

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 76 of 2022

**Chandi Prasad Poddar
Vs.
Virgo merchants Pvt. Ltd.**

For the Petitioner : Mr. Sachit Talukdar
Mr. Tirtharaj Ghosal

For the Opposite Party : Mr. Meghnad Dutta
Mr. A. Sinha

Heard on : 10.01.2025

Judgment on : 27.01.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioner herein has been arraigned as an accused in a proceeding initiated under section 138 read with section 141 of the Negotiable Instrument Act (In short N.I. Act) being CS/27105/2021. Ld. Court below issued process against the petitioner and five other accused persons vide its order dated 23rd August, 2021.

2. Being aggrieved by the said criminal proceeding the petitioner approached before this Court for quashing the same mainly on two broad grounds

(a) The petitioner had resigned prior to the issuance of the cheque and he is also not the signatory of the cheque, nor he was associated with the affairs of the accused company at the time of issuance of cheque and as such he cannot be held liable for the acts of the company subsequent to his resignation.

(b) The role played by the petitioner has not been averred in the petition of complaint by making specific averments to that effect, specially when the petitioner in reply to opposite party's demand notice had clearly answered that he resigned prior to the issuance of the cheque. In the above context it was necessary for the opposite party to make specific averment in the plaint as to how and in what manner the present petitioner was responsible for the conduct of the business of the accused/company at the time of commission of offence.

3. The gist of allegation made in the complaint pertains to dishonour of a cheque bearing no. 205893 dated 01.01.2021 for an amount of Rs. 25 lakhs issued by the accused company M/S Arcuttipore Tea company Ltd. towards the discharge of its existing dues/liabilities. The complainant company presented the said cheque for encashment through its banker within its validity period but the said cheque was returned dishonoured by the drawee bank with the specific remark 'fund insufficient' vide cheque return memo dated 6th March, 2021. The complainant company issued a

demand notice dated 12.03.2021 through its advocate calling upon the accused persons to pay a sum of Rs. 25 lakhs being the amount of the said dishonored cheque within 15 days from the date of the receipt of the notice, but in spite of receipt of said notice the accused persons have failed to pay the said amount and as such the instant criminal proceeding has been instituted.

4. Mr. Talukdar Learned Counsel appearing on behalf of the petitioner submits that the petitioner has resigned as a Director from the accused company with effect from 13th March, 2020 and he had been disassociated from the affairs of the accused company from the date of 13th March, 2020, whereas the impugned cheque was issued on 1st January, 2021. He further contended that it would be apparent from the petition of complaint that the concerned cheque was not a security cheque and as such an offence under section 138 of the Act does not occur against the present petitioner. He further contended that when the alleged cause of action arose the petitioner was no longer Director of the company nor was any way connected with the said company. Infact the petitioner was not associated with the affairs of the accused company and had ceased to be a Director w.e.f. 13.03.2020, which has been reflected in Form DIR-12.

5. Mr. Talukdar further contended that in view of the fact that the accused/company had failed to file relevant Form DIR-12 thereby intimating the Registrar of Companies the factum of the petitioner's resignation, the petitioner had issued a notice to the company on 23rd February, 2021 requesting the accused company to do the needful. Pursuant to such request the petitioner's resignation was accepted on 22nd

November, 2021 w.e.f. 13th March, 2020. Subsequent to the same the accused company proceed to file the Form DIR-12 before the Registrar of Companies indicating the petitioner's resignation w.e.f. 13th March, 2020.

6. Referring a judgment of this court passed in **CRR 2680 of 2014** with **CRR 2682 of 2014** and **CRR 2683 of 2014 (Mahesh Prasad Merhotra Vs. Mrs. Shreye Equipment Finance Pvt. Ltd.)** petitioner contended that by an order dated 15.09.2014, this High Court refused to quash the proceeding under section 138/141 of the N.I. Act, since the dishonored cheque though had been issued subsequent to the petitioners resignation but prior to the submission of Form-32. While said matter was challenged before the Apex Court, the court vide it's order dated 03.10.2017 in criminal Appeal no. 1734 of 2017 (SLP (Cri) 5905 of 2015) was pleased to set aside the said order considering the relevant date appearing in Form No. 32 (Presently Form DIR -12 as per companies Act 2013) as the effective date from which the appellant therein no longer associated with the affairs of the company. Accordingly he argued that in facts and circumstances of the present case, the date disclosed in Form DIR -12 would be pertinent to determine the effective date of resignation and/or the effective date from which an individual can be considered to be disassociated from the affairs of the company.

7. Mr. Talukdar further submits that under similar facts and circumstances, pertaining to the same accused company, this particular petitioner was wrongly arraigned as accused in other proceedings under section 138 read with 141 of the N.I. Act, before Judicial Magistrate, Siliguri and being aggrieved by the same the petitioner herein challenged

the said proceeding before the Circuit Bench Jalpaiguri being CRR 91 of 2022 and CRR 80 of 2022, wherein it was also averred that the petition of complaint lacked specific Averments qua the petitioner. This High Court by its judgment dated 11th August, 2022 was pleased to held that the effective date of resignation of the petitioner to be 13th March, 2020 qua the same accused company i.e. Arcuttipore Tea Company Ltd. In view of above the date of resignation as appearing in Form DIR-12 would be the relevant date for consideration.

8. In this context Mr. Talukdar further referred section 168(2) of the Companies Act 2013 which provides that the resignation of a Director shall take effect from the date on which the notice is received by the company or the date if any specified by the Director in the notice whichever is later. Though it has also been clarified in the proviso that even if such resignation has been tendered, the director shall be liable for the offence which occurred during his tenure.

9. He further contended that though the petitioner in this complaint has been arraigned as accused no.3 but on a bare perusal of the said petition of complaint, it is clear that no specific allegation has been attributed against the present petitioner. It is not sufficient to make a bald cursory statement in a complaint to attract section 141 of the N.I. Act. In order to fasten vicarious liability, the complaint should specifically state as to how and in what manner the accused was responsible. Such averment is mandatory since there is no deemed liability of a Director. Accordingly a clear case should be spelled out in the petition of complaint but trial Magistrate had failed to scrutinize the complaint with care and

circumspection and has mechanically proceeded to summon the petitioner herein. Even the statements made on oath towards initial deposition by the authorized representative of the complainant is completely silent on the above mentioned aspect. Accordingly petitioner has prayed for quashing of the impugned proceeding.

10. Petitioner in this context has relied upon following judgments:-

- (a) (2014) 16 SCC 1, *Pooja Ravinder Devidasani Vs. State of Maharashtra and another.***
- (b) (2011) 3 SCC 351, *Harshendra Kumar D. Vs. Rebatilata Koley and others.***
- (c) (2015) 1 SCC 103, *Gunmala Sales Private Limited Vs. Anu Mehta another.***
- (d) (2012) 1 SCC 520, *Anita Malhotra Vs. Apparel Export Promotion Council and another.***
- (e) (2018) 14 SCC 202, *Ashoke Mal Bafna Vs. Upper India Steel Manufacturing an Engineering Company Limited.***
- (f) (2024) 1 SCC 348, *Siby Thoma Vs. Somany Ceramics Limited.***
- (g) 2024 SCC Online SC 311, *Susela Padmavathy Amma Vs. Bharti Airtel Limited.***
- (h) 2014 SCC Online P&H 19871, *Naendra Kumar Suri and others Vs. M/S Narendra Polymers Pvt. Ltd.***
- (i) 2019 SCC Online Bom 2294, *Shehzad Valimohammad Merehant Vs. Saiyed Gohulam Abbas zaidi land another.***
- (j) (2017) 15 SCC 661 *D.B. Negandhi Vs. Registrar of Companies***

**(k) (2021) 12 SCC 1, S.Kasi Vs. State through Inspector of police,
Samayhallur Police Station, Madurai District.**

11. Mr. Meghnath Dutta Learned Counsel appearing on behalf of the opposite parties submits that though the accused has claimed that he had resigned from the company on 13th March, 2020 but it clearly appears that DIR-12 was uploaded on 23.11.2021, on the basis of a resolution taken by the Board of Directors on 22nd November, 2021, which is long after the date of commission of offence. He further argued that when his resignation was accepted on 22.11.2021 that date will have to be taken as the effective date from which he got disassociated with the company. As the offence herein committed much prior to that date of resolution, the petitioner cannot escape his liability. In this context he referred Rule 15 and Rule 16 of the companies (Appointment and qualification of Directors) Rules, 2014 and contended that it is bounden duty of the company to inform about such resignation within 30 days and copy of resignation shall be forwarded which is a mandatory term. Moreover, quoting section 168 of the Companies Act, he further contended that the proviso to that section states that whenever a director resigns from his post, a copy of his resignation along with detailed reasons for the resignation has to be forwarded to the Registrar within 30 days of his resignation, which has not been complied in the present context. Mr. Dutta in this context further contended that the judgment cited by the petitioner herein is not applicable in the present context as all those judgments are factually distinguishable with the present case because the concerned documents which are the subject matter of those cases, states that the offence committed after accepting

resignation of the petitioner by the company and after due compliance of uploading Form No. DIR-12.

12. I have considered submissions made by both the parties.

13. In the present case petitioners herein filed resignation letter on 13th March, 2020 as appearing from annexure P1 which discloses that his resignation from the directorship of the company was tendered with immediate effect. The DIR -12 form also discloses that the petitioner is not associated with the company w.e.f. 13.03.2020. It is true that said DIR- 12 Form was uploaded on the basis of a resolution taken in a meeting of Board of Directors on 23.11.2021, but it is equally important to note that the contents of said document i.e. DIR 12 Form has not been controverted by the opposite party herein. In fact the opposite party failed to show any document or any material that the petitioner after the aforesaid resignation on 13.03.2020 was in any way concerned with the accused company. The impugned cheque which was dishonoured was issued by the company on 01.01.2021 i.e. after the petitioner's resignation. So far as the dishonour of cheque is concerned admittedly the cheque was not issued by the petitioner herein. There is also no dispute that the petitioner was not the managing director of the company when the impugned cheque was issued. A director of a company is liable to be convicted for an offence committed by the company, if he 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 concerned Director or was attributable to any negligence on the part of the Director concerned. It is also settled law that to attract case under section 141 of the N.I. Act, a specific role must

have been played by a director of a company for fastening vicarious liability, but in this case when the offence was allegedly committed the petitioner herein was neither a Director of the accused company nor in charge of or involved in day to day affairs of the company. There is not even a single statement on record to show that any act was committed by the petitioner with effect from the date of his resignation, from which a reasonable inference can be drawn that the petitioner could be vicariously held liable for the offence with which he is charged. Much before the date of drawing of the cheque by the accused company, the petitioner resigned from the Board of Directors. Except the averment made in the complaint that the directors including the present petitioner (who is arraigned as accused no.3) were in charge of and responsible for the conduct and day to day business of the company, nothing has been stated in the complaint as to what part was played by the petitioner herein after the date of his resignation and how he was associated and responsible even after tendering his resignation for the finances of the accused company or issuance of impugned cheque. There is also nothing to show that the petitioner had any control over the fund of the company, even after tendering the resignation letter. After coming across the unimpeachable and incontrovertible evidence, it indicates that the petitioner could not have been concerned with the issuance of cheque after his aforesaid resignation. Mere bald statement that the petitioner was in charge of and was responsible to the conduct of its business may not be sufficient in the present context. The complaint has to specify the role of the petitioner in the day to day affairs of company after his resignation. In the present

context except reproduction of the statutory requirement, the complainant has not specified or elaborated the role of the petitioner in the day to day affairs of the company even after his resignation. A bare perusal of section 141 (1) of the N.I. Act would reveal that only that 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, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

14. In Narendra Kumar Suri Vs. M/S Narendra Polymers Pvt. Ltd., 2014 SCC online P & H 19871, a Single Bench of Punjab and Haryana High Court held that the Director of Public Limited Company or Private Ltd. Company can tender his resignation unilaterally and without filing in Form 32 and without sending a notice to Registrar of Companies. Filing in of said Form and giving of due intimation and information to Registrar of Companies is duty of company secretary and not of an individual director. it is for the company secretary to fill in forms as prescribed and to give due information and intimation to the ROC, as the law requires and thereafter, to be so mentioned in all the prescribed registers of company, accounts and balance sheet of company and thereafter the said fact is to be brought to the notice of the members of the company as early as possible and at the latest in annual general meeting.

15. Section 168 (2) of the Companies Act, 2013 also provides that the resignation of a director shall take effect from the date on which the notice is received by the company or the date if any specified by the director in the notice, whichever is later. In the present case from the supplementary

affidavit filed by the petitioner it further discloses that the letter of resignation was sent through speed post on 14.03.2020 and it was delivered to the accused company on 16.03.2020.

16. Proviso to section 168 (1) states that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days of resignation but this proviso is not mandatory. A resignation cannot be treated as not accepted by the Company simply because Director had not sent the copy of resignation to the Registrar within 30 days. Similarly, even after tendering resignation and the company even after receiving the same, if does not call meeting for its acceptance that also beyond the control of the petitioner and the petitioner cannot be held responsible for the same.

17. Above all a co-ordinate Bench of this High Court in a similar circumstances allowed the Application of the present petitioner for quashing on the ground that petitioner resigned from his directorship prior to issuance of the cheque being **CRR 91 of 2022** and **CRR 80 of 2022** with specific observation that the petitioner herein tendered his resignation on 13th March, 2020 which is prior to issuance of the cheque, involved in the said proceeding. Accordingly it has already been settled by the High Court that the resignation of the petitioner has become effective with effect from 13th March, 2020 and there is no scope to reopen the said issue again in the present context.

18. Learned Trial Court while issuing process under section 204 of the Code failed to consider that in the entire complaint, neither the role of the petitioner in the affairs of the company was explained nor it has been

stated, in what manner the petitioner is responsible for the conduct of the business of the company after tendering his resignation.

19. It is settled law that putting the criminal law into motion is not a matter of course or to settle the scores between the parties. Courts cannot be a mere spectator to it. Before a magistrate taking cognizance of an offence under section 138/141 of the N.I. Act, making a person vicariously liable has to ensure strict compliance with the statutory requirement. In the aforesaid factual backdrop and the legal position as stated above, continuation of the proceeding quo the petitioner will clearly be an abuse of process of the court.

20. In view of above **CRR 76 of 2022** is allowed.

21. The impugned proceeding being CS 27105 of 2021 under section 138 read with section 141 of the N.I. Act presently pending before the Judicial Magistrate 3rd Court Calcutta is hereby quashed qua the petitioner Chandi Prasad Poddar.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)