and the same remains uncontroverted.

14. In view of the aforesaid discussion, Petitioner No.1 is discharged from the Criminal Complaint case No. 976/2019.

15. It is made clear that the learned Trial Court is not impeded from proceeding further against other accused persons.

16. The petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 18, 2024
"SK"