IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.25 OF 2024

PETITIONER : **Mrs. Neelam Ajay Sarda**,
Age – 45 years, Occupation- Service, Currently residing at Flat No.44 B-1 Vrindavan Apartment, Civil Line, Near Hislop College, Nagpur.

..VERSUS..

RESPONDENTS : 1 **Sau. Sheela Jagdish Kabra**,
Age-58 years, Occ – Housewife, Through her PoA Jagdish Ghanshamal Kabra
Age-62 years, Occ – Agriculturist, R/o:"Ashish", Anikat Road, Near Collector Office, Radhe Nagar, Akola, Taluka and District Akola.

WITH

CRIMINAL WRIT PETITION NO.26 OF 2024

PETITIONER : **Mrs. Neelam Ajay Sarda**,
Age-45 years, Occupation – Service, Currently residing at Flat No.44 B-1 Vrindavan Apartment, Civil Line, Near Hislop College, Nagpur

VERSUS

RESPONDENT : **Mr. Ratanlal Madanlal Verma**,
Age-59 years, Occ – Business, R/o:"Jin Krupa", Shastri Nagar, Akola, Taluka and District Akola.

WITH

CRIMINAL WRIT PETITION NO.102 OF 2024

PETITIONER : **Mrs. Neelam Ajay Sarda**,
Aged about 45 years, Occp- Service (as mentioned in petition), R/o Flat No.44, B-1 Vrindavan Apartment, Civil Lines, Near Hislop College, Nagpur.

..VERSUS..

RESPONDENT : **Jagdish Ghanshamlal Kabra** (HUF) Through its Karta - **Jagdish Ghanshamlal Kabra**, Aged about 62 years, Occp – Architech, R/s "Ashish', Anikat Road, Near Collector Office, Radhey Nagar, Akola

---

Mr H. S. Chitaley, Advocate for Petitioner in all petitions.
Mr S. S. Sarda, Advocate for Respondents in all petitions.

CORAM : M. W. CHANDWANI, J.
DATED : 28th MARCH, 2025.

ORAL JUDGMENT

1. The issuance of process in Summary Criminal Case Nos.5370 of 2017, 5371 of 2017 and 5372 of 2017 against the petitioner by the learned Judicial Magistrate First Class, Akola was challenged before the learned Additional Sessions Judge, Akola on the ground that the petitioner is neither a partner in the firm namely Shree Sarda Oil Industries nor any role has been attributed to her in the complaints filed before the learned Magistrate for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 for dishonor of cheque. Hence, these petitions.

2. Since all these writ petitions are arising out of complaints having identical allegations, therefore, they are being disposed of by this common judgment.

3. Mr. Chitaley, learned counsel appearing for the petitioner submits that to attract Section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, "the NI Act"), i.e. vicarious liability, the

complainant must have averred in the complaint, the specific role of the petitioner to show how the partner of the firm against whom the complaint under Section 138 of the NI Act has been filed was in-charge and responsible for the day-to-day affairs of the firm. However, nothing has been mentioned in the complaint to deduce what role was assigned to the petitioner. According to him, a bald allegation would not suffice the purpose. To buttress his submission, he seeks to rely on the decision of the Hon'ble Supreme Court in the case of ***Ashoke Mal Bafna vs. Upper India Steel Manufacturing and Engineering Company Limited***, ***(2018) 14 SCC 202***, wherein the Supreme Court in paragraphs 8 and 9 has held as under:

> *"8. Interpreting the provisions of Section 141 this Court in National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 observed that 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 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 the accused was in-charge of or was responsible to the Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes especially where such statutes create vicarious liability.*
>
> *9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in-charge of and responsible for the conduct*

of the business at the time of commission of an offence will be liable for criminal action."

4. Next, Mr Chitaley, learned counsel would submit that the petitioner is not a partner in the firm either M/s Shri Sarda Oil Industries or Shree Sarda Oil Industries. It is for the complainant to demonstrate the petitioner's status as a partner in the firm by filing supporting documents. However, only a bald statement has been made without being substantiated by any documentary evidence to show that the petitioner is indeed a partner. According to him, she is neither a partner in Shree Sarda Oil Industries nor in M/s Shri Sarda Oil Industries. This aspect has not been considered by the Revisional Court as well as by the learned Trial Court while issuing the process. Hence, he sought quashing of the proceedings.

5. Per contra, Mr Sarda, learned counsel appearing for the respondent vehemently submitted that the complaint is complete in all respects and the complaint reveals the commission of offence by the petitioner by invoking Section 141 of the NI Act. According to him, there are specific allegations that demonstrate the petitioner's role in the partnership firm where she was responsible for overseeing the firm's purchases. According to him, the defence of the petitioner cannot be considered at this stage. To buttress his submission, he seeks to rely on the case of ***S. P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan***,

(2023) 10 SCC 685, wherein the Hon'ble Supreme Court in para No.58 has held as under :

> ***"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 subsection (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 Section 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.*
>
> *……..*
>
> *……..”*

6. With the help of the learned counsel appearing for the respective parties, I have gone through the complaint. Bare perusal of the complaint particularly, para No.1 of the complaint reveals that apart from the petitioner, accused Nos.3, 5 and 7 in the complaint are also shown as persons responsible for overseeing the purchase, accounts and management of the accused firm. Therefore, from this para of the complaint, one can have the central idea of the petitioner's role in the firm as held in the case of *S. P. Mani and Mohan Dairy* (supra) that the complainant is supposed to know only generally as to who were in-charge of the affairs of the company or firm, the other administrative matters would be within the special knowledge of the company or the firm and those who are in-charge of it. Needless to mention that the evidence is yet to be adduced in the proceedings and criminal liability will be attracted only after considering the evidence adduced before the learned Magistrate. At this stage, in my view, the complaint contains sufficient averments to warrant the issuance of process against the petitioner.

7. This takes me to the next ground. Evidently, the allegations in the complaint have been made on oath and the Magistrate after relying on these allegations has issued process, wherein it is specifically pleaded that the petitioner is one of the partners of the firm. It is also to be noted here that the firm is an unregistered firm, the complainant would have had limited material to place before the learned Magistrate to establish that the petitioner is one of the partners of the firm. The petitioner attempted to support her case by producing a document from the Registrar of the firm showing that the petitioner is not a partner in Shri Sarda Oil Industries, whereas the cheque in question was issued by "Shree Sarda Oil Industries", which is admittedly an unregistered firm. This may be a viable defence for the petitioner which can be considered by the Magistrate at the time of trial. At this stage, no fault can be seen with the order of the learned Magistrate in issuing the process against the petitioner and the dismissal of the revision application by the Revisional Court. Hence, no interference is required. The petition lacks merits, hence, it is **dismissed**.

(M. W. CHANDWANI, J.)

Tambe