



2024:DHC:8471



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

Date of decision: 29th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 4575/2022 & CRL.M.As. 18566/2022, 21260/2023**

SHELLY NARANG

.....Petitioner

Through: Mr. Shiv Charan Garg, Mr. Imran Khan, Ms. Jahanvi Garg, Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) AND ANR.

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.
Mr. Akul Mehandru and Mr. Vaibhav Mehal, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court challenging the Order dated 30.03.2019, passed by the learned Metropolitan Magistrate, Rohini Courts, in Complaint Case No.10617/2017, issuing summons against the Petitioner herein.
2. It is pertinent to mention that the present proceedings arise from Complaint Case No.10617/2017, filed by the Respondent No.2 herein under Section 138 NI Act against the Petitioner herein (Accused No.3 in the Complaint) and Respondents No.3 (Accused No.1 in the Complaint) & 4 (Accused No.2 in the Complaint) herein. In the Complaint it is stated that the Accused No.1, i.e. the Respondent No.3 herein/Company, is involved in financial services. It is stated that the Petitioner herein and Respondent No.4 herein are the Directors of the Company. It is stated that after the demise of



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Mr. Nimit Kumar, who was the signatory director to the cheque in question, the Petitioner herein and the Respondent No.4 are jointly responsible for day to day affairs of the business of the Company and are responsible for all the financial transactions and payments for and on behalf of the company besides being personally involved in making representations to the Complainant for clearing the dues/debts of the Company. It is stated that the Company, acting through its authorized representative had entered into an agreement dated 20.04.2015, whereby the Complainant was induced into disbursing loan of Rs.10,00,000/- to the Company at an interest of 3% per month. It is stated that a cheque bearing No.000621, drawn on HDFC Bank, 3 NRI Complex, Mandakini, Alaknanda, New Delhi, was issued by the Company to the Respondent No.2/Complainant in discharge of its liability. It is stated that it was agreed that the said cheque would be realizable by giving 60 days notice upon failure on the part of the Company to disburse the agreed monthly interest or on failure to return the loan amount as and when demanded by the Complainant. It is stated that in November-December, 2016, there was failure on the part of the Company to return the interest amount and thereby the Complainant was entitled to recall the loan amount as per the loan agreement.

3. It is stated that notice was sent to the Company on 28.12.2016 seeking recall of the loan amount. It is stated that despite the notice, the Company did not return the amount. It is stated that since the amount was not paid as per the terms of the agreement, the cheque in question was presented, however, the same was returned unpaid with endorsement "account blocked". It is specifically averred in the Complaint that the complainant visited the Petitioner and Respondent No.4 who undertook to take remedial measures. It is stated that on the assurance of the Petitioner and the



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Respondent No.4, the Respondent No.2 re-presented the cheque in question. However, it was again returned unpaid with endorsement “account blocked”. It is stated that the requisite notice under Section 138 of the NI Act was issued on 27.06.2017 for payment of the loan amount. It is stated that the notice under Section 138 NI Act was sent to the last known addresses of the Petitioner and the Respondents No.3 & 4. However, the notices were returned with remark “left” and “refused” respectively.

4. Thereafter, the Petitioner herein filed the complaint under Section 138 NI Act. Vide Order dated 30.03.2019, summons were issued to the Petitioner herein by the learned Metropolitan Magistrate. It is this Order which is under challenge in the present Petition.

5. The principal contention raised by the Petitioner is that she is the housewife and has never dealt with the affairs of the Company and that the cheque in question was not signed by her and she was not the authorised signatory of the Company. It is stated that Mr. Nimit Sachdeva, the Managing Director of the accused Company, passed away on 07.11.2016 and the Petitioner is not concerned with the Company. It is stated that she is only a Director of the accused Company but has never dealt with the affairs of the Company. The Petitioner also contends that she has also filed a complaint stating that she never gave her digital signatures or any documents for opening a bank account with the OBC Bank and the HDFC Bank. She further states that she has never signed any documents or given her consent to become the Director of the company. Petitioner places reliance on Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1; Ashok Shewakramani v. State of A.P., (2023) 8 SCC 473, National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330; S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89, etc. to



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contend that there are no requisite averments in the complaint against the Petitioner and that the Petitioner not being the signatory of the cheque in question cannot be made liable for the offence under Section 138 of the NI Act. It is further stated that specific averments have not been made against the Petitioner in the complaint as to how is she responsible for the conduct and business of the company and in the absence of any specific averments, the Petitioner cannot be held vicariously liable. It is further stated that the Petitioner is not a signatory to any of the Loan documents, Security documents of the transaction in question and the cheque which was dishonoured.

6. *Per contra*, learned Counsel for the Respondent No.2 states that there are only three Directors in the accused Company and it cannot be said that only two Directors were responsible for the day-to-day affairs of the Company and the Petitioner was not aware of anything. He further states that the fact that the Petitioner herein was not responsible for the conduct of business of the accused Company can only be proved in Trial and the summoning Order cannot be quashed on these averments.

7. Heard the Counsels for the parties and perused the material on record.

8. It is well settled that while exercising its jurisdiction under Section 482 Cr.P.C, the High Court must be extremely cautious and slow in quashing a complaint at an initial stage. It is now well settled that the power of quashing should be exercised sparingly and that too in the rarest of rare cases and courts must not embark upon enquiry as to the reliability or genuineness or otherwise of the allegations made in the Complaint unless the allegations in the complaint are so patently absurd and inherently improbable so that no prudent person can reach such a conclusion.

9. In Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque,



(2005) 1 SCC 122, the Apex Court has held as under:

“11. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

“102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2)



of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course,



no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 2 SCR 336 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the



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proceedings. [See Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304 : AIR 1999 SC 1044] , State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503 : AIR 1999 SC 3596] and Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]

10. The Apex Court in S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685, after examining the issue as to who would be held vicariously liable for the offence of the company has held that Section 141 extends such criminal liability in case of a company to every person who at the time of the offence, was in charge of and was responsible for the conduct of the business of the company and such a person is vicariously liable to be held guilty for the offence under Section 138 and punished accordingly. The proviso to Section 141 of the NI Act states that the officer who is being accused of committing an offence under Section 138 of the NI Act as being responsible and in-charge of the company can escape the punishment if he/she proves that the offence was committed without his/her knowledge or that he/she was not responsibly for the affairs of the company.

10. In Commr. v. Velliappa Textiles Ltd., (2003) 11 SCC 405, the Apex Court introduced the concept of ego and alter ego in relation to the employee and the employer corporation and has held as under:

“56. In order to trigger corporate criminal liability for



the actions of the employee (who must generally be liable himself), the actor-employee who physically committed the offence must be the ego, the centre of the corporate personality, the vital organ of the body corporate, the alter ego of the employer corporation or its directing mind. Since the company/corporation has no mind of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. To this extent there are no difficulties in our law to fix criminal liability on a company. The common law tradition of alter ego or identification approach is applicable under our existing laws.”

11. In Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581, the Apex Court has held as under:

“7. ... Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted.”

12. In K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48, the Apex Court discussed the principles of vicarious liability of the officers of a company in respect of dishonour of a cheque and has held as under:



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

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

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

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



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

13. The Apex Court in S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685, has summarised the position as to who can be held vicariously liable for the offence of the Company and has held as under:

“50. The principles discernible from the aforesaid decision of this Court in Ashutosh Ashok Parasrampuriya [Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd., (2023) 14 SCC 770 : 2021 SCC OnLine SC 915] are that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made out against the particular Director/partner provided the Director/partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt.” (emphasis supplied)

14. As observed by the Apex Court in SP Mani (supra) that unless the Director or the Partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt, the High Court should not quash the proceedings under Section 482 Cr.P.C. The master data of the accused company shows that the Petitioner is a Director in the



Company. There are only three Directors in the accused company and the Petitioner, apart from stating that she has nothing to do with the affairs of the company has not been able to adduce any unimpeachable and incontrovertible evidence beyond suspicion and doubt to prove the same. The second contention raised by the Petitioner is that there are no specific averments against the Petitioner in the Complaint. In S.P. Mani (supra), the Apex Court, after considering a number of judgments, has held as under:

“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. 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.

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 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.

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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15. At this juncture, it is pertinent to extract the Relevant portion of the Complaint and the same reads as under:

“2. That the accused no. 1 herein is a company involved in financial services. That the accused no. 2 & 3 are the Director of accused no. 1 and after demise of Mr. Nimit Kumar (signatory director to cheque), uudd the accused Nu. 2 & 3 are jointly responsible for day to day affairs of the business of the accused no. 1 and responsible for all the financial transaction and payments for and on behalf of the company besides being personally involved in making representations to complainant for clearing the dues/debts of the accused NO.1 company.

*5. As per the terms of the agreement, since the cheque bearing No.000621 drawn on HDFC Bank had become realizable, the complainant presented the same for encashment with his banker. Canara Bank, Sector-J, Rohini, New Delhi-85, however the same was return unpaid being blocked. **Upon a personal visit to the accused No.2 & 3, the accused undertook to take a remedial measure and convinced the complainant to represent the cheque again after sometime.**”*

(emphasis supplied)

16. As stated above, the Petitioner herein is a Director of the accused Company. In the Master Data, the Petitioner has not been shown as an independent Director or a Non-Executive Director or a Deputy Director, who can be said to be not responsible for the conduct of day-to-day affairs of the company. This Court is of the opinion that when there are only three Directors in the Company, it cannot be said that the Petitioner herein, who is one of the three Directors of the company, is not responsible for the day-to-day affairs of the company. The contentions raised by the Petitioner is a



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matter of trial and at this juncture, this Court is not inclined to quash the summoning Order in the absence of any unimpeachable and incontrovertible evidence beyond suspicion and doubt that the Petitioner herein was not responsible for the day-to-day affairs of the accused Company.

17. In view of the above, the Petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 29, 2024

Rahul