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

\+ **CRL.M.C. 3511/2022 & CRL.M.A. 14689/2022**

SHUBH GAUTAM .....Petitioner

Through: Mr. Sagar Chaturvedi, Adv. (through VC)

versus

CENTRAL BANK OF INDIA & ANR. .....Respondent

Through: Mr. R.K. Srivastava, Adv. for Central Bank of India

\+ **CRL.M.C. 3512/2022 & CRL.M.A. 14691/2022**

SHUBH GAUTAM .....Petitioner

Through: Mr. Sagar Chaturvedi, Adv. (through VC)

versus

CENTRAL BANK OF INDIA .....Respondent

Through: Mr. R.K. Srivastava, Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **16.12.2024**

1. The present petitions are filed essentially seeking quashing of the complaint case nos. 32729/2016 and 32730/2016, filed by the respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881 (‘**NI Act**’), including all consequential proceedings arising therefrom.

2. The brief facts of the cases are as follows:

2.1. The complaints were filed by the respondent complainant alleging that a company, namely, M/s. AVC Electric Pvt. Ltd., had approached it for grant of certain credit facilities for the purpose of establishing a new project in Uttar Pradesh and trading of electrical control panels and manufacturing of flexible cable wires for the same. Pursuant to the same, the complainant sanctioned credit facilities for a sum of ₹43.97 crores.

2.2. M/s. AVC Electric Pvt. Ltd. *vide* letter dated 12.08.2011 requested the complainant for dispersal of a part of the credit facility towards purchase of ₹7.85 crores in respect of factory premises, which was owned by M/s. Anjani Technoplast Limited. The complainant released the sum of ₹6.75 crores. The rest of the consideration amount was remitted directly by M/s. AVC Electric Pvt. Ltd. to M/s. Anjani Technoplast Limited.

2.3. Due to certain differences, the proposed sale transaction was subsequently cancelled and the complainant was intimated about the same on 17.04.2012. In partial discharge of the liability, the Directors of M/s. AVC Electric Pvt. Ltd. also enclosed eight cheques amounting to ₹6.5 crores issued by M/s. Anjani Technoplast Limited, towards repayment of the monies advanced earlier.

2.4. Out of the eight cheques, six of the cheques got dishonored and returned unpaid on presentation with the remark– 'stop payment'. The respective complaints were filed in relation to three of the dishonored cheques respectively. The petitioner is a director of M/s. Anjani Technoplast Limited. The same led to filing of the complaints.

2.5. The petitioner had previously approached this Court for quashing of the aforesaid complaints by preferring petitions, being, Crl. M.C. No. 2919/2013 and Crl. M.C. No. 3110/2013. The petitioner had agitated the same grounds of him being a sleeping/ non active director of M/s. Anjani Technoplast Limited in the said petitions. It was also argued that the petitioner was not a signatory of the cheques in dispute. The said petitions were dismissed by common order dated 09.09.2013 by this Court with direction to the learned Trial Court to deal with the pleas in light of the decision in ***National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another* : (2010) 3 SCC 330** if it chooses to order framing of notice *qua* the petitioner.

2.6. The petitioner had challenged the said order before the Hon'ble Apex Court, however, the petitions were dismissed as withdrawn.

2.7. Subsequently, by order dated 11.03.2022, the learned Magistrate dismissed the discharge applications filed by the petitioner by observing that there is no provision to discharge an accused in a summary manner under the CrPC.

3. The learned counsel for the petitioner submits that the present complaints are an abuse of process of law as they do not satisfy the requirement of Section 141 of the NI Act. He submits that the matter is based upon bald and vague allegations and there is no mention of how the petitioner was involved in the day-to-day affairs of M/s. Anjani Technoplast Limited.

4. He submits that the Managing Director is the signatory of the cheques in dispute. He further submits that the learned Magistrate erroneously dismissed the discharge application of the petitioner without noting that this Court had directed it to adjudicate the matter on merits by way of order dated 09.09.2013.

5. He submits that as per ***National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another*** (*supra*), mere mechanical repetition of the requirements under Section 141 of the NI Act will be of no assistance.

6. *Per contra*, the learned counsel for the respondent disputes the contentions of the petitioner and submits that the grounds raised are in the nature of factual defence which can only be seen

during the course of trial.

7. He submits that it has categorically been pleaded in the complaint that the petitioner was one of the Directors who was responsible for the day-to-day affairs of M/s. Anjani Technoplast Limited and that he had been transacting with the complainant bank.

8. I have heard the counsel and perused the record.

9. At the outset, it is relevant to note that this Court can quash NI Act cases, in exercise of its inherent jurisdiction under 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. The Hon'ble Court in the case of ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan*** **: (2023) 10 SCC 685** had discussed the scope of interference by High Court against issuance of process and also summarised the law in reference to Section 141 of the NI Act as under:

> "***55.*** *Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned.*
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> ***56.*** *Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the noticee. In such circumstances what more is expected of the complainant to say in the complaint.*
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> ***57.*** ***<u>When in view of the basic averment process is issued the complaint must proceed against the Directors or</u>***

*<u>partners as the case may be.</u> **But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention.** He must make out a case that making him stand the trial would be an abuse of process of Court. **<u>He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial</u>**. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner.*

***58.** Our final conclusions may be summarised as under:*

58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. <u>On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.</u>

58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be.** The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the Court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141, respectively, of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted**. The

> ***existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.***
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> ***58.3.*** *Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm.* ***But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners "qua" the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.***
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> *58.4.* ***If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court."***
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> (emphasis supplied)

10. The main issue raised by the petitioner is that the allegations in the complaints are vague and there are no specific averments in relation to the specific role of the petitioner. It is argued that the petitioner was a dormant director in the concerned company.

11. Reliance has been placed on the case of ***National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another*** (*supra*). It is pertinent to note that in the said case, the Hon'ble Apex Court had heavily placed reliance on the judgment in the case of ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*** **: (2005) 8 SCC 89**, where it was found that it is necessary to specifically aver that at the time of the offence, the accused was

in charge of and responsible for the conduct of the company. While it is correct that the complaint has to be specific, however, the specificity is limited to the basic averments as mandated under Section 141 of the NI Act.

12. The Hon'ble Apex Court in the case of ***Gunmala Sales (P) Ltd. v. Anu Mehta* : (2015) 1 SCC 103** had observed that it is open to the High Court to refuse quashing of a complaint if the complaint contains the basic averments. The relevant portion of the said judgment is reproduced hereunder:

> "***34.*** *We may summarise our conclusions as follows:*
> ***34.1.*** *Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director.*
> ***34.2.*** ***If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.***
> ***34.3.*** *In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint.* ***It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director.*** *Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings.* ***It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the***

notice of the High Court. <u>Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed.</u>

34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

35. *We will examine the facts of the present case in the light of the above discussion. In this case, the High Court answered the first question raised before it in favour of the respondents. The High Court held that "in the complaint except the averments that the Directors were in charge of and responsible to the Company at the relevant time, nothing has been stated as to what part was played by them and how they were responsible regarding the finances of the Company, issuance of cheque and control over the funds of the Company". After so observing, the High Court quashed the proceedings as against the respondents….* ***Pertinently, in the application filed by the respondents, no clear case was made out that at the material time, the Directors were not in charge of and were not responsible for the conduct of the business of the Company by referring to or producing any incontrovertible or unimpeachable evidence which is beyond suspicion or doubt or any totally acceptable circumstances…***"

(emphasis supplied)

13. Thus, it is well settled that under Section 138/ 141 of NI Act, the complainant is to make the particular averment in the complaint, to the effect that the accused person was the director of the accused company at the relevant time and is responsible for its day-to-day affairs, and therefore is vicariously liable for the offence. Thereafter, the onus of proving that at the relevant time, the accused persons were *not* the directors of the accused company and were *not* responsible for its day-to-day affairs, lies

upon the accused persons and the same is matter of trial. In the case of ***Rallis India Ltd. vs. Poduru Vidya Bhusan and Ors. (13.04.2011 - SC)*** **: MANU/SC/0422/2011**, it was observed as under:

> *"11. Thus, in the light of the aforesaid averments as found by us in the Criminal Complaint, we are of the considered opinion that sufficient averments have been made against the Respondents that they were the partners of the firm, at the relevant point of time and were looking after day to day affairs of the partnership firm.* ***<u>This averment has been specifically mentioned by the Appellant in the complaint even though denied by the Respondents but the burden of proof that at the relevant point of time they were not the partners, lies specifically on them. This onus is required to be discharged by them by leading evidence and unless it is so proved, in accordance with law, in our opinion, they cannot be discharged of their liability</u>***…. ***<u>The question as to whether or not they were partners in the firm as on 31.03.2004, is one of fact, which has to be established in trial.</u>*** *The initial burden by way of averment in the complaint has been made by the Appellant."*
>
> *12. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable.* ***<u>For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction.</u>*** *On the other hand, proviso to Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his knowledge or he had exercised due diligence to prevent the commission of such offence, he will not be liable of punishment….* ***<u>But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners "qua" the firm.</u>*** *This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced - if they are eventually found to be not guilty, as a necessary consequence thereof would be acquitted."*
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> (emphasis supplied)

14. In the present case, explicit averments have been made in the complaints that the petitioner is responsible for the day-to-day affairs and conduct of business of the concerned company and he had been transacting with the complainant bank.

15. The Hon'ble Apex Court in ***N. Rangachari v. Bharat***

Sanchar Nigam Ltd. **: MANU/SC/7316/2007**, observed that it is open to a person to presume that a Director of the company is in charge of its affairs.

16. The petitioner has placed no material on record to rebut the allegation of his involvement in the day-to-day affairs of the concerned company. Only a bald averment has been made that the petitioner is a dormant director in the concerned company. As observed in ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan*** (*supra*), under Section 482 of the CrPC, the Court can exercise its jurisdiction only upon unimpeachable and uncontroverted evidence being placed on record, however, in the absence of such evidence, the fact whether the accused person is responsible for the affairs of the accused company becomes a factual dispute, which is to be seen during trial.

17. In a situation where the accused moves the Court for quashing even before the trial has concluded and the parties have had a chance to lead evidence, the Court's approach should be careful not to prematurely extinguish the case by disregarding the legal presumption supporting the complaint.

18. Without adverting to the fact that the petitioner has already preferred petitions agitating the same issue previously, at this stage, considering that no unimpeachable material has been brought forth by the petitioner to show that he was not involved in the day-to-day affairs of the concerned company and he was not in charge of its affairs, this Court is of the opinion that quashing the complaint would frustrate the ends of justice. Moreover, in view of the basic necessary averments in the complaint, it cannot be held that the complaint is bereft of the requisite ingredients so as to proceed against the petitioner.

19. Needless to say, it will be open to the petitioner to raise all arguments before the learned Trial Court.

20. The present petitions are dismissed in the aforesaid terms. Pending applications also stand disposed of.

21. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

DECEMBER 16, 2024