



\$~73 to 84

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

+ **CRL.M.C. 1976/2022 & CRL.M.A. 8429/2022**

+ **CRL.M.C. 2026/2022 & CRL.M.A. 8594/2022**

+ **CRL.M.C. 2027/2022 & CRL.M.A. 8596/2022**

+ **CRL.M.C. 2028/2022 & CRL.M.A. 8598/2022**

+ **CRL.M.C. 2029/2022 & CRL.M.A. 8602/2022**

+ **CRL.M.C. 2134/2022 & CRL.M.A. 9021/2022**

+ **CRL.M.C. 2135/2022 & CRL.M.A. 9023/2022**

+ **CRL.M.C. 2137/2022 & CRL.M.A. 9032/2022**

+ **CRL.M.C. 2138/2022 & CRL.M.A. 9034/2022**

+ **CRL.M.C. 2139/2022 & CRL.M.A. 9037/2022**

+ **CRL.M.C. 4078/2022 & CRL.M.A. 16831/2022**

+ **CRL.M.C. 4562/2022 & CRL.M.A. 18523/2022**

Present: Mr. Narender Singh Yadav, Mr. Manu Prakash Upadhyay & Mr. Mayank Singh, Advocates for Petitioners in Item Nos.73 to 84.

Mr. Sunil Kumar Gautam, APP for the State in Item Nos.73 to 84.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
14.10.2024

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1. The affidavit of the service has been filed by the petitioners indicating that notice has been served to Respondent



No.2. It also indicates that notice has also been served to Respondent No.2 through the learned counsel for Respondent No.2 who represents Respondent No.2 before the learned Trial Court.

2. None appears for Respondent No.2 despite service.
3. The matter is, therefore, proceeding *ex parte*.
4. It is averred that the cheques were issued on 02.04.2019 whereas the petitioner had resigned as Director of the company w.e.f. 30.03.2019.
5. The said fact is uncontroverted in the absence of any reply being filed by Respondent No.2.
6. The details of the subject cheques issued are as follows :

CC No.	Quashing Petition	Accused	Cheque dated	Dishonoured date	ROC Record	Retired on	Summoning Order dated
29680/2019	1976	Laxmidevi Jiwarajka	02.04.2019	26.06.2019	Page No.26	30.03.2019	10.02.2021
22072/2019	2027	Laxmidevi Jiwarajka	02.04.2019	16.05.2019	Page No.26	30.03.2019	24.10.2019
22093/2019	2028	Laxmidevi Jiwarajka	02.04.2019	16.05.2019	Page No.26	30.03.2019	24.10.2019
22101/2019	2029	Laxmidevi Jiwarajka	02.04.2019	10.05.2019	Page No.26	30.03.2019	24.10.2019
22098/2019	4562	Laxmidevi Jiwarajka	02.04.2019	10.05.2019	Page No.26	30.03.2019	24.10.2019
29680/2019	2026	Sakshi Kunal Jiwarajka	02.04.2019	26.06.2019	Page No.26	30.03.2019	10.02.2021
22072/2019	2134	Sakshi Kunal Jiwarajka	02.04.2019	16.05.2019	Page No.26	30.03.2019	24.10.2019
22093/2019	2139	Sakshi Kunal Jiwarajka	02.04.2019	16.05.2019	Page No.26	30.03.2019	24.10.2019
22101/2019	2138	Sakshi Kunal Jiwarajka	02.04.2019	10.05.2019	Page No.26	30.03.2019	24.10.2019
22098/2019	4078	Sakshi Kunal Jiwarajka	02.04.2019	10.05.2019	Page No.26	30.03.2019	24.10.2019
27930/2019	2135	Sakshi Kunal Jiwarajka	02.04.2019	04.06.2019	Page No.26	30.03.2019	01.04.2022
27928/2019	2137	Sakshi Kunal Jiwarajka	02.04.2019	04.06.2019	Page No.26	30.03.2019	01.04.2022



7. Further, the petitioner relies upon Form No. DIR-11 as well as the company's master data which shows that the petitioner had retired from the accused company on 30.03.2019. The complaint filed by Respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881, categorically states that the subject cheques were dated 02.04.2019. The petitioner is also not alleged to be the signatory of the cheque, in such circumstances, no vicarious liability for the cheques issued by the company can be attributed on the petitioner.

8. The provisions of Sections 138 and 141 of the NI Act have been the subject matter of examination in the past in several judgments. At the outset, it is relevant to note that this Court can quash the summoning orders issued in NI Act cases in exercise of its inherent jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') (erstwhile Section 482 of the Code of Criminal Procedure, 1973) if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques.

9. It is thus undisputed that the subject cheques were issued after the petitioner had resigned from the accused company. It is pertinent to note that the petitioner has placed Form DIR No.11 on record and the date of his resignation is not disputed.

10. The complaint in the present case was filed by Respondent No. 2 alleging dishonour of the cheques issued by the accused company, namely, M/S JSK Marketing Ltd. The petitioner is sought to be prosecuted for being vicariously liable for the cheques issued by the accused company. In terms of Section 141 of the NI Act, when the offence is committed by the 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 guilty of the offence and is liable to be proceeded against and punished accordingly.

11. Section 141 of the NI Act reads as under:

“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.

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.”

12. It remains undisputed that the petitioner was neither an Incharge nor was responsible to the company for the conduct of



the business of the company at the time of either the issuance of cheques or its dishonour.

13. In view of the above, 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 BNSS.

14. The present petitions are, therefore, allowed and the summoning orders along with all consequential proceedings arising therefrom are quashed *qua* the petitioner.

15. A copy of the order be placed in all the matters.

AMIT MAHAJAN, J

OCTOBER 14, 2024

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