

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1238-2020 (O&M)
Reserved on 24.09.2024
Date of decision: 07.01.2025

CRM-M-1238-2020 (O&M)

Yashpal Sharma ...Petitioner

Versus

Sandeep Goyal ...Respondent

AND

CRM-M-30648-2020 (O&M)

Yashpal Sharma ...Petitioner

Versus

Sandeep Goyal ...Respondent

AND

CRM-M-32340-2021 (O&M)

Yashpal Sharma ...Petitioner

Versus

Sandeep Goyal ...Respondent

AND

CRM-M-32336-2021 (O&M)

Yashpal Sharma ...Petitioner

Versus

Sandeep Goyal ...Respondent

AND

CRM-M-30355-2021 (O&M)

Yashpal Sharma

...Petitioner

Versus

Sandeep Goyal

...Respondent

CRM-M-31779-2021 (O&M)

Yashpal Sharma

...Petitioner

Versus

Sandeep Goyal

...Respondent

AND

CRM-M-31801-2021 (O&M)

Yashpal Sharma

...Petitioner

Versus

Sandeep Goyal

...Respondent

AND

CRM-M-31805-2021 (O&M)

Yashpal Sharma

...Petitioner

Versus

Sandeep Goyal

...Respondent

AND

CRM-M-32685-2021 (O&M)

Yashpal Sharma

...Petitioner

Versus

Sandeep Goyal

...Respondent



CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Amit Kumar Walia, Advocate
for the petitioner(s).

None for the respondent.

KARAMJIT SINGH, J. (ORAL)

1. Since all these petitions involve common question(s) of law, besides having common prayer(s), therefore, all the petitions are being disposed of through a common order.

2. For the sake of convenience, the facts are being extracted from CRM-M-1238-2020. In the instant petition, petitioner has sought relief under Section 482 Cr.P.C seeking quashing of criminal complaint No.1009/2017 titled as Sandeep Goyal Vs. Shakti Bhog Foods Limited and others under Section 138 NI Act (Annexure P-4), summoning order dated 03.11.2017 (Annexure P-5), and all the subsequent proceedings arising therefrom including order dated 23.07.2019 (Annexure P-9) whereby the application filed by the petitioner seeking his discharge was dismissed by the learned trial Court.

3. CRM-M-30648-2020 is filed by the petitioner seeking quashing of criminal complaint No.1012/2017 titled as Sandeep Goyal Vs. Shakti Bhog Foods Limited and others under Section 138 NI Act (Annexure P-4), summoning order dated 03.11.2017 (Annexure P-5), and all the subsequent proceedings arising therefrom.

4. CRM-M-32340-2021 is filed by the petitioner seeking quashing of criminal complaint No.1017/2017 titled as Sandeep Goyal Vs. Shakti Bhog Foods Limited and others under Section 138 NI Act (Annexure



P-4), summoning order dated 03.11.2017 (Annexure P-5), and all the subsequent proceedings arising therefrom including order dated 23.07.2019 (Annexure P-9) whereby the application filed by the petitioner seeking his discharge was dismissed by the learned trial Court.

5. CRM-M-32336-2021 is filed by the petitioner seeking quashing of criminal complaint No.1015/2017 titled as Sandeep Goyal Vs. Shakti Bhog Foods Limited and others under Section 138 NI Act (Annexure P-4), summoning order dated 03.11.2017 (Annexure P-5), and all the subsequent proceedings arising therefrom including order dated 23.07.2019 (Annexure P-9) whereby the application filed by the petitioner seeking his discharge was dismissed by the learned trial Court.

6. CRM-M-30355-2021 is filed by the petitioner seeking quashing of criminal complaint No.1011/2017 titled as Sandeep Goyal Vs. Shakti Bhog Foods Limited and others under Section 138 NI Act (Annexure P-4), summoning order dated 03.11.2017 (Annexure P-5), and all the subsequent proceedings arising therefrom including order dated 23.07.2019 (Annexure P-9) whereby the application filed by the petitioner seeking his discharge was dismissed by the learned trial Court.

7. CRM-M-31779-2021 is filed by the petitioner seeking quashing of criminal complaint No.1016/2017 titled as Sandeep Goyal Vs. Shakti Bhog Foods Limited and others under Section 138 NI Act (Annexure P-4), summoning order dated 03.11.2017 (Annexure P-5), and all the subsequent proceedings arising therefrom including order dated 23.07.2019 (Annexure P-9) whereby the application filed by the petitioner seeking his discharge was dismissed by the learned trial Court.



8. CRM-M-31801-2021 is filed by the petitioner seeking quashing of criminal complaint No.1014/2017 titled as Sandeep Goyal Vs. Shakti Bhog Foods Limited and others under Section 138 NI Act (Annexure P-4), summoning order dated 03.11.2017 (Annexure P-5), and all the subsequent proceedings arising therefrom including order dated 23.07.2019 (Annexure P-9) whereby the application filed by the petitioner seeking his discharge was dismissed by the learned trial Court.

9. CRM-M-31805-2021 is filed by the petitioner seeking quashing of criminal complaint No.1013/2017 titled as Sandeep Goyal Vs. Shakti Bhog Foods Limited and others under Section 138 NI Act (Annexure P-4), summoning order dated 03.11.2017 (Annexure P-5), and all the subsequent proceedings arising therefrom.

10. CRM-M-32685-2021 is filed by the petitioner seeking quashing of criminal complaint No.1018/2017 titled as Sandeep Goyal Vs. Shakti Bhog Foods Limited and others under Section 138 NI Act (Annexure P-4), summoning order dated 03.11.2017 (Annexure P-5), and all the subsequent proceedings arising therefrom including order dated 23.07.2019 (Annexure P-9) whereby the application filed by the petitioner seeking his discharge was dismissed by the learned trial Court.

11. The impugned complaint(s) Annexure P-4 were filed by the respondent/complainant under Section 138 of the NI Act against petitioner he being manager of accused No.1 M/s Shakti Bhog Foods Limited. Accused Nos. 2 to 8 are also impleaded as accused being directors of accused No.1 M/s Shakti Bhog Foods Limited. All these criminal complaints are relating to dishonor of various cheques issued and signed by



accused No.2 Kewal Krishan Kumar on behalf of accused No.1 M/s Shakti Bhog Foods Limited, being it's director.

12. Consequent upon filing of the impugned complaints, the Court of Judicial Magistrate Ist Class passed summoning order(s) Annexure P-5 whereby the petitioner and other accused were summoned for commission of offence under Section 138 NI Act.

13. These petitions are filed by the petitioner seeking quashing of impugned complaint(s) Annexure P-4 and all the subsequent proceedings arising therefrom.

14. In response to notice of motion Mr. Rishav Jain, Advocate put in appearance on behalf of respondent and sought time to argue the matter. However, thereafter, no one appeared on behalf of respondent.

15. The counsel appearing on behalf of the petitioner has submitted that the petitioner who was working as a Manager in M/s Shakti Bhog Foods Limited, resigned from the said post on 23.12.2016 and the resignation was accepted on 21.01.2017 (Annexure P-1) and this happened much prior to issuance of cheques in question. It has been further contended that even otherwise the petitioner who was manager was neither incharge nor responsible to company/firm for conduct of its business. That even otherwise, there are no specific averments in the impugned complaints (Annexure P-4) to the effect that the petitioner was incharge of and was responsible to accused company/firm for the conduct of its business. It has been further argued that there is no dispute that the cheques in question are neither issued nor signed by the petitioner. That in the given circumstances, the petitioner cannot be held vicariously liable for offence punishable under



Section 138 read with Section 141 NI Act for the acts/omissions committed by accused No.1-M/s Shakti Bhog Foods Limited. In support of his arguments, the counsel for the petitioner has placed reliance on the decisions of Hon'ble Supreme Court in ***SMS Pharmaceuticals Limited Vs. Neeta Bhalla and Another (2005) 8 SCC 89*** and ***National Small Industries Corp. Limited Vs. Harmeet Singh Paintal and Another 2010 (3) SCC 330***.

16. I have considered the submissions made by counsel for the petitioner.

17. The Hon'ble Supreme Court in ***Aparna A. Shah Vs. Sheth Developers Private Limited (2013) 8 SCC 71***, has held that in a complaint under Section 138 of NI Act, it is only the drawer of the cheques who can be prosecuted. Thus, under Section 138 of NI Act, the liability is only of the drawer of the cheques. It is only where the offences committed by company/firm that a vicarious liability is created under Section 141 of NI Act on the person who was incharge of or was responsible for the affairs of the company/firm or the conduct of its business

18. In the instant case, impugned complaints Annexure P-4 are filed against a company namely Shakti Bhog Foods Limited and its directors. Even, the present petitioner is impleaded as accused being the manager of the company. It is the admitted case of respondent/complainant that the cheques in question were signed and issued by one of the directors of the company namely Kewal Krishan Kumar who is impleaded as accused No.2 in the impugned complaints. It is apparent that the petitioner is neither signatory to the cheques in question nor he is drawer of the said cheques.

19. It is settled position of law that merely being a director or



manager of a company is not sufficient to make the person liable under Section 141 of NI Act. A director or manager in a company cannot be deemed to be incharge of and responsible to the company for conduct of its business. The Hon'ble Supreme Court in ***SMS Pharmaceuticals Limited's case (supra)*** has held that the requirement of Section 141 of NI Act is that the person sought to be made liable should be incharge of and responsible for the conduct of the business of the company, at the relevant time. It is necessary to specifically aver in the complaint that the director or the concerned manager was incharge of, or responsible for the conduct of business of company. These averments are essential requirement of Section 141 of NI Act and in the absence of such averments in the complaint, against the particular person, he cannot be vicariously held liable for the act/omission committed by the company. In this regard, reference is also made to the latest decision of Hon'ble Supreme Court in ***Siby Thomas Vs. Somany Ceramics Limited (2024) 1 SCC 348***.

20. Now reverting back to the facts of the case at hand, this Court is of the view that the averments made in the impugned complaints filed by respondent/complainant are not sufficient to satisfy the mandatory requirements under Section 141 (1) NI Act and to create vicarious liability upon the petitioner.

21. From the perusal of Annexure P-1, it is evident that the petitioner who was earlier working with Shakti Bhog Foods Limited, as a manager, submitted his resignation from the said post and the said resignation was accepted by the management on 20.01.2017. The cheques in question were issued after the resignation of the petitioner was accepted.



Thus, it is evident that at the time when cheques in question were issued and subsequently dishonored, the petitioner was having no connection with the affairs of Shakti Bhog Foods Limited. The Hon'ble Supreme Court in ***National Small Industries Corporation Limited's case (supra)*** while dealing with a similar matter, held as follows:-

“26) Apart from the legal position with regard to compliance of [Section 141](#) of the Act, in the appeals of National Small Industries Corporation, respondent No.1- Harmeet Singh Paintal was no more a Director of the company when the cheques alleged in the complaint were signed and the same is evidenced from the Sixth Annual Report for the year 1996-97 of the accused company. The said report is of dated 30.08.1997 and the same was submitted with the Registrar of Companies on 05.12.1997 and assigned as document No. 42 dated 09.03.1998 by the Department. Those documents have been placed before this Court by respondent No.1 as an additional document. In view of these particulars and in addition to the interpretation relating to [Section 141](#) which we arrived at, no liability could be fastened on respondent No.1. Further, it was pointed out that though he was an authorized signatory in the earlier transactions, after settlement and in respect of the present cause of action, admittedly fresh cheques were not signed by the first respondent. In the same way, in the appeal of the DCM Financial Services, the respondent therein, namely, Dev Sarin also filed additional documents to show that on the relevant date, namely the date of issuance of cheque he had no connection with the affairs of the company.

27) In the light of the above discussion and legal principles, we are in agreement with the conclusion arrived at by the High Court and in the absence of specific averment as to the role of the respondents and particularly in view of the acceptable materials that at the relevant time they were in no way connected with the affairs of the company, we reject all the contentions raised by learned counsel for the appellants. Consequently, all the appeals fail and are accordingly dismissed.”

22. In light of the above, in order to secure ends of justice and to prevent the abuse of the process of Court, sufficient grounds are made out to interfere in this matter under Section 482 Cr.P.C.

23. Given the aforementioned facts and circumstances and the settled position of law, the criminal proceedings initiated under Section 138 read with Section 141 NI Act in the present case deserve to be quashed

along with all the subsequent proceedings arising therefrom qua the present petitioner in all the criminal complaints Annexure P-4. Accordingly, all the petitions are allowed and the impugned complaints (Annexure P-4), summoning orders (Annexure P-5) and all the subsequent proceedings arising therefrom are hereby set aside qua the petitioner.

24. However, it is made clear that any observation made herein above shall not be construed as an expression of opinion on the merits of the case qua the other accused persons.

25. Pending application(s), if any, stand disposed of.

07.01.2025
YOGESH

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No