



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-3660-2024 (O&M)

Reserved on : 09.02.2026

Pronounced on : 07.03.2026

Mahipal

..... Petitioner

Versus

Alliage Engineering India Pvt. Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Argued by : Mr. Kunal Dawar, Sr. Advocate with
Mr. Shashi Kant Singh, Advocate
for the petitioner.

Mr. Viren Sibal, Advocate and
Mr. Shayon Sen, Advocate
for the respondent.

SURYA PARTAP SINGH, J.

1. Vide order dated 21.10.2022 the learned Judicial Magistrate First Class Gurugram, hereinafter being referred to as 'trial Court' only, has summoned the petitioner, as an accused, to face trial for the commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881.

2. Aggrieved of the abovementioned order, hereinafter being referred to as 'impugned order' only, the extraordinary jurisdiction of this Court, vested by virtue of Section 482 of Criminal Procedure Code, has been invoked vide instant petition and the quashing of impugned order has been sought.

3. In nut-shell, the facts emerging from record are that on 13.02.2022, a cheque for a sum of Rs.7,10,165/- was issued by a company, namely 'M/s Simplicity Projects Pvt. Ltd.' (hereinafter being referred to as accused-company). The abovesaid cheque was issued in favour of the respondent. When the abovementioned cheque was presented by the respondent for encashment, the same was dishonoured which led to filing of complaint under Section 138 of NI Act against the company, i.e. 'M/s Simplicity Projects Pvt. Ltd.' and its three Directors, namely Anoop Shankar Madan, Mahipal (petitioner herein) and Dolly Madan.

4. The impugned order has been challenged by the petitioner on the ground that neither he is a signatory to the cheque in question nor he was privy to the contract between the respondent and 'M/s Simplicity Projects Pvt. Ltd.'. In addition of above it has also been alleged by the petitioner that on the date of issuing the cheque, he was not even a Director of the abovementioned company.

5. In addition to above, it has also been alleged by the petitioner that the petitioner was not incharge of the affairs of the company on the date when the cheque was dishonoured, and that even the complaint qua abovementioned aspect is silent. According to petitioner in view of above, he cannot be held liable for the offence committed by the accused-company or its other Directors, by invoking the principle of vicarious liability.

6. Heard.

7. It has been contended by learned Senior Counsel for the petitioner that the petitioner is innocent having no nexus, whatsoever, with the commission of offence, and that merely on the ground that subsequent to issuance of cheque he became Director of the accused-company, the petitioner can't be implicated as an accused in the complaint in question. It has been vehemently argued by learned Senior Counsel for the petitioner that either at the time when the deal was struck, between the accused-company and the respondent-company, or at the time of issuing the cheque, the petitioner was not a Director of the company, and that he became Director of the company only on 18.02.2022.

8. In addition to above, the learned Senior Counsel for the petitioner has also contended that the petitioner was not the signatory of the cheque. Besides that, it has also been contended by learned Senior Counsel for the petitioner that the complaint filed by the respondent is silent with regard to the role played by the petitioner in the commission of crime, and that as per settled principles of law, unless the specific role is attributed to the petitioner, by alleging that he was incharge of the affairs of the company at the time of commission of offence, merely by virtue of designation of petitioner, he cannot be prosecuted.

9. In support of his abovementioned arguments, the learned Senior Counsel for the petitioner has referred to the principles of law laid down by Hon'ble Supreme Court of India in the cases of 'Ashok Shewakramani and Others Versus State of Andhra Pradesh and Another (2023) 8 Supreme Court Cases 473', 'Siby Thomas Versus Somany Ceramics Ltd. 2023 SCC

OnLine SC 1299', 'K.K. Ahuja Versus V.K. Vora 2009(3) RCR (Criminal) 571' and by this Court in case of 'Gazal Chadha Versus Rajpal Bansal 2023(3) R.C.R. (Criminal) 523' and 'Bhupinder Kaur Versus M/s Sohan Lal Mohan Lal, 2023(4) RCR (Criminal) 734'.

10. The abovementioned arguments have been controverted by learned counsel for the respondent. The thrust of arguments of learned counsel for the respondent has been upon the plea that the relevant aspect to be taken into consideration, while dealing with a complaint under Section 138 of NI Act is the date of commission of offence and note the date of issue of the cheque. According to learned counsel for the respondent, although at the time of deal or at the time of issuing cheque, the petitioner was not a Director of the company, yet, before the presentation of cheque for realization, i.e. on 15.04.2022, the petitioner had been appointed as Director of the company and, therefore, being a Director of the company at the time of commission of offence, the petitioner is responsible for the same and therefore, liable to face the punishment.

11. It has also been contended by learned counsel for the respondent that there is specific averment in the complaint itself that being a Director, the petitioner was managing the affairs of the company and thus, he is liable for the offence committed by the accused-company. In support of his arguments, the learned counsel for the respondent has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of 'N. Rangachari Vs. Bharat Sanchar Nigam Ltd., AIR 2007 SC 1682', in the cases of 'Gunmala Sales Private Ltd. Vs. Anu Mehta and Others, AIR

2015 SC 1072’, ‘S.P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan, AIR 2022 SC 4883’, ‘Hitesh Verma Vs. M/s Health Care at Home India Pvt. Ltd. & Ors., 2025 (7) SCC 623’, ‘Malwa Cotton and Spinning Mills Ltd. Vs. Virsa Singh and Others., (2008) 17 SCC 147’ and ‘S.V. Muzumdar and Others Vs. Gujarat State Fertilizer Co. Ltd. and Another, (2005) 4 SCC 173 (Criminal) 1020’.

12. The record has been perused carefully.

13. A perusal of record shows that in the present case there are certain dates which are relevant to be taken into consideration:-

- i. On 30.12.2021, invoice was raised against the accused-company by the respondent-company.
- ii. Cheque No.000770 for a sum of Rs.7,10,165/- was issued by the accused-company in favour of respondent-company.
- iii. On 18.02.2022, the petitioner was appointed as Director of the accused-company.
- iv. On 15.04.2022, the cheque issued on behalf of accused-company, in favour of respondent-company, was dishonoured with remarks of ‘insufficient funds’.

14. In the light of abovementioned events, which are virtually undisputed, it has to be determined as to whether any ground for quashing of complaint qua petitioner is made out or not. With regard to abovementioned decision, the most crucial aspect to be taken into consideration is;

“As to whether the petitioner was incharge of the accused-company on the day when the offence was committed or not.”

15. With regard to abovementioned component, the only reference in the complaint filed by the respondent is in paragraph No.1 of the complaint which reads as under:-

“That the Complainant Company is a Company registered under the Companies Act with the Registrar of Companies, Delhi. That the Accused No.1 Company is a Company registered under the Companies Act with ROC, Delhi and engaged in handling various types of conveying and material handling systems and the Accused No.2, 3 and 4 are the Directors of the Accused No.1 Company who manage the day to day affairs of the Accused No.1 Company. The Accused No.2 is also its Authorized Signatory for the Cheque in question.”

16. The abovementioned averments made in the complaint have to be tested in the light of relevant principles of law, laid down in the case of ‘N. Rangachari’ (supra). In the abovementioned case it has been observed by the Hon’ble Supreme Court of India that a Director of the company can be assumed that he was incharge and responsible for the affairs of the company and, therefore, he can be prosecuted for the commission of offence punishable under Section 138 of NI Act. According to Hon’ble Apex Court, the burden is upon the Director to establish at the trial that he was not incharge or responsible of the affairs of the company. In the abovementioned case, it has also been observed by the Hon’ble Supreme Court of India that a prosecution can be launched not only against the company, but also against

every person who at the time of commission of offence was incharge and was responsible for the conduct of the business of the company.

17. In the case of ‘Gunmala Sales Private Ltd.’ (supra), it has been observed by the Hon’ble Supreme Court of India that a Director can be prosecuted merely on the basis of bald assertion in the complaint that he was incharge and responsible for the conduct of day-to-day business of the company.

18. In the cases of ‘S.P. Mani and Mohan Dairy’ (supra), the Hon’ble Supreme Court of India has observed that once necessary averments are made in statutory notice issued by the complainant with regard to vicarious liability of partner and upon receipt of such notice if partner keeps quiet and does not say anything in reply to same, then complainant has all reasons to believe that what he has stated in notice, has been accepted by the noticee. In the abovementioned case, the Hon’ble Supreme Court of India has also observed that Court should not interfere at the instance of accused unless it comes across some unimpeachable and incontrovertible evidence that Director or partner of firm cannot have concern with issuance of cheque.

19. In the case of ‘Malwa Cotton and Spinning Mills Ltd. (supra)’, the Hon’ble Supreme Court of India has observed that if there are allegations that all Directors were responsible for the commission of offence under Section 138 of NI Act committed by a company, any ground to quash the proceedings is not made out.

20. On the other hand in the case of ‘Ashok Shewakramani’ (supra), it has been laid down by the Hon’ble Supreme Court of India that in a complaint for the commission of offence punishable under Section 138 of NI Act against a company, the complainant is required to aver in his complaint that the accused at the time of commission of offence was incharge of and responsible to the company for the conduct of its business.

21. In the case of ‘Anita Malhotra vs Apparel Export Promotion Council’ AIR 2012 SC 31, the Hon’ble Supreme Court of India has observed that the complaint should specifically spell out how and in what manner the Director was incharge of or was responsible to the accused-company for conduct of its business. According to Hon’ble Supreme Court of India mere bald statement that he or she was incharge of and was responsible to the company for conduct of its business is not sufficient.

22. In the case of ‘K.K. Ahuja’ (supra), the Hon’ble Supreme Court of India has ruled that in a case wherein a Director is being prosecuted for the commission of offence punishable under Section 138 read with Section 141 of NI Act, an averment in the complaint, that he was incharge of, and was responsible to the company for the conduct of the business of the company, is necessary to bring the case under Section 141(1) of NI Act.

23. In addition to above, it is also relevant to mention that in the case of ‘Gunmala Sales Private Ltd.’ (supra) also it has been observed by the Hon’ble Supreme Court of India that a Director of a company, who was not a signatory to the cheque, cannot be prosecuted unless there is an averment

in the complaint that at the relevant time, the abovesaid Director was incharge of and responsible for the conduct of business of the company. In the abovementioned case, the Hon'ble Supreme Court of India has also observed that any Director, who is not responsible for the commission of offence, can seek the quashing of complaint qua him by furnishing that he was not concerned with the issuance of cheque.

24. In the case of 'Hitesh Verma' (supra), it has been observed by the Hon'ble Supreme Court of India that a non-signatory to a cheque cannot be held liable under Section 138 of NI Act, unless the case falls within the purview of Section 141 of NI Act, which requires specific allegations regarding the person's role in the company's business. If the abovementioned principles of law are applied , co-jointly, to the facts and circumstances of the present case, it transpires that in order to prosecute the petitioner, while invoking the provisions under Section 141 of NI Act, there is a requirement that the respondent-complainant should make specific averment in the complaint that the petitioner was incharge of and was responsible to the company for the conduct of business of the company. On the abovementioned touchstone, if the averments made by the complainant, in the complaint, are analyzed, it transpires that the complaint filed by the respondent is completely silent with regard to the abovementioned averments.

25. A perusal of record further shows that following are the relevant factors which are required to be taken into consideration:-

- a) that on the date of issue of invoice the petitioner was not a Director of the company;
- b) that on the date of issuance of cheque also, the petitioner was not a Director of the company;
- c) that the petitioner is not a signatory to the cheque; and
- d) that there is no specific allegations in the complaint that the petitioner was incharge of and was responsible to the company for the conduct of the business of the company.

26. Taking into consideration the cumulative effect of abovementioned factors, it is hereby held that the complaint filed by the respondent fails to meet the test prescribed by the principles of law discussed above. Therefore, it is hereby held that the respondent has failed to show that *prima facie* the petitioner was responsible for the commission of abovementioned offence.

27. Thus, it is hereby held that present petition has got merit and deserves to be allowed. Hence, the present petition is hereby **allowed**, accordingly and, the complaint in question as well as impugned order, are hereby quashed qua petitioner. Obvious to say that any other proceeding related to the petitioner shall also come to an end.

(SURYA PARTAP SINGH)
JUDGE

07.03.2026
Vinod

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No