



2024:DHC:2805



\$~33

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 05.04.2024***

+ CRL.M.C. 6365/2022 & CRL.M.A. 24850/2022

NAVEEN KUMAR

..... Petitioner

Through: Mr.Rishi Sehgal, Mr.Midhun
Aggarwal, Mr.Himanshu
Ahuja, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Shoaib Haider, APP.
Mr.Sanjay Chhabra, Mr.Satish
Choudhary, Mr.Sugndh
Virmani, Advs. for R-2.
Mr.Avinash Das, Mr.Nikhil
Yadav, Adv. for R-4 to 7.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of the Complaint Case, being CC No.2733/2018, titled as ***Nath Paper Pvt. Ltd. vs. Prabhat Containers Pvt. Ltd. & Ors.***; the order dated 04.07.2018 passed by the learned Metropolitan Magistrate, East, Karkardooma Courts (hereinafter referred to as the 'Trial Court') on the above complaint, summoning *inter alia* the petitioner as an accused for an offence under Section 138 of the Negotiable



2024:DHC:2805



Instruments Act, 1881 (in short, 'NI Act'); and the order dated 27.10.2021 passed by the learned Trial Court, whereby the notice under Section 251 of the Cr.P.C. has been framed against the petitioner.

Factual Background

2. The above complaint has been filed by the respondent no.2 herein under Section 138 of the NI Act *inter alia* against the petitioner herein, who has been arrayed as accused no.6 in the said complaint.

3. It is alleged therein that the respondent no.2 is a Private Limited Company engaged in the business of trading of Kraft paper which is used for manufacturing of Corrugated Board, Boxes and Cartons etc.. It is alleged that the accused no.1, that is, Prabhat Containers Pvt. Ltd. is also a company registered under the Companies Act, 1956. The accused no.6 in the complaint is arrayed as the director and the authorized signatory of the cheque in question of the accused no.1.

4. It is stated that the accused no.1 is doing the business of manufacturing of Corrugated Board, Boxes and Carton etc. It is further the case of the complainant/respondent no.2 that oral purchase orders were placed by the accused no.1 on the complainant company, whereunder the complainant company supplied Kraft paper in reels through transport. Thereafter, various Sale Invoices were generated against the accused no.1, details whereof are given in paragraph 8 of the complaint. The accused had handed over a cheque for the total outstanding amount of Rs.39,55,664/-, however, the same was undated. The respondent no.2 raised an objection against the same.



2024:DHC:2805



The accused assured the respondent no.2 that as soon as the funds are arranged in the bank account, they will be informing the respondent no.2, and shall write the date on the cheque in question. It was in May, 2018 that the accused confirmed that the funds have been arranged and they wrote the date of 10.05.2018 on the cheque in question and asked the respondent no.2 to present the said cheque. The same was, however, returned dishonored with remarks “*Funds Insufficient*”.

Submissions of the learned counsel for the petitioner

5. The learned counsel for the petitioner submits that the petitioner had resigned from the accused no.1 company on 01.11.2017. In support, he places reliance on the copy of the Board Resolution dated 01.11.2017, Form No.DIR-12 of the said company filed before the Registrar of Companies on 02.11.2017, and a copy of the Board Resolution dated 02.11.2017 removing the petitioner as an authorized signatory of the bank account of the accused no.1 company.

6. He submits that as on and from 01.11.2017, the petitioner had no role to play in the affairs and management of the accused no.1 company. He submits that, therefore, the petitioner cannot be made liable for the dishonour of the cheque of the accused no.1 company post 01.11.2017.

7. He submits that it appears that the accused no.1 company, in connivance with other accused, has handed over to the complainant the cheque which was earlier signed by the petitioner and lying with the accused no.1 company, that is, the respondent no.2 post resignation of the complainant from the accused no.1 company,



2024:DHC:2805



thereby misusing the said cheque. He further submits that a complaint in this regard has also been made by the petitioner with the police.

Submissions of the learned counsel for the Respondent

8. On the other hand, the learned counsel for the respondent no.2 / complainant submits that the cheque handed over to the respondent no.2 bears the signatures of the petitioner. He submits that the petitioner is equally liable for the dishonour of the cheque. He submits that whether the petitioner resigned from the company and was removed as its authorized signatory, are matters of internal affairs of the accused company.

9. He submits that as far as the respondent no.2 is concerned, the cheque was handed over by the accused no.1 company. It bears the signatures of the petitioner and it is for the petitioner to explain how this cheque came in the possession of the accused no.1 company.

10. He submits that it appears that the petitioner has generated this false narration of his resignation in order to deceive the respondent no.2. He submits that even otherwise, these are the matters of evidence and for the above reason, complaint cannot be quashed at this stage.

Analysis and Conclusion

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

12. In *S.P. Mani & Mohan Dairy v. Snehalatha Elangovan*, (2023) 10 SCC 685, the Supreme Court after taking note of the earlier



judgments, including the judgment in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89, has explained the contours of Section 141 of the NI Act for invoking vicarious liability of a Director in case of a company, as under:

“25. Evidently, the gist of Section 138 is that the drawer of the cheque shall be deemed to have committed an offence when the cheque drawn by him is returned unpaid on the prescribed grounds. The conditions precedent and the conditions subsequent to constitute the offence are drawing of a cheque on the account maintained by the drawer with a banker, presentation of the cheque within the prescribed period, making of a demand by the payee by giving a notice in writing within the prescribed period and failure of the drawer to pay within the prescribed period. Upon fulfilment of these requirements, the commission of the offence which may be called the offence of “dishonour of cheque” is complete. If the drawer is a company, the offence is primarily committed by the company.

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.

xxxx

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.”



2024:DHC:2805



(Emphasis Supplied)

13. In the present case, it is not denied by the petitioner that the cheque that has been presented by the respondent no.2 and has been dishonoured, was not signed by the petitioner himself. How this cheque came in the possession of the accused no.1 and whether the accused no.1 was entitled to hand over the said cheque to the respondent no.2/complainant, are matters of trial. These cannot be pre-judged only on the say so of the petitioner at the present stage.

14. I must herein note the submission of the learned counsel for the respondent no. 2, that apart from sending a complaint to the police regarding the alleged misuse of the cheque signed by the petitioner, through speed post, the petitioner has not taken any follow-up action.

15. The learned counsel for the respondent no. 2 has submitted that, therefore, the purported resignation of the petitioner from the Directorship of the accused no. 1 company is mere a charade created by the petitioner. These submissions are best to be left to be determined by the learned Trial Court on appreciating the evidence that may be led by the parties. The complaint cannot be short-circuited against the petitioner at this stage.

16. Therefore, I find no merit in the present petition. The same is accordingly dismissed. The pending application is also dismissed being infructuous. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 5, 2024/Arya/ss

[Click here to check corrigendum, if any](#)