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

+ **CRL.M.C. 1783/2025, CRL.M.A. 8049/2025**

PREM RAHUL MANDURI

.....Petitioner

Through: Mr. Nithin Chowdary, Mr. A. Vidhuri
and Mr. Subham Saurabh, Advocates.

versus

M/S PERNOD RICARD INDIA PVT. LTD.

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

17.03.2025

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1. The present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 482 of the Code of Criminal Procedure, 1973²) read with Article 226 of the Constitution of India, 1950 seeks quashing of the complaint bearing CC No. 3473/2023 titled as ***Pernod Ricard India Pvt. Ltd. v. M/s Indo Spirits & Ors***³ which is pending before the Court of Chief Judicial Magistrate, Patiala House Court, and all proceedings arising therefrom.

2. The impugned complaint has been filed under Section 138 of the Negotiable Instruments Act, 1881⁴ against M/s Indo Spirits, a partnership firm, along with its power of attorney holder, controlling person and

¹ "BNSS"

² "Cr.P.C."

³ "the impugned complaint"

⁴ "the NI Act"



partners. The Petitioner, Mr. Prem Rahul Manduri, arrayed as Accused No.5, has been impleaded in his alleged capacity as a partner of M/s Indo Spirits. The complaint attributes liability to the Petitioner for the issuance of 4 cheques dated 30th September, 2022, which were dishonoured due to “funds insufficient.” Pursuant to the complaint, the Petitioner has been summoned *vide* order dated 26th November, 2024.

3. Aggrieved by the impugned complaint, the Petitioner has approached this Court seeking quashing of the complaint on the following grounds:

3.1. The Petitioner was initially part of the firm as an agent of Prayag Enterprise Marketing Services LLP under a Joint Venture Agreement executed on 29th October, 2021, with 32.5% ownership stake. However, his ownership was reduced to 0%, which is evident from communication dated 8th April, 2022 issued by the accused firm to the office of the Commissioner of Excise, GNCT of Delhi proposing changes in the partnership’s structure.

3.2. The letter dated 8th April, 2022 clearly evidences the Petitioner’s decision to part ways with the accused firm due to ongoing irregularities and his lack of knowledge of the firm’s internal operations. This document serves as proof of the cessation of any legal relationship between the Petitioner and the accused firm prior to the issuance of the cheques in question.

3.3. The Petitioner had no role in the decision-making or financial affairs of the firm. Pertinently, he neither signed nor authorized the surety bond dated 21st December, 2021, valued at INR 200 crores, which forms the basis of the alleged liability. His lack of involvement is further corroborated by the fact that he was not a signatory to the letter of acknowledgment dated



30th August, 2022, issued by the other co-accused. While his name appears in the document, he did not sign it, reinforcing his non-participation in the firm's obligations.

3.4. A perusal of the complaint reveals that no specific allegations have been made against the Petitioner regarding his role in the issuance or dishonour of the cheques. The complaint mechanically imputes liability upon him merely by virtue of his past designation as a partner. However, under Section 141 of the NI Act, liability cannot be affixed upon a person merely for being a partner, there must be specific averments detailing their active involvement in the firm's affairs at the time of the offence. In the absence of such assertions, the complaint is unsustainable.

3.5. The summoning order dated 26th November, 2024, in absence of *prima facie* evidence, is a grave abuse of the process of law. Thus, the instant petition deserves to be allowed and the Petitioner's name ought to be deleted from the array of accused parties.

4. The Court has considered the afore-noted. The Petitioner himself acknowledges that he was, at some point, a partner of the accused firm. When specifically queried by the Court, counsel for the Petitioner confirmed that M/s Indo Spirits is a registered partnership firm. He further conceded that, as per the records maintained by the Registrar of Firms, the Petitioner's name continues to be reflected as a partner of the firm and has not been deleted. Despite this, the Petitioner asserts that he had ceased to be a partner. However, there is no documentary evidence on record substantiating his alleged resignation, dissolution or the reconstitution of the accused partnership firm. The indisputable fact remains that, in the absence of any



material to the contrary, the Petitioner, by his own admission, continues to be as a partner of the firm in the official records of the Registrar of Firms.

5. Moreover, even as per the documents placed on record, it can be seen that a communication dated 5th January, 2022, which is few months prior to the cheques written by M/s Indo Spirits to the Complainant, bears the signatures of the Petitioner. The other communications also bear his name. Thus, there is nothing on record to suggest that the Petitioner resigned as a partner, as alleged.

6. Furthermore, there are specific allegations in the complaint regarding the involvement of the Petitioner which are extracted below:

“The Accused No. 4 and Accused No. 5 are partners in Accused No. 1 and their role is clear from the letter dated 05.01.2022 where they have agreed to the credit terms for supply of products as determined by the Complainant and assured of issuance of security against supply of products from the Complainant. The said accused have also executed the special power of attorney dated 30.03.2022 in favour of Accused No. 2 to act on behalf of Accused No. 1 for inter alia issuance of the dishonoured cheques on behalf of Accused No. 1.

15. Thus. Accused No. 1 to 5 are jointly and severally liable for the criminal acts committed. The said accused have committed an offence under Section 138 r/w Section 141 and 142 of the Negotiable Instruments Act, 1881 and the Complainant company has been constrained to file the present complaint.”

7. The aforementioned allegations in the complaint are not general or vague but specifically implicate the Petitioner in the firm’s financial dealings. The letter dated 5th January, 2022, *prima facie* records his agreement to the credit terms for the supply of products and his assurance regarding the issuance of security. Additionally, the Complainant has specifically alleged that the special power of attorney dated 30th March, 2022, executed in favour of



Accused No. 2, authorizes the issuance of the very cheques that form the subject matter of the present complaint. These documents directly contradict the Petitioner's claim of having ceased involvement in the firm's affairs before the dishonoured cheques were issued.

8. It is well settled that mere internal communications or unilateral assertions, without any official documentation reflecting reconstitution or resignation, cannot absolve a partner of liability, particularly in proceedings under Section 138 read with Sections 141 and 142 of the NI Act, where vicarious liability is expressly imposed on individuals responsible for the firm's conduct. It cannot be controverted that a partner who plays an active role in decision-making or financial matters of a firm cannot evade liability by claiming that he was not directly responsible for issuing the dishonoured cheques. The material on record, including the aforementioned documents, *prima facie* establishes that the Petitioner had an active role in the firm's financial transactions. On this aspect, it must be highlighted that the Petitioner has invoked the jurisdiction of this Court under Section 528 of the BNSS, which is akin to Section 482 of Cr.P.C., to set aside the impugned order prosecuting him under Section 138 of the NI Act. On this issue, it is apposite to emphasise that the Supreme Court, in ***S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan***,⁵ elucidated the standard for the exercise of inherent powers under Section 482 of the Cr.P.C. in matters concerning negotiable instruments as follows:

“57. 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

⁵ (2023) 10 SCC 685



*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.***

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]

9. In light of the foregoing, there being no basis for this Court to conclude that the Petitioner had ceased to be the partner of the accused firm, the Court is not inclined to exercised its jurisdiction under Section 582 of BNSS.

10. Accordingly, the present petition, along with pending application, is dismissed.

SANJEEV NARULA, J

MARCH 17, 2025/nk