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

\+ CRL.M.C. 5649/2023 & CRL.M.A. 21309/2023, CRL.M.A. 34925/2023

ANKIT BHUWALKA .....Petitioner

Through: Mr. Shishir Mathur, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR. .....Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for the State.
SI Sanjeev, PS: Kalkaji.
Mr. Rishab Raj Jain, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **03.03.2025**

1. The present petition under Sections 482 and 483 of the Code of Criminal Procedure, 1973[1] read with Article 227 of the Constitution of India, 1950 seeks quashing of order dated 10th July, 2023 passed by the Additional Sessions Judge[2] in Criminal Revision No. 350/2023 as well as Complaint Case No. 9340/2017, which is pending before the Court of Metropolitan Magistrate- 03 (NI Act), South East District, Saket Courts, Delhi for the offences under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881,[3] and all proceedings emanating therefrom.

2. Before examining the contentions raised by the Petitioner, it is

[1] "Cr.P.C"
[2] "ASJ"

necessary to outline the factual background and the multiple legal challenges previously initiated by the Petitioner:

2.1 The dispute originates from a complaint filed by IFCI Factors Limited against Nava Karnataka Steels Private Limited (Accused No. 1),[4] concerning a dishonoured cheque issued by the said company. The cheque was signed by Accused No. 2, yet the Petitioner (Accused No. 3) was also arrayed as an accused under Section 141 of the NI Act, on the ground of being a director of the accused company.

2.2 Subsequently, the Petitioner filed a revision petition [CR No. 121/2020] assailing the said summoning order dated 25th September, 2017 before the Court of Additional Sessions Judge-02, South East, Saket, Delhi. However, the revision petition was dismissed on 24th November, 2021 on the ground that it was time-barred. The order recorded as follows:

> *"Today, matter is fixed for arguments on revision petition.*
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> *Ld. Counsel for respondent no. 2 has filed his Vakalatnama, which is taken on record.*
>
> *Vide present revision petition, revisionist has challenged order of summoning passed by Ld. Trial Court dated 25.09.2017. The revision petition was filed on 13.03.2020. Limitation period for filing of revision petition is 90 days as per article 131 of the Limitation Act. Evidently, revision petition is time barred. There is no application for condonotion of delay in filing present revision petition accompanying present revision petition. Therefore, present revision petition stands dismissed, being time barred.*
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> *Order dasti."*

2.3 Aggrieved by the afore-noted decision, the Petitioner filed Crl.M.C. 3074/2021 before this Court. While the said petition was pending, a notice was served on the Petitioner under Section 251 Cr.P.C. on 10th December, 2021. In light of this development, the Petitioner moved a miscellaneous

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[3] "NI Act"

[4] "accused company"

application [Crl. M.A. 5391/2022 in Crl.M.C. 3074/2021], seeking permission to withdraw the petition with liberty to file a fresh petition challenging the notice under Section 251 Cr.P.C. This application was allowed by order dated 24th March, 2022. The relevant portion reads as under:

> "***CRL.M.A.5391/2022***
> *1. This is an application for withdrawal of the CRL.M.C. 3074/2021.*
> *2. The petition was filed for quashing of order dated 24.11.2021 passed in Cr No.121/2020 and also quashing of summoning order dated 25.09.2017 passed in CC No. 9340/2017.*
> *3. It is stated the statement of the complainant has since been recorded, hence the petitioner intends to withdraw the petition to take recourse to other legal remedies, hence, this application.*
> *4. For the reasons mentioned in the application, the application is allowed and disposed of.*
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> ***CRL.M.C. 3074/2021***
> *5. The petition stands dismissed as withdrawn with liberty as aforesaid.*
> *6. Pending application(s), if any also stands disposed of.*
> *7. The earlier date(s), if any also stands cancelled."*

2.4 Exercising the liberty granted, the Petitioner filed Crl.M.C. 1393/2022, challenging the notice dated 10th December, 2021, issued under Section 251 Cr.P.C. However, during the hearing, the Petitioner sought permission to withdraw the petition with liberty to file an appropriate revision before the Sessions Court. This request was granted *vide* order dated 25th April, 2023, with the Court directing:

> *"Learned counsel for the petitioner seeks permission to withdraw the present petition with the liberty to file the appropriate revision petition before the learned Revisioinal Court.*
> *Learned counsel submits that however till that time, learned Trial Court may not pass any effective order. Learned counsel also submits that delay if any, caused on account of filing of this petition may be condoned.*
> *Learned counsel for the respondent states that she has no objection if the petition is withdrawn with the liberty to file the revision petition before the learned Sessions Court.*
> *In view of the submissions made above, the present petition along with*

pending application is dismissed as withdrawn with the liberty to file the revision petition before the learned Revisional Court.

Learned Revisional Court shall condone the delay if any caused on account of filing of this petition. Learned Trial Court may also not pass any order for four weeks from today so as to enable the petitioner to approach the learned Revisional Court for filing of revision petition."

2.5 Availing the aforenoted liberty granted by this Court, in Crl.M.C. 1393/2022, the Petitioner preferred Criminal Revision No. 350/2023 before the court of ASJ, seeking the following reliefs:

> *"i) Call for records and set-aside the notice framed vide order dated 10.12.2021 passed in CC No. 9340/2017 titled "IFCI Factors Limited Versus Nava Karnataka Steels Pvt. Ltd. & Ors." pending before the Court of Ld. MM - 03 (NI Act), Saket Courts, New Delhi, under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 and all proceeding arising thereto ; and/ or*
> *ii) Pass any other order(s), direction(s), as this Hon'ble Court may deem fit and proper, in the facts and circumstances of the instant case."*

2.6 The ASJ dismissed the revision petition by the impugned order dated 10th July, 2023 holding that:

> *"10. This Court has considered the rival contentions.*
> *11. Admittedly, the revisionist and some others were summoned by the Court of Ld. MM concerned vide orders dated 25.09.2017 for the commission of an offence punishable u/s 138 NI Act. Admittedly, on 10.12.2021, the Ld. MM was pleased to frame a notice u/s 251 Cr.P.C. upon the revisionist and some others for the commission of said offence. Admittedly, the present revision petition has been preferred only against the latter order dated 10.12.2021 and not against the summoning order dated 25.09.2017. Admittedly, the offence in question is a 'summons case'. Without challenging the summoning order dated 25.09.2017, the revisionist could not be permitted to assail the order dated 10.12.2021 as section 251 Cr.P.C. does not empower the Ld. MM concerned to discharge the revisionist on either of the grounds cited herein above. Reason being the categorical observations made by Hon'ble Supreme Court in* ***Subramanian Sethu Raman Vs. State of Maharashtra Appeal (Crl.) No. 1253/2002, decided 17.09.2004****. Nor could the Ld. MM concerned stop the proceedings u/s 258 Cr.P.C. In these facts and circumstances, this Court is constrained to order the dismissal of the present petition as the course adopted by the Ld. MM concerned does not suffer from any illegality or perversity. There is no need to delve into the merits of the submissions made by the present revisionist.*

12. Ordered accordingly.
13. Let copy of this order be sent to Ld. Trial Court alongwith TCR.
14. Revision file be consigned to record room."

2.7 Aggrieved by the dismissal of the revision petition, the Petitioner has now approached this Court invoking Section 482 Cr.P.C. and Article 227 of the Constitution, challenging not only the impugned order dated 10th July, 2023, but also seeking quashing of the complaint and all proceedings arising therefrom.

3. Counsel for the Petitioner makes the following submissions to assail the impugned order:

3.1 The ASJ erred in dismissing the revision petition without examining the legality of the proceedings before the Trial Court. As a revisional court, it was duty-bound to assess whether the complaint and subsequent proceedings suffered from any legal infirmity.

3.2 The ASJ ought to have exercised the revisional jurisdiction under Section 397 read with Section 401 of Cr.P.C to quash the complaint.

3.3 The ASJ incorrectly held that the Petitioner could not challenge the notice under Section 251 Cr.P.C. without first assailing the summoning order dated 25th September, 2017. Since the Petitioner's revision petition sought to set aside all proceedings arising from the complaint, including the framing of notice, the ASJ's refusal to entertain the challenge was unjustified.

3.4 The order framing notice under Section 251 Cr.P.C. is a procedural consequence of the summoning order, and the Petitioner had accordingly, sought setting aside of the impugned order dated 10th September, 2021 before the ASJ. Moreover, in the revision petition, the Petitioner had assailed all the proceedings arising from the complaint.

3.5 The ASJ misinterpreted the judgment of the Supreme Court in ***Subramanian Sethu Raman v. State of Maharashtra***.[5]

3.6 Even on merits, the Petitioner has a strong case for quashing of the complaint. The sole reason the Petitioner has been arrayed as an accused is his position as a director in the accused company. The complaint merely asserts that the Petitioner was a director, without providing any specific allegations as to how the Petitioner was responsible for the conduct of the company's business, and in what manner. In the absence of any specific averments demonstrating the Petitioner's involvement in the day-to-day operations of the company, the complaint against him is liable to be quashed.

3.7 In order to make the Petitioner vicariously liable, Respondent No. 2 was obligated to establish the legal requirements showing that the Petitioner was in charge of the business operations of the accused company. Since these requirements were not met, the complaint itself is liable to be quashed.

4. The Court has carefully considered the aforementioned contentions. At the outset, it must be emphasized that the revision petition decided by the impugned order, was limited to challenging the notice under Section 251 Cr.P.C. The grounds as well as the prayer sought in the petition make it clear that the Petitioner had not raised any challenge to the summoning order. Therefore, *ex facie* the challenge was confined solely to the service of the notice under Section 251 Cr.P.C, and the ASJ was justified in restricting its adjudication accordingly.

5. The Supreme Court has clarified that the provision concerning discharge in summons cases, namely Section 258 Cr.P.C., is not applicable

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[5] Appeal (Crl.) No. 1253/2002, decided 17th September, 2004.

in a complaint case under Section 138 of the NI Act. The Supreme Court in ***Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re***,[6] observed as follows:

> *"20. Section 143 of the Act mandates that the provisions of summary trial of the Code shall apply "as far as may be" to trials of complaints under Section 138. Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint. Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act."*

6. Moreover, Section 251 Cr.P.C. lays down that in a summons case, once the accused appears, the Magistrate must inform them of the particulars of the offence and inquire whether they plead guilty or wish to contest the allegations. Unlike in warrants cases, no formal charge is framed. The purpose of this provision is to ensure that the accused understands the allegations and is given an opportunity to respond.

7. Thus, in the present case, once the summoning order was passed and the Petitioner appeared, the Magistrate was bound to serve notice under Section 251 Cr.P.C. and proceed with the trial. The challenge to the notice, without assailing the summoning order itself, was legally untenable. Consequently, the ASJ correctly declined to interfere with the Trial Court's order.

8. Further, since the Petitioner has also sought quashing of the complaint itself, the Court has heard the counsel on the merit of the case. It is not the Petitioner's case that he was a non-executive director or that he had resigned prior to the alleged offence. The Petitioner's primary contention is that there is no basis for proceeding against him under Section 138 of the NI Act.

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[6] (2021) 16 SCC 116.

However, a perusal of the complaint reveals that the Petitioner is not merely being implicated by virtue of being a director of the accused company, but is specifically alleged to have been involved in the issuance and dishonour of the cheques in question. The complaint contains categorical assertions that the Petitioner, along with Accused No. 2, was responsible for the management of the company and had undertaken to ensure that the cheques were honoured upon presentation. The specific averments are as follows:

> *"The Accused No. 1 is a company incorporated under the Companies Act, 1956 with its registered office at Bangalore, Karnataka. The Accused No. 2 and 3 are the directors of the Accused No. 1, therefore, the Accused Nos. 2 & 3 constitute the senior management of the Accused No. 1 Company and are in charge of the day to day business and management of operational affairs of the Accused No. 1 Company.* ***Therefore, the cheques issued through the Accused No. 1 are issued at the behest the Accused Nos. 2 and 3 with their full knowledge.*** *In fact, the cheques in question that were issued and subsequently dishonoured, had been signed by the Accused No. 2****. The accused no.2 and 3 had undertaking to the complainant that the cheques would be duly honoured upon presentment****. The said undertaking of the Accused no.2 and 3 are annexed herewith and marked as* ***Annexure B (Colly)****.* ***The Accused no. 2 and 3 had also guaranteed repayment by the Accused no.1 of the amount in question, with respect to which and in repayment of which the cheques were issued.*** *The true copies of the said guarantees are annexed herewith and marked as* ***Annexure C (Colly).*** *True copy of the Form No.MGT-7 evidencing that Accused No. 2 & 3 are Directors on the board of the Accused No. 1 Company, is annexed herewith and marked as* ***Annexure D****. The accused no. 2 and 3 had also enclosed along with the same is a table containing particulars of the accused, and of the dishonoured cheques, and the offence.*
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> [Emphasis supplied]

9. Further, the undertaking given by the Petitioner, which forms a part of the complaint, is significant. In this document, the Petitioner expressly assured Respondent No. 2 that the cheques issued by the accused company would be duly honoured and undertook not to issue stop-payment instructions. He further affirmed that, in the event of default, Respondent No. 2 would be entitled to take legal action against both him and the

company under the relevant provisions of the NI Act, the Indian Penal Code, or any other applicable law. The relevant portion of the undertaking is extracted hereinbelow:

> *"I, Sri / Ankit Kumar Bhuwalka aged about 29 years, son / of Sri . Suresh Kumar Bhuwalka resident of #2996,12th A Main, 5th Cross, HAL 2nd Stage, Indiranagar, Bangalore S60038, do hereby solemnly undertake as under:*
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> *1. That I am the Director of M/s Nava Karnataka Steels Private Ltd. (hereinafter referred to as the COMPANY) and I am duly authorised by the COMPANY to give this undertaking on its behalf.*
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> *2. That in consideration of you, IFCI Factors Limited, having its registered office at 13th Floor, IFCI Tower, 61, Nehru Place, New Delhi - 110019, sanctioning factoring facilities (upto a Prepayment Limit of Rs. 100000000/-(Rupees Ten Hundred Lakh Only) to the COMPANY, we forward herewith Cheques for a total amount of Rs 100000000/-(Rupees Ten Hundred Lakh only), favoring yourselves. In case a demand is made by you for a payment of outstanding prepayments or for values of reassigned, you can present the Cheques for the amount due and get paid, in case we fail to make payment of the demanded amount within a period of seven days.*
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> *3. That neither I nor any other authorised representative/official of the company shall issue Stop Payment instructions to our Bankers in respect of the Cheques issued by the COMPANY, and affirm that the COMPANY or anybody else authorised on its behalf, shall not intimate the Bankers to stop the payment due on the said Cheques.* ***I shall also ensure, on behalf of the COMPANY, the availability of adequate funds in the Bank account of the COMPANY on which these Cheques favouring IFCI Factors Limited are issued, and undertake as well that this Bank account shall not be closed, without prior intimation to you. I further affirm that no communication / notice, requiring you not to present these Cheques, shall ever be issued to you, by or on behalf of the COMPANY.*** *Further that, if after the issuance of these Cheques and before all of the same have been presented for payment, the authorised signatories of the COMPANY have changed, or if there have been any other changes, I undertake to immediately ensure the issuance of fresh Cheques favouring IFCI Factors Limited, in lieu of the Cheques already issued.* ***In the event of any default in honoring the Cheques/s, or honoring any commitment/s made vide this deed, you shall be completely within your rights to take action against me / the COMPANY for the dishonor of the Cheques/s or commitment/s, under the relevant provisions of the Negotiable Instruments Act, the Indian Penal Code, and / or any other enactment/s.***
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> *4. I further undertake to send you fresh Cheques for the same amount*

> *after five months from the date of issue of these Cheques. I have noted not to include the invoices factored by you in the stock / book debts statement/s sent / to be sent to the Bank/s.*
>
> *I solemnly affirm that the contents of this undertaking are true and correct and nothing has been concealed."*

10. The Petitioner has placed reliance on ***Dilip Hariramani v. Bank of Baroda***,[7] to argue that mere status as a director or guarantor does not attract liability under Section 138 of the NI Act. However, this reliance is misplaced. The Court has examined this judgment, but finds it inapplicable to the present case. Firstly, ***Dilip Hariramani*** was decided after a full-fledged trial, where the Court assessed the evidence before arriving at its conclusions. In contrast, the present case is still at the pre-trial stage, where only the *prima facie* sufficiency of the complaint needs to be examined. Secondly, the judgment in ***Dilip Hariramani*** does not establish a blanket rule that a director or guarantor can never be held liable under Section 138 of the NI Act. Rather, it underscores the requirement of specific allegations indicating the individual's role in the transaction leading to dishonour of the cheque. In the present case, the complaint makes categorical assertions regarding the Petitioner's direct involvement. He is alleged to have undertaken personal responsibility for the honouring of the cheques, and the complaint is supported by an undertaking signed by him, where he explicitly agreed to ensure that the cheques would be honoured. Given these distinguishing factors, the reliance on ***Dilip Hariramani*** is untenable.

11. It is a well-established principle of law that, in order to hold a director of a company liable under Section 141 of the NI Act, the complaint must outline specific averments against the director, demonstrating as to how and in what manner, the director was responsible for the conduct of

business of the company.[8] In this regard, the relevant portion of the complaint, as extracted above, clearly delineates the role and responsibility of the Petitioner, which stem not only from his position as a director, but also from the specific undertaking given by him regarding the cheques in question. These allegations, along with the supporting documents, raise sufficient grounds to require adjudication at trial. At this stage, the Court cannot embark on a detailed appreciation of evidence, as the issues raised by the Petitioner pertain to matters of defence, which are best examined during trial.

12. In light of the foregoing, even on merits, the Court finds no ground, at this juncture, to quash the complaint.

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

SANJEEV NARULA, J

MARCH 3, 2025
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[7] MANU/SC/0611/2022.
[8] Susela Padmavathy Amma v. Bharti Airtel Ltd., 2024 SCC OnLine SC 311.