



Crl.O.P.No.13639 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 12.08.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.13639 of 2025
and Crl.M.P.Nos.9052 & 9053 of 2025

Govindarajan

... Petitioner

Versus

M.Mohan

... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, to call for the records in C.C.No.466 of 2022 on the file of the Judicial Magistrate (Fast Track) Alandur and quash the case insofar as against the petitioner/2nd accused.

For Petitioner : Mr.R.Veeramani

For Respondent : No appearance

ORDER

This petition has been filed to call for the records in C.C.No.466 of 2022 on the file of the Judicial Magistrate (Fast Track) Alandur and quash the case the same insofar as against the petitioner/2nd accused.

2. The petitioner is arrayed as A2 in the complaint filed under Sections 138



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and 142 of Negotiable Instruments Act, 1881. The respondent filed a complaint alleging that he has subscribed for two chits with the respondent company and paid a sum of Rs.3,80,000/-. As per the scheme, he will get Rs.1,90,000/- for two each chits and he is entitled to Rs.3,80,000/-, however, the same was not paid. On repeated demands, the first accused has issued cheques in question and when the said cheques were presented for encashment, the same was returned as “Funds Insufficient”. Hence, the complaint under Sections 138 and 142 of Negotiable Instruments Act, 1881.

3. According to the learned counsel for the petitioner, he has already resigned from the company from 31.12.2021 and resignation is also entered in the Form No.DIR-12 under Section 168 of the Companies Act. Further, stated that the above averment in the complaint is not sufficient to sustain the complaint without specifying the role of the accused in the day to day administration of the Company, mere reference to their designation in the Society is not sufficient to attract the provisions under Section 146(1) of the N.I Act to create vicarious liability upon the petitioners. Hence, seeks for quashment of complaint as against the petitioner.

4. Heard the learned counsel for the petitioner and perused the materials



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placed on record.

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5. As rightly pointed out by the learned counsel for the petitioner, absolutely there is no materials whatsoever in the complaint as against the petitioner as he was in charge of the day to day affairs of the company. The very complaint proceeded as if the first accused has issued a cheque and further there is no allegations that other directors were in charge of the affairs of the company. Be that as it may, now, Form No.DIR-12 is issued under Section 168 of Companies Act and the same would indicate that the resignation of the petitioner was accepted and he has resigned from the company as early as on 31.12.2021, whereas, the cheques in question were issued in the year 2022 much after resignation of the petitioner, therefore, this Court is of the view the liability cannot be fastened against the person who was not in charge of the company at the relevant point of time.

6. It is relevant to note that in *S.P.Mani and Mohan Dairy -vs- Dr.Snehalatha Elangovan* reported in 2023 (10) SCC 685, the Hon'ble Supreme Court summed up their conclusion on vicarious liability under Section 141 of N.I



Act and the scope of Section 482 of Cr.P.C to quash the complaint as below:-

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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*



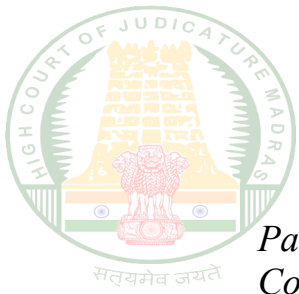
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the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred 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.

7. In Ashok Shewakramani and others -vs- State of Andhra Pradesh and another reported in (2023) 8 SCC 473, the Hon'ble Supreme Court after considering the S.P.Mani & Mohan Dairy case and the facts of the respective cases discussed, held as below:-

19. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section (1) of Section 141 are satisfied. The section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company shall be deemed to be guilty of the offence under Section 138 of the NI Act. In the light of subsection (1) of Section 141, we have perused the averments made in the complaints subject-matter of these three appeals. The allegation in



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Para 1 of the complaints is that the appellants are managing the Company and are busy with day-to-day affairs of the Company. It is further averred that they are also in charge of the Company and are jointly and severally liable for the acts of Accused 1 Company. The requirement of sub-section (1) of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section (1) of Section 141 of the NI Act must be a 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. Merely because somebody is managing the affairs of the Company, per se, he does not become in charge of the conduct of the business of the Company or the person responsible for the Company for the conduct of the business of the Company. For example, in a given case, a manager of a Company may be managing the business of the Company. Only on the ground that he is managing the business of the Company, he cannot be roped in based on sub-section (1) of Section 141 of the NI Act. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the Company. This is hardly relevant in the context of sub-section (1) of Section 141 of the NI Act. The allegation that they are in charge of the Company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the Company for the conduct of the business. Only by saying that a person was in charge of the Company at the time when the offence was committed is not sufficient to attract sub-section (1) of Section 141 of the NI Act. Sub-section 1 of Section 141 reads thus:

“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 subsection shall render



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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:

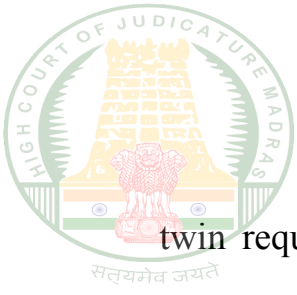
[Provided further that where a person is nominated as a Director of a Company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]”

20. On a plain reading, it is apparent that the words “was in charge of” and “was responsible to the Company for the conduct of the business of the Company” cannot be read disjunctively and the same ought be read conjunctively in view of use of the word “and” in between.

21. Therefore, even by giving a liberal construction to what is averred in Para 1 of the complaints, we are unable to accept the submission made by the learned counsel appearing for the second respondent that these averments substantially comply with sub-section (1) of Section 141 of the NI Act.

8. By harmonious reading of these two judgments, it is clear that to proceed against any persons other than the drawer of the cheque by invoking Section 141 of the N.I Act, the complaint must necessarily disclose the twin requirements viz., (1) averment explicitly the accused person was in charge of and (2) responsible to the Company for the conduct of the business of the company.

9. On plain reading of the entire complaint, this Court is satisfied that the



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twin requirements as to the averment explicitly that the accused person was in charge of and responsible to the Company for the conduct of the business of the company under Section 141 of N.I Act is absent, hence the complaint is liable to be quashed against this petitioner and the same is hereby set aside as against the petitioner.

10. Accordingly, this Criminal Original Petition is allowed and proceedings against the petitioner in C.C.No.466/2022 on the file of the learned Judicial Magistrate (Fast Track) Alandur is alone quashed. Consequently, connected miscellaneous petitions stand closed.

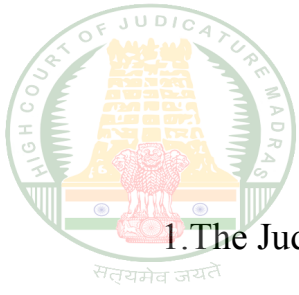
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1. The Judicial Magistrate (Fast Track) Alandur

2. The Public Prosecutor
Madras High Court

N. SATHISH KUMAR, J.



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