



2024:DHC:3046



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 31.01.2024
Pronounced on: 22.04.2024

+ CRL.M.C. 3828/2019

SACHIN KUMAR PAROLIA

..... Petitioner

Through: Mr. Pulkit Prakash, Mr. Saimon
Farooqui, Mr. Arjun Mohan,
Mr. Shubhashish Sharma & Mr.
Chirantan Krishna, Advs.

Versus

RAHUL RAJAN & ORS.

..... Respondents

Through: Mr. Aman Nandrajog &
Mr. Chaitanya Sharma, 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'), challenging the Order dated 27.08.2018 (hereinafter referred to as 'Impugned Order') passed the learned Additional Sessions Judge-04 & Special Judge (NDPS) South-East, Saket Courts, New Delhi, in CR No. 371 of 2018, titled *Sh. Rahul Rajan & Ors. v. Sh. Sachin Kumar Parolia*, whereby the summons issued against the respondent nos. 1 to 3, who are the accused nos. 4 to 6 in the complaint filed by the petitioner herein under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act'), being Case No. 1397/2018, has been set aside.



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Case of the petitioner in the complaint:

2. In the Complaint, it is the case of the petitioner that Right Choice Marketing Solutions JLT/accused no.1 is an entity with its office in the United Arab Emirates (UAE). It is the sales and marketing wing of Right Choice Builders Private Limited/respondent no.3 herein, a company incorporated under the Companies Act, 2013, which was arrayed as accused no.6 in the complaint. It is stated that the respondent no.3 company has established various branches like Right Choice Properties, Right Choice Investment, etc. It is further contended that the respondent nos.1 and 2, along with others, who have been arrayed as accused nos. 2 and 3 in the complaint, are the common Directors of the Group, namely, Right Choice Group of Companies, and are responsible for the day-to-day affairs of accused no.1 and respondent no.3 herein.

3. It is further contended that respondent nos.1 and 2, along with accused nos.2 and 3, are the ones who approached different investors for their business and directly dealt with them regarding all transactions between the Right Choice Group of Companies and such investors.

4. It is further alleged that the respondent nos.1 and 2, along with accused nos.2 and 3 in the complaint, approached the petitioner herein with various investment ideas and brochures mentioning the schemes and projects of accused no.1 and respondent no.3, so as to lure the petitioner to invest in the same.

5. It is further alleged that in 2014, the accused no.2, representing himself to be the Director of Right Choice Group of Companies,



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personally approached petitioner for investment(s) in the aforesaid entities, assuring him of high rates of return on investments.

6. It is stated that petitioner succumbed to the repeated follow-ups of the accused, and believing their representation of assured quarterly returns, invested an amount of Emirati Dirham (AED) 600,000/- in favour of respondent no.3 at its office in Dubai, that is, accused no.1, by issuing multiple cheques in the month of August 2014. It is asserted that the said amount was invested by the petitioner only on instructions of accused nos.2 and 3 and the respondent nos.1 and 2, who wanted the said money to be deposited in the name of accused no.1 stating that it is its branch office from where it would then be transferred to respondent no.3, a company registered in India. The said amount was invested on the assurance of return at the rate of 26.5% per annum.

7. It is stated that the accused nos.1 and 3, on express instructions from accused no.2, and respondent nos. 1 and 2, issued multiple post-dated cheques to the petitioner as monthly repayments spreading across the entire year of 2015. The entire principal sum of AED 600,000/- was to become immediately payable by the accused after the expiry of the period of one year.

8. It is stated that the accused thereafter requested the petitioner not to present the cheques, and also failed to repay the principal sum upon the expiry of the one-year period. On an arbitrary basis, they paid an amount of AED 50,000/- in the form of two cheques of AED 25,000/- each, making an assurance that the rest would be paid soon.

9. It is asserted that in January 2016, when the petitioner called



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upon the accused at the head office at Pune, which is the registered address of respondent no.3/accused no.6, the accused nos.1 and 3, on express instructions from accused no.2, respondent no. 1, and respondent no. 2, issued ten fresh post-dated cheques towards the repayment of interest to the petitioner. These were spread over the entire year of 2016 and were issued with an undertaking that they shall be honoured as and when presented.

10. It is stated that petitioner presented the said cheques before the bankers, that is, National Bank of Abu Dhabi, and HSBC Bank, Middle East, and to the shock of petitioner, the said cheques were returned dishonoured with the remarks '*insufficient funds*'. Upon repeated follow-ups, the accused nos.1 and 3 again paid an arbitrary and *ad hoc* amount of AED 42,500/- in bits and pieces against the cheques that had been returned dishonoured.

11. The petitioner asserts that being aggrieved of the aforesaid conduct, he initiated criminal complaints against the accused with the Abu Dhabi Police for the dishonour of the ten cheques. The Abu Dhabi Courts of First Instance, vide its order dated 26.12.2016 passed in Case No.13267/2016, convicted the accused no.3 and sentenced him with imprisonment of two years for the first set of five cheques totalling AED 295,089/-. The said Court, vide its order dated 27.03.2017 passed in Case No. 1918/2017, convicted accused no.3 and awarded a sentence of imprisonment of three years for the second set of five cheques totalling AED 685,625/-. It is stated that the accused are not travelling to Dubai out of fear of being arrested.

12. It is stated that the petitioner thereafter issued a legal notice



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dated 15.03.2017 through his counsel in Abu Dhabi. The said notice was addressed to the accused at its Dubai office as also the India office and was duly served on the India office on 25.03.2017. An e-mail dated 19.04.2017 was also addressed to all the Directors. It is stated that in response to the above notices, accused no.3 contacted the counsel of the petitioner and assured of repayment. Terms of settlement were shared by the counsel for the petitioner vide e-mail dated 09.05.2017, however, the accused never responded to the same.

13. It is stated that petitioner then proceeded to present the cheque of the principal amount of AED 600,000/- drawn on the bank, namely, Emirates NBD Bank Gold Branch, which again was returned dishonoured with the remark '*insufficient funds*' vide returning memo dated 07.12.2017 to the bank of the petitioner, namely, ICICI Bank, Branch, Greater Kailash-I, New Delhi.

14. It is stated that the petitioner thereafter issued Legal Demand Notice dated 30.12.2017 under Section 138 of the NI Act. The said notice was duly delivered at the office of the accused. As the accused did not make the payment, complaint under Section 138 of the NI Act, being Case no. 1397/2018, was filed by the petitioner against the respondents and the accused no. 1 to 3.

Proceedings before the learned Trial Court and the learned Revisional Court:

15. Summons on the Complaint were issued to all the accused by the learned Metropolitan Magistrate-04, South East District, Saket Courts. The same were challenged by the respondents herein by way



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of a Revision Petition, being CR No. 371/2018, which has been allowed by the learned ASJ by way of the Impugned Order.

Submissions by the learned counsel for the petitioner

16. The learned counsel for the petitioner submits that the learned ASJ has erred in holding that the respondent no.3 herein is a legal entity separate from Right Choice Marketing Solutions JLT/accused no.1, by merely placing reliance on the Memorandum of Association produced by the respondent no.2 and 3. He submits that the respondent no.3 and the accused no.1 are a part of a single group of companies and have common Directors. He submits that the accused no. 1 company and the respondent no. 3 company have worked in an orchestrated manner and form one economic entity. He submits that it is a fit case where this Court would lift the corporate veil. He places reliance on *DHN Food Distributors Ltd. & Ors. v. London Borough of Tower Hamlets*, (1976) 1 WLR 852; *Delhi Development Authority v. Skipper Construction Co. (P) Ltd.*, (2002) 9 SCC 387; and *Cox and Kings v. SAP India Pvt. Ltd.*, 2023 SCC Online SC 1634.

17. Placing reliance on the judgment of this Court in *Santanu Ray v. Union of India*, 1988 SCC OnLine Del 169, and of the High Court of Bombay in *Amit H. Jhaveri and Ors. v. Bank of Baroda a Banking Company and Ors.*, 2010 SCC OnLine Bom 1559, he submits that the court must penetrate the economic actualities beneath the legal exterior, especially in instances of economic offences. He submits that the Brochure floated to attract investments, copy of email communications, and other evidence prove linkage between the



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respondent no. 3 and the accused no. 1 companies. They prove that the respondent no. 3 is the main beneficiary of the fraud.

18. He submits that there is an underlying principal-agent relationship between the respondent no. 3 and the accused no. 1. Placing reliance on *Varsha Engineering Pvt. Ltd. v. Vijay Traders*, AIR 1983 Guj 166, he submits that the contract of agency can also manifest as an implied one and can make the principal liable to be sued by third parties.

19. The learned counsel for the petitioner submits that the respondent nos. 1 and 2, being in-charge of supervising the operations of the Right Choice Group of Companies, are legally accountable for the conduct of these companies. Placing reliance on *S.P. Mani and Mohan Diary v. Dr. Snehalatha Elangovan*, (2023) 10 SCC 685, he submits that once the complainant has made specific averments in the complaint to make the accused vicariously liable, it is for the accused to disprove the same. He submits that, in the present case, the respondent nos. 1 and 2 have failed to establish that the offence was committed without their knowledge.

20. The learned counsel for the petitioner submits that as the accused no.1 and the respondent no.3 company are sisters companies, in light of the judgement of the High Court of Andhra Pradesh in *Sunrise Oleo Chemicals Ltd. v. K.M. Enterprises*, 2003 SCC OnLine AP 95, they are liable to be proceeded against for the dishonour of the cheque though the cheque was issued in the name of the accused no. 1.



Submissions by the learned counsel for the respondents

21. The learned counsel for the respondents submits that apart from vague and unsubstantiated averments in the complaint, no material has been placed on record by the petitioner to substantiate his averments that the respondent nos. 1 and 2 have any say in the management of the accused no. 1 company.

22. He submits that the accused no. 1 and respondent no. 3 are distinct companies having separate corporate entities. He submits that the respondent nos. 1 and 2 are not the Directors of the accused no. 1 company, nor are they the signatories of the cheque in question. He submits that therefore, neither of the respondents can be made an accused for the dishonour of the cheque issued by the accused no. 1.

Analysis & Findings

23. I have considered the submissions made the learned counsels for the parties.

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

“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 subsection 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, —

(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.”

25. A reading of the above 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.

26. The Supreme Court in its decision in ***S.P.Mani & Mohan Diary*** (supra), explained the difference between persons on whom vicarious liability is cast under sub-section (1) and sub-section (2) of Section 141 of the NI Act, 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.”

27. In ***S.P.Mani & Mohan Diary*** (supra), the Supreme Court culled out the principles that govern the liability of persons covered under Section 141 of the NI Act, as under:

“42. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:

42.1. Vicarious liability can be fastened on those who are in-charge of and responsible to the company or firm for the conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;

42.2. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;

42.3. If the substance of the allegations made in the complaint fulfils the requirements of Section 141, the complaint has to proceed in regard to the law.

42.4. In construing a complaint a hypertechnical approach should not be adopted so as to quash the same.

42.5. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141, respectively, should be kept in mind by the Court concerned.

42.6. These provisions create a statutory presumption of dishonesty exposing a person



to criminal liability if payment is not made within the statutory period even after the issue of notice.

42.7. The power of quashing should be exercised very sparingly and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed.

42.8. The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking.

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58. Our final conclusions may be summarized 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. On the other hand, the first proviso to subsection (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.

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.

58.3. *Needless to say, the final judgement 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.*

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*



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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.”

28. Let us now test the complaint filed by the petitioner as against the respondents herein, on the above parameters.

29. The petitioner, in his complaint, states that the accused no. 1 and the respondent no. 3 are a ‘corporate entity under the group of Companies namely, the Right Choice Group’. The complainant further admits that the accused no. 1 is an entity having its office in the United Arab Emirates, however, goes on to state that it is a ‘sales and marketing wing’ of the respondent no. 3, a company incorporated under the relevant provisions of the Companies Act, 2013. The complainant states that there are other ‘branches’ established by the respondent no. 3 catering to the demands of different sectors, like Right Choice Properties and Right Choice Investment, etc.. Further, the complainant has placed reliance on the Brochure allegedly handed over by accused nos. 2 and 3 and respondent nos. 1 and 2 herein to the complainant while trying to lure the complainant into investing in the Right Choice Group of Companies. The said Brochure, *inter alia*, states as follows:

“ABOUT US

Established in 2010, the 7 group companies - Right Choice Properties, Right Choice Builders, Right Choice Marketing Solutions, Right Choice Developers, Right Choice Investments, Right Choice Marketing Solutions JLT (Dubai), Spacers for Life Real Estate Brokers (Middle East)- are already on the last track with many success stories and hundreds of happy customers to their credit.”



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*(Emphasis supplied)*

30. The Brochure, therefore, clearly states that the Right Choice Group is a group of seven companies, which in law would mean that each of them is a distinct and separate legal entity, though part of a group.

31. In the complaint, the petitioner also states that he has annexed the Master Data of the respondent no. 3 and the accused no. 1, however, what has been annexed with the present petition is only the copy of the Master Data of the respondent no. 3.

32. The learned ASJ, in its Impugned Order, has recorded that there is nothing on record to establish that the respondent no. 3 herein and the accused no. 1 are the same entity. Therefore, apart from a mere bald assertion in the complaint that the accused no. 1 is the sales and marketing wing of respondent no. 3 or is a branch established by respondent no. 3, no material has been placed on record by the petitioner to prove the said assertion.

33. On the other hand, from the material placed on record by the petitioner itself, it is established that the accused no. 1 and the respondent no. 3 are separate legal entities; one registered in Dubai and the other registered in India. The Brochure itself states that they are separate companies though part of the same group.

34. Section 141 of the NI Act is neither intended nor extends the vicarious liability on the group companies. It is intended to create vicarious liability only on the persons and officers who are either in-charge of the company, which is the main accused, or have connived



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or are negligent, resulting in the accused company committing the offence under Section 138 of the NI Act. Section 141 of the NI Act, therefore, cannot extend to the group companies.

35. Section 138 of the NI Act, in fact, creates liability only on the ‘drawer of the cheque’. As it creates a criminal liability, there is no scope of lifting of the corporate veil. It is only because of the application of Section 141 of the NI Act, that the liability, in case the offence under Section 138 of the NI Act is committed by a company, has been extended by a deeming fiction on the person in-charge of or holding an office, making them equally liable for the offence. The said provision, however, cannot extend to other corporate entities or group of companies.

36. This Court in ***Yashovardhan Birla v. CECIL Webber Engineering Ltd.***, 2023 SCC OnLine Del 2127, has reiterated that large business conglomerates may have a number of companies under them, which may be ultimately managed by a particular family or group of investors, but to run the day-to-day affairs, officers and professionals are appointed in such companies. In such cases, the head of the Company cannot be made liable and taken into the purview of Section 141 of the NI Act, doing so would unfairly and unnecessarily expand the provisions of vicarious liability under the NI Act. This Court observed as under:

“19. It is evident from para 2 of the complaint that bald averments have been made against Accused No. 3 - 8 being directors of Accused No. 1 Company and in-charge of and responsible for the conduct, affairs and business of the company. There is no specific



avermment made that this was so at the time of the commission of the offence. Also, the signatory of the cheque was also the Managing Director of the Company would be deemed to be in-charge of and responsible for the conduct of the business of the company and therefore, it was not as if the complainant was remediless. Considering that Accused No. 4 to 8 were dropped by the complainant, there was no reason for the complainant to have continued with proceedings against Accused No. 3.

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24. It is common knowledge that very large business conglomerates spawn and sustain hundreds of companies under them which may be ultimately held by a particular business family or a group of investors, but officers and professionals are appointed to run the day-to-day affairs of such companies. The whole purpose of having a Managing Director and executive directors appointed for a company is to ensure that all executive decisions are resident with that Managing Director and his/her team of executive directors. A number of non-executive Directors or Directors who are not executive Directors are present on the Board of the Companies for their expert independent advice or oversight of the functioning of the company. Even the role of 'Chairman'/'Chairperson' is not typically of an executive nature since the Chairperson presides over the general meetings or of the functioning of the company and guides its business policies and need not interfere in the day-to-day affairs of the company. Chairperson of large business conglomerates are in fact even further removed from the minutiae of everyday operations of the company and distant from the micro-management which is required to be done by the executive directors and officers of the company. Needless to say, this has to be assessed in context of the peculiar facts of each case.



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26. Creeping up an escalating liability to Chairpersons of large conglomerates/companies for cheques issued in day-to-day affairs of the business of a company would unfairly and unnecessarily expand the provisions of vicarious liability under the provisions of the Negotiable Instruments Act. Particularly, since no prejudice is caused to the complainant in this case as the signatory of the cheque and admittedly the Managing Director of the accused company is already arrayed as A-2 and is continued to be part of proceedings. It does not need to be reiterated, as has been held by various decisions, including the ones noted above, that the High Courts have the power to quash proceedings under section 138 NI Act qua those accused who do not fall within the rubric of vicarious liability as now defined and refined by various decisions of the Hon'ble Supreme Court."

37. Reliance of the petitioner on ***Varsha Engineering Pvt. Ltd.*** (Supra), also cannot be accepted as the concept of agency would have no application to Sections 138 and 141 of the NI Act.

38. In view of the above, the respondent no. 3 could not have been proceeded against only on the allegation that it is a group company of the accused no. 1, which is the drawer of the cheque in question.

39. As far as respondent nos. 1 and 2 are concerned, the petitioner, in the complaint, alleges that respondent nos. 1 and 2 are the common Directors of the group, namely, Right Choice Group of Companies, and are responsible for the day-to-day affairs of the group including those of accused no. 1. It is further alleged that they had, along with accused nos. 2 and 3, approached the petitioner with various



investment proposals. It is alleged that it is on the instructions, *inter alia*, of respondent nos. 1 and 2, that the petitioner invested an amount of 6,00,000 AED in the accused no. 1, on the assurance of return at the rate of 26.5% per annum. It is further alleged that multiple post-dated cheques for the return of investment and the interest thereon were issued by accused nos. 1 and 3 '*with express instructions from accused nos. 2, 4, and 5*', that is, accused no. 2, respondent nos. 1 and 2 herein. The petitioner then goes on to say that 'the accused persons' made a request to the petitioner not to present the cheques. It is further stated that accused nos. 1 and 3 '*on express instructions of accused nos. 2, 4, and 5*' issued 10 fresh post-dated cheques towards the repayment of interest. It is stated that the cheques in question were presented by the petitioner for encashment on express instructions from, *inter alia*, respondent nos. 1 and 2 herein. The petitioner, in the complaint, states as follows:

"19. That the Accused No. 3 in connivance with accused No.2, 4, 5 and 6 herein dishonestly and with the mala fide intent of escaping the payment of legitimate dues of the Complainant issued the cheques in question and made the Complainant believe that the said cheques would be honoured upon presentation. That the said cheques were issued by the accused No.3 on clear and express instructions of Accused No.2, 4 and 5 knowing well, that the account maintained by it does not have the requisite balance to honour the payment for which the cheques were issued. Thus, the accused persons have cheated the complainant and caused wrongful losses to the Complainant and wrongful gains to itself. Copy of the documents evidencing the link of the accused entities with each other are



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annexed herewith as ANNEXURE C-13 (COLLY)."

40. The learned ASJ in the Impugned Order records that it is only accused nos. 2 and 3 who are the Directors of the accused nos. 1. It held that there is no document to show that respondent no.1 and 2 are the Directors of accused no.1, that is, Right Choice Marketing Solution JLT. The learned ASJ held as follows:

"15 There is nothing on the record that revisionist No. 3 and accused no. 1 are the same entity. There is nothing on the record that revisionist no. 1 and 2 are the Directors of accused no. 1. There is nothing on record that revisionists no. 1 and 2 were in control or incharge or responsible for the conduct of the business of accused no. 1. The proceedings in such matter are in persona and cannot be used to foist on some other person who under the statute is not liable for the commission of such offence."

41. Even in the present petition, the petitioner has placed no document on record to show that the respondent nos. 1 and 2 were the Directors of the accused no. 1, which is the drawer of the cheque. There is no averment in the complaint that the respondent nos. 1 and 2 were persons in-charge of or responsible to the accused no.1 for the conduct of its business. Apart from stating that the respondent nos. 1 and 2 have acted in connivance with accused nos. 1 and 3 or that the accused no. 3 has acted on their express instructions, there is no material placed on record by the petitioner for the said averment.

42. The only reliance of the petitioner even in the present petition is on the alleged LinkedIn profile of respondent no. 1, which *inter alia*



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claims respondent no. 1 to be the Director of the Right Choice Group. However, accused no. 1 is not the Right Choice Group but Right Choice Marketing Solutions JLT.

43. The complaint is also lacking in the basic averments of Section 141 of the NI Act against the respondent nos. 1 and 2, as have been culled out by the Supreme Court in ***S.P. Mani and Mohan Diary*** (Supra) for fastening liability under Section 138 of the NI Act on persons other than the Company. Therefore, even tested on the parameters of Section 141 of the NI Act, as explained by the Supreme Court in ***S.P. Mani and Mohan Diary*** (Supra), respondent nos. 1 and 2 cannot be fastened with the vicarious liability of the dishonour of the cheque issued by accused no. 1 under the signatures of accused no. 3.

44. In ***Sunrise Oleo Chemicals Ltd.*** (Supra), the Court was considering a case where the second accused was the Managing Director of M/s Sunrise Oleo Chemicals Ltd., which owed the debt, and was also the signatory of the cheque in question, which had been issued from the account maintained by Sunrise Oils Mills Limited. It was held that the second accused was, therefore, representing both companies and was the Managing Director of both the companies. Even when the notice was issued post the dishonour of the cheque, Sunrise Oleo Chemicals Ltd., in its reply signed by the second accused, raised no objection on the premise that it is not the drawer of the cheque. It was on those peculiar facts that the Court held that the first accused company cannot escape liability on the premise that it is not the maker or drawer of the cheque.

45. In ***Amit H. Jhaveri & Ors.*** (Supra), the Court was considering



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whether a financial assistance obtained by a person through an unlawful transaction and where no documents were executed, proceedings before the DRT was maintainable. The said judgment can have no application to the facts of the present case wherein statutory liability for dishonour of the cheque is created on the drawer of the cheque, and where the drawer of a cheque is a company, vicariously on the persons in-charge of or responsible for the conduct of the company, or on officers of the Company because of whose neglect or connivance the offence is committed by the Company.

Conclusion

46. In light of the above, I do not find any merit in the challenge made by the petitioner in the present petition.
47. Accordingly, the petition is dismissed.
48. There shall be no orders as to costs.

NAVIN CHAWLA, J

APRIL 22, 2024/rv/RP/AS