IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

202 **CRM-M-45420-2017**
Date of decision: 14th May, 2025

Prem Nath
...Petitioner

Versus

ICICI Bank Ltd. through Shri Rajiv Pathak
...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. C.M. Munjal, Advocate for the petitioner.

Mr. Karan Gaba, Advocate for
Mr. Sandeep Suri, Advocate for the respondent.

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MANISHA BATRA, J (ORAL):-

The instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of criminal complaint No. 16 of 2016 titled as '*ICICI Limited Bank Vs. Karan Aren and company and others'* as well as the order dated 04.07.2015 passed by the Judicial Magistrate First Class, Bathinda, whereby the petitioner along with the co-accused had been ordered to be summoned for commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short, '*NI Act*').

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint has been moved by the respondent-complainant, who is a banking company through its Collection Manager on the allegations that it has been transacting the business of

bankers and receives deposits, grants loans of different nature and advances to the public under various policies floated by it from time to time. The petitioner, who is partner of M/s Karan Aren and Company (impleaded as accused No.1 in the complaint) along with another partner Karan Aren (impleaded as accused No.2 in the complaint) had approached the respondent for grant of loan, which was sanctioned and loan/overdraft limit was granted to the above named partnership firm. The petitioner and its partner on behalf of the firm had agreed to make repayment of the loan amount. To discharge liability of part payment due to the complainant, a cheque for a sum of Rs. 1,41,83,676/- was issued which was signed by the accused No.2 -Karan Aren. The said cheque was deposited by the respondent but was dishonored with remarks 'funds insufficient'. The respondent issued legal notice dated 30.05.2015. The petitioner and co-accused failed to make payment of the cheque amount within the statutory period thereby compelling the respondent to file the above mentioned complaint.

3. After considering the preliminary evidence, which was produced by the respondent-complainant in the form of oral as well as documentary evidence, the learned Magistrate vide order dated 04.07.2015 issued process for offence under Section 138 of NI Act as against the petitioner, co-accused i.e. another partner-Karan Aren as well as the partnership firm namely- Karan Aren and company.

4. Feeling aggrieved, the instant petition has been filed by the petitioner.

5. It is argued by learned counsel for the petitioner that he was

partner only to the extent of 10% in the firm, whereas, the co-accused Karan Aren was partner to the extent of 90%. It was the co-accused Karan Aren, who was responsible for day to day conduct of the business of the firm. The liability of the petitioner was limited one. The cheque in question was issued by the co-accused Karan Aren from his personal account in his individual capacity and therefore, the petitioner could not be held liable for commission of offence under Section 138 of the Act. It is further contended that since the drawer of the cheque had drawn the cheque in his individual capacity from his individual account, neither the partnership firm nor any other partner of the same could be held vicariously liable by taking aid of Section 141 of the Act. To fortify his argument, learned counsel for the petitioner has placed reliance upon authorities cited as ***'Alka Khandu Avhad Vs. Amar Syamprasad Mishra and another, 2021 SCC Online SC 186', 'M/s Gujarat Oleo Chem vs. State 2010 (1) JCC (NI) 84'*** and ***'Srikant Somani vs. Sharad Gupta, (2005) V AD (Delhi) 300'.***

6. On the other hand, it has been argued by learned counsel for the respondent that the cheque in question was issued by one of the partners of the firm to discharge the legally enforceable liability of the firm. The petitioner being one of the partners is liable for transaction in question by incurring vicarious as well as personal liability. It is also argued that the powers under Section 482 of Cr.P.C. are to be exercised in extra ordinary and sparing circumstances and no such circumstance has been made out at this stage in this case. The appreciation of evidence is not permissible at the stage of quashing of the proceeding in exercise of power under Section 482 of Cr.P.C.. The factual defences taken by the petitioner-accused have to be

looked into at the time of discharge in the trial. Disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence and therefore, the complaint cannot be quashed by this Court by taking recourse to Section 482 of Cr.P.C. With these broad submissions, it is urged that the petition does not deserve to be allowed.

7. At the outset, it would be proper to refer to the provisions of Section 138 and 141 of the NI Act, which read as under:-

138. Dishonour of cheque for insufficiency, etc., of funds in the account.-- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

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 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 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.

8. It is also relevant to mention that Section 7 of the Act provides that maker of a bill of exchange or cheque is called the 'drawer'; the person thereby directing to pay 'drawee'.

9. A conjoint reading of Section 7 and 138 of the Act clearly shows that it is only the drawer of the cheque, who can be held responsible for the offence under Section 138 of the Act. However, Section 141 of the NI Act, envisages that if drawer is a company or firm or association of individuals, all such persons who at the time when the offence was committed, were in charge or responsible for conduct of the business of such company or firm or association of individuals, will be deemed to be guilty for the offence under Section 138 of the Act. However, before Section 141 is invoked, the complainant has to demonstrate that cheque in question had been issued by company/firm.

10. In the instant case, the petitioner is admittedly one of the partners of the accused No.1-partnership firm and Karan Aren is another partner. It is also not in dispute that the firm had availed loan facility/ overdraft facility from the respondent-complainant Bank. The short question involved in this case is as to whether the petitioner being partner of the firm is vicariously liable for the offence under Section 138 of the Act with regard

to the cheque in question issued by another partner in his individual capacity from his personal account?

11. A copy of the cheque in question has been placed on record and a perusal of the same shows that it had been signed by the accused Karan Aren and was issued from his personal bank account. Neither any rubber stamp of the firm has been affixed and nor the name of the firm has been mentioned/printed below the signatures of the accused-Karan Aren and only his name has been printed on the cheque. The respondent has also not produced any material on record to suggest that this cheque was issued for and on behalf of the accused firm. The petitioner has also placed on record a letter shown to be issued by HDFC Bank informing the petitioner that the account number given in the letter sent by him belonged to accused-Karan Aren pertaining to his saving account and not a current account. It is, thus, clear that this cheque was signed and issued by accused Karan Aren in his personal capacity and not in the capacity of partner of the accused-firm.

12. Merely because accused-Karan Aren was one of the partners of the accused firm, in the considered opinion of this Court, that by itself will not fasten criminal liability of the offence under Section 138 of the Act on the other partner i.e. the petitioner for the individual act of the accused-Karan Aren. Since the well settled proposition of law is that only the signatory of the cheque i.e. drawer of the cheque, who has drawn the cheque in his individual capacity and from his individual account, who would be liable under Section 138 of the Act and not other directors/partners of the company/firm. In this context, this Court places reliance upon ***Srikant Somani's case (supra)***, wherein it was observed by Hon'ble Supreme Court

that vicarious liability is available only in respect of those offences which are committed by a company as provided in Section 141 of the Act. Since the petitioners in that case other than petitioner No.1 were neither the persons who drew the cheques nor the persons who could be held liable by virtue of Section 141 of the NI Act, it was held that only petitioner No.1 was liable for the offence and he alone could be summoned and not the remaining petitioners.

13. Reliance is further placed upon the observations made by Hon'ble Apex Court in ***Alka khandu's case (supra)***, wherein it was held that that Section 141 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person, who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138. A person might have been jointly liable to pay the debt but he cannot be prosecuted under this Section unless the bank account is jointly maintained and that he was a signatory to the cheques.

14. Similar observations were made by Hon'ble Supreme Court in '***Monaben Ketan Bhai Shah and another vs. State of Gujarat and others, AIR 2004 Supreme Court 4274'***, wherein it was held that Section 141 does not make all the partners liable for the offence under Section 138 of the Act. The criminal liability has been fastened on those, who at the time of commission of the offence were in-charge of and were responsible to the firm for the conduct of the business of the firm. There may be sleeping partners, who are not required to take any part in the business of the firm and there may be ladies and others, who may not know anything about the

business of the firm. The primary responsibility is on the respondent to make necessary averments in the complaint so as to make accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the accused to prove that at the time when the offence was committed, they were not in-charge of and were not responsible to the firm for the conduct of the business of the firm would arise only when firstly the complainant make necessary averments in the complaint established the facts. Similar observations were made in ***M/s Conserve Reddy Misx Concrete and others Vs. M/s Shub Laabh Minerals, 2022(2) AIR Kar R 90*** by High Court of Karnataka and by Delhi High Court in ***'Shiv Kumar Verma and another Vs. Manoj Pandey, 2012(7)RCR (Criminal) 262'*** and ***'Mrs. Aparna A. Shah Vs. M/s Sheth Developers Pvt. Ltd. and another, 2013(8) SCC 71'.***

15. In view of the position of law as discussed above, this Court is inclined to hold that since the petitioner was neither the person who had drawn the cheque nor the cheque in question is shown to be issued on behalf of the firm by co-accused Karan Aren on the basis of which the petitioner could be presumed to be vicariously liable for the offence under Section 138 of the Act and as this cheque is shown to be issued from the individual account of Karan Aren in his individual capacity, therefore, the petitioner cannot be prosecuted by assuming any vicarious liability or otherwise. For the forgoing reasons, the petition is allowed, the complaint No. 16 of 2016 titled as *'ICICI Limited Bank Vs. Karan Aren and Company and others'* pending in the Court of Judicial Magistrate First Class, Bathinda and the impugned order dated 04.07.2015 are quashed qua the petitioner only.

However, it is made clear that the proceedings shall continue as against the remaining accused.

16. A copy of this order be sent to the learned trial Court.

[MANISHA BATRA]
JUDGE

14th May, 2025
Parveen Sharma

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes