

**CRM-M-35320-2019(O&M)****1****112**

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

CRM-M-35320-2019(O&M)**Date of Decision: 02.02.2026****RUDRA NARAIN JHA AND ORS****.....PETITIONERS****VERSUS****STATE OF HARYANA AND ANR****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE H.S.GREWAL**

Present: Mr. Akhshay Bhan, Senior Advocate with
Mr. Aman Singh Talwar, Advocate and
Mr. Abhijeet Singh Rawaley, Advocate for the petitioners.

Ms. Ruchi Sekhri, Addl.A.G. Haryana.

Mr. Rohit Rana, Advocate for respondent No.2.

H.S. GREWAL, J. (ORAL)

1. This petition has been filed under Section 482 of Cr.P.C for quashing of complaint No. 46102 of 2018 (138 N.I.Act/78847/2018) dated 21.12.2018 (Annexure P-1) and summoning order dated April 20,2019 Annexure P-2 passed by JMIC, (Special Court) , Gurgaon District Haryana issuing process/ summons under Sections 138 & 141 of Negotiable Instruments Act.

2. Learned Senior counsel appearing on behalf of the petitioners submits that the summoning order dated 20.04.2019 has been passed without advertng to or considering the effect of the official liquidator letter dated 12.12.2017 addressed to the petitioner including the



complainant/respondent No.2 informing about the appointment of official liquidator in respect of the company concerned and asked the parties to remain present for the meeting fixed on 26.12.2017 for taking possession of the movable and immovable assets along with the books of accounts and records of the company. It is further submitted that the petitioners were serving only as non-executive independent directors of the company and were not responsible for the conduct of its business nor they were in charge of the day-to-day affairs of the company at the relevant time. Learned Senior counsel argues that in the absence of specific allegations showing their direct role or responsibility in the alleged offence, the summoning order suffers from non-application of mind and is liable to be set aside.

3. Learned Senior counsel has placed reliance upon the case titled as *National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another (2010) 3 Supreme Court Cases 330*, wherein it has been observed that “Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company, without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner respondent was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability”.



4. Learned Senior counsel in support of his contention, further placed reliance on *Pooja Ravinder Devidasani Vs State of Maharashtra and others, 2014 (16) SCC 1*, wherein the Hon'ble Supreme Court held that in the absence of specific averments establishing the role of an Independent Director in the conduct of the business of the company, no liability under Sections 138 and 141 can be imposed.

5. Mr. Rohit Rana, Advocate appears and has filed his memo of appearance on behalf of respondent No.2 in the Court today and the same is taken on record. He has vehemently opposed the submissions made by the ld. Senior Counsel and prays for dismissal of the present petition.

6. I have heard the learned counsel for the parties and perused the record.

7. While dealing with similar situation, it has been observed by the Hon'ble Supreme Court of India that simply because a person is designated as a Director it does not mean that he is responsible for the offence committed by the company under Section 138 of the NIA. In the case of *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another (2005) 8 Supreme Court Cases 89*, the Hon'ble Supreme Court of India has ruled that a specific role and responsibility being performed by a person as a Director must be established in the complaint.

8. In the *National Small Industries Corporation Limited (supra)*, the Hon'ble Supreme Court of India has also observed that "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”.

9. The Hon’ble Supreme Court of India has further observed that “Vicarious liability on the part of a person must be pleaded and proved and not inferred”.

10. In the present case, the complaint is silent qua any active role of the petitioners in the business of the company. The admitted position, as noted during course of arguments, is that the petitioners were merely as non-executive independent Director and were not responsible for the conduct of its business.

11. Keeping in view the above discussion, the case of the petitioner is squarely covered by the judgments of Hon’ble Supreme Court as captioned above, permitting the continuation of criminal proceedings against the petitioners would amount to an abuse of the process of law. The complaint, summoning order dated 20.04.2019 (Annexure P-2) , and subsequent proceedings in the criminal complaint in question, cannot be sustained in the absence of the foundational ingredients required under Section 141 of the Act.

12. In the facts and circumstances enumerated hereinabove, this Court deems it fit to allow the instant petition and summoning order 20.04.2019 (Annexure P-2) is hereby set aside. The matter is remitted back to the Id. trial Court to reconsider the case afresh after taking into consideration the effect of the official liquidator letter dated 12.12.2017



and the role attributed to the petitioners, and thereafter pass an appropriate order in accordance with law.

13. Pending applications, if any, shall also stand disposed of.

02.02.2026

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(H.S.GREWAL)
JUDGE

Whether speaking/ reasoned :
Whether Reportable :

Yes/No
Yes/No