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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:24.02.2025

+ **CRL.M.C. 6104/2019 & CRL.M.A. 41453/2019**

MAHENDRA KUMAR JAIN

..... Petitioner

versus

M/S. SHIVAAN EXPORTS & IMPORTS

..... Respondent

+ **CRL.M.C. 6177/2019 & CRL.M.A. 41704/2019**

MONICA JAIN

..... Petitioner

versus

M/S. SHIVAM EXPORTS & IMPORTS

..... Respondent

Advocates who appeared in these case:

For the Petitioner(s) : Mr. Neelambar Jha, Adv.

For the Respondent(s) : Ms. Rubi Bedi, Adv. through V.C.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petitions are filed challenging the proceedings in Complaint Case No. 5312/2018 filed by the respondent under Section



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138 of the Negotiable Instruments Act, 1881 ('NI Act').

2. The complaint was filed alleging that the petitioners are the Directors and are managing the day-to-day affairs of the accused company, namely– M/s Jain MFG (India) Pvt. Ltd. It has been alleged in the complaint that a business transaction took place between the accused company and the complainant company, namely – M/s Shivaan Exports & Imports, in or around May, 2018, for the sale of import-export licenses whereby, it was agreed that 50% payment would be made by the accused company immediately on the date of invoice being issued by the complainant, and the balance 50% would be made the next day. Consequently, the complainant sold various licenses to the accused company between the period 17.05.2018 to 16.08.2018.

3. The complainant alleged that though the accused company initially made regular payments towards the invoices raised however, subsequently stopped making the payments. It is further the case of the complainant that the accused company had issued two cheques bearing no. 00119 for ₹4,02,31,000/- dated 18.08.2018 and 000179 dated 25.09.2018 for ₹3,97,00,000/- drawn on HDFC Bank. The cheque bearing no. 000179 was issued in lieu of cheque no. 000119, after deduction of ₹5,31,000/- towards discharge of liability for the payment of outstanding dues by the accused company. The said cheque no. 000179, upon presentation, was dishonoured with remarks "*Payment stopped by Drawer*" vide return memo dated 27.09.2018. Upon the failure of the accused persons to make the payment despite



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the service of notice, the respondent filed the subject complaint.

4. The learned counsel for the petitioners submitted that the learned Trial Court has mechanically passed the summoning orders without appreciating that the petitioners were not involved in the day-to-day affairs of the accused company.

5. He submitted that the cheque in question was issued on 25.09.2018, whereas the petitioners namely – Mahindra Kumar Jain and Monica Jain had already resigned from the Directorship of the accused company, with effect from 01.08.2018 and 25.08.2018 respectively, and hence, the complaint case under Section 138 of the NI Act is not maintainable against them. Resignation Form No. DIR-12, in respect of both the petitioners has been relied upon, evidencing that the petitioners had resigned from the accused company.

6. He submitted that to make the petitioners vicariously liable in terms of Section 141 of the NI Act, the complainant has to specifically plead and show that the petitioners were the persons responsible for the conduct and had control over the financial affairs of the accused company at the time of commission of the offence.

7. The learned counsel for the respondent disputed the contention of the petitioners and submitted that the petitioners were actively involved in the day-to-day affairs of the accused company. She submitted that the grounds raised are factual defense of the accused persons and the same can only be raised at the stage of trial.

8. She points out specific averments regarding the petitioners actively participating in negotiations and transactions with the



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complainant company, giving assurances to the respondent regarding the cheques in dispute being honoured on presentation.

9. At the outset, it is relevant to note that this Court can quash the summoning orders issued in NI Act cases, in exercise of its inherent jurisdiction under Section 482 of the CrPC, if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques. The Hon'ble Court in the case of ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan*** : (2023) 10 SCC 685 had discussed the scope of interference by High Court against issuance of process and also summarised the law in reference to Section 141 of the NI Act as under:

“55. Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned.

56. Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the noticee. In such circumstances what more is expected of the complainant to say in the complaint.

57. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner 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 is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of Court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner.

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.”

(emphasis supplied)

10. The learned counsel for the respondent submits that the offence, in the present case, is a continuing offence. The petitioners, at the relevant time, were the directors of the accused company and resigned just before the cheque was presented with the bank for realizing the liability. She submits that there is no document on record to show when the resignation was tendered and when it was accepted by the board of directors vide a board resolution to that effect accepting the resignation on record.

11. It is well settled that under Section 138/ 141 of NI Act, the



complainant is to make the particular averment in the complaint, to the effect that the accused person was the director of the accused company at the relevant time and is responsible for its day-to-day affairs, and therefore is vicariously liable for the offence. Thereafter, the onus of proving that at the relevant time, the accused persons were *not* the directors of the accused company and were *not* responsible for its day-to-day affairs, lies upon the accused persons and the same is matter of trial. Reliance is placed on ***Rallis India Ltd. vs. Poduru Vidya Bhusan and Ors. (13.04.2011 - SC) : MANU/SC/0422/2011*** wherein it was observed as under:

*“11. Thus, in the light of the aforesaid averments as found by us in the Criminal Complaint, we are of the considered opinion that sufficient averments have been made against the Respondents that they were the partners of the firm, at the relevant point of time and were looking after day to day affairs of the partnership firm. **This averment has been specifically mentioned by the Appellant in the complaint even though denied by the Respondents but the burden of proof that at the relevant point of time they were not the partners, lies specifically on them. This onus is required to be discharged by them by leading evidence and unless it is so proved, in accordance with law, in our opinion, they cannot be discharged of their liability.... The question as to whether or not they were partners in the firm as on 31.03.2004, is one of fact, which has to be established in trial.** The initial burden by way of averment in the complaint has been made by the Appellant.”*

*12. 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, proviso to 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 knowledge or he had exercised due diligence to prevent the commission of such offence, he will not be liable of punishment.... **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.***



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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 acquitted.”

(emphasis supplied)

12. With reference to the resignation, it is observed that the petitioners have not placed on record FORM 32, which is required to be filed with the Registrar of Companies to indicate the status of the company's directors. Furthermore, FORM NO. DIR-12, pertaining to the petitioner, Mahender Kumar Jain, was filed by the authorization of the Board of Directors on 20.08.2018, with effect from 01.08.2018. Mahender Kumar Jain contends that he had resigned even before the issuance of the first cheque dated 18.08.2018. In the opinion of this Court, this argument lacks merit. The question whether the authorization by the board has any retrospective effect on his directorship is a matter to be determined at trial. No unimpeachable evidence has been placed on record at this stage to establish that the resignation took effect before the issuance of the first cheque.

13. Similarly, concerning the resignation of the petitioner, namely, Monica Jain, it is pertinent to note that the cheque in question was issued on 18.08.2019. Monica Jain argues that she resigned before the dishonour of the cheque, i.e., on 25.08.2018, whereas the cheque was dishonoured on 25.09.2018. In the opinion of this Court, this argument is also without merit. At the time of issuance of the cheque, she was admittedly director of the company and was *prima facie* responsible



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for its business and affairs. In the absence of any unimpeachable evidence to the contrary, her liability remains.

14. It must be borne in mind that Section 141 of the NI Act is a penal provision that creates vicarious liability for the accused. The petitioners have been implicated on the premise that they were responsible for the day-to-day affairs of the company. It is also settled that every person, regardless of whether they are in charge of the company during each series of act necessary to constitute the offence under Section 138 read with Section 141 of the NI Act or not, could be proceeded against if they are in charge of the affairs of the company even during one of the omissions' that is necessary to constitute an offence under Section 138 read with Section 141 of the NI Act. This would include being in charge of the company at the time of drawing of the cheque, or the dishonour of cheque, or at the time of failure to pay after the receipt of notice. [Ref: *S P Mani and Mohan Dairy v. Dr. Snehalatha Elangovan* : (2023) 10 SCC 685]

15. Therefore, the Court can exercise its jurisdiction only upon unimpeachable and uncontroverted evidence being placed on record, however, in the absence of such evidence, the fact whether the accused person is responsible for the affairs of the accused company becomes a factual dispute, which is to be seen during trial.

16. In a situation where the accused moves the Court for quashing even before the trial has commenced, the Court's approach should be careful not to prematurely extinguish the case by disregarding the legal presumption supporting the complaint.



17. In *Malwa Cotton and Spinning Mills Ltd. v. Visra Singh Sidhu & Ors.* : (2008) 17 SCC 147, the Hon'ble Apex Court made certain observations in this regard, which reads as under:

"6. As rightly contended by learned Counsel for the appellant factual disputes are involved. What was the effect of delayed presentation before the Registrar of Companies is essentially a matter of trial. Whether respondent No. 1 had intimated the company and whether there was any resolution accepting his resolution are matters in respect of which evidence has to be led. Therefore, the High Court was not justified in its view.

8. We find that the prayers before the courts below essentially were to drop the proceedings on the ground that the allegations would not constitute a foundation for action in terms of Section 141 of the Act. These questions have to be adjudicated at the trial. Whether a person is in charge of or is responsible to the company for conduct of business is to be adjudicated on the basis of materials to be placed by the parties. Subsection (2) of Section 141 is a deeming provision which as noted supra operates in certain specified circumstances. Whether the requirements for the application of the deeming provision exist or not is again a matter for adjudication during trial.

18. The Hon'ble Apex Court in *N. Rangachari v. Bharat Sanchar Nigam Ltd.* : MANU/SC/7316/2007, observed as under:

"19. Therefore, a person in the commercial world having a transaction with a company is entitled to presume that the Directors of the company are in charge of the affairs of the company. If any restrictions on their powers are placed by the memorandum or articles of the company, it is for the Directors to establish it at the trial. It is in that context that Section 141 of the Negotiable Instruments Act provides that when the offender is a company, every person, who at the time when the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty of the offence along with the company. It appears to us that an allegation in the complaint that the named accused are Directors of the company itself would usher in the element of their acting for and on behalf of the company and of their being in charge of the company."

(emphasis supplied)



19. Reference to the observations made in *Gunmala Sales Private Ltd. Vs. Anu Mehta (supra)* are crucial to conclude the issue at hand. It was observed by the Hon'ble Apex Court that once the basic averments have been made by the complainant in the complaint, alleging that the director was in charge of the company and was responsible for the day-to-day affairs of the company, the proceedings against the accused persons may commence. To quash the proceedings by petition filed under Section 482 of CrPC, the Petitioner is to place some unimpeachable and uncontroverted evidence which is beyond suspicion or doubt.

20. The factual issues that serve as defences in the case are not appropriate for determination under the powers conferred by Section 482 of the CrPC at this stage. It is well-established that this Court should refrain from expressing any views on disputed questions of fact in proceedings under Section 482 of the CrPC, as doing so could pre-empt the findings of the trial court. The relevant paragraphs of *Gunmala Sales Private Ltd. Vs. Anu Mehta (Supra)* in this respect reads as under:

33. We may summarize our conclusions as follows:

a) Once in a complaint filed Under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed Under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.



c) 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 role of the Director in the complaint....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 tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible 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. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers Under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

21. In such circumstances, at this stage, considering the contradicting material on record, the documents adduced by the petitioners cannot be said to be of such sterling and unimpeachable quality that it merits the quashing of the summons and consequential proceedings thereof. It cannot be said that the petitioners are not responsible for the functioning of the accused company or that the complaint is bereft of the requisite ingredients so as to proceed against the petitioners.

22. Needless to say, it will be open to the petitioners to justify the arguments taken by them regarding their resignation and non-



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involvement in the during the course of the trial.

23. In view of the above, this Court finds no reason to interfere with the impugned orders.

24. The present petitions are dismissed in the aforesaid terms. Pending applications also stand disposed of.

25. A copy of this judgment be placed in both the matters.

AMIT MAHAJAN, J

FEBRUARY 24, 2025