231 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

Date of decision: 28.03.2025

(i) CRR-325-2025(O&M)

Rita ....Petitioner

Versus

State of Punjab and another ...Respondent

(ii) CRR-319-2025(O&M)

Rita ....Petitioner

Versus

State of Punjab and another ...Respondent

(iii) CRR-365-2025(O&M)

Rita ....Petitioner

Versus

State of Punjab and another ...Respondent

(iv) CRR-384-2025(O&M)

Rita ....Petitioner

Versus

State of Punjab and another ...Respondent

(v) CRR-385-2025(O&M)

Rita ....Petitioner

Versus

State of Punjab and another ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amrindra Pratap Singh, Advocate
for the petitioner. (in all five petitions)

Mr. M.S. Batth, Advocate
for respondent(s) No.2 (in all five petitions)

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This common judgment shall dispose of all the above mentioned revision petitions as they arise from a similar factual matrix. However, for the sake of brevity, the facts are taken from CRR-325-2025(O&M).

2. The present revision petition is filed against judgment dated 04.12.2024 passed by the learned Additional Sessions Judge, Kapurthala whereby the judgment of conviction and order of sentence dated 22.03.2022 passed by the learned Judicial Magistrate Ist Class, Phagwara were upheld in the case stemming from criminal complaint bearing No. NACT/335/2016 registered under Sections 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter ' NI Act').

3. Briefly, the facts are that the petitioner is a partner in M/s Dashmesh Rice Mills. In the year 2015-2016 (Kharif season), the said firm was given a contract for custom milling of paddy and delivery of rice to respondent No.2-complainant. However, it fell short of 31,889 bags. In order to clear the dues qua the shortage of paddy, a cheque bearing No.157419 dated 29.02.2016 for Rs. 25,00,000/- was issued by the firm. On presentation for encashment, the same was dishonoured vide memo dated 25.03.2016 with the remarks- 'funds insufficient. Since the accused failed to make the requisite payment in the stipulated time, complaint(supra) was instituted.

4. After assessing all the material available on the record, the learned trial Court convicted the petitioner vide judgment dated 22.03.2022 and sentenced her to rigorous imprisonment of 02 years as well as a fine of Rs. 1000/-. Aggrieved by the same, the petitioner filed an appeal before the learned lower Appellate Court, which was dismissed vide judgment dated 04.12.2024.

5. Learned counsel for the petitioner *inter alia* contends that the petitioner was not a signatory to the disputed cheque. In fact, she was a sleeping partner in the accused firm. The petitioner had executed a Power of Attorney in favour of her husband, Pargan Singh, who is also a partner in the said firm. As such, she was not in-charge of managing day-to-day affairs of the firm. Further still, in the month of October, 2015, five cheques were handed over by Pargan Singh to respondent No.2, since it was a prerequisite for the agreement. Therefore, the disputed cheque was not issued against a legally enforceable debt. Finally, respondent No.2 presented all five cheques for encashment, the total value of which was Rs. 2,34,96,395/-, while the shortage of paddy bags could have been compensated with encashment of only one cheque. Reliance in this regard is placed on the judgment rendered by the Hon'ble Supreme Court in ***N.K. Wahi vs. Shekhar Singh and others 2007(3) SCC(Cri) 203, Ashok Shewakramani and others vs. State of Andhra Pradesh and another 2023(3) SCC(Cri) 568,*** this Court in ***Gazal Chadha vs. Rajpal Bansal 2023(3) R.C.R.(Criminal) 523,*** the Delhi High Court in ***Sunita Palta and others vs. M/s Kit Marketing Pvt. Ltd. 2020(2) R.C.R.(Criminal) 366*** and the Madras High Court in ***Coronation Printing Ink Manufacturing Company and others vs. Elgi Finance Limited 1998(2) CTC 548.***

6. Learned counsel for respondent No.2 submits that the petitioner

was an active partner in the accused firm. The firm caused a loss to respondent No.2 by not fulfilling their end of the agreement as it fell short of delivering paddy by 31,889 bags.

7. Learned State counsel presented the custody certificate of the petitioner, which is taken on record. He submits that the petitioner has undergone 04 months 02 days of custody.

8. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner was a partner in the accused firm. However, she was not a signatory to the disputed cheque. In fact, a Power of Attorney was executed by her in favour of her husband- Pargan Singh, who took care of the everyday affairs pertaining to the said firm. Moreover, no specific averments have been made by respodnent No.2-complainant against the petitioner that would highlight her role in the present dispute.

9. A just adjudication of the matter at hand requires a study of Section 141 of the NI Act, which reads as follows:

> ***Section 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* ***<u>in charge of, and was responsible to, the company for the conduct of the business of the company,</u>*** *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 sub-section shall render 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.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-- For the purposes of this section, --
(a) "company" means any body corporate and includes a firm or other association of individuals; and
(b) "director", in relation to a firm, means a partner in the firm.

It is evident that the legislative intention behind the aforementioned provision was to create vicarious liability. It further clarifies that such liability would only be placed on all such persons who were responsible for conducting day to day business of the said company. A two Judge Bench of the Hon'ble Supreme Court in ***S.P. Mani and Mohan Dairy vs. Dr. Snehlata Elangovan (2023) 10 SCC 685***, speaking through Justice J.B. Pardiwala, held as follows:

"47. Our final conclusions may be summarised as under:-

a.) 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.

b.) <u>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.</u> 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.

c.) Needless to say, the final judgement 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.*

d.) 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.****"* (emphasis added)

10. Further, a two Judge Bench of the Hon'ble Supreme Court in ***Pooja Ravinder Devidasani vs. State of Maharashtra and another Maharashtra (2015) 3 SCC(Civil) 384*** **,** speaking through Justice N.V. Ramana, opined as follows:

"27. Unfortunately, the High Court did not deal the issue in a proper perspective and committed error in dismissing the writ petitions by holding that in the Complaints filed by the Respondent No. 2, specific averments were made against the appellant. But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the appellant in the commission of offence. ***It is settled law that to attract a case under Section 141 of the N.I.***

> ***<u>Act a specific role must have been played by a Director of the Company for fastening vicarious liability.</u>*** *But in this case, the appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged.*
>
> *28. In the entire complaint,* ***<u>neither the role of the appellant in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained.</u>*** *From the record it appears that the trade finance facility was extended by the Respondent No. 2 to the default Company during the period from 13th April, 2008 to 14th October, 2008, against which the Cheques were issued by the Company which stood dishonored. Much before that on 17th December, 2005 the appellant resigned from the Board of Directors. Hence, we have no hesitation to hold that continuation of the criminal proceedings against the appellant under Section 138 read with Section 141 of the N.I. Act is a pure abuse of process of law and it has to be interdicted at the threshold."*

11. In view of the discussion above, all the present petitions are allowed and the judgment dated 04.12.2024 passed by the learned Additional Sessions Judge, Kapurthala and judgment and order of sentence dated 22.03.2022 passed by Judicial Magistrate Ist Class, Phagwara are hereby set aside. Petitioner is acquitted of the notice of accusation framed against her. Petitioner be released from custody, if not required in any other case. Pending miscellaneous application(s), if any, shall also stand disposed of.

12. A photocopy of this order be placed on the files of other connected cases.

(HARPREET SINGH BRAR)
JUDGE

28.03.2025
Ajay Goswami

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