



2025:DHC:5172



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

% **Reserved on: 16th April, 2025**
Pronounced on: 28th June, 2025

+ **CRL.M.C. 1403/2018**

MANOJ RUNGTA

S/o. Sh. Gauri Shankar Rungata,
R/o-Diamond City North,
Block-16, IInd Floor,
68 Jessore Road,
Kolkatta-700055

.....Petitioner

Through: Mr. Ranjan Kumar and Mr. Ankit
Kumar, Advocates.

versus

1. STATE

Through Govt. Of Nct Of Delhi
Ch-437, Lawyers Chamber Block
Delhi High Court,
New Delhi

2. M/S OM SHIV GARMENTS

Through Authorised Representative
Mr. Subhash Sethia
Office At: Ix/6269, Mukherjee Gali
Hari Gali, Gandhi Nagar,
Delhi-110031

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.

+ **CRL.M.C. 1405/2018**

MANOJ RUNGTA

S/o. Sh. Gauri Shankar Rungata,
R/o-Diamond City North,
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68 Jessore Road,
Kolkatta-700055

.....Petitioner

Through: Mr. Ranjan Kumar and Mr. Ankit



Kumar, Advocates.

versus

1. STATE

Through Govt. Of Nct Of Delhi
Ch-437. Lawyers Chamber Block
Delhi High Court,
New Delhi

2. M/S RICHA FASHION

Through Authorised Representative
Mr. Subhash Sethia
Office At: Ix/6434, Sardari Lal Market
Mukherjee Gali, Gandhi Nagar,
Delhi-110031

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.

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CRL.M.C. 1406/2018

MANOJ RUNGTA

S/o. Sh. Gauri Shankar Rungata,
R/o-Diamond City North,
Block-16, IInd Floor,
68 Jessore Road,
Kolkatta-700055

.....Petitioner

Through: Mr. Ranjan Kumar and Mr. Ankit
Kumar, Advocates.

versus

1. STATE

Through Govt. of NCT of Delhi
Ch-437, Lawyers Chamber Block
Delhi High Court,
New Delhi

2. M/S G.P. COLLECTION

Through Authorised Representative
Mr. Subhash Sethia
Office At: 6782, Shyam Gali
Gandhi Nagar



Delhi-110031

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.

+

CRL.M.C. 1407/2018

MANOJ RUNGTA

S/o. Sh. Gauri Shankar Rungata,
R/o-Diamond City North,
Block-16, IInd Floor,
68 Jessore Road,
Kolkatta-700055

.....Petitioner

Through: Mr. Ranjan Kumar and Mr. Ankit
Kumar, Advocates.

versus

1. **STATE**

Through Govt. of NCT of Delhi
Ch-437, Lawyers Chamber Block
Delhi High Court,
New Delhi

2. **M/S FINE CREATIONS**

Through Authorised Representative
Mr. Subhash Sethia
Office At: 6782, Shyam Gali
Gandhi Nagar
Delhi-110031

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petitions under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred*



to as Cr.P.C.) has been filed by the Petitioner, Sh. Manoj Rungta to challenge the Order dated 13.07.2017 wherein the Ld. MM has dismissed his Application made under Section 239 Cr.P.C. seeking discharge in Complaint Cases under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "NI Act"*).

2. **Briefly stated**, four Complaints bearing CC No. 59196/2016, CC No. 59195/2016, CC No. 59193/2016 & CC No. 59194/2016 under Section 138 of the NI Act, were filed by the Respondents, M/s Om Shiv Garments, M/s Richa Fashion, M/s GP Collection and M/s Fine Creations through common AR Sh. Subhash Sethia against M/s. *Shyam Retails (India) Pvt. Ltd* and total 13 Directors including Sh. Manoj Rungta, Petitioner, on the averments that six cheques dated 11.03.2016 were issued in favour of the Complainant Company, M/s Shyam Retails (India) Pvt. Ltd. on presentation, got dishonored on account of "**Funds Insufficient**" vide respective Return Memo. The Complainants had issued separate Legal Notice dated 08.06.2016, 10.06.2016 and 13.06.2016, leading to filing of the aforesaid four Complaints under Section 138 NI Act. The details of the dishonored cheques are as follows:

Cheque No.	Dated	Amount	Payee	Date of Dishonor
650181	11.03.2016	Rs. 101,563/-	M/s. Om Shiv Garments	30.05.2016
650180	11.03.2016	Rs. 95634/-	M/s. Om Shiv Garments	30.05.2016
039177	11.03.2016	Rs. 55,757/-	M/s Richa Fashion	27.05.2016
047708	11.03.2016	Rs. 66, 855/-	M/s G.P.	04.06.2016



			Collection	
047707	11.03.2016	Rs. 79,546/-	M/s Fine Creation	26.05.2016
047706	11.03.2016	Rs. 83,308/-	M/s Fine Creation	26.05.2016

3. The summons were issued against the accused persons including the Petitioner, Sh. Manoj Rungta.

4. The Petitioner, Sh. Manoj Rungta has sought his discharge under Section 239 Cr.P.C. on the ground that he had resigned as Director of M/s Shyam Retail India Pvt. Ltd./Accused on 18.12.2015 before the date of issue of Cheques on 11.03.2016. His resignation was accepted by the Registrar of Companies (ROC) at Kolkata on 19.12.2015 and confirmed that the Petitioner, Sh. Manoj Rungta is not associated with the Accused Company, M/s Shyam Retails (India) Pvt. Ltd. with effect from 19.12.2015. To support his assertions, he has relied on Form No.32 submitted to the ROC. It was asserted that he cannot be held responsible for the acts of Company, after his resignation and therefore, sought discharge.

5. *Ld. MM vide Order dated 13.07.2017* dismissed the Application for discharge made on behalf of the Petitioner by observing that the documents including Form No.32, could not be considered at the stage of Notice/Charge, as held by the Apex Court in the case of State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568. *Ld. MM* further observed that the defense of the Petitioner, Sh. Manoj Rungta that he was not responsible for the affairs of the Company, M/s Shyam Retails (India) Pvt. Ltd can be considered only at the stage of evidence.



6. Aggrieved by the said Order dated 13.07.2017 of the Ld. MM, present Petitions has been filed on behalf of the Petitioner.
7. ***The grounds of challenge on behalf of the Petitioner, Sh. Manoj Rungta are that*** the Ld. MM has failed to appreciate that the cheques in question were issued on behalf of the Company, M/s Shyam Retails (India) Pvt. Ltd. and bears the signature of Director Sh. Jitender Aggarwal. The Petitioner had already resigned from the Directorship of the Company, M/s Shyam Retails (India) Pvt. Ltd on 19.12.2015 and the same was intimated to the ROC at Kolkata. In support of his assertions, the Petitioner has relied upon ***Form 32*** submitted to the ROC.
8. The Cheques in question were handed over to the Complainant by the Company in the Month of March, 2016 which is much after the Petitioner had ceased to be the Director of the Accused Company. Since after his resignation, the Petitioner ceased to have any control over the affairs of the Company, he could not have ensured the encashment of the cheques in question. After his resignation in December, 2015, he cannot be held vicariously liable for the alleged offence committed by the Company, *M/s Shyam Retails (India) Pvt. Ltd.*
9. *Therefore, the Impugned Order dated 13.07.2017 is liable to be set aside and he be discharged.*
10. ***The Respondent No.2*** was duly served with the summons of the Petition but did not choose to appear despite multiple opportunities.
11. **Submissions heard and record perused.**
12. The Complainant Companies filed the aforesaid four Complaints under Section 138 of the NI Act against M/s Shyam Retails (India) Pvt. Ltd. and its Directors, of which Petitioner was one of the Director.



13. *The first ground on which discharge is sought is that there are no specific averments specifying the role of the Petitioner, Sh. Manoj Rungta in the accused Company, in the entire Complaint. Only an omnibus averment is made that the accused Company was working through its Directors. The Cheques in question were issued on 11.03.2016 and returned vide various memos for the reason “**Funds Insufficient**”. The Petitioner, Sh. Manoj Rungta had resigned on 18.12.2015 and was neither the signatory to the cheques nor is the whole-time Director of the Company, at the time when the said cheques in question were issued.*

14. *S.141(1) NI Act* 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. This Section 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 Complainant is required to aver that the accused at the time of the commission of the offence, was in charge of and were responsible for the conduct of the business of the Company.

15. This principle of vicarious liability was explained in the case of N.K. Wahi v. Shekhar Singh, (2007) 9 SCC 481, wherein the Apex Court has observed:

*“8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. **There should be clear and unambiguous allegation as to how the Directors are in-charge and***



responsible for the conduct of the business of she company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”

16. Similar proposition of law was stated by Apex Court in Anita Malhotra v. Apparel Export Promotion Council, (2012) 1 SCC 520, mere reproduction of the statutory requirements in the Complaint without specifying or elaborating the role of the appellant in the day-to-day affairs of the Company, would not be sufficient to make the Director vicariously liable.

17. Similarly, the Apex Court in National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal (2010) 3 SCC 330) has observed that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, 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. Every person connected with the company shall not fall within the ambit of the provision. It follows that if a Director of a Company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for a criminal offence under the provisions. The liability would not ipso facto arise merely on the basis of merely holding a designation or office in a Company.

18. In recent judgement in Ashok Shewakramani v. State of A.P., (2023) 8 SCC 473, the allegation made in the Complaints were that the Appellants are managing the Company and are busy with day-to-day affairs of the



Company. It was further averred that they are also in charge of the Company and are jointly and severally liable for the acts of Accused Company. The Apex Court observed *that 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.* 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.*

19. The Apex Court reiterated this proposition in the case of Ravi Dhingra v. State (NCT of Delhi), 2024 SCC OnLine SC 3802 wherein while endorsing the law enunciated in the decision in Ashok Shewakramani's case (supra), it was concluded that the position is now well settled and is being followed with alacrity.

20. Likewise, in K.S. Mehta v. Morgan Securities & Credits (P) Ltd., 2025 SCC OnLine SC 492, the Apex Court has quashed the NI Act proceedings against the Director on the ground that “*the complaint lacks specific averments that establish a direct nexus between the Appellant(s) and the financial transactions in question or demonstrate their involvement in the company's financial affairs.*”



21. From the perusal of the above judgments, it is the settled position of law, that for initiating the proceedings under Section 138 N.I. Act, the averment has to be provided against the Directors, who were the responsible person for the conduct of the Company. The words '*every person who, at the time the offence was committed*', occurring in Section 141 (1) of the NI Act are not without significance and these words indicate that criminal liability of a Director must be determined on the date the offence is alleged to have been committed.

22. In this context, reference be made to the Complaints wherein it is stated that the Respondent No.1/Accused No.1 was a Company operating through Accused No. 2 to 14 who are the authorized signatories/directors of its Company to whom the goods had been supplied by the Complainant. It is further stated that the impugned cheques were issued which on presentation, were dishonored. The impugned cheques dated 11.03.2016 are signed by Sh. Jitendra Aggarwal, Director. M/s Shyam Retails (India) Pvt. Ltd and not by the Petitioner, Sh. Manoj Rungta.

23. In the Legal Notices, similar averments were made. *Aside from stating that the accused Company was operating through its Directors, there was no specific role assigned to any of the Directors.* On this ground itself, the Petitioner is entitled to be discharged.

24. ***The second aspect of significance is that*** the Petitioner, Sh. Manoj Rungta has resigned from the position of Director of the Accused Company on 19.12.2015 and had duly informed the ROC vide Form DIR-12 on 25.12.2015 which is well within the period of 30 days. The Resignation of the Petitioner, Sh. Manoj Rungta was duly accepted by the ROC at Kolkata with effect from 19.12.2015.



25. The contention of the Petitioner, Sh. Manoj Rungta, that he had resigned from the position as the Director of the Accused Company, M/s Shyam Retails (India) Pvt. Ltd, is supported by DIR-12/Form 32, which is a public document, the authenticity of which is not questioned by the Respondents. Petitioner had resigned from the Company in December, 2015.

26. However, ***the question which arises is whether this Form 32 which the petitioner has relied can be considered at this stage of framing of Notice or it is the defense which can be considered only during the evidence.***

27. Every Company is required to maintain at its registered office a register of its Directors, Managing Director, Manager and Secretary containing the particulars with respect to each of them as set out in clauses (a) to (e) of sub-section (1) of Section 303 of the Companies Act, 1956. Sub-section (2) of Section 303 mandates every Company to send to the Registrar a return in duplicate containing the particulars specified in the Register. Any change in its Directors, Managing Directors, Managers or Secretaries, such information specifying the date of change is required to be furnished to the Registrar of Companies in the prescribed Form within 30 days of such change, in Form 32.

28. This aspect of consideration of documents relied by the accused to seek discharge, was considered by the Apex Court in the case of Mohd. Akram Siddiqui v. State of Bihar (2019) 13 SCC 350 wherein Apex Court made a reference to the case of Yin Cheng Hsiung v. Essem Chemical Industries 2011(15) SCC 207 and State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335, AND observed that ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding, will



not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. *However, in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, an exception has been carved out and the same can be considered.*

29. In the case of Harshendra Kumar D. v. Rebatilata Koley AIR 2011 SC 1090, similar facts as in hand came up for consideration. Therein as well, in a Complaint under S.138 NI Act, the Petitioner took the plea of having resigned from the Directorship prior to the presentation of the Cheque and sought a discharge. It was observed that while it is fairly settled now that while exercising inherent jurisdiction under Section 482 or Revisional Jurisdiction under Section 397 of the CrPC in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, it was held that *the materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code.* Further, in an appropriate case, if on the face of the documents placed by accused, which are beyond suspicion or doubt, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.



30. The facts in this case are *para materia* with *Harshendra Kumar D (supra)*, wherein the resignation documents from the Company were considered and Petitioner was discharged under S.138 NI. Act.

31. It is not disputed that the said cheques in question were issued on 11.03.2016, much after the resignation of the Petitioner, Sh. Manoj Rungta. Therefore, it is beyond the power of the Petitioner to get the same honoured, since he had ceased to be the Director of the Accused Company at the time of issuance of the Legal Notice.

32. In this view of the matter, it must be held that a Director whose resignation has been accepted by the Company and that has been duly notified to the Registrar of Companies, cannot be made accountable and fastened with liability for anything done by the Company after the acceptance of his resignation. ***The Petitioner, is entitled to be discharged, on this ground as well.***

Conclusion:

33. In view of the aforesaid, it is held that no *prima facie* case was disclosed against the Petitioner, Sh. Manoj Rungta who had resigned from the Company even prior to the date of issue of cheque. The impugned Order against the Petitioner is therefore, set aside and he is discharged for the offence under Section 138 NI Act.

34. The Petition is accordingly, allowed. The pending Applications are disposed of, accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 28, 2025/pp