



2024:DHC:7418



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

Date of decision: 24th SEPTEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 6415/2022 & CRL.M.A. 25042/2022**

SANGEETA CHADHA

.....Petitioner

Through: Mr. Rohan Jaitly, Mr.Bhuvanesh
Sehgal, Mr.Akshay Sharma, Mr.Dev
Pratap Shahi, Advs

versus

NEW INDIA COLOR COMPANY LIMITED

.....Respondent

Through: Ms.Kajal Chandra, Adv

+ **CRL.M.C. 6416/2022 & CRL.M.A. 25044/2022**

SANGEETA CHADHA

.....Petitioner

Through: Mr. Rohan Jaitly, Mr.Bhuvanesh
Sehgal, Mr.Akshay Sharma, Mr.Dev
Pratap Shahi, Advs

versus

NEW INDIA COLOR COMPANY LIMITED

.....Respondent

Through: Ms.Kajal Chandra, Adv

+ **CRL.M.C. 6417/2022 & CRL.M.A. 25046/2022**

NIDHI BERI CHADHA

.....Petitioner

Through: Mr.Rohan Jaitly, Mr.Bhuvanesh
Sehgal, Mr.Akshay Sharma, Mr.Dev
Pratap Shahi, Advs

versus



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NEW INDIA COLOR COMPANY LIMITEDRespondent
Through: Ms.Kajal Chandra, Adv

+ **CRL.M.C. 6418/2022 & CRL.M.A. 25048/2022**

NIDHI BERI CHADHAPetitioner

Through: Mr.Rohan Jaitly, Mr.Bhuvanesh
Sehgal, Mr.Akshay Sharma, Mr.Dev
Pratap Shahi, Adv

versus

NEW INDIA COLOR COMPANY LIMITEDRespondent
Through: Ms.Kajal Chandra, Adv

+ **CRL.M.C. 6552/2022 & CRL.M.A. 25523/2022**

SANGEETA CHADHAPetitioner

Through: Mr.Rohan Jaitly, Mr.Bhuvanesh
Sehgal, Mr.Akshay Sharma, Mr.Dev
Pratap Shahi, Adv

versus

NEW INDIA COLOR COMPANY LIMITEDRespondent
Through: Ms.Kajal Chandra, Adv

+ **CRL.M.C. 6553/2022 & CRL.M.A. 25525/2022**

NIDHI BERI CHADHAPetitioner

Through: Mr.Rohan Jaitly, Mr.Bhuvanesh
Sehgal, Mr.Akshay Sharma, Mr.Dev
Pratap Shahi, Adv



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versus

NEW INDIA COLOR COMPANY LIMITEDRespondent
Through: Ms. Kajal Chandra, Adv

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petitions have been filed under Section 482 Cr.P.C for setting aside of the Summoning Order dated 26.05.2022 and quashing of the Criminal Complaint bearing No. 3425/2021 pending before the Ld. MM, Tis Hazari Court.
2. Since the facts, allegation and parties in the present petitions i.e., CRL.M.C. 6415/2022, CRL.M.C. 6416/2022, CRL.M.C. 6417/2022, CRL.M.C. 6418/2022, CRL.M.C. 6552/2022, CRL.M.C. 6553/2022 are identical and the issue involved is also the same, with the consent of the parties, all the petitions are being disposed by a common Judgment.
3. The facts, in brief, leading to the filing of the present petitions are as under:
 - a) The Petitioners in the present Petition are the wives of directors in the Company M/s RBT Pvt Ltd. The Respondent/complainant i.e., New India Color Company Limited, is a company incorporated under provisions of the Company Act, 1956 and is a leading distributor for Dyes and Chemicals for the Textile Industry. The Respondent Company has supplied certain materials to M/s RBT Private Limited, the Company in which the Petitioners' husbands are directors. The Company, M/s RBT Private Limited, had approached the Respondent



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Company to supply various materials for day-to-day running of the Petitioners' Company. Pursuant to various purchase orders, the Complainant's Company had supplied various material/products as required by the M/s RBT Private Limited. The M/s RBT Private Limited had subsequently raised invoices which were accepted without raising any dispute regarding the quantity and quality or the invoicing of the said products.

- b) The Complainant Company had raised a net debt of Rs. 62,90,019/- towards the company M/s RBT Private Limited. In partial discharge of the said admitted liability, the company, M/s RBT Private Limited, had issued three cheques favouring the Complainant's Company bearing Cheque Nos.020446 for sum of Rs.20 lakhs, 020447 for a sum of Rs.10 lakhs both dated 24.12.2019 and third cheque bearing No.032205 for a sum of Rs.15 lakhs dated 21.02.2020, all drawn on South Indian Bank, Faridabad.
- c) As per the specific instructions of the Company, M/s RBT Private Limited, the Complainant Company on 03.03.2020, deposited the aforesaid cheque bearing No.020447 for a sum of Rs.10 lakhs in their account with HDFC Bank, Khari Baoli, Delhi. However, on 04.03.2020, the said Cheque No 020447 was dishonoured by the said Bank on the ground "Account Blocked". It is pertinent to mention the the other two cheques were also dishonoured. On 07.03.2020, after receiving the dishonoured cheque and the memo of dishonour from the bank, the Complainant informed the Company, M/s RBT Private Limited, of the same. M/s RBT Private Limited replied the Respondent Company, informing them that they were expecting a



payment from a customer and that they should wait for some days for the Company to make their good that debt. However, it is pertinent to mention that no action was taken by M/s RBT Private Limited.

- d) The Complainant Company had issued to the Company, M/s RBT Private Limited, a legal demand notice dated 04.03.2021 where they were called upon to make the amount of Rs.10 lakhs within 15 days from the date of the receipt of the said notice.
 - e) The period of 15 days to make the payment expired on 24.03.2021 and M/s RBT Private Limited did not discharge the liability creating an offence punishable under Section 138 read with 142 of the Negotiable Instrument Act, 1881 (*hereinafter referred to as "NI Act"*).
 - f) On 10.05.2021, a complaint was filed before Ld. learned Metropolitan Magistrate, Tis Hazari Court, Delhi and subsequently on 26.05.2022, summons in the complaint were issued against the Petitioners herein. This Order summoning the Petitioner along with the Criminal Complaint No. 3425/2021 is under challenge in the present petitions.
4. Notice was issued on 06.12.2022 in the present petitions. Reply has been filed.
5. Learned Counsel for the Petitioner vehemently contends that the Respondent has failed to establish any links between the Company, M/s RBT Private Limited, and the Petitioners. He further contends that the Petitioners were not the Directors of the Company and have no relation whatsoever with the running of the Company and for reasons only known to the Respondents, the Petitioners have been arrayed as accused in the present complaints. He further contends that no criminal liability can be fostered on the Petitioners as the cheque in question do not bear the signature of the



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Petitioners and the Petitioners are nowhere associated with the running of the debt bearing Company.

6. *Per contra*, learned Counsel for the Respondent states that the cheque in question was issued by the accused persons in discharge of their liability in lieu of goods supplied by the Respondent Company. She further states that the Petitioners continue to be the managers of M/s RBT Private Limited and even at the time of issuance of cheque, the Petitioner was a Director and the Petitioner was himself a manager of the M/s RBT Private Limited and stresses on the point that when the offence occurred, the Petitioner was managing the day-to-day affairs of the M/s RBT Private Limited.

7. Heard learned Counsel appearing for the Parties and perused the material on record.

8. The short question which arises for consideration is as to whether the Petitioner herein, who have been described as managers and are the wives of the Directors, can be arrayed as accused or not. The Principal accused is the company, i.e. M/s RBT Pvt. Ltd., and Accused No.2, 3, 4, 5 & 6 are the Directors of the Accused No.1 company; Accused No.7 & 8 are the Petitioners herein, who have been described as Managers. Paragraph No.3 of the complaint, which brings out the averments against the accused and their role in the Accused No.1 Company, reads as under:

“3. THAT the accused No. 1 is a company incorporated under the provisions of the Companies Act, 2013, having its registered office at Khasra No.48/21, 47/25 Village Dhatir, Tehsil & District Palwal, Faridabad-121 102 Haryana and also at C/o Panex Overseas, B-63, Okhla Industrial Area, Phase- I, New Delhi-110:020. The Accused No. 2 to 6 are the directors of the accused No. 1 Company and the



Accused No. 7 and 8 are the managers of the accused No.1 Company. All of them are responsible for the business of the accused No.1 Company and are actively involved in the day to day affairs of the accused No.1 Company and all of them have been dealing with the complainant company from time to time.”

9. There is no averment in the Complaint that the Petitioners herein were involved in the transaction against which the cheques in question were issued. There is no averment in the complaint as to what is the role of the Petitioners herein in the functioning of the company. The Petitioners herein have only been described as Managers and the Complaint only discloses that the Accused No.7, i.e. Nidhi Beri Chadha, who is the wife of Mr. Rajan Chaddha, i.e. Accused No. 3 in the complaint & Accused No.8, i.e. Sangeeta Chaddha, who is the wife of Rajiv Chaddha, i.e. Accused No.4 in the Complaint, are the Managers in the Accused No.1 Company. In the absence of any averment regarding the involvement of the Petitioners herein in the day-to-day functioning of the Company, the issue as to whether the Complaint against the Petitioners herein could be sustained or not.

10. It is well settled that there is no vicarious liability in the criminal law. Section 141 of the NI Act has an explanation which postulates that if the persons 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. Section 141(2) of the NI Act stipulates that if 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 then 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.

11. Other than showing the Petitioners herein as Managers in the complaint, there is no specific averment regarding their specific role in the functioning of the Accused No.1 Company. It has also not been mentioned in the complaint that the Petitioners have ever interacted with the Petitioners herein in the transaction or not. The nature of averments that are required for a Director would also apply to a Manager.

12. The Apex Court in Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1, has observed as under:

“17. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the NI Act. 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.

22. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

23. In Gunmala Sales (P) Ltd. [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Cri) 580 : (2015) 1 SCC (Civ) 433] on which the learned counsel for the respondents has heavily relied, this Court at para 34.3 held: (SCC p. 127)

“34.3. In the facts of a given case, on an overall



reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactic, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out.”(emphasis supplied) ”

13. Further, the Apex Court in Ashok Shewakramani v. State of A.P., (2023) 8 SCC 473, has observed as under:

"21. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section (1) of Section 141 are satisfied. The section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the



conduct of business of the Company, as well as the Company shall be deemed to be guilty of the offence under Section 138 of the NI Act.

22. In the light of sub-section (1) of Section 141, we have perused the averments made in the complaints subject-matter of these three appeals. The allegation in Para 1 of the complaints is that the appellants are managing the Company and are busy with day-to-day affairs of the Company. It is further averred that they are also in charge of the Company and are jointly and severally liable for the acts of Accused 1 Company. 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 of the 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.]”(emphasis supplied)

On a plain reading, it is apparent that the words “was in charge of” and “was responsible to the Company



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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.”

14. As stated earlier, what would apply to a Director should also apply to a Manager and in the present case, the Petitioners are only the wives of the Accused No.3 & 4 in the complaint. There is nothing in the Complaint which shows that there is any role of the Petitioners herein the day-to-day functioning of the company. In the absence of any specific averment against the Petitioners herein in the complaint, this Court is of the opinion that the complaint against the Petitioners cannot be sustained.

15. Accordingly, the Petitions are disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 24, 2024

hsk/vsk/Rahul