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

\+ CRL.M.C. 6501/2019, CRL.M.A. 42847/2019 & CRL.M.A. 12071/2023

MANOJ SHARMA .....Petitioner

Through: Mr. Vishal Saxena, Advocate

versus

RAZA ALI KHAN .....Respondent

Through: Mr. Vishesh Kumar Raghav, Advocate

\+ CRL.M.C. 6507/2019, CRL.M.A. 42866/2019 & CRL.M.A. 851/2020

MANOJ SHARMA .....Petitioner

Through: Mr. Vishal Saxena, Advocate

versus

VISHAL SINGHAL .....Respondent

Through: Mr. Vishesh Kumar Raghav, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **07.05.2025**

1. These petitions under Section 482 of the Code of Criminal Procedure, 1973[1], seek quashing of two separate complaints filed under Section 138 of the Negotiable Instruments Act, 1881[2], along with the summoning orders both dated 5th June, 2015, passed therein.

2. CRL.M.C. 6501/2019 pertains to Criminal Complaint No. 1851/2015 (renumbered as C.C. No. 1261/2017), filed by Raza Ali Khan and CRL.M.C. 6507/2019 pertains to Criminal Complaint No. 1850/2015

[1] "CrPC

(renumbered as C.C. No. 1268/2017), filed by Vishal Singhal. Both complaints are pending before the Metropolitan Magistrate, Shahdara District, Karkardooma Courts, Delhi, and named Manoj Sharma, the present Petitioner as the sole accused.

3. The material facts, as set out in the complaints, are summarised as follows:

3.1. As per the allegations in the complaints, the Petitioner represented to both complainants in the year 2012 that he had acquired land in Vrindavan, Uttar Pradesh, and was developing a residential project under the name "Dwarka City-II" at the said location. Relying on these representations, the complainants were induced to invest in the purported project by booking residential plots. Raza Ali Khan is stated to have paid a sum of INR 10,00,000/- to the Petitioner on 20th December, 2012. Vishal Singhal is alleged to have made a payment of INR 11,84,000/- on 21st December, 2012.

3.2. It is alleged that the Petitioner misrepresented facts to the complainants, who later came to know that no such project or land existed in Vrindavan, contrary to what had been claimed. When confronted, the Petitioner is said to have offered no credible explanation and, instead of refunding the invested sums, continued to evade the issue and mislead the complainants.

3.3. Thereafter, upon repeated demands for repayment, the Petitioner is stated to have issued the following cheques:

(a) In favour of Raza Ali Khan:

Cheque No. 036371 dated 12th March, 2015, for INR 5,00,000/-,

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[2] "NI Act"

which forms the subject matter of CRL.M.C. 6501/2019.

(b) In favour of Vishal Singhal:

Cheque No. 036373 dated 12th March, 2015, for INR 2,00,000/-, and Cheque No. 036369 dated 12th March, 2015, for INR 5,00,000/-, both forming the subject matter of CRL.M.C. 6507/2019.

3.4. Upon presentation, the aforenoted cheques were dishonoured due to "insufficient funds." Legal notices under Section 138 of the NI Act were served upon the Petitioner, however, no payment ensued, prompting the filing of the respective complaints.

3.5. After recording pre-summoning evidence, the Magistrate, *vide* orders dated 5th June, 2015, summoned the Petitioner, having found that the complaints disclosed a *prima facie* case. The summoning order reads:

> *"Evidence by way of affidavit filed by the Complainant. Original documents have been filed on record along with Complaint.*
>
> *Let pre summoning evidence be recorded.*
>
> *Statement of the Complainant recorded separately. Documents have been exhibited. Pre summoning evidence closed on behalf of Complainant.*
>
> *Arguments, heard on point of summoning.*
>
> *All statutory requirement under NI Act are complied with.' The present complaint case is filed within limitation. After perusal, of the case record, this Court is of the considered opinion that prima-facie, case punishable U/s 138 N.A. Act is made Out against the accused.*
>
> *Issue summons to the accused on filing of PF RC/AD/ Speed post for 30.10.2015. Steps be taken within two weeks."*

4. The Petitioner has assailed the continuation of these proceedings on the ground that the cheques in question were not issued from a personal account of the Petitioner, but from the account of a company "Seguro Buildtech Pvt. Ltd." of which he is only a director. It is submitted that the company has not been arraigned as an accused, nor was it served with the requisite statutory notice under Section 138 of NI Act. The Petitioner

contends that in absence of the drawer of the cheque as an accused, the complaints are not legally sustainable. In support, reliance is placed on the cheques themselves, which bear the name and account details of Seguro Buildtech Pvt. Ltd.

5. In response, Counsel for the complainants contends that the impugned summoning orders suffer from no legal infirmity. It is submitted that Seguro Buildtech Pvt. Ltd. is merely a shell entity, and that the Petitioner, being both a director of the company and the admitted signatory of the dishonoured cheques, is directly liable under Section 138 of the NI Act. Counsel argues that the Petitioner's dual role, as authorised signatory and person in control of the company's affairs, squarely attracts liability for the dishonoured instruments.

6. The Court has considered the rival submissions and perused the material placed on record. The crucial issue, whether it is mandatory to implead the company as an accused in a prosecution under Sections 138 and 141 of the NI Act, stands conclusively settled by a series of authoritative pronouncements, beginning with the decision of the Supreme Court in ***Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd.,***[3] wherein it has been held as under:

> *" xx ... xx ... xx*
> *58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a*

[3] (2012) 5 SCC 661

finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

59. ***In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself****...*

xx ... xx ... xx"

(emphasis supplied)

7. The above position was reaffirmed in ***Himanshu v. B. Shivamurthy & Ors.***[4] where the Supreme Court has held as under:

"xxx

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.

xxx"

8. In the present case, there is no dispute that the dishonoured cheques were drawn from the account of Seguro Buildtech Pvt. Ltd., a company of which the Petitioner is a director. The cheques annexed to the complaints, clearly reflect the company's name and its account details.

9. It is also not the complainants' case that the cheques were issued from a bank account personally maintained by the Petitioner. On the contrary, the case hinges on the assertion that the cheques were issued by the Petitioner in discharge of his personal liability. However, that argument stands on a fragile footing when the cheques in question are, on the face of it, drawn

[4] Criminal Appeal No. 1465/2009

from the account of a separate legal entity "Seguro Buildtech Pvt. Ltd." and not from the Petitioner's individual account.

10. In light of the legal position crystallised by the decisions referred to above, there can be little doubt that where a cheque is issued on behalf of a company by its authorised signatory, prosecution under Section 138 of the NI Act cannot proceed solely against the signatory or other officers of the company, without first arraigning the company itself as an accused. Section 141 of the Act creates a mechanism for fastening vicarious liability, but such liability arises only if the principal offender, the drawer company, is held liable for the offence. The directors and other officers cannot be made liable in isolation.

11. The Court has no hesitation in holding that in view of the laid down in ***Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd.***[5] ***and Himanshu v. B. Shivamurthy & Ors***.[6], arraigning of a company is imperative in order to maintain a prosecution under Section 141 of NI Act. The only exception carved out by judicial pronouncements is where arraignment of the company is legally impossible. No such circumstance exists in the present case. This is, in fact, not even their pleaded case. The Complaints are, in fact, silent and makes no mention of the accused company. In fact, the complaints do not even allude to the company's role, despite the cheques having been drawn exclusively from its account. This omission renders the complaints unsustainable in law. Unless the company is first prosecuted and found liable under Section 138, no vicarious liability can be imputed to its directors or signatories. The deeming fiction created under Section 141 of

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[5] (2012) 5 SCC 661
[6] Criminal Appeal No. 1465/2009

NI Act rests on the foundational premise of the company's culpability. In the absence of such foundation, the superstructure of vicarious liability necessarily collapses.

12. In the instant case, merely because the Petitioner is the signatory of the cheques and has signed the same as a director of Seguro Buildtech Pvt. Ltd. is not sufficient to maintain the complaints against him, in absence of arraigning the company as an accused. Admittedly, the company has neither been served with the statutory demand notice nor impleaded as an accused. This defect cannot be cured by inference or assumption.

13. For the reasons discussed above, this Court is of the view that the complaints, as presently framed, suffer from a fundamental legal defect that goes to the root of their maintainability. The omission to implead Seguro Buildtech Pvt. Ltd., the drawer of the cheques in question, renders the invocation of vicarious liability against the Petitioner unsustainable in law. This is not a mere procedural lapse but a substantive failure to satisfy the statutory conditions contemplated under Sections 138 and 141 of the NI Act.

14. In light of the foregoing discussion, the petitions are allowed. Accordingly, *Criminal Complaint No. 1851/2015* (New C.C. No. 1261/2017) in *CRL.M.C. 6501/2019* and *Criminal Complaint No. 1850/2015* (New C.C. No. 1268/2017) in *CRL.M.C. 6507/2019*, along with the summoning orders dated 5th June, 2015 passed therein, are hereby quashed and set aside.

15. The petitions are disposed of, along with pending applications.

SANJEEV NARULA, J

MAY 7, 2025/ab