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

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Reserved on: 12.12.2023
Pronounced on: 20.03.2024

+ **CRL.M.C. 5777/2023 & CRL.M.A. 21738/2023**

DHEERAJ PAHWA Petitioner

Through: Mr. Deepender Hooda & Mr.
A.S. Tiwari, Advocates.

versus

STATE (GOVT OF NCT DELHI CRIMINAL)
& ANR. RespondentsThrough: Mr. Atul Kumar, Ms. Sweety
Singh, Ms. Archana Kumari &
Mr. Rahul Pandey, Advocates
for R-2.+ **CRL.M.C. 7208/2023 & CRL.M.A. 26876/2023**

SH. SAURABH SETHI Petitioner

Through: Mr. Arpit Verma, Mr.
Chanakya Gupta & Ms.
Nandini Chadha, Advocates
(through video-conferencing).

versus

THE STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. Atul Kumar, Ms. Sweety
Singh, Ms. Archana Kumari &
Mr. Rahul Pandey, Advocates
for R-2.



CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petitions under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') have been instituted on behalf of the petitioners, seeking quashing of the criminal complaint case no. 1498/2019, titled as "*Ankit Sood Vs. Yumm Bites Foods and Hospitality Pvt. Ltd. & Ors.*", pending before the learned Metropolitan Magistrate, District Court Rohini (North West), New Delhi, qua the petitioners.

2. Brief facts of the case, as per the complaint filed under Section 138 of Negotiable Instruments Act, 1881 ('NI Act'), are that the complainant i.e. Sh. Ankit Sood is proprietor of 'M/s Ankit Sood and Company' which is engaged in supply of food and vegetables, and the accused company i.e. 'Yumm Bites Foods and Hospitality Pvt. Ltd.' is also engaged in the similar business. It is alleged that the accused company had entered into business relations with the complainant in the year 2015 for supply of fruits and vegetables on a daily basis. It is stated that the bills of the goods supplied were sent to the accused on weekly basis. As per the complaint, initially, the accused was regular in making payments but eventually, the accused had started defaulting in making the payments and from February, 2016 till August, 2017, the complainant had supplied goods worth Rs. 26,81,253/-, however, the accused had paid only Rs. 17,23,793/-



out of the same. It is alleged that in the month of September, 2018, in order to discharge the remaining liability, the accused had issued a cheque bearing no. 241976 dated 05.09.2018 for Rs. 9,57,460/- drawn on IDBI Bank, and had assured the complainant that the cheque would be honoured upon its presentation. However, when the complainant had presented the same for encashment with its banker, the cheque had got dishonoured *vide* cheque returning memo dated 25.10.2018 with the remarks “funds insufficient”. Thereafter, the complainant had issued statutory legal notice dated 22.11.2018 to the accused persons, however, they had neither sent any reply to the same nor had made any payment. Thereafter, the present complaint under Section 138 of NI Act was filed against the accused company arraigned as accused no. 1, and its Directors i.e. Sh. Dheeraj Pahwa as accused no. 2, Sh. Nikhil Mehta as accused no. 3, and Sh. Saurabh Sethi as accused no. 4.

3. The learned Magistrate *vide* order dated 03.09.2019 had summoned the accused persons. Appearance on behalf of accused no. 3 Sh. Nikhil Mehta was marked on 25.11.2019 before the learned Magistrate. However, the summons issued against the accused no. 4 i.e. Sh. Saurabh Sethi (petitioner herein) had been received back unserved. Moreover, due to non-appearance of accused no. 2 i.e. Sh. Dheeraj Pahwa (petitioner herein), bailable warrants were issued against him.

4. Learned counsel appearing on behalf of petitioner Sh. Dheeraj Pahwa, argues that the petitioner had resigned and had ceased to be a



Director of the accused company w.e.f. 17.07.2017 and thereafter, he had no concern with the day-to-day affairs and decisions of the company qua its business transactions. In this regard, this Court's attention has been drawn towards the resignation letter dated 17.07.2017 as well as Form No. DIR-12 wherein the petitioner is shown to have ceased as Director of Company w.e.f. 17.07.2017. It is stated that the petitioner is not aware of the circumstances and the purpose for which the cheque in question had been issued. It is also stated that the cheque has neither been signed by the petitioner nor is the petitioner aware of the amount if any or at all was payable to the complainant, since the cheque was allegedly issued in September, 2018, whereas the petitioner had already resigned in July, 2017. It is also argued that the complainant has not attributed or assigned any role to the petitioner in the entire complaint. In these circumstances, it is prayed that the summoning order and the complaint case be quashed against the petitioner.

5. Learned counsel appearing on behalf of petitioner Sh. Saurabh Sethi, argues that the petitioner had resigned and had ceased to be a Director of the accused company w.e.f. 10.08.2017 and thereafter, he had no concern with the day-to-day affairs and decisions of the company qua its business transactions. In this regard, this Court's attention has been drawn towards the resignation letter and Board Resolution dated dated 10.08.2017, as well as Form No. DIR-12 wherein the petitioner is shown to have ceased as Director of Company w.e.f. 10.08.2017. It is stated that the petitioner is not



aware of the circumstances and the purpose for which the cheque in question had been issued. It is also stated that the cheque has neither been signed by the petitioner nor is the petitioner aware of the amount if any or at all was payable to the complainant, since the cheque was allegedly issued in September, 2018, whereas the petitioner had already resigned in August, 2017. It is also argued that the complainant has not attributed or assigned any role to the petitioner in the entire complaint, and the learned Magistrate had issued summoning order on the basis of un-updated Master Data of accused company which was reflecting petitioner as its Director. In these circumstances, it is prayed that the summoning order and the complaint case be quashed against the petitioner.

6. Learned counsel for the respondent no. 2, on the other hand, argues that the issues raised by the petitioners in the present petitions can only be decided during the course of trial. It is stated that even if the petitioners have resigned prior to the dishonour of cheque in question, the complainant had been supplying goods to the accused company for six years and the petitioners herein were the persons responsible for day-to-day affairs of the accused company during that period of time. It is also pointed out that while framing of notice under Section 261 read with Section 251 of Cr.P.C. of accused no. 3 i.e. Nikhil Mehta before the learned Trial Court on 18.08.2023, the said accused has specifically taken name of the petitioner Dheeraj Pahwa and that he used to exclusively used to look after finances in



respect of the accused company. Therefore, it is prayed that present petitions be dismissed.

7. This Court has heard arguments addressed by the learned counsels appearing on behalf of the petitioners as well as the complainant, and has perused the material on record.

8. The case set out by the petitioners, in a nutshell, is that both of them had resigned in the year 2017 from the directorship of accused company, and the cheque in question had been issued and dishonored much later i.e. in the year 2018, and therefore, the petitioners cannot be made liable for the dishonor of the cheque.

9. To appreciate the same, this Court has analysed the material including the resignation letters, Form No. DIR-12, copy of Board Resolution etc. placed before this Court by both the petitioners as well as the Trial Court Record, and an examination of the same brings forth the following important facts:

- a.* Accused persons namely Nikhil Mehta, Dheeraj Pahwa and Saurabh Sethi were the first three directors of the accused company, appointed on 04.12.2015;
- b.* The petitioner Dheeraj Pahwa had tendered his resignation from the accused company *vide* resignation letter dated 17.07.2017;
- c.* Form No. DIR-12 was filed with the Registrar of Companies *vide* which it was informed that Dheeraj Pahwa had ceased to be a director with effect from



17.07.2017, and that one Sh. Bhagwan Singh had been appointed as Additional Director/Executive Director. This Form was digitally signed by Saurabh Sethi, who was still the Director in the accused company;

- d. Thereafter, the petitioner Saurabh Sethi had tendered his resignation from the directorship of accused company *vide* resignation letter dated 10.08.2017;
- e. Board Resolution dated 10.08.2017 was passed wherein it was proposed that Ms. Sheetal Pahwa will be appointed as an Additional Director and Sh. Saurabh Sethi, Director and Sh. Bhagwan Singh, Additional Director, would cease to be a part of the company;
- f. Thereafter, Form No. DIR-12 was filed wherein Ms. Sheetal Pahwa was appointed as Additional Director/Executive Director and information regarding cessation of directorship of Saurabh Sethi as well as Bhagwan Singh, with effect from 10.08.2017, was informed to the Registrar of Companies. This Form was digitally signed by Nikhil Mehta, the Director of the accused company;
- g. The aforesaid sequence of events is also corroborated by the Master Data available on the website of Ministry of Corporate Affairs wherein Nikhil Mehta appears to be the Director of the accused company since 04.12.2015 and Ms. Sheetal Pahwa is shown as the Director of the



accused company since 10.08.2017. The records of the MCA also corroborate the date of appointment and resignation of the petitioners Dheeraj Pahwa and Saurabh Sethi which has been mentioned in the petition and argued before this Court.

10. None of the aforesaid documents placed on record by either of the petitioners have been disputed or assailed by the complainant i.e. respondent no. 2. Rather, it is the case of complainant before this Court that even if the accused persons i.e. the petitioners had resigned prior to the issuance of cheque in question, they would still be liable to face trial since the transactions in question relate to the time period when these petitioners were directors in the accused company.

11. While appreciating such contentions, this Court remains conscious of the principles laid down by the Hon'ble Apex Court in catena of judgments and in this regard, a reference can be made to the recent judgment in case of *Rajesh Viren Shah v. Redington (India) Limited* 2024 SCC OnLine SC 143 wherein the Hon'ble Apex Court has held that a director, who had resigned prior to the issuance of cheque in question, cannot be held liable under Sections 138 and 141 of NI Act. The relevant observations are extracted hereunder:

“8. We find the High Court, in the impugned order to have elaborately discussed the principles of law in regard to the quashing of such proceedings but, however, not dealt with the factual matrix. Ex facie, we find that the complainant has not placed any materials on record indicating complicity of



the present appellant(s) in the alleged crime. Particularly, when the appellant(s) had no role in the issuance of the instrument, which is evident from Form 32 (Exh.P.59) issued much prior to the date on which the cheque was drawn and presented for realisation.

9. The veracity of Form-32 has neither been disputed by the Respondent nor has the act of resignation simpliciter been questioned. As such, the basis on which liability is sought to be fastened upon the instant appellant(s) is rendered questionable.

10. The record reveals the resignations to have taken place on 9th December 2013 and 12th March 2014. Equally, we find the cheques regarding which the dispute has travelled up the courts to have been issued on 22nd March 2014. The latter is clearly, after the appellant(s) have severed their ties with the Respondent-Company and, therefore, can in no way be responsible for the conduct of business at the relevant time. Therefore, we have no hesitation in holding that they ought to be then entitled to be discharged from prosecution.”

12. Similarly, in case of *Ashoke Mal Bafna v. Upper India Steel Manufacturing and Engineering Co. Ltd.* (2018) 14 SCC 202, the Hon’ble Apex Court had quashed proceedings under Section 138/141 of NI Act against a Director who had resigned a few months prior to the dishonor of cheque.

13. Therefore, this Court has no hesitation to hold that the petitioners herein had resigned more than a year prior to the issuance of cheque in question, and thus, they cannot be roped in as accused to face trial for dishonor of a cheque which had been issued subsequent to their cessation from the accused company.

14. While observing so, it is also significant to mention that the cheque in question had not been signed by the present petitioners, but



by accused no. 3 i.e. Nikhil Mehta, who has admitted his signatures before the learned Trial Court.

15. Furthermore, this Court has also taken note of the fact that in the criminal complaint filed in the present case, only one line has been added at the end of the complaint, as para no. 13, wherein it has been written that “*accused no. 2 to 4 are responsible of day to day affairs of accused no. 1*”. This portion of complaint is extracted hereunder for reference:

provisions of IPC separately and not pressing in this complaint.
 13) That Accused No.2 to 4 are responsible of day to day affairs of Accused No.1

16. Recently in case of *Susela Padmavathy Amma v. M/s. Bharti Airtel Limited SLP (Crl.) No. 12390-12391 of 2022*, vide judgment dated 15.03.2024, the Hon’ble Apex Court has reiterated that the complainant, while filing a complaint under Section 138/141 of NI Act, has to mention and specify as to in what manner, a director of the accused company was in-charge of and responsible for the day-to-day affairs of the company, and merely because a person is a director in the company, it cannot be presumed that he was also responsible for its day-to-day affairs. The relevant observations are as under:

“12. It could thus clearly be seen that this Court has held that merely reproducing the words of the section without a clear



statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not ipso facto make the director vicariously liable.”

17. In case of *Pooja Ravinder Devidasani v. State of Maharashtra & Anr.* (2014) 16 SCC 1 also, the Hon’ble Apex Court had observed as under:

"17. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In *National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113]* this Court observed: (SCC p. 336, paras 13-14)

"13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the



company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141."

(emphasis in original)

18. In *Girdhari Lal Gupta v. D.H. Mehta* [*Girdhari Lal Gupta v. D.H. Mehta*, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162], this Court observed that a person "in charge of a business" means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see *State of Karnataka v. Pratap Chand* [*State of Karnataka v. Pratap Chand*, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, **there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.**

21. In *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* [*Sabitha Ramamurthy v. R.B.S. Channabasavaradhya*, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621], it was held by this Court that: (SCC pp. 584-85, para 7)

"7. it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. 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."

(emphasis supplied)

By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act."

(Emphasis supplied)

18. In case of *Ashok Shewakramani v. State of A.P. (2023) 8 SCC 473*, the Hon'ble Apex Court has made the following crucial observations in respect of averments to be made in a complaint filed under Section 138/141 of NI Act, qua the role of a Director:

"22.The requirement of sub-section 1 of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section 1 of Section 141 NI Act must be a 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. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of Section 141 of the NI Act.

23. **The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of sub-section 1 of Section 141 of the NI Act. The allegation that they are in charge of the company is neither here nor**



there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act.

24. Sub-section 1 of Section 141 reads thus:

"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.]"

On a plain reading, **it is apparent that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between.**

(Emphasis supplied)

19. As noted above, in the present case, one handwritten line has been added in the complaint i.e. *"accused no. 2 to 4 are responsible*



of day to day affairs of accused no. 1”, and even the complete language of Section 141 of NI Act has not been reproduced, let alone any specific detail about any role played by either of the petitioner in issuance or dishonour of cheque in question or as to how were they in-charge of or responsible for the day-to-day affairs of the accused company when the cheque in question had been issued or dishonoured. Even before the learned Trial Court, the complainant had submitted the copies of Articles of Association and Memorandum of Association of the accused company, in which the details of Directors, as they were at the time of formation of company in the year 2015, were mentioned, and the updated data of the company available in the records of Registrar of Companies or Ministry of Corporate Affairs website was not placed before the learned Trial Court.

20. In fact, as already noted above, the petitioners had resigned much prior to the issuance of cheque and the complainant has not disputed the factum of their resignations. The Director who had signed the cheque in question i.e. Nikhil Mehta (accused no. 3) continues to be the Director of the accused company till date, whereas the records show that the present petitioners had resigned in the year 2017 itself. Thus, the petitioners cannot be made liable under Section 138/141 of NI Act, in such facts and circumstances.

21. Therefore, for the reasons recorded hereinabove, the present petitions are allowed. Consequently, the proceedings pending against



the petitioners in relation to Complaint Case No. 1498/2019 are quashed and set aside.

22. The present petitions are accordingly disposed of.

23. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 20, 2024/at