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

Date of decision: 02nd SEPTEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 6769/2024 & CRL.M.A. 25832/2024**

VIJAY KESHAO KAMBE

.....Petitioner

Through: Mr. Anil Dutt, Mr. Rahul Ray, Mr.
Anupam Chaudhary, Ms. Lavi
Agarwal and Mr. Sarvesh Mehra,
Advocates.

versus

TECHNOLOGY DEVELOPMENT BOARD & ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner has approached this Court seeking quashing of the Complaint bearing CC (NI Act) No.7570/2022 and summons *qua* the Petitioner issued by the Magistrate *vide* Order dated 15.04.2023 in the said complaint.
2. The facts of the case reveal that in the year 2013, Accused No. 1 i.e., the Accused Company, through Accused No. 2 & 3 approached the Respondent No. 1 herein for financial assistance for a project titled "Development and Commercialization of indigenously developed in-vitro Diagnostic (IVD) (medical diagnostic) products (ruralab, autora, outocoe, clisa analyser with computers, urine analyser-multi strip)" in the form of a loan amounting to Rs. 8,50,00,000/-. After processing the request of the



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Accused Company, the Respondent No. 1 herein agreed to sanction the loan assistance.

3. Subsequently, a Loan Agreement dated 12.04.2013 was executed between the Accused Company through Accused No. 2 & 3 and the Respondent No. 1 herein and the loan was granted. Several Supplementary Agreements were also executed between the parties whereby the Respondent herein further granted another loan of Rs. 1,30,00,000/- to the Accused Company. The Accused through these Supplementary Agreements also sought for re-scheduling of the payment plan of the loans which was agreed to by the Respondent No. 1 herein.

4. It is further mentioned that after the Sixth Supplementary Agreement for rescheduling the payment plan, the payment of an instalment of Rs. 1,38,48,712/- was due and payable by the Accused Company on 01.10.2022. Accordingly, in terms of Schedule II of the Loan Agreement read with other Supplementary Agreements, the Respondent No. 1 herein presented Cheque No. 015680 dated 01.10.2022 for an amount of Rs. 1,38,48,712/- before Union Bank of India, drawn on HDFC Bank, Shop No. 3 & 4, Type Shopping Complex, Vashi Sector-7, Navi Mumbai, Maharashtra-400703. The aforesaid cheque was issued by the Accused Company under the signature of Accused No. 2. The subject cheque was returned unpaid with remarks "Exceeds Arrangement" which was notified by a return memo dated 07.10.2022.

5. Thereafter, a statutory demand notice under the Negotiable Instruments Act, 1881 ('NI Act') was issued on 14.10.2022 whereby the accused were called upon to pay a sum of Rs. 1,38,48,712/- within 15 days from the receipt of the notice. Despite receipt of the above statutory notice



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on 18.10.2022, Accused failed to make the payment of the amount involved in the dishonoured cheque within the stipulated time period.

6. The Respondent No. 1 herein, then filed Complaint Case No. 7570 of 2022 under Section 138 read with Section 141 and 142 of the Negotiable Instruments Act.

7. Summons were issued by the Ld. Magistrate vide Order dated 15.04.2023

8. Learned Counsel appearing for the Petitioner states that specific averments have not been made against the Petitioner in the complaint as to how is he responsible for the conduct and business of the company and in the absence of any specific averments, the Petitioner cannot be held vicariously liable.

9. It is further stated by the Counsel for the Petitioner 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. It is also stated that the Petitioner was not even an authorised representative of the Accused Company at the time of issuance or presentment of the subject cheque.

10. It is contended by the counsel for the Petitioner that the Respondent No. 1 herein had filed similar complaints in respect of other cheques that were dishonoured relating to the same Loan Agreement. The Ld. Metropolitan Magistrate vide Order dated 17.07.2023 and 07.12.2023 in Complaint Case No. 5335 of 2023 & 9685 of 2023 respectively, has observed that there are no grounds to proceed against the Petitioner herein as prima facie he has no role to play in the transactions relating to the Loan Agreement. It is further stated that both the Complaint cases have been



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dismissed qua the Petitioner.

11. Heard the counsels for the parties and peruse the material on record.

12. The Petitioner herein has been arrayed as an Accused No.4 in the complaint. In the complaint it is stated that the Petitioner herein, who has been arrayed as an Accused No.4 in the complaint, had signed security documents at the time of availing loan. Paragraph No.4 of the complaint reads as under:

“4. That Accused No. 2 is the Managing Director and Accused No. 3 and 4 are the Directors of the Accused No. 1, and as such are in-charge, involved and responsible for day to day affairs of the Accused No. 1 Company.”

13. The Accused Company is a private limited company. There is no averment in the complaint that other than the aforesaid three persons, there are any further directors of the accused company or the accused No.2, 3 and 4 are non-executive directors or are independent directors who are not responsible for the conduct of the day-to-day affairs of the company.

14. The Apex Court in Monaben Ketanbhai Shah v. State of Gujarat, (2004) 7 SCC 15 has observed as under:

“3. Section 138 of the Act makes dishonour of the cheque an offence punishable with imprisonment or fine or both. Section 141 relates to offences by the company. It provides that 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. Thus, vicarious liability has been fastened on those who are in charge of and



responsible to the company for the conduct of its business. For the purpose of Section 141, a firm comes within the ambit of a company.

4. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole. If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hypertechnical approach should not be adopted so as to quash the same. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind. These provisions create a statutory presumption of dishonesty, exposing a person to criminal liability if payment is not made within the statutory period even after issue of notice. It is also true that the power of quashing is required to be exercised very sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed. All the same, it is also to be remembered that it is the duty of the court to discharge the accused if taking everything stated in the complaint as correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking. The present case falls in this category as would be evident from the facts noticed hereinafter.”

15. A perusal of the above paragraphs indicates that vicarious liability can be fastened on those persons who are in charge of and responsible to the company for the conduct of its business and it is not necessary to reproduce the language of Section 141 verbatim in the complaint as the complaint is required to be read as a whole. The Apex Court has held that if substance of



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the allegations made in the complaint fulfils the requirements of Section 141 then the complaint has to proceed and is required to be tried in accordance with law. The Apex Court has warned against adopting a hyper-technical approach to quash the complaint because it will defeat the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions which is the purpose of enactment of Sections 138 and 141 of the Negotiable Instruments Act. The Apex Court has also held that the power of quashing is required to be exercised very sparingly and if the factual foundation of the offence has been laid in the complaint, it should not be quashed.

16. In the present case, as stated above there are only three directors and there is no averment that they are independent directors or non-executive directors. The Petitioner herein is one of the directors, and therefore, the ingredient of Section 141 is made out. The Apex Court in K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48 has observed 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.” (emphasis supplied)



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17. In the present case, the Petitioner was involved in the transaction for which the cheque in question was issued. As stated in the complaint, the Petitioner continued to be the director at the time when the cheque was dishonoured. The Apex Court in S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685, has analysed Sections 138 and 141 of the NI Act and after discussing various judgments on the concept of fastening of vicarious liability, has observed as under:

“42. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:

42.1. Vicarious liability can be fastened on those who are in-charge of and responsible to the company or firm for the conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;

42.2. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;

42.3. If the substance of the allegations made in the complaint fulfils the requirements of Section 141, the complaint has to proceed in regard to the law.

42.4. In construing a complaint a hypertechnical approach should not be adopted so as to quash the same.

42.5. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141, respectively,



should be kept in mind by the Court concerned.

42.6. These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within the statutory period even after the issue of notice.

42.7. The power of quashing should be exercised very sparingly and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed.

42.8. The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking.

xxx

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”



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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)

18. As stated above, the accused No.1 is a private limited company and there is no averment that the Petitioner is an independent or non-executive director who does not have any role in the day-to-day administration of the company. In a private limited company, the averment that a person is a director of the company who is responsible for the conduct and affairs of the company is a sufficient averment made in the complaint to issue summons and more particularly when it is stated that he has signed security documents. The Petitioner has not brought on record any sterling incontrovertible, unimpeachable material or circumstances to substantiate his contention that he is not responsible for the conduct and business of the company. The Petitioner would have filed Form DIR-12 to substantiate that he was a non-executive or independent director.



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19. The fact that the Magistrate *vide* Orders dated 17.07.2023 and 07.12.2023 in Complaint Case No. 5335/2023 & 9685/2023 respectively has held that no case is made out against the Petitioner herein or that there is no ground against the Petitioner herein as the Petitioner herein had no role to pay in the transaction in question is no ground for this Court to interfere in the present case. It is for the Petitioner to lead evidence in the trial to substantiate that he cannot be held vicariously liable for the actions of the company. This Court is not making any observations on the role of the Petitioner and also the observations are limited only to the aspect as to whether there were sufficient averments in the complaint against the Petitioner herein for issuing summons against the Petitioner.

20. In view of the above, this Court is not inclined to quash the complaint.

21. The petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 2, 2024

S. Zakir