2025:PHHC:172773

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.M-51132 of 2025
Date of Decision: *December 11, 2025*

Love Kohli & others

..... PETITIONER(S)

VERSUS

M/s Devans Modern Breweries Ltd.

..... RESPONDENT(S)

CORAM: **HON'BLE MR. JUSTICE SUBHAS MEHLA**

PRESENT: - Mr. Rajesh Lamba, Advocate, with Mr. Abhinav Kaushik, Advocate, for the petitioners.

Mr. Aman Bahri, Advocate, for the respondent.

SUBHAS MEHLA, J

1. At the very outset, the Ld. Counsel for the petitioners submits that he does not wish to press the present petition qua petitioner Nos.2, 8, 9, 11, 13 and 15.

2. The petition *qua* petitioner Nos.2, 8, 9, 11, 13 and 15 stands dismissed as not pressed, vide separate order of even date.

3. This is the second petition for quashing order dated 02.09.2025 (Annexure P-8) vide which revision petition against summoning order dated 07.03.2020 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Gurugram, has been dismissed.

4. Brief facts of the case for the adjudication of the present petition are that respondent-complainant is engaged in business of manufacturing and selling of beer and Indian Made Foreign liquor. The petitioners along with one Mr. Adesh Giri, formed an Association of Persons (in the name & style of *M/s Adesh Associates*) to carry out the business of

trading and supply of liquor on liquor vends. On 31.05.2017, an Agreement of Association of Persons (Annexure P-4) was signed between all the petitioners as well as Mr. Adesh Giri. As per the clause (1) of aforesaid agreement, business was to be carried out under the name and style of '*M/s Adesh Associates'*. Further in clause (2) of the agreement, it was agreed that a license allocated to any member of the association shall be deemed as the business part of the association. In the yearly draw of lots conducted by the Government, liquor vend licenses were allotted to Petitioner Nos.2, 8, 9, 11, 13 and 15, namely, Sanjay Aggarwal, Suraj, Urmila Devi, Sulochna, Mahesh Pokhriyal and Surendra Singh Pokhriyal, (qua whom the present petition is not pressed). Complainant has alleged in the complaint dated 30.09.2017 (Annexure P-1) that all the members of Association of Persons were actively engaged in day-to-day affairs and were responsible for payments. On the demand of the individual members of the association, the beer was supplied by the complainant to *M/s Adesh Associates*. In order to repay the outstanding amount towards the Complainant, *M/s Adesh Associates* issued cheque bearing No.518906 dated 17.07.2019 for a sum of Rs.45,97,617/- (*Rupees Forty Five Lakh Ninety Seven Thousand Six Hundred and Seventeen*), which on presentation was dishonored and after statutory compliances, the instant complaint was filed.

5. Learned counsel for the petitioners contended that impugned orders dated 02.09.2025 as well as 07.03.2020 are liable to be set aside since the petitioners are sleeping partners in the association and were not responsible for day-to-day affairs of the association. The petitioners are not the signatory of cheque which bounced. Agreement of Association of Persons

dated 31.05.2017 is part of trial Court record. As per the clauses (5) and (6) of the Agreement, solely Mr. Adesh Giri was empowered and authorized to sign the papers or any type of application or to give any statement to all concerned departments, and also in judicial matters. The bank account was only to be operated under the signatures of Mr. Adesh Giri, thus he was the person managing the business. There are no specific averments in the complaint against the petitioners and they were not incharge or responsible for conduct of business of the association.

6. Learned counsel for the respondent-complainant contended that summoning order dated 07.03.2020 has been passed in accordance with law. From the agreement forming Association of Persons (Annexure P-4), it is crystal clear that all the petitioners had been incharge of, and were responsible for the working of association. Decisions of the Association of Persons were being taken by mutual consent of its members and were entitled to profits and withdraw money for their personal needs. Beer was supplied by the complainant on demand of the individual members of the association. Earlier also, the petitioners approached the revisional Court by filing Revision No. CRR/156/2023 which was dismissed as withdrawn on 03.01.2024 followed by filing of quashing petition before this Court viz. CRM-M-2360 of 2024 which was also dismissed as withdrawn on 08.08.2024 with liberty to take appropriate remedy in accordance with law. Thus, the petitioners filed a second revision petition against the same order, which was dismissed on merits by the Additional Sessions Judge, Gurugram vide order dated 02.09.2025. Hence, he prays for dismissal of the present petition.

7. Heard.

8. At the outset, it is pertinent to mention that the present petition *qua* petitioner Nos.2, 8, 9, 11, 13 and 15 has already been dismissed as not pressed. *Qua* the remaining petitioners, the main contention is that they were not the incharge or responsible for day-to-day functioning of Association of Persons, namely *M/s Adesh Associates*, and hence criminal liability is not attracted under Section 138 of NI Act r/w Section 141 of NI Act; only Mr. Adesh Giri was empowered and authorized to operate the bank account under his signatures, as well as to sign papers/applications or to give statements to all concerned departments as well as in judicial matters on behalf of the association.

9. A perusal of agreement (Annexure P-4) reveals that license allotted to any individual member would be considered to be a part of business (clause 2); decisions of the association were to be taken by mutual agreement between them(clause 8); all the members of association would be entitled to make withdrawals for their personal needs from capital account (clause 9); members of the association were entitled to salary and other direct expenses incurred (clause 12); and they had equal share-holding barring Sanjay Aggarwal, Adesh Giri and Mahesh Pokhriyal who had 5% more shareholding(clause 15).

10. In support of their contentions, the petitioners have adamantly sought to rely on clauses (5) and (6) of the Agreement of Association of Persons Mr. Adesh Giri was empowered and authorized to operate the bank account as well as represent the association before all departments and in judicial matters. However, a piece-meal approach cannot be adopted to derive

the true intent of a legal document. Clauses (8) and (9) of the Agreement (Annexure P-4) are reproduced as follows:

> *8. That for Financial Year 2017-18 and onwards, the trading of liquor/beer shop allotted by the government would be mutually decided among the members and a majority decision shall be applicable and all the business income derived from the allotted shops in the individual name of the member of AOP, shall be treated as the income of the AOP.*
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> *9. That the members of AOP shall be entitled to make withdrawal for their personal need from their capital account and same shall be debited to their respective capital account.*

11. Although Mr. Adesh Giri was the authorized person for carrying out the banking transaction, a combined reading of the clauses suggests that all members of the association actively participated in the running of the business of the association, as decisions were to be taken by mutual consent. Moreover, if one member has been nominated by mutual consent to be the authorized signatory in banking transactions, it does not automatically imply that he alone was at the helm of the affairs, especially when the governing document of the Association of Persons i.e. the Agreement annexed as Annexure P-1, particularly provides for mutual consent of all members in all decisions relating to trading carried out by the association.

12. Further, as the present petition is not being pressed qua Petitioners Nos.2, 8, 9, 11, 13 and 15, it is pertinent to note that Petitioners Nos.2, 8, 9, 11, 13 and 15 are the members of the Association who were allotted the liquor vend licenses through the government lottery draw. In this

regard, even though the present petition is not being pressed qua Nos.2, 8, 9, 11, 13 and 15, it is not enough to arrive at the conclusion that the remaining petitioners did not actively conduct the affairs of the business of the associations. Perusal of the Agreement of Association shows that a liquor vend license allotted to any member would be deemed as part of the business of the association; and decisions regarding the trade of beer and Indian made liquor were to be taken with the mutual consent of all the members, *irrespective of the fact to whom the liquor vend license was allotted*. Thus, prima facie, it does not appear that the petitioners were sleeping/dormant members of the association, and there is nothing on record to suggest that petitioners were not actively involved in the business of the association.

13. The petitioners have also sought to rely on ratio of law held in ***S.M.S. Pharmaceuticals v. Neeta Bhalla & Anr., (2005) 8 SCC 89***, and ***Ketanbhai Shah & Anr. V. State of Gujarat and others, (2004)7 SCC15***, which were carefully perused by this court.

14. In ***S.M.S. Pharmaceuticals (supra)*** the Hon'ble Apex Court held that it is *necessary to aver* in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of and was responsible for conduct of the business. It has been averred by the complainant in para 6 of the complaint (Annexure P-1) as follows:

> "All the members (i.e. accused No. 3 to 19) of accused No.1 were actively engaged in the day to day affairs of accused No.1 and are responsible for the payment of the cheque in question."

15. The complainant in the present case has made an averment in its complaint as to the involvement of the petitioners in the day-to-day affairs

of the Association. The Hon'ble Supreme Court has considered ***S.M.S. Pharmaceuticals (supra)*** as well as ***Ketanbhai Shah (supra)*** (both authorities cited by the petitioners) in ***HDFC Bank Limited v. State of Maharashtra and Anr., 2025 INSC 759***. The Hon'ble Supreme Court held that the averment in the complaint "*responsible for its day-to-day affairs, management and working of the Accused No.1 Company*", was sufficient to comply with the requirement of Section 141, NI Act. Further, the Supreme Court observed as follows:

> "....the administrative role of each director would be within the special knowledge of the company or the director of the firm and it is for them to establish that they were not in charge of the affairs of the company. In view of this, the contention of the learned counsel for the respondent No.2 that the specific role attributed to the directors should be set out in the complaint does not merit acceptance.
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> … A harmonious reading of the judgments in *K.K. Ahuja (supra)*, *Harmeet Singh Paintal (supra)* and *S.P. Mani (supra)* brings out the position that there is no obligation on the complainant to plead in the complaint as to matters within the special knowledge of the company or the directors or firm about the specific role attributed to them in the company."

16. Thus, the averment in the complaint that the accused petitioners were in charge of day-to-day affairs of the association, and were responsible for the issuance of the payment, satisfies the requirement of Section 141, NI Act.

17. In ***Ketanbhai Shah (supra)*** the Hon'ble Supreme Court has held vis – a – vis the requirement of Section 141 of NI Act :

> "The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable….The obligation of the appellants to prove that at the time 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 first the complainant makes necessary averments in the complaint and establishes that fact. *The present case is of total absence of requisite averments in the complaint*." (emphasis supplied)

The above case is clearly distinguishable from the present case as the cited case is one of clear *non-averment* in the complaint regarding the participation of the accused in the conduct of business, whereas, in the present case, the complainant has clearly mentioned in his complaint that the all members/accused of the association were actively involved in the day-to-day business of the firm.

18. Not only this, the Apex Court in ***Ketanbhai Shah (supra)*** has further held that criminal liability can be "fastened on those who, at the time of the commission of the offence, was in charge of and was responsible to the firm for the conduct of the business of the firm. *These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm*". (emphasis supplied).

19. In view of the aforementioned discussion, thus, all that is required under the scheme of Section 141 NI Act, is an *averment* in the

complaint to the effect that the accused participated in the conduct of the business. Once the averment is made, the onus is on the accused to prove that he/she was not at the helm of affairs, and the same is to be adjudged by the trial court after appreciating the evidence. Whether or not the petitioners were actively involved in the business of the association is a question of fact, which can be determined by the trial court only after appreciating evidence adduced by the parties.

20. Now coming to the order dated 02.09.2025 (Annexure P-8) vide which revision petition against summoning order dated 07.03.2020 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Gurugram, has been dismissed. While dismissing the revision petition, the Additional Session Judge, Gurugram, in its order dated 02.09.2025 has held as follows:

> *"Primary grievance of the revisionist is to the effect that they were not in charge of adverse responsible for day-to-day functioning of the acute No. 1 Association of Persons namely M/s Adesh Associates. However, perusal of agreement dated 31.5.2017 forming Association of Persons reveal that the association was more in nature of being a partnership form in which shareholdings of every revisionist/member of association was shown. The agreement clearly specifies that any license allotted to any individual member would be considered to be a part of business. The agreement further provided that all members of association would be entitled to make withdrawals for their personal needs from the capital account of the association. The capital of the association was to be contributed by all the members including the revisionists. The members of association were entitled for salary and*

for their expenses. Decisions of the association were to be taken by the mutual agreement between the members and almost all members of the association have equal shareholding barring Sanjay Aggarwal, Adesh Giri and Mahesh Pokhriyal, who had 5% more shareholding. ***Thus from the agreement forming association of persons, it is clear that all members of the association had an equal say and it was not a case where any member was sleeping member or sleeping partners, and had no role in the functioning of the business. Thus even on merits, there are no grounds for allowing the present revision petition, especially when first revision petition against same order was dismissed as withdrawn and quashing petition filed against same summoning order was also dismissed as withdrawn from Hon'ble Punjab and Haryana High court.*** *Though liberty was granted to the revisionists by Hon'ble Punjab and Haryana High court, but this court is of the opinion that even in exercise of the said liberty, if case is considered on merits, there are no grounds to grant any relief to the revisionists."*

21. The Additional Sessions Judge has correctly appreciated the material available on the file, and after perusal of the Agreement of Association of Persons, held that all members were actively involved in the business of the association, and there was nothing to suggest that any of them was a sleeping or a dormant member, unaware of the functioning of the firm.

22. No provision or statute is to be interpreted in such a limited or strict way that it defeats the end of justice, or rather, impeding the judicial process altogether. The summoning order of the JMIC was passed in the year

2020, and is now before this Court for quashing, i.e., after a period of five years.

23. In respect of quashing of proceedings initiated under Section 138 NI Act, the Hon'ble Apex Court in ***Ketanbhai Shah (supra)*** observed as follows:

> *It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole. If the substance of the allegations made in the complaint fulfill the requirements of Section 141, the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hyper-technical approach should not be adopted so as to quash the same....the power of quashing is required to be exercised very sparingly and where, read as a whole, factual foundation for the offence has been laid in the complaint, it should not be quashed."*

24. Summoning of the accused is the initial stage of the proceedings under Section 138, NI Act and stalling the proceedings on the summoning stage itself is not in the interest of justice. Hence, the present set of facts do not warrant this Court to exercise its extra-ordinary powers to quash the summoning order.

25. The revisional Court correctly held that all members of the association had an equal say and no member was sleeping member/partner. This court finds no ground to interfere with the order dated 02.09.2025 passed by Additional Sessions Judge, Gurugram dismissing revision petition against summoning order dated 07.03.2020 passed by JMIC, Gurugram. Accordingly, same is upheld.

26. Dismissed.

(SUBHAS MEHLA)
JUDGE

December 11, 2025
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No