$~101 & 102

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

\+ **CRL.L.P. 486/2024, CRL.M.A. 30352/2024 & CRL.M.A. 30353/2024**

MANJU JAIN .....Petitioner

Through: Mr. Jinendra Jain, Mr. Krishna Sharma, Mr. Manoj Gautam, Mr. M.N. Mishra & Mr. Harshit Batra, Advs.

versus

GURMEET VERMA .....Respondent

Through:

\+ **CRL.L.P. 488/2024, CRL.M.A. 30375/2024 & CRL.M.A. 30376/2024**

MANJU JAIN .....Petitioner

Through: Mr. Jinendra Jain, Mr. Krishna Sharma, Mr. Manoj Gautam, Mr. M.N. Mishra & Mr. Harshit Batra, Advs.

versus

GURMEET VERMA & ANR. .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **08.10.2024**

CRL.M.A. 30351/2024 (*exemption*) in CRL.L.P. 486/2024 & CRL.M.A. 30374/2024 (*exemption*) in CRL.L.P. 488/2024

1. Exemptions allowed, subject to all just exceptions.

2. The applications stand disposed of.

CRL.L.P. 486/2024, CRL.M.A. 30352/2024 & CRL.M.A.

3. The present leave to appeals are filed for setting aside the judgments dated 06.05.2024 (hereafter '**impugned judgments**') passed by the learned Metropolitan Magistrate ('**MM**'), South District, Saket Courts in CT Case 463485/2016 and CT Case 3115/2018 whereby the respondent was acquitted of the offence under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 ('**NI Act**')

4. The complaints were filed by the petitioner under Section 138 of the NI Act against the company M/s. Fucon Technologies Ltd., Rahul Parikh being Managing director, Deep Parikh being whole time director, and the respondent being director of the company, alleging that cheques bearing nos. 566248 dated 25.04.2014, 566246 dated 25.02.2014, 566247 dated 25.03.2014, each for a sum of ₹21,19,150/- were issued by the accused company in discharge of a legal liability.

5. It is the case of the petitioner, being proprietor of M/s. V.K. Jain, that the accused persons had taken a loan from the firm M/s. V.K. Jain and M/s. Shubham Agencies and Company in terms of memorandum of understanding dated 07.06.2010. It is alleged that a sum of ₹6,38,66,175/- was due upon the accused persons on 31.05.2010, and the same was guaranteed by Deep Parikh vide guarantors' agreement dated 07.06.2010. It is further the case of the petitioner that in consonance with the Memorandum of Understanding, and in discharge of liability, Rahul Parikh being the Managing Director, and authorized signatory, had issued 57 cheques from the account of the accused company. It is alleged that out the said 57 cheques, 3 cheques

bearing nos. 566248 dated 25.04.2014, 566246 dated 25.02.2014, 566247 dated 25.03.2014, each for a sum of ₹21,19,150/-, upon presentation, were dishonoured for the reason "*funds insufficient*", and the same was not paid even within the prescribed period of 15 days despite service of notice.

6. The respondent, in her statement under Section 313 of the Code of Criminal Procedure, 1973 ('**CrPC**') admitted being the director of the accused company but stated that she was not responsible for the day to day affairs of the company. She stated that she had not signed any MoU. She stated that while the issuance of the cheques were a matter of record, she had no knowledge of the issuance of the cheques in question or that they were subsequently dishonoured. She stated that she had no knowledge about the transaction, or that the directors of the accused company approached the complainant for importing some parts for the accused company in the year 2004. She further denied that any loan for a sum of ₹25,00,00,000/- was given to the accused persons by the complainant.

7. By the impugned judgments, the learned MM convicted the accused company M/s Fucon Technologies Ltd, and accused Deep Parikh of an offence under Section 138 read with Section 141 of the NI Act. The respondent, however, was acquitted of the offence under Section 138 read with Section 141 of the NI Act.

8. The learned counsel for the petitioner submits that the learned MM erred in acquitting the respondent of the offence under Section 138 read with Section 141 of the NI Act. He submits that the respondent was not only the director of the company but was also responsible for managing the day to day affairs of the company. He submits that there existed sufficient averments in the complaint as well as the evidence to

demonstrate that the respondent was in charge of the day to day affairs of the company. He submits that the petitioner had proved that the cheques were issued by the accused company, and the other accused persons being directors were responsible for managing the day to day affairs of the company.

9. He submits that since the petitioner had already placed the settlement agreement on record, the burden was on the respondent to show that she was not in charge of the day to day affairs of the company. He submits that during the pendency of the complaints before the learned Trial Court, the parties had settled the present matter before the Delhi High Court Mediation and Conciliation Centre on 25.03.2015, and since the same was also signed by the respondent, it only amounted to an admission that the respondent was a director of the accused company, and was consequently also bound by the liability of the accused company.

10. *Per contra*, the learned counsel for the respondent submits that the learned MM considered all the averments and evidence while acquitting the respondent of the offence under Section 138 read with Section 141 of the NI Act. He submits that merely because the respondent was a director does not prove that she was also responsible for managing the day to day affairs of the company.

11. I have heard the counsels for the petitioner and perused the material on record.

12. It is trite law that a Court while considering the challenge to an order of acquittal, in exercise of jurisdiction under Section 378 of the CrPC, is empowered to reconsider the evidence on record and reach its own conclusions, however, it is to be kept in mind that there is a double presumption of innocence in favour of

the accused. High Court ought to only interfere with the finding of acquittal if it finds that the appreciation of evidence is perverse [***Rajaram s/o Sriramlulu Naidu (since deceased) through LRs*** **: Criminal Appeal No. 1978 of 2013**].

13. The Hon'ble Apex Court in the case of ***Chandrappa v. State of Karnataka*** **: (2007) 4 SCC 415** has expounded upon the powers of the Appellate Court while dealing with an order of acquittal:

> *"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
> *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
> *(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

14. The present case concerns the offence under Section 138 of the NI Act. The Hon'ble Apex Court in the case of ***Rohitbhai***

***Jivanlal Patel v. State of Gujarat* : (2019) 18 SCC 106** had observed as under:

> *"12. According to the learned counsel for the appellant-accused, the impugned judgment is contrary to the principles laid down by this Court in Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] because the High Court has set aside the judgment of the trial court without pointing out any perversity therein. The said case of Arulvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] related to the offences under Sections 304-B and 498-A IPC. Therein, on the scope of the powers of the appellate court in an appeal against acquittal, this Court observed as follows : (SCC p. 221, para 36)*
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> > *"36. Careful scrutiny of all these judgments leads to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."*
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> *The principles aforesaid are not of much debate. In other words, ordinarily, the appellate court will not be upsetting the judgment of acquittal, if the view taken by the trial court is one of the possible views of matter and unless the appellate court arrives at a clear finding that the judgment of the trial court is perverse i.e. not supported by evidence on record or contrary to what is regarded as normal or reasonable; or is wholly unsustainable in law. Such general restrictions are essentially to remind the appellate court that an accused is presumed to be innocent unless proved guilty beyond reasonable doubt and a judgment of acquittal further strengthens such presumption in favour of the accused.* ***However, such restrictions need to be visualised in the context of the particular matter before the appellate court and the nature of inquiry therein. The same rule with same rigour cannot be applied in a matter relating to the offence under Section 138 of the NI Act, particularly where a presumption is drawn that the holder has received the cheque for the discharge, wholly or in part, of any debt or liability. Of course, the accused is entitled to bring on record the relevant material to rebut such presumption and to show that preponderance of probabilities are in favour of his defence but while examining if the accused has brought about a probable defence so as to rebut the presumption, the appellate court is certainly entitled to examine the***

evidence on record in order to find if preponderance indeed leans in favour of the accused.”

(emphasis supplied)

15. At the outset, the learned MM noted that the accused Deep Parikh and the respondent disputed their signatures on the cheque. It was noted that the accused Deep Parikh and the respondent had been arraigned as accused in accordance with Section 138 read with Section 141 of the NI Act. It was further noted that the deeming fiction created by Section 141 of the NI Act attributed liability on the accused on the principle of vicarious liability thereby doing away with the requirement that the accused necessarily was signatory of the cheque.

16. The petitioner is essentially aggrieved by the fact that the respondent being a director of the accused company could not have been acquitted under Section 138 read with Section 141 of the NI Act. The short point for determination thus is whether the respondent being the director of the accused company, where the principal offender was the accused company who had signed the subject cheques through its authorised signatory, was vicariously liable for the offence under Section 138 read with Section 141 of the NI Act on account of being the director of the accused company.

17. Section 141 of the NI Act reads as under:

“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.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and 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, 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.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

18. In accordance with Section 141 of the NI Act, in instances where the principal offender under Section 138 of the NI Act is a company, every person who at such time when the cheque was dishonoured, and no subsequent payment was made, was in charge of the business of the company, and was responsible for the conduct of business, is deemed to be guilty of the offence under Section 138 of the NI Act.

19. It is pertinent to note however that merely because a person is a director of the company, does not make him vicariously liable under Section 138 read with Section 141 of the NI Act. It is imperative that such director is also responsible in the management of the day to day affairs of the company. The Hon'ble Apex Court in ***K.K. Ahuja v. V. K. Vora*** **: (2009) 10 SCC 48** observed as under:

"20. Section 291 of the Companies Act, 1956 provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do. A company though a legal entity can act only through its Board of Directors. The

settled position is that a Managing Director is prima facie in charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. ***But insofar as other Directors are concerned, they can be prosecuted only if they were in charge of and responsible for the conduct of the company's business****."*

(emphasis supplied)

20. Similarly, the Hon'ble Apex Court in ***Susela Padmavathy Amma v. M/s. Bharti Airtel Limited*** **: 2024 INSC 206** while quashing the proceedings under Section 138 read with Section 142 of the NI Act against the director of the company observed as under:

> *"10.* ***It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-to- day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company.*** *This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence."*

(emphasis supplied)

21. It must be borne in mind that Section 141 of the NI Act is a penal provision that aims to creates vicarious liability on the accused. For this reason, the provision ought to be strictly construed. It is thus incumbent to show how such director was responsible for managing the day to day affairs of the company.

22. In the present case, the learned MM noted that the respondent had been shown to be 'director' in the accused company. The learned MM noted that no specific averment regarding the role of the respondent had been made by the

petitioner in her evidence by way of affidavit. It was further noted that when the petitioner, in her cross-examination, was asked about the role of the respondent, she had deposed that she did not know whether the respondent had given the import orders to the complainant firm or not. It was consequently noted that the petitioner had failed to attribute a specific role to the respondent in the transaction that occurred between the complainant firm and the accused company. It was noted further that the respondent was not signatory either to the cheque or the Memorandum of Understanding pursuant to which the loan amount was taken. Merely making a bald perfunctory assertion that the accused is a director does not suffice to impute liability under Section 138 read with Section 141 of the NI Act. In that light, considering that no evidence had been placed on record to show that the respondent was in charge of and responsible for the business of the company at the time of the issuance of the cheque in question, it was rightly noted that the respondent had successfully rebutted the presumption under Section 139 of the NI Act.

23. It is pertinent to note during the pendency of the proceedings before the learned Trial Court, the parties, by way of mediation, had entered into a settlement agreement dated 25.03.2015 to settle all the pending disputes between them which also contained the signature of the respondent. It is seen that the learned counsel for the respondent, before the learned Trial Court, had taken a stance that the mediation agreement was signed only to put a quietus to all the pending disputes between the parties. Much emphasis has been placed by the learned counsel for the petitioner on the fact that since the respondent had signed the Settlement agreement, she admitted to being a director of the company, and was also bound by the liability of the

company. It is consequently argued that the learned Trial Court in that regard erred in acquitting the respondent for an offence under Section 138 of the NI Act. In that light, it is pertinent to note that the acquittal of the respondent stemmed from the fact that while an allegation regarding the respondent being the director was made, no specific role was attributed to the respondent. It was noted that even in her cross-examination, the petitioner failed to point out a specific role of the respondent as a director, and his involvement in the day to day affairs of the company.

24. It is pertinent to note that a decision of acquittal fortifies the presumption of innocence of the accused, and the said decision must not be upset until the appreciation of evidence is perverse.

25. Upon a consideration of the facts and circumstances of the case, this Court finds no such perversity in the impugned judgments so as to merit interference in the finding of acquittal. Consequently, this Court finds no reason to entertain the present petitions.

26. The present leave petitions are accordingly dismissed.

AMIT MAHAJAN, J

OCTOBER 8, 2024

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