IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

2026:PHHC:068936

CRM-M-30015-2017 (O&M)

Anil Gupta **...Petitioner**

Versus

M/s Rajiv Trader **...Respondent**

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	04.05.2026
2	The date when the judgment is pronounced	06.05.2026
3	The date when the judgment is uploaded on the website	06.05.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ashish Chopra, Senior Advocate with
Mr. Gagandeep Singh, Advocate and
Mr. Abhishek Kansal, Advocate
for the petitioner.

Mr. Aman Pal, Senior Advocate with
Ms. Mansi, Advocate,
Mr. Rajender Kumar, Advocate and
Mr. Balraj, Advocate
for the respondent.

MANISHA BATRA, J.

1. Prayer in this petition, filed under Section 482 of the Code of Criminal Procedure *(for short 'the Code')*, is for quashing of Complaint bearing registration No. 1265 of 2017, titled as ***M/s Rajiv Trader v. Amira***

Pure Foods Pvt. Ltd. and others, filed under Sections 138 and 142 of the Negotiable Instruments Act, 1881 *(for short 'N. I. Act')* as well as the order dated 18.03.2017, whereby the petitioner had been summoned to face trial in the aforesaid complaint, along with all the subsequent proceedings having emanated therefrom.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by the complainant-respondent against the petitioner and the co-accused on the allegations that M/s Amira Pure Foods Pvt. Ltd. (for short, *'the company'*) of which the petitioner is a director, used to purchase paddy from the complainant from time to time and the transactions continued till the year 2014 on credit basis. After settling the accounts, the complainant found that an amount of Rs.6,66,425/- was outstanding towards the accused. On a demand made by the respondent/complainant, the accused, in order to discharge their legally enforceable liability, issued a cheque bearing No. 078218 dated 27.06.2016 in favour of the complainant. The said cheque was presented by the complainant before its banker on 23.09.2016, but the same was returned unpaid with the remarks 'funds insufficient. The complainant served legal notice dated 19.10.2016 upon the petitioner and the co-accused. They still failed to make payment of the amount of the cheque within prescribed period, thereby compelling the complainant to file the aforementioned complaint.

3. On considering the preliminary evidence adduced by the complainant, the learned Jurisdictional Magistrate, vide impugned order dated 18.03.2017, issued process as against the petitioner and co-accused under Section 138 of N. I. Act to face trial in the aforementioned complaint.

Aggrieved from the same, the petitioner has filed the present petition seeking quashing of the aforesaid complaint, summoning order as well as all the subsequent proceedings having emanated therefrom.

4. It is argued by learned senior counsel for the petitioner that the impugned summoning order passed by the learned trial Court is not sustainable in the eyes of law as the same is cryptic, non-speaking and reflects complete non-application of judicious mind. It is argued that the complaint itself is bereft of any specific averments qua the petitioner and merely contains bald and omnibus allegations that all the accused persons, being Directors, were in charge of and responsible for the affairs of the company. The complaint lacks specific allegations against the petitioner that he was one of the Directors and was responsible for day to day affairs of the company. The vague assertions made in the complaint do not satisfy the settled legal requirement for fastening vicarious liability.

5. It is further argued by learned senior counsel that the very basis of arraying the petitioner as an accused is factually incorrect and legally unsustainable, inasmuch as the petitioner had resigned from the directorship of the company on 21.01.2016 i.e. much prior to the date of issuance of the cheque in question i.e. 27.06.2016. A copy of the Form No. DIR-11, which has been placed on record as Annexure P-4, would clearly establish the fact that the petitioner had resigned on 21.01.2016. Consequently, he was neither in charge of, nor responsible for the conduct of the business of the company at the relevant time and, therefore, cannot be held liable for any alleged offence committed thereafter. He was not even the signatory of the disputed cheque. Even otherwise, the complaint fails to spell out as to how and in what manner

the petitioner was responsible for the conduct of the business of the company. No role, much less any specific or active participation, has been attributed to him. It is argued that mere designation as a Director is not sufficient to attract criminal liability in the absence of clear and specific allegations demonstrating involvement in the day-to-day affairs of the company. The learned trial Court failed to consider the material on record, including the fact of the petitioner's prior resignation, and has mechanically issued summons without recording any satisfaction regarding the petitioner's role or liability. The impugned order, therefore, suffers from serious legal infirmity. It is also argued that the impugned complaint is not only vague but is also legally deficient as it does not invoke the provisions of Section 141 of the N. I. Act, which is a *sine qua non* for fastening vicarious liability upon the Directors. In the absence of such invocation, the summoning of the petitioner under Section 138 of the N. I. Act alone is wholly unsustainable.

6. Learned senior counsel for the petitioner has drawn attention of this Court to a common order dated 30.09.2025, passed by a coordinate Bench of this Court in ***CRM-M-1036-2017***, titled as ***Anil Gupta v. M/s Om Parkash @ Sons and another*** and in three other petitions, whereby similar complaints filed against the petitioner have been quashed qua the petitioner on the grounds as raised in the present petition. While submitting that it is well settled that a person who had resigned from the company prior to the commission of the alleged offence cannot be compelled to face criminal prosecution and that criminal proceedings against such a person would amount to abuse of the process of law, it is urged by learned senior counsel that the present petition also deserves to be allowed and the impugned complaint, summoning order as

well as all the subsequent proceedings having emanated therefrom are liable to be quashed qua the petitioner.

7. No reply has been filed on behalf of the respondent/complainant. Learned senior counsel for the respondent/complainant has not controverted the fact that the petitioner ceased to be one of the Directors of the company w.e.f. 21.01.2016, subsequent to his resignation from the said post.

8. This Court has heard the rival submissions.

9. Section 138 of the N. I. Act refers to penalty in case of dishonour of a cheque for insufficient fund in the bank account. Since, the impugned complaint has been filed against the Company and its directors alleging commission of offence under Section 138 of the N. I. Act, therefore, it is appropriate to refer to Section 141 of the N. I. Act, which deals with the offence by a Company. The same reads as follows:-

Section 141- OFFENCES BY COMPANY:-

> (1) If the person committing an offence under section 138 is a company, every 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, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any person liable to punishment, if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:
>
> Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial

> corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

10. On a bare reading of the aforementioned provision, it is clear that so far as the companies are concerned, if any offence is committed by it, then every person who is director or employee of the company is not liable. Only such person would be held liable, who, if at the time when offence was committed, was in charge and was responsible for the company for the conduct of business of the company as well as of the company. However, by way an exception to the normal rule that in cases involving criminal liability against vicarious liability, no-one is to be held liable for an act of another, a specific provision is made in the statue by way of this Section that criminal liability can be extended to others. Section 141 of the N. I. Act is an instance of specific provision, which in case an offence under Section 138 of the N. I. Act is committed by a Company, extends criminal liability for dishonour of cheque to

the officers of the Company. For that purpose certain conditions, which are mentioned in Section 141 of the N. I. Act, have to be satisfied and those conditions have to be strictly complied with. In that case apart from the Company, all persons, who at the time of commission of offence were in-charge and were responsible to the Company for conduct of business of the Company, are liable for the offence. This section postulates constructive liability of the directors of the company or the business of the company.

11. It is well settled that what is required for a person, who is sought to be vicarously liable for the offence under Section 141 of the N. I. Act, is that when the offence was committed, he was in charge and responsible for conduct and business of the company and this should be reflected in the averments made in the complaint. Reliance in this context can be made to ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla, 2005(3) Apex Criminal 229,*** wherein a three Judges Bench of Hon'ble Supreme Court was dealing with the reference made by a two Judges Bench, for determination of the question, as to whether, for the purpose of Section 141 of N. I. Act, it was sufficient if the substance of the allegation read as a whole fulfilled the requirement of the said Section and it was not necessary to specifically state in the complaint that the person accused was in charge of or responsible for the conduct of a company or not. The second question for determination was whether a director of a company was deemed to be in charge of and responsible for the company for conduct of the business of the company and therefore, deemed to be guilty of the offence unless, he proved to the contrary and further that whether in the absence of specific averments that the signatory of the cheque and the Managing Director or Joint Managing Director was responsible to the

company for conduct of its business, he could be proceeded against? The Hon'ble Apex Court observed that it was necessary to specifically aver in a complaint under Section 141 that at the time when the offence was committed, the person accused was in charge of, and responsible for the conduct of the business of the company and this averment was an essential requirement of Section 141 and had to be made in a complaint. Without this averment having been made in the complaint, the requirement of Section 141 could not be said to be satisfied.

12. Reliance can also be placed upon ***Saroj Kumar Poddar Vs. State (NCT of Delhi), 2007(1) R.A.J. 205,*** wherein it was observed by Hon'ble Supreme Court that the complaint must not only contain averments justifying the requirement of Section 141 of NI Act but must also show as to how and in what manner, the accused named therein was responsible for the conduct of the business of the company or otherwise responsible to it with regard to its functioning.

13. In ***N.K. Wahi Vs. Shekhar Singh, 2007(2) RCR (Criminal) 266,*** it was observed by Hon'ble Supreme Court that Section 141 of NI Act raised a legal fiction by reason of which a person, although not personally liable for commission of an offence, would be vicariously liable and that it was held that such vicarious liability could be inferred against a company only if the requisite statement was made in the complaint but before a person could be made vicariously liable strict compliance with the statutory requirements would be insisted. In that case, the basic averments in terms of Section 141 of NI Act were absent and hence, the complaint was ordered to be quashed by observing that to launch a prosecution against 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 the company. The description should be clear.

14. In ***Paresh P. Rajda Vs. State of Maharashtra and another (2008) 7 SCC 442***, it was observed by Hon'ble Supreme Court that the entire matter would boil down to an examination of the nature of the allegations made in the complaint to determine the question as to whether, a particular director is liable to face trial due to his vicarious liability or not.

15. In ***K.K. Ahuja Vs. V.K. Arora, 2009(3) RCR (Criminal) 571***, the Hon'ble Supreme Court while considering the same question summarized the position under Section 141 of the N. I. Act as under:-

> **27.** The position under Section 141 of the Act can be summarised thus:
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> (i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.
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> (ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

> (iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge 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 the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.
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> (iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

16. Reference can also be made to ***National Small Industry Corporation Limited vs. Harmeet Singh Paintal, 2010(2) RCR (Criminal) 122,*** wherein the Hon'ble Supreme Court while dealing with the same question laid down the following principles:-

> *"(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.*
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> *(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.*
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> *(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.*

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If the accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases."

17. In ***A.K. Singhania vs. Gujarat State Fertilizer Company Ltd.,2013 (4) RCR (Criminal) 777***, while dealing with the same, Hon'ble Supreme Court observed that it is necessary for a complainant to state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company. Although, no particular form for making such an allegation is prescribed, and it may not be necessary to reproduce the language of Section 138 of the N. I. Act, but a reading of the complaint should show that the substance of the accusation discloses that the accused person was in charge of and responsible for the conduct of the business of the company at the relevant time.

18. In ***Mannalal Chamaria vs. State of West Bengal, 2014(2) RCR (Criminal) 25***, the Hon'ble Supreme Court reiterated the above observations and observed that in the averments made before it, there was no specific or even a general allegation made against the appellants. Therefore, the complaint filed against the appellants under Section 138 of the NI Act was dismissed.

19. In ***Gunmala Sales Pvt. Ltd. Vs. Anu Mehta 2015(1) SCC 103***, the Hon'ble Apex Court was dealing with a question with regard to the directors of a company, who were not signatories to the cheques but were summoned as accused. It was observed that so far as the directors who are not signatories to the cheques or not managing directors or joint managing directors are concerned, it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time, when the offence was committed, such directors were in charge of and were responsible for the conduct of the business of the company. This was a basic requirement and there was no deemed liability of the directors. It was further observed that when a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, if the basic averments are found to be sufficient, the complaint must proceed against the directors, but if there is bald averment, the High Court can quash the process, if the director makes out a case that making him stand a trial would be an abuse of process of the Court.

20. Reference can also be made to the judgment dated 15.03.2024 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1577-1578 of 2024 arising out of Special Leave Petition (criminal) No. 12390-12391 of 2022 decided on 15.03.2024 titled as ***Susela Padmavathy Amma vs. M/s Bharti Airtel Limited***, wherein it was observed that simply because a person is a director of a company, it does not necessarily mean that he fulfills the requirement so as to make him liable, unless at the material time he was in charge of the company and was responsible for conduct of its business.

21. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, this Court finds that the impugned

complaint does not satisfy the mandatory requirements of Section 141 of the N.I. Act for fastening vicarious liability upon the petitioner. A careful perusal of the complaint reveals that it merely contains bald and omnibus allegations to the effect that all the accused persons were Directors and were in charge of and responsible for the affairs of the company, without spelling out as to how and in what manner the petitioner was responsible for the conduct of the business of the company at the relevant time. Such vague and sweeping assertions fall short of the specific averments as mandated by law. Furthermore, it is not in dispute that the petitioner had resigned from the directorship of the company on 21.01.2016, much prior to the issuance of the cheque in question dated 27.06.2016. In the absence of any material to show that the petitioner was associated with the affairs of the company at the time when the alleged offence was committed, he cannot be held vicariously liable. The petitioner is neither the signatory of the cheque nor has any specific role been attributed to him in the transaction in question. Thus, the essential condition that the accused must be in charge of and responsible for the conduct of the business of the company at the time of commission of the offence, stands unfulfilled.

22. The learned trial Court, while passing the summoning order, has failed to advert to these crucial aspects and has proceeded in a mechanical manner without recording any satisfaction regarding the role of the petitioner. The impugned summoning order, being cryptic and non-speaking, reflects non-application of judicial mind and cannot be sustained in the eyes of law. In view of the settled legal position, as crystallized in the judgments referred to hereinabove and in the absence of the foundational averments required under

Section 141 of the N.I. Act, continuation of criminal proceedings against the petitioner would amount to abuse of the process of the Court. Consequently, the present petition deserves to be allowed. Accordingly, the impugned complaint bearing registration No. 1265 of 2017, the summoning order dated 18.03.2017, as well as all consequential proceedings arising therefrom, are hereby quashed qua the petitioner.

06.05.2026 **(MANISHA BATRA)**
Waseem R. Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*