IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
CRM-M-31345-2024
Reserved on: 5th March, 2025
Pronounced on: 5th April, 2025

Ketan Bansal

...Petitioner

Versus

Krishiacharya Techonologies Pvt. Ltd.

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Shubham Budhiraja, Advocate for the petitioner.
Mr. Akshay Goel, Advocate for the respondent.
(through video conferencing)

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MANISHA BATRA, J :-

The instant petition has been filed by the petitioner seeking quashing of criminal complaint No. NACT/48972-2022 titled as 'Krishiacharya Technologies Pvt. Ltd. Vs. Om Shri Shubh Labh Agritech Pvt. Ltd. and ors.' filed under Section 138 of Negotiable Instruments Act, 1881 (for short, '*NI Act*') and order dated 18.01.2023, whereby the petitioner along with the co-accused had been ordered to be summoned as such and the proceedings having emanated subsequently therefrom.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by the complainant-respondent against the petitioner and the co-accused on the allegations that Om Shri Shubh Lab Agritech Private Company (for short, *'the company'*) of which the petitioner is a director, had purchased grain from it as per terms of an agreement executed between themselves. The said agreement had been signed by the accused Giri Raj Bansal, who is Managing Director of the company. He had also given personal guarantee of

timely payment along with two personal cheques signed by him. These cheques were presented by the complainant before its banker on 30.08.2022, but the same were returned unpaid with the remarks ‘payment stopped by drawer’. The complainant served legal notice dated 30.09.2022 upon the petitioner and the co-accused. They still failed to make payment of the amount of the cheques within prescribed period thereby compelling the complainant to file the aforementioned complaint.

3. On considering the preliminary evidence recorded by the complainant, the learned Jurisdictional Magistrate, Gurugram vide order dated 18.01.2023 issued process as against the petitioner and co-accused under Section 138 of NI Act. On 05.06.2023, another order was passed to the effect that due to some inadvertent mistake in the summoning order, it was mentioned that only one cheque had been given though infact two cheques were given and the same mistake was ordered to be rectified.

4. It is argued by learned counsel for the petitioner that the complaint as filed against him and the impugned summoning order as well, are not sustainable in the eyes of law since he is not a signatory to the cheuqes in question. He is only one of the directors of the company. It is not the petitioner but the accused No.2 Giri Raj Bansal, who had entered into a trade agreement with the complainant and had executed deed of personal guarantee and had issued the cheques in question in his personal capacity. The allegations in the complaint are bereft of basic ingredients of Section 141 of NI Act. There is no allegation in the complaint attributing any role to the petitioner in the commission of offence under Sections 138 or 149 of NI Act. Even while passing the impugned order dated 18.01.2023, the learned trial Magistrate ignored the fact that the basic requirement of issuance of

process against the petitioner had not been fulfilled. The complainant had not specified the role of the petitioner in the entire transaction. No case for issuance of summons had been made out against him. The proceedings have been initiated against him to abuse the process of law. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned complaint as well as summoning order are liable to be quashed.

5. Conversely, learned counsel for the respondent vehemently argued that there is no illegality or infirmity in the impugned order. The petitioner is admittedly one of the two directors of the accused No.1 company and was obviously in charge of and responsible for the conduct of the business of the company and as such, he is jointly, severally as well as personally responsible for all the transactions entered into by the company. It is further argued that even that it is not open for this Court to interfere in the impugned order while exercising powers under Section 482 of Cr.P.C. unless there is some incontrovertible evidence clearly indicating that the petitioner could not have any concern with the issuance of cheque in question and it would be an abuse of process of the Court to ask him to stand trial. Accordingly, it is urged that the petition is being devoid of any merits and is liable to be dismissed.

6. The rival contentions of both the sides have been heard and given due considerations.

7. Section 138 of the NI Act refers to penalty in case of dishonour of a cheque for insufficient fund in the bank account. Since, the complaint has been filed against the Company and its managing director as well as director, alleging commission of offence under Section 138 of the NI Act therefore, it is appropriate to refer to Section 141 of the NI Act, which deals

with the offence by a Company. The same reads as follows:-

Section 141- OFFENCES BY COMPANY:-

> (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.

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."

8. On a bare reading of the aforementioned provision, it is clear that so far as the companies are concerned, if any ofence is committed by it, then every person who is director or employee of the company is not laible. Only such person would be held liable who if at the time when offence was committed, was in charge and was responsible for the company for the conduct of business of the company as well as of the company. However, by way an exception to the normal rule that in cases involving criminal liability against vicarious liability, no-one is to be held liable for an act of another, a specific provision is made in the statue by way of this Section that criminal liability can be extended to others. Section 141 of the NI Act is an instance of specific provision, which in case an offence under Section 138 of the NI Act is committed by a Company, extends criminal liability for dishonour of cheque to the officers of the Company. For that purpose certain conditions, which are mentioned in Section 141 of the NI Act, have to be satisfied and those conditions have to be strictly complied with. In that case apart from the Company, all persons, who at the time of commission of offence were in-charge and were responsible to the Company for conduct of business of the Company, are liable for the offence. This section postulates constructive liability of the directors of the company or the business of the company.

9. It is well settled that what is required for a person, who is sought to be vicarously liable for the offence under Section 141 of the NI Act, is that when the offence was committed, he was in charge and responsible for conduct and business of the company and this should be reflected in the averments made in the complaint. Reliance in this context cane be made to ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla, 2005(3) Apex Criminal 229,*** wherein a three Judges Bench of Supreme Court was dealing with the reference made by a two Judges Bench, for determination of the question, as to whether, for the purpose of Section 141 of NI Act, it was sufficient if the substance of the allegation read as a whole fulfilled the requirement of the said Section and it was not necessary to specifically state in the complaint that the person accused was in charge of or responsible for the conduct of a company or not. The second question for determination was whether a director of a company was deemed to be in charge of and responsible for the company for conduct of the business of the company and therefore, deemed to be guilty of the offence unless, he proved to the contrary and further that whether in the absence of specific averments that the signatory of the cheque and the Managing Director or Joint Managing Director was responsible to the company for conduct of its business, he could be proceeded against? The Hon'ble Apex Court observed that it was necessary to specifically aver in a complaint under Section 141 that at the time when the offence was committed, the person accused was in charge of, and responsible for the conduct of the business of the company and this averment was an essential requirement of Section 141 and had to be made in a complaint. Without this averment having been made in the complaint, the requirement of Section 141 could not be said to be satisfied.

10. Reliance can also be placed upon ***Saroj Kumar Poddar Vs. State (NCT of Delhi), 2007(1) R.A.J. 205,*** wherein it was observed by Hon'ble Supreme Court that the complaint must not only contain averments justifying the requirement of Section 141 of NI Act but must also show as to how and in what manner, the accused named therein was responsible for the conduct of the business of the company or otherwise responsible to it with regard to its functioning.

11. In ***N.K. Wahi Vs. Shekhar Singh, 2007(2) RCR (Criminal) 266,*** it was observed by Hon'ble Supreme Court that Section 141 of NI Act raised a legal fiction by reason of which a person, although not personally liable for commission of an offence, would be vicariously liable and that it was held that such vicarious liability could be inferred against a company only if the requisite statement was made in the complaint but before a person could be made vicariously liable strict compliance with the statutory requirements would be insisted. In that case, the basic averments in terms of Section 141 of NI Act were absent and hence, the complaint was ordered to be quashed by observing that to launch a prosecution against alleged directors, there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation, as to how the directors are in charge and responsible for the conduct of the business of the company. The description should be clear.

12. In ***Paresh P. Rajda Vs. State of Maharashtra and another (2008) 7 SCC 442***, it was observed by Hon'ble Supreme Court that the entire matter would boil down to an examination of the nature of the allegations made in the complaint to determine the question as to whether, a particular director is liable to face trial due to his vicarious liability or not.

13. In ***K.K. Ahuja Vs. V.K. Arora, 2009(3) RCR (Criminal) 571***, the Hon'ble Supreme Court while considering the same question summarized the position under Section 141 of the NI Act as under:-

> **27.** The position under Section 141 of the Act can be summarised thus:
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> (i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.
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> (ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.
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> (iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.
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> (iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

14. Reference can also be made to ***National Small Industry Corporation Limited vs. Harmeet Singh Paintal, 2010(2) RCR (Criminal)***

122, wherein the Hon'ble Supreme Court while dealing with the same question laid down the following principles:-

> *"(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.*
> *(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.*
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> *(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 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 offence committed by the company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.*
>
> *(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.*
>
> *(v) If accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.*
>
> *(vi) If the accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.*
>
> *(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."*

15. In ***A.K. Singhania vs. Gujarat State Fertilizer Company Ltd.,2013 (4) RCR (Criminal)*** *777*, while dealing with the same, Hon'ble Supreme Court observed that it is necessary for a complainant to state in the complaint that the person accused was in charge of and responsible for the

conduct of the business of the company. Although, no particular form for making such an allegation is prescribed, and it may not be necessary to reproduce the language of Section 138 of the NI Act, but a reading of the complaint should show that the substance of the accusation discloses that the accused person was in charge of and responsible for the conduct of the business of the company at the relevant time.

16. In ***Mannalal Chamaria vs. State of West Bengal, 2014(2) RCR (Criminal) 25***, the Hon'ble Supreme Court reiterated the above observations and observed that in the averments made before it, there was no specific or even a general allegation made against the appellants. Therefore, the complaint filed against the appellants under Section 138 of the NI Act was dismissed.

17. In ***Gunmala Sales Pvt. Ltd. Vs. Anu Mehta 2015(1) SCC 103***, the Hon'ble Apex Court was dealing with a question with regard to the directors of a company, who were not signatories to the cheques but were summoned as accused. It was observed that so far as the directors who are not signatories to the cheques or not managing directors or joint managing directors are concerned, it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time, when the offence was committed, such directors were in charge of and were responsible for the conduct of the business of the company. This was a basic requirement and there was no deemed liability of the directors. It was further observed that when a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, if the basic averments are found to be sufficient, the complaint must proceed against the directors, but if there

is bald averment, the High Court can quash the process, if the director makes out a case that making him stand a trial would be an abuse of process of the Court.

18. Reference can also be made to the judgment dated 15.03.2024 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1577-1578 of 2024 arising out of Special Leave Petition (criminal) No. 12390-12391 of 2022 decided on 15.03.2024 titled as ***Susela Padmavathy Amma vs. M/s Bharti Airtel Limited***, wherein it was observed that simply because a person is a director of a company, it does not necessarily mean that he fulfills the requirement so as to make him liable, unless at the material time he was in charge of the company and was responsible for conduct of its business.

19. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, it may be mentioned that on a perusal of the contents of the complaint (Annexure P-1), it is apparent that there is not even a basic averment that the present petitioner was either a director or that he was in charge of and responsible for the conduct of the business of the accused No.1 company at the relevant time, when the offence was committed. It is only mentioned that the managing director of the accused company, Mr. Giri Raj Bansal, provided personal guarantee of timely payment along with two personal cheques signed by him. On overall reading of this complaint, it is clear that there is absence of any particular role of the petitioner in the complaint. No doubt, while exercising powers under Section 482 of the Code (Section 528 of BNSS), the High Court should proceed with great circumspection to prevent the abuse of the process of the Court. This Court does not conduct a mini trial or roving enquiry.

However, there is no fixed formulae to be followed by this Court. On examining the facts of the case in the light of the above discussion, it is noticed that since in the complaint there is no allegation at all to the effect that the petitioner was in charge of and responsible for the conduct of business of the company at the relevant time nor anything has been stated as to the part played by him and how he was responsible regarding finances of the company, issuance of the cheque and control over the funds of the company, therefore, there can be no hesitation in saying that the summoning order and the complaint are liable to be quashed qua the petitioner. Hence, considering the peculiar facts and circumstances of the case as well as ratio of law as laid down in the above discussed authorities, I am of the considered opinion that it is a fit case wherein inherent power of this Court provided under Section 482 Cr.P.C. can be exercised to quash the complaint.

20. Accordingly, the present petition is allowed and the complaint No. NACT/48972-2022 titled as 'Krishiacharya Technologies Pvt. Ltd. Vs. Om Shri Shubh Labh Agritech Pvt. Ltd. and ors.' filed under Section 138 of Negotiable Instruments Act, 1881 (for short, '*NI Act*') and order dated 18.01.2023 are quashed qua the present petitioner, along with all the subsequent proceedings arising therefrom.

[MANISHA BATRA]
JUDGE

5th April, 2025
Parveen Sharma

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No