**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Reserved on: 22.01.2025
Pronounced on: 03.02.2025

1. CRM-M-44594-2023 (O&M)

Prabh Jyoti Singh and others ...Petitioners

Versus

M/s Steel Kart through its proprietor ...Respondent

2. CRM-M-44741-2023(O&M)

Prabh Jyoti Singh and others ...Petitioners

Versus

M/s Steel Kart through its proprietor ...Respondent

3. CRM-1786-2024(O&M)

Sandeep Singh and others ...Petitioners

Versus

M/s Steel Kart through its proprietor ...Respondent

4. CRM-12976-2024(O&M)

Sandeep Singh and others ...Petitioners

Versus

M/s Steel Kart through its proprietor ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Dr. Pankaj Nanhera, Advocate
and Mr. Yogesh Vashishta, Advocate for the petitioners(s).

Mr. Prateek Gupta, Advocate for the respondent(s).

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Harpreet Singh Brar, J.

1. This common order shall dispose of all the abovementioned petitions as they arise from similar factual matrix. However, for the sake of brevity, the facts are taken from CRM-M-44594-2023.

2. The present petition has been preferred under Section 482, Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of complaint bearing No.NACT No. 59849 of 2022 dated 20.10.2022, titled as "M/s. Steel Kart vs M/s. Bird Machines Private Limited", under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act') as well as summoning order dated 11.11.2022(Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Faridabad.

3. Briefly, the facts, as alleged, are that the respondent-complainant is in the business of sale and purchase of iron and steel goods with accused company i.e. M/s Bird Machine Pvt. Ltd. The accused, including the petitioners, being the directors of the said company came to the office of the respondent for quality and quantity inspection before taking delivery of the ordered goods. The goods were delivered by the complainant on assurance of payment by the accused. In order to discharge their liability, four cheques were issued by the accused-company under the signatures of accused- Arvinder Pal Singh, the details of which are given below:

Sr. No.	Cheque No.	Date	Amount	Complaint
1.	022831	30.06.2022	Rs.37,49,753/-	NACT No. 59298 of 2022
2.	022808	15.06.2022	Rs.10,00,000/-	NACT No. 59378 of 2022
3.	022810	30.07.2022	Rs.50,00,000/-	NACT No. 59526 of 2022
4.	022811	30.08.2022	Rs.50,00,000/-	NACT No. 59849 of 2022

However, all the abovementioned cheques were dishonoured on presentation. A legal notice was served qua each of the aforementioned cheques, however, the requisite payment was not made in the stipulated time and accordingly, complaints under the NI Act were instituted.

4. Learned counsel for the petitioners *inter alia* contends that the petitioners have only been arraigned as accused in the present case because they

are Directors of the accused-company. However, the petitioners were never associated with the day to day affairs of the company. In fact, they were not drawing any salary or monetary benefit from the company either. Further still, the cheque(s) have been issued under the signature of the authorised signatory-Arvinder Pal Singh, Managing Director. Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in ***Ashok Shewakramani and others vs. State of Andhra Pradesh and another 2024 INSC 1013, Pooja Ravinder Devdasani vs. State of Maharashtra (2015) 3 SCC(Civil) 384*** and ***Veenu Rana vs. Surindra Milk Chilling Centre Pvt. Ltd. 2024(1) R.C.R. (criminal) 516.***

5. *Per contra* learned counsel for the respondent submits that the petitioners visited the premises of the respondent in order to check the quality and quantity of the goods ordered by them and subsequently, accepted delivery. As such they were involved in the day to day affairs of the company, being its Directors. Therefore, no interference by this Court is warranted.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it appears that the petitioners are the Directors of the accused-company and the cheque(s) was issued under the signature of the Managing Director- Arvinder Pal Singh. The doctrine of vicarious liability is a civil concept and its applicability in criminal cases is an exception rather than the rule. The doctrine of vicarious liability originates from the maxim *Qui Facit per Alium Facit per,* which means any act done by the servant in the course of his employment is considered to be done by the master and in principle, the master is also liable for the said act. In the Indian context, a person can be held liable for the actions of another, with the aid of provisions contained in Section 149 and 34 of the IPC. As such, in criminal law, in certain cases, a person may be

held liable as the principal offender even though the *actus reus* was committed by another person. However, the legal framework for imputing vicarious liability on corporate entities is categorically provided for in a variety of legislations such as the NI Act. Section 141 of the NI Act 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 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.*
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> *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.*
>
> (emphasis added)

7. 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:

> *46. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be.* ***But, if any Director or Partner 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 is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention.*** *He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or Partner.*
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> *47. Our final conclusions may be summarised as under:-*
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> > *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.) 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. 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)

Further still, a two Judge Bench of the Hon’ble Supreme Court in ***K.K. Ahuja vs. V.K. Vora and another (2009) 10 SCC 48*** has categorically held that signature of a Director of the company would automatically attract liability under Section 141(2), NI Act. Speaking through Justice R.V. Raveeendran, the following was observed:

“20. *The position under section 141 of the Act can be summarised thus :*

(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.
(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***.
xxx xxx xxx" (emphasis added)

8. Finally, a two Judge Bench of the Hon'ble Supreme Court in **Pooja Ravinder Devidasani vs. State of Maharashtra and another (supra),** 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. Act a specific role must have been played by a Director of the Company for fastening vicarious liability.*** *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, ***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.*** *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."*

9. In view of the discussion above, the aforementioned petitions are allowed. The complaints bearing no. NACT No. 59298 of 2022, NACT No. 59378 of 2022, NACT No. 59526 of 2022 and NACT No. 59849 of 2022 and all subsequent proceedings arising therefore are hereby quashed qua the petitioners.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

03.02.2025 **(HARPREET SINGH BRAR)**
yakub **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*