IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.6282 of 2024
and
Crl.M.P.No.4605 of 2024

Kavita Prasad Aluru ... Petitioners

Vs.

M/s.Redington (India) Ltd.,
Represented by Mr.M.Sundararajan,
Senior Executive,
SPL Guindy House,
95, Mount Road, Guindy,
Chennai – 600 032. ... Respondent

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to the complaint pending in C.C.No.3958 of 2016 pending on the file of the V Fast Track Court at Saidapet, Chennai, and quash the same.

For Petitioner : Mr.Maninder Singh
Senior Counsel
assisted by Ms.Smriti,
Mr.Abhishek Swaroop,
Mr.Manav Sharma
for Ms.Madhupreetha Elango

For Respondent : Mr.V.T.Narendiran

O R D E R

This Criminal Original Petition has been filed to quash the complaint in C.C.No.3958 of 2016 on the file of the V Fast Track Court at Saidapet, Chennai, filed for the offence under Section 138 of the Negotiable Instruments Act.

2.The petitioner is arrayed as A4 in the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act. This is the second quash petition filed by the petitioner. Earlier, the quash petition filed by the petitioner in Crl.O.P.No.17533 of 2018 was dismissed by order dated 18.07.2018.

3.It is the case of the complainant that they are engaged in the business of distribution of computers and computer peripherals, products of various multinational companies and services for the same. The 1st accused Company, through its Managing Directors and Directors who are arrayed as 2nd, 3rd, 4th and 5th accused, approached the complainant Company and placed orders for purchase of IBM Servers, IBM Storage Servers, IBM

P.Series Servers, IBM Tivoli Software Licence, IBM Tivoli Software Support, IBM Software, IBM Storage Support Pack and Novel Software Licence, etc. Towards the materials purchased from the complainant over a period of time, an amount of Rs.1,61,08,212/- was due and payable by the accused. Therefore, the accused issued a cheque dated 22.10.2013 for the said amount of Rs.1,61,08,212/-. When the cheque was presented for encashment, the same was dishonoured with the endorsement "funds insufficient". After serving the statutory notice, the present complaint came to be filed by the respondent/complainant as against the accused for the offence under Section 138 of the Negotiable Instruments Act. Challenging the same, the present Criminal Original Petition has been filed by A4, who is arrayed as one of the Directors of A1 Company.

4.Learned Senior Counsel appearing for the petitioner would submit that this Court, while dismissing the earlier quash petition, directed the trial Court to complete the proceedings in C.C.No.3958 of 2016 within a period of six months from the date of receipt of a copy of the order. Though the said order came to be passed as early as on 18.07.2018, still the trial has not been completed and there is a delay in disposing of the case. Hence, according to him, it is an abuse of process of law.

5.The other contention raised by the learned Senior Counsel is that, merely because the first quash petition was dismissed, the same will not be a bar for entertaining the second quash petition on different grounds. He would submit that a second quash petition is also maintainable. In support of this contention, the learned Senior Counsel relied upon the judgments of the Hon'ble Supreme Court in *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh and others* reported in ***(1975) 3 SCC 706*** and *Anil Khadkiwala v. State (Government of NCT of Delhi) and another* reported in ***(2019) 17 SCC 294.***

6.Learned Senior Counsel would further submit that the petitioner (A4) is only a Non-Executive Director of A1 Company. According to him, the petitioner never received any remuneration from A1 Company and the Audit Annual Report of the A1 Company also proves the same. In support of his contention, he also seeks to produce certain documents before the Court. Further, it is his contention that the petitioner (A4) has resigned from the A1 Company and the same is reflected in Form-32 dated 01.12.2013.

The learned Senior Counsel relied upon the judgments of the Hon'ble Supreme Court in *Pooja Ravinder Devidasani v. State of Maharashtra* reported in ***(2014) 16 SCC 1***, *Kamal Kishore Shrigopal Taparia v. India Ever-Gen Private Limited and another* reported in ***(2025) SCC Online SC 321*** and *K.S.Mehta v. Morgan Securities & Credits (P) Ltd.* reported in ***(2025) 7 SCC 615*** for the proposition that the Non-Executive Directors are only custodians of corporate governance and they do not participate in the daily operations of the company, but they monitor only the "executive activity" and as such, they cannot be subjected to vicarious liability under Section 141 of the Negotiable Instruments Act, 1881, unless specific evidence proves their active involvement. The learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court in *S.M.S.Pharmaceuticals Ltd. v. Neeta Bhalla and another* reported in ***(2005) 8 SCC 89*** for the proposition that, mere designation as a Director does not conclusively establish liability and there must be specific averments in order to demonstrate that he/she was in-charge of and responsible for the affairs of the Company under Section 141 of the Negotiable Instruments Act.

7.Therefore, it is the contention of the learned Senior Counsel that the entire proceedings pending as against the petitioner (A4) has to be quashed.

8.Whereas, the learned counsel for the respondent/complainant would submit that the same grounds have earlier been raised before this Court. In fact, the Audit Annual Report was sought to be relied upon by the petitioner on the earlier occasion, but this Court did not accept it and rejected the contention of the petitioner. Therefore, the same ground cannot be re-agitated once again, which is not permissible in law. Further, the said document is disputed by the respondent. Therefore, the same cannot be a ground for quashing the complaint.

9.Further, it is the contention of the learned counsel for the respondent that the delay in disposal of the case is attributable only to the petitioner. According to him, it is the *modus operandi* of the accused to avoid Court process one by one, resulting in issuance of Non-Bailable Warrant and keeping the matters pending for all these years. Therefore, he would submit that the petitioner cannot now take advantage of the delay in disposal of the case.

10.Heard the learned counsel on either side and perused the materials available on record.

11.As far as the contention of the learned Senior Counsel that the petitioner had resigned from the A1 Company prior to the cause of action, is concerned, the document Form-32 which is relied upon by the petitioner is disputed by the respondent/complainant. Even from the Form-32 produced by the petitioner, it can be seen that it is dated 01.12.2013. Though it is prior to filing of the present complaint, it is much after the issuance of the impugned cheque dated 22.10.2013. Further, the petitioner had the opportunity to place the said fact before this Court when the earlier quash petition was argued. However, the petitioner did not raise the ground in the earlier quash petition that she had resigned from the Company prior to the cause of action. Such a contention is pressed into service before this Court for the first time in the second quash petition. At the time of earlier quash proceedings, the alleged document Form-32 to show the resignation of the petitioner was very much available with the petitioner and nothing prevented her from producing the same before this Court, however, the same has not been done. The grounds which are very much available to the accused cannot be raised in installments, one after the other, in multiple quash petitions.

12.Further, as far as the contention of the learned Senior Counsel that the petitioner has not received any salary/remuneration from the A1 Company, is concerned, the Audit Annual Report relied upon by the petitioner to substantiate the same, is disputed by the respondent/complainant. This Court, in a quash petition can look into only unimpeachable documents of sterling character and not every document produced by the accused in support of his plea can be looked into. When a document is disputed, it is a matter of evidence before the trial Court and such a disputed document cannot be relied upon by this Court in a quash petition under Section 482 Cr.P.C. Moreover, it is relevant to note that the said Audit Annual Report was a subject matter before this Court in the earlier quash petition and the same has not been accepted by this Court.

13.No doubt, as per the judgments relied upon by the learned Senior Counsel for the petitioner in *Superintendent and Remembrancer of Legal Affairs's case (supra)* and *Anil Khadkiwala's case (supra)*, a second quash petition is not barred, provided there is a change of circumstance. However, in the present case, the petitioner once again wants to re-agitate the same grounds which have already been rejected by this Court in the earlier quash petition, which is not permissible in law.

14.With regard to the delay, though it is trite that the delay on the part of the Court and prosecution affects speedy trial, here, in the given case, the fact remains that the delay has occurred due to the absence of the accused one by one and Non-Bailable Warrant has been issued against them one after another. Therefore, when the delay is solely attributable to the accused themselves, such delay cannot be taken advantage by the accused for seeking quashment of the entire proceedings.

15.As far as the contention of the learned Senior counsel that the petitioner is a Non-Executive Director and she is not involved in the affairs of the A1 Company, is concerned, in the judgment relied upon by the learned Senior Counsel in *K.S.Mehta's case (supra)*, the Hon'ble Supreme Court has held as follows :

> ***"22.****Upon perusal of the record and submissions of the parties,* ***it is evident that the appellant(s) neither issued nor signed the dishonoured cheques, nor had any role in their execution. There is no material on record to suggest that they were responsible for the issuance of the cheques in question.*** *Their involvement in the company's affairs was purely non-executive, confined to governance oversight, and did not extend to financial decision-making or operational management.*
>
> ***23.The complaint lacks specific averments that establish a direct nexus between the appellant(s) and the financial transactions in question or demonstrate their involvement in the company's financial affairs.*** *Additionally, the CGR(s) and RoC records unequivocally confirm their non-executive status, underscoring their limited role in governance without any executive decision-making authority. The mere fact that the appellant(s) attended Board meetings does not suffice to impose financial liability on the appellant(s), as such attendance does not automatically translate into control over financial operations.*
>
> ***24.Given the lack of specific allegations and in view of***

the aforesaid observations, the appellant(s) cannot be held vicariously liable under Section 141 of the NI Act."

(emphasis supplied)

16.Therefore, in the said case, the Hon'ble Supreme Court has quashed the proceedings only on the ground that there are no specific allegations as against the petitioners therein to establish a direct nexus between the petitioners therein and the financial transactions in question or demonstrate their involvement in the company's financial affairs. Whereas, as far as the present case is concerned, this Court, in the earlier quash petition, has clearly recorded a finding that the complainant has made sufficient averments about the involvement of this petitioner (A4) in the affairs of A1 company in Para Nos.3, 7, 8, 9 and 10 of the complaint. In fact, it is found that, in Para No.3 of the complaint, the complainant has stated that the petitioner herein (A4) and other accused had placed orders with the complainant for the supply of computer peripherals to A1 Company. Further, even in the Audit Annual Report relied upon by the petitioner, it is relevant to note that the petitioner herein (A4) is shown in the Board of Directors and she is also a Member of Shareholders/Investors Grievance Committee. Therefore, when there are sufficient materials to show the involvement of the petitioner (A4) in the affairs of the Company, the judgments relied upon the learned Senior Counsel for the petitioner cannot be applied to the present case, on facts.

17.Further, the Hon'ble Supreme Court in ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan*** reported in ***(2023) 10 SCC 685***, has held as follows :

> ***"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."

18.In the above judgment, the Hon'ble Supreme Court has clarified that the complainant need not make specific allegations as to the nature of the roles of each Director of the accused Company and it is for the Directors to prove their non-involvement in the offence during the process of trial. But, in the present case, there are sufficient averments in the complaint and materials as against the petitioner herein (A4), as stated *supra*, to create a nexus between the petitioner and the financial transaction in question. If at all the petitioner wants quashment of the proceedings against her on the bald allegation that she is not concerned with the affairs of the Company, she has to produce sterling incontrovertible material to the satisfaction of this Court. However, when the documents produced by the petitioner are disputed by the complainant and particularly when even those documents themselves show the petitioner's roles as one in Board of Directors, Member of Shareholders/Investors Grievance Committee, etc., it is for the petitioner (A4) to prove her case before the trial Court by adducing oral and documentary evidence. In any event, this Court cannot quash the proceedings as against the petitioner (A4) at this stage.

19.In view of the above discussion, I do not find any merit in this petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

23.09.2025

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Internet : Yes
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Speaking order : Yes / No
Neutral Citation : Yes / No

To

The V Fast Track Court at Saidapet,
Chennai.

N. SATHISH KUMAR, J.

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