

Before Arvind Singh Sangwan, J.

VIKRAM JOSHI—Petitioners

versus

M/S RAJ TRADING COMPANY—Respondents

CRM-M No.32573 of 2017

December 20, 2021

Constitution of India, 1950—Art. 226 and 227—Negotiable Instruments Act, 1881— S.138 and 141—Petitioners cannot be held vicariously liable under Section 141 of the Act, if neither signatory of cheque, nor charged with the day affairs of the company— Summoning order passed u/s 138 without referring to Section 141 of the Negotiable Instruments Act quashed.

Held that, a perusal of the summoning order also reveal that the same have been passed in a very casual manner without observing that the cheques were issued only by accused No.3/Anil Mahajan, authorized signatory of the Company and not by accused No.4/petitioner and the same has been passed only under Section 138 of the N.I. Act, without referring to Section 141 of the N.I. Act.

(Para 30)

Further held that, accordingly, the present petitions i.e. CRM-M Nos.32573 of 2017 and No.14654 of 2021, are allowed and complaint No.1830 of 2016 dated 22.07.2016 as well as the summoning order dated 22.07.2016 (in CRM-M No.32573 of 2017) and complaint No.2890 of 2019 dated 20.12.2019 as well as the summoning order dated 08.02.2021, are ordered to be quashed.

(Para 31)

Bipan Ghai, Sr. Advocate with
Bhupinder Ghai, Advocate and
Rishabh Singla, Advocate
for the petitioner (in all the cases)

N.S. Shekhawat, Sr. Advocate with
Sahil Gupta, Advocate
for the respondent
(in CRM-M 32573-2017 and in CRM-M-14654-2021)

Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

1. CRM-M No.32573 of 2017 (O&M)

(1) Prayer in this petition is for quashing of complaint No.1830 of 2016 dated 22.07.2016 filed by the respondent – Darshan Devi under Section 138/142 of the Negotiable Instruments Act, 1881 in short 'the N.I. Act') (Annexure P-1) and all other subsequent proceedings arising therefrom, pending in the Court of Judicial Magistrate Ist Class, Panipat and for setting-aside the summoning order dated 22.07.2016 (Annexure P-2)

(2) It is submitted on behalf of the petitioner that as per the allegations in the complaint filed by Darshan Devi, she had a dealing with the Company M/s. Chintpurni Foods Private Limited in the year 2013-14 and the Company had made payment to her from time to time. On 31.03.2016, a sum of Rs.3,69,60,254/- was due as per the accounts book of the complainant firm M/s. Raj Trading Company, New Grain Market, Madlauda, District Panipat and 05 cheques were issued by Ankit Gupta (authorized signatory of the company) and one cheque No.067376 dated 30.06.2016 for a sum of Rs.50.00 lacs, which was dishonoured by the Bank on 01.07.2016 and thereafter, a legal notice was sent on 06.07.2016 and thereafter, the complaint was filed.

2. CRM-M No.14654 of 2021 (O&M)

(3) Prayer in this petition is for quashing of complaint No.2890 of 2019 dated 20.12.2019 filed by the respondent – Darshan Devi under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') (Annexure P-1) and all other subsequent proceedings arising therefrom, pending in the Court of Judicial Magistrate Ist Class, Panipat and for setting-aside the summoning order dated 08.02.2021 (Annexure P-2).

(4) It is submitted on behalf of the petitioner that as per the allegations in the complaint filed by Darshan Devi, she had a dealing with the Company M/s. Chintpurni Foods Private Limited in the year 2013-14 and the Company had made payment to her from time to time. On 31.03.2016, a total sum of Rs.3,69,60,254/- was due as per the accounts book of the complainant firm M/s. Raj Trading Company, New Grain Market, Madlauda, District Panipat and 05 cheques were issued by Ankit Gupta (authorized signatory of the company) and the cheques No.067374 and No.067375 for a sum of Rs.50.00 lacs each, which were dishonoured by the Bank on 01.07.2016 and thereafter, a legal notice was sent on 06.07.2016 and

thereafter, the complaint was filed.

(5) Learned senior counsel for the petitioner has relied upon the compromise/settlement deed arrived at between the parties before the Mediation and Conciliation Centre of this Court to submit that whatever was due that has been paid by the petitioner. It is further argued that as per the impugned complaint, the petitioner Vikram Joshi is arrayed as an accused by giving his address as Director of M/s. Chintpurni Foods Private Limited, C/o Indian Heritage School near Chintpurni Medical College, Dalhauji Road, DSR Valley, Pathankot (Punjab). It is further submitted that in para 7 of the complaint, it is stated that accused No.1 had received notice issued by the complainant but accused Nos.2 and 3 i.e. petitioners, managed to return the notice and therefore, they have the knowledge of the same.

(6) Learned senior counsel for the petitioner has also submitted that the petitioner never resided at the address given in the complaint and on the notice, there is a report that the addressee is not residing in Dehradun and his complete address is not known.

(7) Learned senior counsel for the petitioner has, thus, submitted that no legal notice was served upon the petitioner and therefore, the prosecution of the petitioner is bad.

(8) Learned senior counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in **Rahul Builders** versus **Arihant Fertilizers**¹ to submit that the requirement and service of notice under Section 138(b) of the N.I. Act is mandatory and the penal provision should be construed strictly.

(9) Learned senior counsel for the petitioner has further relied upon the judgment **Central Bank of India** versus **Saxons Farms**², to submit that it has been held by the Hon'ble Supreme Court that the object of notice is to give chance to the drawer of the cheque to rectify his omission within 15 days from the date of receipt of the notice.

(10) Learned senior counsel for the petitioner has also relied upon the judgment **M/s. Ajaya Industries** versus **Gulshan Rai**³ to submit that the legal notice demanding payment sent on incomplete address by way of registered post received back unserved, cannot be termed as served.

¹ 2007(4) RCR (CrI.) 973

² 1994(4) RCR (CrI.) 324

³ 2014(1) RCR (CrI.) 79

(11) Learned senior counsel for the petitioner has next argued that as per the Memorandum of Association of the Company, the address of the petitioner is of Dehradun and the permanent address of the petitioner is House No.14, Arya Nagar, Dehradun, Uttrakhand and his official residence as per the Ministry of Corporate Affairs Website is R-6 G/Floor (Back Portion), Nehru Enclave Kalkaji, New Delhi, i.e. theregistered office of the Company. It is also submitted that since the respondent/complainant has not complied with the provisions of Section 138(b) (c) of the N.I. Act, as no legal notice was ever served on the petitioner on either of his address, the prosecution is liable to be quashed. It is also argued that in fact, except for the aforesaid 05 cheques of the other cheques forming basis of the complaints were in fact, issued by the co-accused Anil Mahajan, being the Director of the Company under his signatures and the petitioners are not the signatory of any of the cheque. It is also submitted that there is nothing on record to suggest that the petitioners are looking after the day-to-day business of the Company as it was the working Director Anil Mahajan, who was Incharge of the affairs and control of the Company and the property of the Company was under the ownership of Rajni Mahajan, wife of aforesaid Director Anil Mahajan.

(12) Learned senior counsel for the petitioner has also argued that even co-accused Rajni Mahajan, has entered into some settlement with the accused persons and in pursuance thereof, some properties have been transferred in the name of the complainant vide sale deed dated 02.05.2016 and even mutation of the same has been sanctioned in favour of the complainant on 07.06.2015 and therefore, there was no enforceable debt or liability against the petitioners who are the non- functioning Director of the Company. It is further submitted that the co-accused Anil Mahajan and his wife Rajni Mahajan, have sold total 13 kanals of land to clear the outstanding dues towards the complainant side. It is further submitted that once the agreement and settlement was arrived at between the parties, Anil Mahajan, who had undertaken to get the sale deed executed and later on it was in fact, executed, the complainant has no *locus standi* to continue with the prosecution of the accused persons and rather in a *mala fide* motive, the complainants instead of withdrawing the complaints are prosecuting the same out of greed.

(13) Learned senior counsel for the petitioner has further submitted that the complainants have deliberately concealed the aforesaid fact of sale of land by Anil Mahajan in favour of the

complainant and despite the said fact, the complaint has been filed and therefore, the complainant has suppressed the correct facts from the knowledge of the Court. It is also argued that in fact, the cheques were only the security cheques in lieu of guarantee given by Anil Mahajan for the transfer of the land and therefore, the petitioners cannot be held liable for the dishonour of the cheques, which were in fact, issued by Anil Mahajan under his own signatures.

(14) Learned senior counsel for the petitioner has also argued that as per the provisions of Section 138 of the N.I. Act, it is applicable to a transaction which relates to legally enforceable debt or other liability.

(15) Learned senior counsel for the petitioner has further relied upon the judgment of the Hon'ble Supreme Court in *Gunmala Sales Private Limited, etc. versus Navkar Promoters Private Limited and others*⁴ wherein in Para 26, it is observed as under:-

“.....We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the conclusions drawn in the above-mentioned cases that 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, the Directors were in charge of and were responsible for the conduct of the business of the company. This is a basic requirement. There is no deemed liability of such Directors.”

(16) Reliance has also been placed upon the judgment in *S.M.S. Pharmaceuticals Limited versus Neeta Bhalla and another*⁵ in which the Hon'ble Supreme Court has held that there should be specific averments of vicarious liabilities for making the Director of the Company liable for criminal prosecution initiated against the Company and the complainant must aver that the accused persons were Incharge and responsible for conduct of the Company to meet mandatory requirement of Section 141 of the N.I. Act. It is also submitted that in the absence of any such averments, the prosecution of the petitioner is liable to be quashed as no criminal liability can be fastened on the petitioners, who are not Incharge of the firm or responsible for conduct

⁴ 2014(4) RCR (Civil) 788

⁵ 2005(4) RCR (CrI.) 141

of the business when the cheques were issued.

(17) Learned senior counsel for the petitioner has further argued that the petitioner has already cleared the liability and the intention of the complainant to continue with the prosecution is nothing but an act of *mala fide* and greed and therefore, the petition be allowed and the complaints be quashed.

(18) Learned senior counsel for the petitioners has further submitted that since the cheques, in question were never issued under the signatures of the petitioners and they are not the person, who are responsible for conducting day-to-day business of the firm, the petition may be allowed.

(19) Learned counsel for the petitioner has relied upon **National Small Industries Corp. Ltd.** versus **Harmeet Singh Paintal and Anr.**⁶ wherein Hon'ble Supreme Court has held that if a person, who was not a Director at the relevant point of time when the cheques were issued or dishonoured and there is no specific allegation in the complaint that such accused person was Incharge of the day to day business of the company, he cannot be prosecuted for the offences punishable under the provisions of the N.I. Act.

(20) Learned counsel for the petitioner has also relied upon **N. K. Vahi** versus **Shekhar Singh and others**⁷, **DCM Financial Services Ltd.** versus **J. N. Sareen and another**⁸, **Mrs. Anita Malhotra** versus **Apparel Export Promotion Council and another**⁹ **Harshendra Kumar D.** versus **Rebatilata Koley Etc.**¹⁰ and **Pooja Ravinder Devidasani** versus **State of Maharashtra**¹¹, wherein the similar view has been taken by Hon'ble Supreme Court.

(21) Learned counsel for the petitioner further argued that merely being the director of a company is not sufficient to make a person liable under Section 141 of the N.I. Act.

(22) In reply, learned senior counsel for the respondent/complainant has argued that as per the Memorandum of Association dated 11.02.2012, the petitioner is a Director in the accused

⁶ 2010 (2) RCR (CrI.) 122

⁷ 2007 (2) RCR (CrI.) 266

⁸ 2008 (3) RCR (CrI.) 152

⁹ 2011 (4) RCR (CrI.) 930

¹⁰ 2011 (3) SCC 351

¹¹ 2015 (3) SCC (Civil) 384

No.1 – Company and therefore, he is deemed to be an active Director of the Company. It is further argued that the petitioner has intentionally not accepted the notice issued by the complainant.

(23) Learned senior counsel for the respondent/complainant has also submitted that though, the sale deed was executed by Rajni Mahajan wife of Anil Mahajan as a part of settlement in favour of Balwan Singh, Suresh Kumar, Ajit Singh and Jagdeep Singh and mutation was also sanctioned but with regard to the present complaint, no such sale deed was executed.

(24) Learned senior counsel for the complainant/respondent has relied upon some judgments to submit that since the petitioners are the active Director of the Company, the petition be dismissed.

(25) In reply to a Court query, whether any of the cheque was signed by the petitioner, it could not be disputed that all the cheques were issued under the signatures of Anil Mahajan only and the petitioner is not the signatory of any of the cheque.

(26) Learned senior counsel appearing for the respondent has relied upon the judgment *M/s.Gimpex Private Limited* versus *Manoj Goel*¹² to submit that it has been held by the Hon'ble Supreme Court that if the settlement agreement entered into between the parties in the original complaint, the original complaint cannot be sustained and fresh cause of action accrues to the complainant under the terms and settlement of the deed. The Hon'ble Supreme Court in Para 53 and 54 of the said judgment, held as under:-

“53 Section 139 raises the presumption “unless the contrary is proved”. Once the complainant discharges the burden of proving that the instrument was executed by the accused; the presumption under Section 139 shifts the burden on the accused; The expression “unless the contrary is proved” would demonstrate that it is only for the accused at the trial to adduce evidence of such facts or circumstances on the basis of which the burden would stand discharged. These are matters of evidence and trial. As held in Arun Kumar (supra) and discussed above, the determination of whether a cheque pursuant to a settlement agreement arises out of a legal liability would be dependent on various factors, such as the underlying settlement agreement, the nature of the

¹² 2021(4) RCR (Cr.) 404

original transaction and whether an adjudication on the finding of liability was arrived at in the original complaint, the defence raised by the accused, etc. The Single Judge was in error in proceeding to quash the criminal (2018) 8 SCC 165 PART C complaint on a priori reasoning that the second set of cheques issued in pursuance of the deed of compromise were not in discharge of a liability and on that basis proceeding to quash the proceedings under Section 482 CrPC. The mere fact that a suit has been instituted before the Madras High Court challenging the deed of compromise would furnish no justification for exercising the jurisdiction under Section 482. The deed of compromise would continue to be valid until a decree of the appropriate court setting it aside is passed. The High Court, as we have explained above, has failed to notice the true meaning and import of the presumption under Section 139 which can only be displaced on the basis of evidence adduced at the trial.

54. A submission was urged by the appellants that in the event the second complaint is found to be non-maintainable and the compromise deed is held to be invalid, they would be left remediless and thus, the first trial should be allowed to continue. We do not find any merit in this submission. In the event that the compromise deed is found to be void ab initio on account of coercion, the very basis for quashing of the first complaint is removed since the settlement agreement is deemed to have never existed and hence it had no effect on the liability subsisting under the first complaint. The appellants may then approach the competent court for reinstatement of the original complaint and the trial can proceed on that basis.”

(27) The Hon'ble Supreme Court concluded that the issue regarding the validity of a transaction cannot be enquired into under the proceedings under Section 482 Cr.P.C. and the quashing of the complaint by the High Court was set-aside.

(28) Learned senior counsel for the respondent has relied upon the judgment *C.C. Alavi Haji* versus *Palapetty Muhammad and another*¹³ to submit that it is held by the Hon'ble Supreme Court that

¹³ 2007(3) RCR (CrI.) 185

even if the notice is not received by the accused, he can make the payment within 15 days from the receipt of the summons from the Court to escape the prosecution. It is also held by the Hon'ble Supreme Court that under Section 138 of the N.I. Act, giving notice to a drawer before filing the complaint under Section 138 of the N.I. Act is mandatory requirement and in that context, it is not the same as receipt of notice and if the notice is sent by registered post with endorsement of refusal or not available in house or addressee not found, there is a presumption of effecting the notice.

(29) Learned senior counsel for the respondent has also relied upon the judgment *Yogendra Pratap Singh* versus *Savitri Pandey and another*¹⁴ wherein similar view has been taken by the Hon'ble Supreme Court.

CRM-M NOS.32573 OF 2017 AND NO.14654 OF 2021

(30) After hearing the learned counsel for the parties, I find merit in the present petitions, for the following reasons:-

i. A perusal of all the original complaints filed under Sections 138/141 of the N.I. Act, reveals that the petitioner is arrayed as accused No.4 wherein it is stated that accused No.3 Anil Mahajan and the petitioner, are the Directors of accused No.1 – Company and are responsible persons of the firm.

ii. It is further stated that the firm/accused, purchased the Paddy crop from time to time on credit basis and part payment was made to the complainant as per their ledger. It is stated that on calculation of the payments as on the closing of the Financial Year, the accounts were settled. It is further stated that the complainant/firm used to purchase Paddy crop and deliver the same to the accused No.1 – Company and in that process, cheques were issued under the signatures of accused No.3, Anil Mahajan, however, the same were dishonoured on presentation before the Bank and after issuing a notice, the complaints have been filed.

However, a perusal of complaint and legal notice show that neither it is alleged that petitioner as a Director approached the complainant to purchase crop nor it is stated that the petitioner ever acknowledged settlement of

¹⁴ 2014(4) RCR (Cr.) 321

alleged accounts of complainant or ever handed over the cheques.

iii. A perusal of the cheques (attached with the present petitions) would show that these have been issued by accused No.3/Anil Mahajan, as the sole authorized signatory and not by the petitioner. It has been observed hereinbefore that the petitioner to show his bona fide has paid the amount to the firms, from whom the Paddy was purchased by the Proprietor's firms/commission agents as before the Mediation and Conciliation Centre of this Court, a settlement agreement was arrived at in which the petitioner has made the payment of Rs.1.57 crore(approx.).

iv. It has also come on record that accused No.3/Anil Mahajan (non-petitioner) and his wife Rajni Mahajan, have also sold certain agricultural land in favour of the commission agents/firms, to clear the outstanding liability and therefore, the liability of the petitioner as well as liability of Anil Mahajan and his wife Rajni Mahajan, is decipherable.

v. The petitioner has paid the amount towards the farmers whereas Anil Mahajan has sold some of his land and has already withdrawn the quashing petition on an earlier occasion. Therefore, it is apparent from the perusal of the impugned complaints that it is the accused No.3/Anil Mahajan, who was the authorized signatory on behalf of the Company/accused No.1 and he was dealing with the day-to-day business of the Company and to acknowledge his liability, he has even sold properties in favour of some of the victims whereas the petitioner to show his bona fide has also paid huge amount to the victims before the Mediation and Conciliation Centre of this Court as noticed above.

vi. In view of the well-settled principle of law as held by the Hon'ble Supreme Court, the petitioner cannot be held vicariously liable in terms of Section 141 of the N.I. Act as he is neither the signatory of the cheques nor the person Incharge of the day-to-day business of the Company.

vii. In view of the judgment of the Hon'ble Supreme Court in S.M.S. Pharmaceutical's case (supra), the petitioner was neither Incharge nor responsible for the conduct of day-to-

day business of the Company and in view of the fact that there are specific averments in all complaints that the cheques were issued by the authorized signatory of the Company i.e. accused No.3/Anil Mahajan, the requirement of Section 141 of the N.I. Act, is not made out and therefore, the petitioner cannot be held liable for the prosecution.

viii. It is also a matter of record that the complainant was availing two remedies to prosecute the petitioner, after filing of the complaint, a complaint was also given to the SHO, Police Station Matlauda, District Panipat wherein on conducting an enquiry, it was found that no offence of cheating is made out, however later on, FIR No.418 dated 23.10.2016 was registered against the petitioner and others, under Sections 406, 420, 506 IPC. It is worth noticing that a similar FIR No.427 dated 13.12.2017 registered under Sections 34, 406, 420, 506 IPC at Police Station Gohana Sadar, District Sonapat, already stands quashed by this Court in CRM-M No.12545 of 2021, vide order of even date.

ix. A perusal of the summoning order also reveals that the same have been passed in a very casual manner without observing that the cheques were issued only by accused No.3/Anil Mahajan, authorized signatory of the Company and not by accused No.4/petitioner and the same has been passed only under Section 138 of the N.I. Act, without referring to Section 141 of the N.I. Act.

(31) Accordingly, the present petitions i.e. ***CRM-M Nos.32573 of 2017 and No.14654 of 2021, are allowed*** and complaint No.1830 of 2016 dated 22.07.2016 as well as the summoning order dated 22.07.2016 (in CRM-M No.32573 of 2017) and complaint No.2890 of 2019 dated 20.12.2019 as well as the summoning order dated 08.02.2021, are ordered to be ***quashed***.

(32) Needless to say that the civil right for recovery of the amount will always remain open between the parties subject to law of limitation.