



2024:DHC:4866



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20.05.2024

Pronounced on: 02.07.2024

+ CRL.M.C. 2641/2022 & CRL.M.A. 10983/2022

SPEEDACC LEARNING SYSTEMS PVT LTD & ANR.

..... Petitioners

Through: Mr.Nitin Mittal, Adv.

versus

SATYASAI PANIGRAHY

..... Respondent

Through: Mr.Tribindh Kumar,
Mr.Subodh Kumar Jha &
Mr.Awnesh Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of the Criminal Complaint, being CC No. 5945/2021, titled as *Mr. Satyasai Panigrahy v. M/s Speedacc Learning Systems Pvt. Ltd. & Anr.*, filed by the complainant/respondent for offence under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), pending adjudication before the Court of the learned Metropolitan Magistrate (NI Act)/Digital Court-06, South West District, Dwarka Courts, New Delhi (hereinafter referred to as 'MM').

Factual Background

2. The above Complaint has been filed by respondent against the petitioners alleging therein that the respondent was associated with the



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petitioner no. 1 company and also other companies of the group of companies controlled by petitioner no.2, thereby providing services to the petitioners. It is alleged in the said Complaint that due to some differences with the Management, in June of 2020, the respondent resigned from the group of companies controlled by the petitioner no.2.

3. It is further alleged that in settlement of his claims, the petitioner no. 2 issued cheques to the respondent, including the cheque bearing no. 118021, dated 31.12.2020 for an amount of Rs.1,22,400/- drawn on the bank account of the petitioner no. 1 Company at ICICI Bank, Dwarka, New Delhi, which is the cheque in question in the above Complaint. The said cheque, when presented, was returned dishonoured *vide* Return Memo dated 02.01.2021 with remark '*Funds Insufficient*'.

4. Thereafter, a legal notice of demand dated 16.01.2021 was issued to the petitioners by the respondent, which is claimed to have been duly served on the petitioners on 19.01.2021.

5. As the petitioners failed to pay the cheque amount despite receipt of notice, the respondent filed the abovementioned Complaint under Section 138 read with Section 142 of the NI Act against the petitioners herein.

6. The learned MM, *vide* its order dated 04.03.2021 was pleased to take cognizance of the Complaint and issued summons to the petitioners in the said complaint case.



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7. Aggrieved of the same, the petitioners have filed the present petition seeking quashing of the said Complaint Case pending before the learned MM.

Submissions of the learned counsel for the petitioners

8. The learned counsel for the petitioners submits that the petitioner no. 2 joined the petitioner no. 1 Company as its Director only on 24.12.2020 after taking over the control from the erstwhile management. He submits that earlier the petitioner was merely an authorised signatory of the cheques issued by the petitioner no. 1, which he used to sign being authorised by the then management of the petitioner no. 1 company. He submits that the respondent falsely impleaded the petitioner no. 2 as an accused in the complaint by relying on the Company Master Data filed on 04.03.2021 showing the petitioner no. 2 and his wife to be the directors of the petitioner no. 1.

9. He submits that the respondent intentionally did not also file the list of cheques that were allegedly given by the petitioner no. 2 to the respondent in purported settlement of his claims. The list would show that the said cheque was handed over to the respondent on 30.06.2020, when the petitioner no. 2 was not a Director of the petitioner no. 1 company.

10. The learned counsel for the petitioner no. 2 submits that in the reply dated 05.02.2021 to the demand notice, the petitioner no.2 had stated that he was neither the Chairman of the petitioner no. 1 company nor was in any way connected with the administration or internal management of the petitioner no. 1 company when the said



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cheque was issued. The respondent, however, did not disclose this reply in the Complaint.

11. Placing reliance on the judgments of the Supreme Court in *S.M.S. Pharmaceuticals Ltd v. Neeta Bhalla and Anr.*, (2007) 4 SCC 70; *Saroj Kumar Poddar v. State (NCT of Delhi) & Anr.*, (2007) 3 SCC 693; *N.K. Wahi v. Shekhar Singh and Ors.*, (2007) 9 SCC 481; *K.K. Ahuja v. V.K. Vora & Anr.*, (2009) 10 SCC 48; *National Small Industries Corp. Ltd v. Harmeet Singh Paintal & Anr.*, (2010) 3 SCC 330; *Dilip Hariramani v. Bank of Baroda*, 2022 SCC OnLine SC 579; and, *Susela Padmavathy Amma v. M/s. Bharti Airtel Ltd.*, 2024 SCC OnLine SC 311, he submits that petitioner no.2, therefore, cannot be made an accused in the said Complaint.

12. He submits that as no liability was owed by the petitioner no. 1 to the respondent, the cheque cannot be said to be issued in discharge of a debt or liability, so as to attract Section 138 of the NI Act. Placing reliance on the judgment of this Court in *Roots Production Private Limited Through its Authorised Signatory v. Aarti Malhotra*, 2022 SCC OnLine Del 3173, he submits that in the present case, the complainant is totally silent on the nature of liability owed by the petitioner no.1 to the respondent. He submits that there are no supporting documents with the complaint with respect to any such liability. He submits that therefore, the complaint is not maintainable against the petitioner no. 1.

Submissions of the learned counsel for the respondent

13. On the other hand, the learned counsel for the respondent submits that the cheque in question has been signed by the petitioner



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no. 2 as the Authorised Signatory of the petitioner no. 1 company. He further submits that admittedly, on the date when the cheque was returned dishonoured, the petitioner no. 2 was a Director of the petitioner no.1 company. He submits that the respondent has also asserted that petitioner no. 2 was in control of the affairs of the petitioner no. 1 company. By relying on the judgment of **KK Ahuja v. V.K. Vora & Anr.**, (2009) 10 SCC 48, he submits that, therefore, the petitioner no. 2 has been rightly arrayed as an accused in the complaint.

14. By placing reliance on the judgment of **S.P. Mani & Mohan Dairy v. Snehalatha Elangovan**, (2023) 10 SCC 685, he submits that the mere fact that petitioner no. 2 signed the cheque in question on behalf of the petition no. 1 company would bring the petitioner no. 2 under the clutches of Sub-Section (2) of Section 141 of the NI Act.

15. As far as the liability of petitioners is concerned, he submits that the respondent was a Director of the group of companies which was under the control of petitioner no. 2 and was also holding approximately 3% shares in the said companies. On his resignation, the shares were transferred in favour of petitioner no. 2 and petitioner no. 2 had issued approximately 20 cheques, including the one in question, in discharge of his liability. He submits that, in any case, these assertions are matters of evidence which are best left to be considered by the learned MM at the trial and cannot be a ground to quash the Complaint.



Analysis and Findings

16. I have considered the submissions made by the learned counsels for the parties.

17. Section 138 of the NI Act reads as under:

“S.138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.



Explanation.— For the purposes of this section, debt of other liability means a legally enforceable debt or other liability.”

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

“S.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, —



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- (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."

19. A reading of the above provisions would show that in case the offence under Section 138 of the NI Act is committed by a Company, Section 141 of the NI Act creates a vicarious liability on the persons who are in charge of and responsible for the day-to-day affairs of the Company or, being the officers of the Company, were negligent or otherwise connived in the commission of the offence by the Company. It is in two parts. While sub-section (1) of Section 141 of the NI Act makes "every person", who, at the time the offence was committed, was in charge of and responsible for the day-to-day affairs and conduct of the business of the company, to be "deemed to be guilty of the offence", unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such an offence, Sub-Section (2) of Section 141 makes any director, manager, secretary, or other officer of the Company, with whose consent or connivance of or due to whose neglect the offence has been committed by the company, to be deemed to be liable to be proceeded against and punished under Section 138 of the NI Act along with the Company.

20. The Supreme Court in ***S.P.Mani & Mohan Dairy*** (supra) has held that the pre-requisite under Section 141 of the NI Act is in two parts so as to make a person liable for offence under Section 138 of the NI Act. The Supreme Court also held that a person who signs the



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cheque or who has the authority to sign the cheque for and on behalf of the Company, regardless of their capacity, can, *prima facie*, be assumed to be in charge of and responsible for the conduct of the business of the Company. I may quote from the said judgement as under:-

“26. By virtue of the provisions of sub-section (1) of Section 141, the guilt for the offence and the liability to be prosecuted and punished shall be extended to every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of its business; irrespective of whether such person is a Director, manager, secretary or other officer of the company. It would be for such responsible person, in order to be exonerated in terms of the first proviso, to prove that the offence was committed without his knowledge or despite his due diligence.

27. Under the separate provision of sub-section (2), if it is proved that the offence was committed with the consent or connivance of or was attributable to the neglect on the part of any Director, manager, secretary or other officer of the company, such person would also be deemed to be guilty for that offence. Obviously, the burden of alleging and proving consent, connivance or neglect on the part of any Director, etc. would rest upon the complainant. The non obstante clause with which sub-section (2) opens indicates that the deeming provision is distinct and different from the deeming provision in sub-section (1) in which the office or designation of the person in charge of and responsible to the company for the conduct of its business is immaterial.

28. While the essential element for implicating a person under sub-section (1) is his or her being in charge of and responsible to the



company in the conduct of its business at the time of commission of the offence, the emphasis in sub-section (2) is upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. Thus, the important and distinguishing feature in sub-section (1) is the control of a responsible person over the affairs of the company rather than his holding of an office or his designation, while the liability under sub-section (2) arises out of holding an office and consent, connivance or neglect.

29. While all the persons covered by sub-section (1) and sub-section (2) are liable to be proceeded against and also punished upon the proof of their being either in charge of and responsible to the company in the conduct of its business or of their holding of the office and having been guilty of consent, connivance or neglect in the matter of commission of the offence by the company, the person covered by sub-section (1) may, by virtue of the first proviso, escape only punishment if he proves that the offence was committed without his knowledge or despite his due diligence.

30. As for the requisite evidence, the burden upon the prosecution would be discharged under sub-section (1) when a person is proved to be in charge of and responsible to the company in the conduct of its business and would shift upon the accused to prove that he was ignorant or diligent, if that be his defence; whereas under sub-section (2) the prosecution would be required to allege and prove the consent, connivance or neglect and holding of the office by the accused. There is nothing to suggest that the same person cannot be made to face the prosecution either under sub-section (1) or sub-section (2) or both.



31. A Director or manager can be arraigned and proved to be guilty as the person in charge of and responsible to the company as well as the Director of the company who, as such, might have consented to, connived at or been negligent in respect of the offence of dishonour of cheque, be logically deduced that a person can be arraigned in a complaint as the accused along with the company if it prima facie appears that he was in charge of and responsible to the company for the conduct of its business, although he may or may not be or may not have continued to be a Director or other officer of the company, as mentioned in sub-section (2). It would be sufficient if the complaint indicates that such person has been arraigned on the basis of averments which disclose him or her to be the person in charge of and responsible to the company in the conduct of its business at the time the offence was committed.

32. Evidently, a person who signs the cheque or who has the authority to sign the cheque for and on behalf of the company, regardless of his office or capacity, can, prima facie, be assumed to be in charge of and responsible to the company in the conduct of its business. And, where such person is prosecuted, then, if it be his defence that the offence was committed without his or her knowledge or that he or she has exercised all due diligence to prevent the commission of such offence, the burden to prove that would be on him or her and can only be discharged at the stage of evidence."

21. Further, the Supreme Court in ***S.P. Mani & Mohan Dairy*** (supra) has clarified that different persons can be in-charge of the company when each of the series of acts of commission and omission, essential to complete the commission of offence by the company, that



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is, (i) the drawing of cheque, (ii) presentation of the cheque to the bank for encashment, (iii) returning of the cheque unpaid by the drawee bank, (iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, and (v) failure of the drawer to make payment within 15 days of the receipt of the notice, may have taken place. The purpose of the provisions of Section 138 and Section 141 of the NI Act would advance if any or all of them are permitted to be prosecuted. I may quote from the said judgment as under:

“34. The seminal issue raised and required to be settled in the present case is one relating to a person liable to be proceeded against under the provisions of sub-section (1) of Section 141 for being in-charge of and responsible to the company “at the time the offence was committed.” It would, therefore, be important to find out the “time” when the offence under Section 138 can be said to have been committed by the company. It is commonplace that an offence means an aggregate of facts or omissions which are punishable by law and, therefore, can consist of several parts, each part being committed at different time and place involving different persons. The provisions of Section 138 would require a series of acts of commission and omission to happen before the offence of, what may be loosely called “dishonour of cheque” can be constituted for the purpose of prosecution and punishment. It is held by the Supreme Court in K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510, that : (SCC p. 518, para 14)

“14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence : (1)



drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.”

35. Different persons can be in-charge of the company when each of the series of acts of commission and omission essential to complete the commission of offence by the company were being committed. To take an example, in the case of a company, “A” might be in charge of the company at the time of drawing the cheque, “B” might be in charge of the company at the time of dishonour of cheque and “C” might be in charge of the company at the time of failure to pay within 15 days of the receipt of the demand notice. In such a case, the permissibility of prosecution of A, B and C, respectively, or any of them would advance the purpose of the provision and, if none can be prosecuted or punished, it would frustrate the purpose of the provisions of Section 138 as well as Section 141.

36. The key to this interpretation lies in the use of the phrase: “every person shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly” as it occurs in sub-section (1) of Section 141 and the use of the phrase “provided that nothing contained in this sub-section shall render any person liable to punishment if he proves...” that occurs in the first proviso. Every person who was in charge of and was responsible to the company for the conduct of its business at the time any of the components necessary for the commission of the offence occurred may be “proceeded against”, but may not be “punished” if he succeeds in proving that the offence was committed without his knowledge and despite



his due diligence; the burden of proving that remaining on him.

37. Therefore, it also has to be held that the time of commission of the offence of dishonour of cheque cannot be on the stroke of a clock or during 15 days after the demand notice has to be construed as the time when each of the acts of commission and omission essential to constitute the offence was committed. The word "every" points to the possibility of plurality of responsible persons at the same point of time as also to the possibility of a series of persons being in charge when the sequence of events culminating into the commission of offence by the company were taking place.

(Emphasis Supplied)

22. Testing the above principles to the facts of the present case, it is evident that the petitioner no. 2 does not dispute his position as an Authorised Signatory of the petitioner no. 1 even as on the date of issue of the subject cheque. He also does not dispute his signatures on the cheque. He also does not dispute his position as a Director of the petitioner no. 1 as on the date of the presentation of the cheque in question, that is, 01.01.2021, its dishonour, that is, 01.01.2021, the demand notice having been issued and received, that is, 16.01.2021, and no payment being made in spite of receipt of the demand notice. In fact, interestingly, the petitioner no. 2, in the present petition admits that he along with his wife "*are running the said company as its directors*" since 24.12.2020, that is, before the dishonour of the cheque. Therefore, as on the date when the ingredients of the offence under Section 138 of the NI Act fructified, the petitioner no. 2 was admittedly the Director of the petitioner no. 1 Company and in-charge



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of the affairs of the petitioner no. 1 and *prima facie* he is liable for the offence under Section 138 of the NI Act and in terms of Section 141 of the NI Act.

23. In view of the above, the judgments relied upon by the petitioners do not in any manner support the petitioner no. 2 or come to his aid for seeking quashing of the complaint as against him.

24. As far as the submission of the learned counsel for the petitioners *qua* the nature of liability owed by the petitioner no.1 to the respondent is concerned, it is to be reiterated that the petitioner no.2 has not disputed his signatures on the cheque as an Authorised Signatory of the petitioner no. 1. The respondent, in the complaint, has asserted that the subject cheque had been issued in settlement of his account. Section 139 of the NI Act read with Section 114 of the Indian Evidence Act, 1872 raises a presumption that the cheque in question was issued in discharge of a debt or liability and for a good consideration.

25. In any case, these will be matters of evidence and cannot be decided in a proceeding under Section 482 of the Cr. P.C., where disputed question on fact cannot be gone into. The Supreme Court has repeatedly cautioned that the power under Section 482 of the Cr. P.C. cannot be used to scuttle a complaint or an FIR at an initial stage, especially where a disputed question of fact and law is involved. The power is to be exercised sparingly and only in the rarest of the rare cases. Reference in this regard may be had to the judgment of the Supreme Court in ***Rathish Babu Unnikrishnan v. State (NCT of***



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Delhi) & Anr., 2022 SCC OnLine SC 513 wherein the Supreme Court held as under:

“16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage,



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scuttling of the criminal process is not merited.”

26. In the view of the above, I find no merit in the present petition. The same is, accordingly, dismissed. The petitioners shall pay costs of Rs. 25,000/- to the respondent within four weeks.

27. The pending application is also disposed of being rendered infructuous.

28. It is hereby made clear that this Court has not expressed any opinion on the merits of the Complaint Case, and any observation made hereinabove shall not, in any manner, prejudice the petitioners in their defence in the Complaint case.

NAVIN CHAWLA, J

JULY 02, 2024/rv/VS/RP

Click here to check corrigendum, if any