HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CRM-M-3941-2023 (O&M)
Date of Decision: 01.07.2025
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Vikas ... Petitioner

VS.

State of Haryana & Anr. ... Respondents
****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
****

Present: Mr. Rahul Singla, Advocate for the petitioner

Mr. BS Virk, Sr.DAG Haryana

Mr. SK Aggarwal, Advocate and
Mr. Nissim Aggarwal, Advocate for respondent No.2
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<u>Sandeep Moudgil, J. (Oral)</u>

(1). This petition under Section 482 CrPC has been filed by the petitioner seeking to quash the complaint dated 26.02.2018 titled as "M/s Yamuna Power and Infrastructure Ltd. vs. M/s Corodex Infrastructure P.Ltd." filed under Section 138 of Negotiable Instruments Act, 1881 (in short, the 1881 Act) before the JMIC, Yamuna Nagar at Jagadhari (Annexure P1) as well as the summoning order dated 21.03.2018 (Annexure P2) vide which the petitioner has been summoned to face trial in the above mentioned complaint.

(2). Learned counsel for the petitioner contends that the petitioner had resigned from the post of Director w.e.f. 01.06.2015 (Annexure P3) whereas the cheque in question, which is alleged to have been dishonoured by the Bank on 19.12.21017 was issued much later i.e. 15.12.2017 and as such, the petitioner was no longer concerned with the day-to-day affairs of the company or responsible for any act or liability of the company. He further submitted that the petitioner, during his tenure as Director of the Company before the year 2015, was never holding or involved in regular activities of the company.

(3). It is further contended by the petitioner that the cheque in question does not bear the signatures or in any manner, no authority vested with the petitioner apart from any action for issuance of such cheque in any capacity whatsoever on behalf of the company i.e. M/s Corodex Infrastructure P.Ltd.

(4). Learned counsel for respondent No.2 contends that the petitioner was ordered to be summoned by the trial court vide impugned order dated 21.03.2018 and the petitioner intentionally filed this petition at this fag end of the trial only to prolong the trial as the complaint was filed in December, 2018 and the petitioner approached the trial court after a lapse of four years. He further averred that the assertion made by the petitioner that he was not the director of the company at the relevant time, has to be corroborated by leading a piece of evidence to be proved before the trial court and not before this Court.

(5). Heard learned counsel for the parties.

(6). A person would be vicariously liable for commission of an offence on the part of a Company only in the event the conditions precedent laid down therefor in Section 141 of the Act stand satisfied. For the aforementioned purpose, a strict construction would be necessary.

(7). The petitioner did not issue any cheque. He, as noticed hereinbefore, had resigned from the Directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint as to how and in what manner the petitioner was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. How he is responsible for dishonour of the cheque has not been stated. The allegations made in the complaint, thus, in my opinion does not satisfy the requirements of Section 141 of the Act.

(8). Evidently, after 2015 the petitioner was not involved in any activity of the company, therefore, in that way the petitioner is not liable for any liability of the company which arose after resignation from company i.e. in 2017. It is an admitted fact that the dispute arose between the parties in complaint against the purchase order given by the M/s Corodex infrastructure Pvt. Ltd. to the respondent no. 2 and it is evident from the content of the complaint that the purchase order was given on 05.05.2017. The present petitioner was not holding any position in the company neither at the time of placing purchase order to respondent no. 2 nor at the time when cheque was dishonored. That apart, the petitioner in compliance of the provision of Section 168 (1) of the Companies Act also duly filed the Form DIR-11 with the Registrar of the Companies (Annexure P-4).

(9). The question whether the Director who has resigned can be prosecuted under Section 138 of NI Act after his resignation from the company came up for consideration before the Supreme Court in ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another [(2005) 8 SCC 89]*** wherein upon consideration of a large number of decisions, it was opined as under:-

> *"While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by*

a company. The key words which occur in the Section are "every person". These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words " 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 etc." What is required is that the persons who are sought to be made criminally liable under Section 141 should be at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a Company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for conduct of business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company and not on designation or status. If being a Director or Manager or Secretary was enough to cast criminal liability, the Section would have said so. Instead of "every person" the section would have said "every Director, Manager or Secretary in a Company is liable"....etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.

A reference to Sub-section (2) of Section 141 fortifies the above reasoning because Sub-section (2) envisages direct involvement of any Director, Manager, Secretary or other officer of a company in commission of an offence. This section operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of these offices in a company. In such a case, such persons are to be held liable. Provision has been made for Directors, Managers, Secretaries and other officers of a company to cover them in cases of their proved involvement."

(10). The Supreme Court further opined as under:-

"To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That respondent tails within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial."

(11). This aspect of the matter has also been considered recently by Supreme Court in ***Sabitha Ramamurthy & Anr. v. R.B.S. Channabasavaradhya [2006 (9) SCALE 212]*** stating as under:-

> *"Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted"*

(12). For the reasons aforementioned, this Court has no other option but to hold that the allegations made in the complaint even if are taken to be correct in their entirety do not disclose any offence against the petitioner herein. The proceedings under Section 138 of NI Act along with summoning order dated 21.03.2018 against him, thus, are quashed.

(13). The petition is allowed.

01.07.2025
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*