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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2045/2023 & CRL.M.A. 7755/2023**

SUCHITHRA S. DODDAGADDAVALIPetitioner

Through: **Mr. Akshay Ravi and Mr. C.B.
Gururaj, Advocates.**

versus

CNH INDUSTRIAL INDIA PRIVATE LIMITED.....Respondent

Through: **Mr. Sanjeev Saraswat, Advocate.**

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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14.02.2025

1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the Cr.P.C. seeks the following prayers:

(i) quash the C.C. No. 3076/2017, for offences punishable under section 138 of Negotiable instruments Act, which is pending on the file of the Hon'ble Addl. C.M.M., Patiala House Courts, at New Delhi, with respect to Accused no.2/petitioner herein; and/or
(ii) pass such other or further relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, in the interest of justice.

3. The facts necessary for consideration of the present petition are as under:

i. The Respondent (Complainant) company is engaged in the business of manufacturing and sale of Agriculture Equipment's including tractors and parts thereof. M/s M.C. Farm Equipments (Accused No.3) is the partnership firm of Accused No.1 and 2



(Petitioner). The accused persons had approached the Respondent (Complainant) company with their application for appointment of authorised dealer for the sale of products and provide after sale service. Consequently, the partnership firm was appointed as authorised dealer/ service representative of the Respondent (Complainant) company. Accordingly, the dealership agreement between the partnership firm and the Respondent (Complainant) Company was executed on 23.05.2012 along with the personal guarantee of the Accused No.1 and 2 (Petitioner).

ii. As per the statement of account maintained by the Respondent (Complainant) company a sum of Rs. 37,27,835/- was due and outstanding against the partnership firm as on 21.12.2016. After repeated requests the Accused No.1 as the partner of the partnership Firm, under his signature and on behalf of the Petitioner (Accused No.2) and the partnership firm, issued a cheque bearing No.05338 dated 21.12.2016 for Rs. 37,27,835/- towards discharge of liability to pay the outstanding. The Respondent (Complainant) company presented the aforementioned cheque to their Banker, City Bank NA, Jeevan Bharti, 124, Connaught Circus, New Delhi-110001 for clearance. But the cheque was dishonoured *vide* return memo dated 29.12.2016 with reason “Funds insufficient”.

iii. Thereafter the Respondent (Complainant) company issued a legal notice dated 12.01.2017 calling upon the Accused No.1 to 3 to pay the amount of cheque. Despite the service of notice, the accused failed to pay the amount of cheque within the statutory period of 15 days or after. Therefore, the Respondent (Complainant) company had



filed a private complaint before the Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi and the same was numbered as PCR. No. 4767/2017. Thereafter, the present petitioner was summoned along with other accused and the partnership firm by the learned Metropolitan Magistrate (N.I. Act), Patiala House Courts, New Delhi *vide* order dated 02.06.2017.

4. Learned counsel appearing on behalf of the petitioner submits that although the latter was a partner in the partnership firm from whose account the cheque was issued but she was not the signatory and it was the other partner who had signed the cheque without her knowledge and without taking her into confidence. It is submitted that the present petitioner was never in-charge of the affairs of the partnership firm and the complaint ought to have specific averments with respect to her being in-charge of affairs of the partnership firm at the time of issuance of cheque. It is pointed out that no such averments have been made.

5. Attention of this Court has been drawn to a document filed with the complaint by the respondent before the learned Trial Court which is a dealership proposal on behalf of the partnership firm, *i.e.*, M/s M.C. Farm Equipments and more particularly to a column where the proposed management is mentioned and the name of the present petitioner is not reflected. In view of the above, it is submitted that the present petitioner was not responsible for the day to day affairs of the firm with respect to the dealership of the complainant company.

6. Attention of this Court was further drawn to clause-7 of the partnership agreement, wherein it has been recorded that the partners will be bound to carry out the business of the firm to the greatest common



advantage and shall share all the information affecting the firm. It is submitted that in the present case the other partner had issued the cheque without the knowledge of the present petitioner.

7. Reliance is placed upon a judgment of the Hon'ble Supreme Court in **Ashok Shewakramani and Ors. v. State of Andhra Pradesh and Anr., (2023) 8 SCC 473** and in particular to the following paras:

“20. After having considered the submissions, we are of the view that there is non-compliance on the part of the second respondent with the requirements of sub-section (1) of Section 141 of the NI Act. We may note here that we are dealing with the appellants who have been alleged to be the Directors of Accused 1 Company. We are not dealing with the cases of a Managing Director or a whole-time Director. The appellants Have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the appellants.

21. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section (1) of Section 141 are satisfied. The section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company shall be deemed to be guilty of the offence under Section 138 of the NI Act.

22. In the light of sub-section (1) of Section 141, we have perused the averments made in the complaints subject-matter of these three appeals. The allegation in Para 1 of the complaints is that the appellants are managing the Company and are busy with day-to-day affairs of the Company. It is further averred that they are also in charge of the Company and are jointly and severally liable for the acts of Accused 1 Company. The requirement of sub-section (1) of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section (1) of Section 141 of the NI Act must be a 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. Merely because somebody is managing the affairs of the Company, *per se*, he does not



become in charge of the conduct of the business of the Company or the person responsible for the Company for the conduct of the business of the Company. For example, in a given case, a manager of a Company may be managing the business of the Company. Only on the ground that he is managing the business of the Company, he cannot be roped in based on sub-section (1) of Section 141 of the NI Act.

23. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the Company. This is hardly relevant in the context of sub-section (1) of Section 141 of the NI Act. The allegation that they are in charge of the Company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the Company for the conduct of the business. Only by saying that a person was in charge of the Company at the time when the offence was committed is not sufficient to attract sub-section (1) of Section 141 of the NI Act.”

8. *Per Contra*, learned counsel for the respondent submits that the present petition is misconceived. In the complaint, sufficient averments have been made against present petitioner/accused no. 2 and she was one of the partners in the partnership firm *i.e.*, M/s M.C. Farm Equipments from whose account the subject cheque has been issued.

9. Attention of this Court has been drawn to the partnership agreement between the present petitioner and co-accused no. 1 wherein it has been clearly stated that both the partners shall be the managing partners of the firm and will be entitled to look after day to day business of the partnership firm. It is further submitted that the main dealership agreement between the partnership firm and the respondent/complainant was executed on 23.05.2012 in which the present petitioner is a signatory. The subject cheque has been issued in pursuance of dealership agreement with regard to the liability towards the respondent on behalf of the partnership firm.



10. Heard learned counsel for the parties and perused the records.

11. The subject cheque has been issued on behalf of the partnership firm concerned, namely, M/s M.C. Farm Equipments. Admittedly, the petitioner is a partner in the said partnership firm. The petitioner is a signatory to the dealership agreement between the partnership firm and the respondent-company. The partnership agreement between the petitioner and her partner records as under:

“6. **MANAGEMENT:** That the Both the partners shall be managing partners of the Firm entitle to look after the day to day affairs of the business and also empower to deal with the sorts and shall take all sorts of import in dealing with the business and others, the managing partner shall represents in the firm before all authorities and all courts. The managing partners is also authorized to sign and execute papers and documents with the bankers for any loan, cash credit, overdraft or any other advance and to mortgage, pledge or encumber the stocks furniture equipments or any other assets of the firm and they are also authorize to purchase vehicles, machineries or other assets of the firm.”

12. In the dealership proposal, referred by the learned counsel for the petitioner, it is noted that the first column of the document shows that the petitioner along with the other partner, *i.e.*, Madhusudhan B.S. are the owners of the partnership firm. In the said proposal, the petitioner's name is shown as a partner with 50% shareholding and the other partner, Madhusudan B.S. shows a shareholding of 50%. So far as the column “management (proposed)” is concerned, the name of the other partner, Madhusudhan B.S. has been shown to be of showroom and service and one Prasad (who is stated to be the Power of Attorney of the partnership firm concerned) shows that he would be handling manpower. The aforesaid proposal reflects that the same is with respect to the management of the



showroom, however, that cannot be taken with respect to the management of the partnership concerned, in which as per documents, the present petitioner is the 50% shareholder and a managing partner.

13. It is further noted that in the complaint, following averments have been made:

“3. That the Accused No.3 is a Partnership Firm of Accused Nos. 1 and 2. Accused approached the Complainant with their application alongwith all the relevant documents for appointment of Authorised Dealer for the sale of the Products and providing after sales service. Consequently the accused were appointed as the non exclusive authorised dealer i authorised service representative of the Complainant for District Chikmagalur in the State of Karnataka.

9. **That Accused No. 1 as the Partner of the Partnership Firm under his signatures and on behalf of other Partner being Accused No. 2 and the Partnership Firm issued cheque no. 005338 dated 21.12.2016 for Rs. 37,27,8351- (Rupees Thirty seven lacs twenty seven thousand and eight hundred and thirty five only) drawn on The Federal Bank, Kadur Branch, Chickmagalur, Karnataka towards discharge of liability to pay the outstanding amount of Rs. 37,27,8351- (Rupees Thirty seven lacs twenty seven thousand and eight hundred and thirty five only) under the dealer agreement. The aforementioned cheque was signed by Accused No. 1 as Partner of M/s M.C. Equipments, Accused No' 3.**

11. That the Accused Nos. 1 to 3 under signature of Accused No. 1 issued the said cheque in respect of discharge of their debts and liabilities which is a legally enforceable debt. It is pertinent to mention here that the Accused issued the cheque in favor of the Complainant as acceptance of the debt and liability and with malafide intention of not discharging their admitted liability and malafidely and fraudulently did not maintain sufficient balance in their account for the cheque to be honoured. **Accused No. 1 and 2 are the Partners of Accused No. 3 and are involved and responsible for conduct of business of the Partnership Firm and managing the day-to-day affairs of the Firm.”** (emphasis supplied)

14. The Hon’ble Supreme Court in **S.P. Mani & Mohan Dairy v.**



Snehalatha Elangovan, (2023) 10 SCC 685 in case of specific averments made in a complaint with respect to a partnership firm has observed and held as under:

20. Thus, from the aforesaid the following averments in the complaint are evident:

(a) Accused 1 is a partnership firm, Accused 2 and 3, respectively, are the partners and in charge and responsible for the day-to-day affairs of the firm, Accused 2 and 3 are regularly looking after and actively taking part in the day-to-day business of the firm;

(b) In order to discharge the part liability, Accused 2 on behalf of the firm and with the consent and knowledge of Accused 3 issued the cheque drawn on Tamilnad Mercantile Bank Ltd., Thiruvananthapuram Branch, Chennai 41.

23. Thus, the plain reading of the impugned order [*Snehalatha Elangovan v. S.P. Mani & Mohan Dairy*, 2021 SCC OnLine Mad 16522] passed by the High Court as aforesaid would indicate that the proceedings came to be quashed essentially on the ground that there was nothing to indicate that in what manner the respondent herein was in-charge and responsible for the day-to-day affairs of the firm so as to make her vicariously liable for the alleged offence with the aid of Section 141 of the NI Act. To put it in other words, the High Court proceeded on the footing that mere averments in the complaint as regards the role of the respondent as a partner in the firm are not sufficient.

53. In the case on hand, we find clear and specific averments not only in the complaint but also in the statutory notice issued to the respondent. **There are specific averments that the cheque was issued with the consent of the respondent herein and within her knowledge. In our view, this was sufficient to put the respondent herein to trial for the alleged offence. We are saying so because the case of the respondent that at the time of issuance of the cheque or at the time of the commission of the offence, she was in no manner concerned with the firm or she was not in-charge or responsible for day-to-day affairs of the firm cannot be accepted on the basis of mere bald assertion in this regard.** The same is not sufficient. To make good her case, the respondent herein is expected to lead unimpeachable and incontrovertible evidence. Nothing of the



sort was adduced by the respondent before the High Court to get the proceedings quashed. The High Court had practically no legal basis to say that the averments made in the complaint are not sufficient to fasten the vicarious liability upon the respondent by virtue of Section 141 of the NI Act.

58. Our final conclusions may be summarised as under:

58.1. 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.**

58.2. 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.**



58.3. Needless to say, the final judgment 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.

58.4. 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 supplied)

15. The judgment relied upon by the learned counsel for the petitioner is distinguishable on the facts as it has been noted in para 20 of the judgment in *Ashok Shewakramani (supra)* was not dealing with the case of managing director or whole time director, but the appellants therein were the directors who had not signed the cheques. The relevant portion of the said paragraph is reproduced as under:-

“20. We are not dealing with the cases of a Managing Director or a whole-time Director. The appellants Have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the appellants.”

16. In the present case, as pointed out hereinabove, as per the partnership agreement itself, the present petitioner is stated to be the managing partner, who, in the capacity of the partner of the said firm, entered into the dealership



agreement on account of which the liability has been passed down to the partnership firm. Terms of the partnership agreement clearly spell out that the present petitioner was equally responsible to the partnership firm for the conduct of its business. The issue whether the cheque was issued without the knowledge of the petitioner, is a matter of trial and which will be dealt with by the learned Trial Court. The necessary averments with respect to the present petitioner as pointed out hereinbefore have been made.

17. The petition is dismissed and disposed of.

18. Needless to state that nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of present petition.

19. Interim order stands vacated.

20. Order be communicated to the learned Trial Court for necessary information and compliance.

21. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

FEBRUARY 14, 2025/bsr/sc

Click here to check corrigendum, if any