

Arvind Singla vs M/S Beetel Teletech Limited on 4 April, 2025

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.04.

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CRL.M.C. 6741/2019 & CRL.M.A. 43621/2019

ARVIND SINGLA

...

versus

M/S BEETEL TELETECH LIMITED

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Advocates who appeared in this case:

For the Petitioner : Mr. Viraj Dattar, Senior Advocate
Deepesh Aneja, Advocate.

For the Respondent : Mr. K.P. Singh, Advocate R-1.
Mr. Anil K. Batra, Mr. K.K.Tiwari,
Ms.Shashi Bhalla, Mr. Madan Pal Sing
Mr. Amish Tiwari, Advocates for R-2.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed seeking quashing of the order dated 02.01.2017 (hereafter 'impugned order'), passed by the learned Metropolitan Magistrate-05, Patiala House Courts, New Delhi (hereafter 'Trial Court'), in Complaint Case bearing number 03/2017, titled as M/s Beetel Teletech Ltd. v. M/s Bell Enterprises & Ors., taking cognizance for offence under Section 138 of the Negotiable Instrument Act (hereafter "NI Act").

Brief Facts

2. The complaint was filed by the respondent under Section 138 of the NI Act, alleging that the petitioner and other co-accused persons namely- Sh. Deepak Singla and Smt. Shweta Singla/Respondent No.2 (wife of Deepak Singla), acting on behalf of the accused partnership firm namely- M/s Bell Enterprises (hereafter 'accused firm'), entered into a Distributorship Agreement dated 20.01.2016 with the complainant company / respondent, for resale and marketing of various products/ goods as mentioned in the said agreement.

3. It is stated that at the time of the execution of the Distributorship Agreement, the accused firm issued a blank cheque drawn on Punjab National Bank and a bank guarantee of 3,00,00,000/- as a security towards the supply of products on a timely basis.

4. It is the case of the complainant that the goods were supplied to the accused firm as and when a purchase order was issued and invoices were raised by the complainant against such supply. The details provided by the complainant/ respondent in regard to the invoices is given below:

S.No.	Tax Invoice	Date	Amou
1.	5079100209	16.05. 2016	4,99
2.	5002100908	26.05.2016	15,9
3.	5075103126	26.05.2016	1,1
4.	5091104220	27.05.2016	8,23
	Total		6,37

5. The complainant alleged that the accused firm issued a cheque for a sum of 3,00,00,000/- being cheque No. 553963 dated 17.07.2016 (hereafter 'subject cheque') drawn on State Bank of India, in partial discharge of their liability. The said subject cheque, upon presentation, was dishonoured with remarks "funds insufficient"

vide return memo dated 18.07.2016. It is stated that when the complainant informed the accused firm regarding the dishonour of the subject cheque, the accused firm requested the complainant to invoke the bank guarantee of 3,00,00,000/- issued at the time of execution of the Distribution Agreement, and hold the presentation of the subject cheque for another two months. It is stated that after the invocation of the bank guarantee, the outstanding liability along with interest came to be total of 3,02,00,330/- owed by the accused firm.

6. It is alleged that after almost three months, the complainant presented the subject cheque through its banker, State Bank of India, Jahawar Vyapar Bhawan, New Delhi, however the said cheque was again dishonoured with remarks "funds insufficient" vide return memo dated 13.10.2016. Upon the failure of the accused persons to make the payment despite the service of the statutory notice, the complainant/ Respondent No. 1 filed the subject complaint.

7. The present petition is filed on the ground that the petitioner had withdrew and retired from M/s Bell Enterprises way back on 14.06.2016. The petitioner relied upon the Modified Partnership Deed dated 14.06.2016 executed between Sh. Deepak Singla, Smt. Shweta Singla and the petitioner, entailing therein that Smt. Shweta Singla is inducted as a new partner and that the petitioner will no longer be liable for

any liability of the firm, including cheques issued for payment of suppliers or cheques issued as security and that the same will be the sole responsibility of the new partners. He further relied upon a Public Notice dated 28.06.2016 in a daily newspaper "The Tribune" (English) to that effect and a letter dated 15.07.2016 sent to the Director of Respondent No. 1 by Sh. Deepak Singla, notifying him about the change in the constitution of the accused firm, with effect from, 14.06.2016, and requesting him to return the security cheque previously issued by the accused firm.

8. The learned senior counsel for the petitioner submitted that neither was the petitioner a partner in the firm at the time of issuance of the subject cheque dated 17.07.2016 by Sh. Deepak Singla, nor at the time of its dishonour on 12.10.2016. He submitted that since the petitioner had already resigned on 14.06.2016, and was not in charge of managing the affairs of the accused firm at the time of the alleged dishonour of the subject cheque, no liability would be attracted against him under Section 138 read with Section 141 of the NI Act. He submitted that neither any specific averment regarding the role of the petitioner in the transaction has been made in the complaint nor in the demand notice.

9. The learned senior counsel submitted that, the fact that the petitioner was not involved in the day-to-day affairs of the accused firm, with effect from 14.06.2016, and that Respondent No. 2 is being inducted as a new partner, has been well within the knowledge of Respondent No 1, as is evident from the acceptance of the fresh cheque dated 17.07.2016 issued by the new partners of the accused firm in lieu of the security cheque as well as the fact that even the new partners have been arrayed as accused persons in the present complaint.

10. He relied upon the judgement passed by the Hon'ble Apex Court in *Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd.* :

(2002) 7 SCC 655, wherein the Hon'ble Court, while interpreting the provisions of Section 138 and 141 of the NI Act, held that only persons who, at the time of the commission of the alleged offence, were responsible for the affairs of the company, can be prosecuted under the said provisions, and that the High Courts have the power to determine the same under Section 482 of the Code of Criminal Procedure, 1973 (CrPC). He further placed reliance on *Dashrath Rupsingh Rathod v. State of Maharashtra* : (2014) 9 SCC 129, to state that the offence under Section 138 of the NI Act is committed no sooner than the drawee bank returns the cheque unpaid, whereas in the instant case, the petitioner had already retired from the accused firm at the time of commission of the offence.

11. He placed reliance on the judgement passed by the Hon'ble Apex Court in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* : (2007) 4 SCC 70 to submit that to make the petitioner vicariously liable in terms of Section 141 of the NI Act, the complainant has to specifically plead and show that the petitioner was a person responsible for the conduct and had control over the affairs of

the accused company at the time of commission of the offence, whereas the petitioner has been made an accused in the instant case merely because he was an erstwhile partner of the accused firm. He submitted that it is trite law that every person connected with the accused company shall not fall within the ambit of the said provision, as the liability depends upon the role played by such person in the affairs of the accused company and not the designation or status.

12. He further placed reliance on the judgement of the Hon'ble Apex Court in *Siby Thomas v. Somany Ceramics Ltd.* : (2024) 1 SCC 348 wherein the Hon'ble Court has referred to judgement passed in *Ashok Shewakramani v. State of A.P.* : (2023) 8 SCC 473, to underscore the interpretation of the words "was in charge of and, was responsible to the company for the conduct of the business of the company" in Section 141 of the NI Act, to state that the same needs to be read conjunctively and not disjunctively, in view of the word "and" in between the two requisites. He submitted that to attract vicarious liability under the provisions of Section 141 of the NI Act, it was necessary for the complainant to plead that the petitioner was in charge of the conduct of the business of the accused firm, at the relevant time when the offence was committed, and that merely stating that he managed the day-to-day affairs of the accused firm is insufficient to attract such liability under the said provision.

13. He further submitted that the learned Trial Court has mechanically passed the impugned orders without application of mind and without appreciating that the petitioner was not involved in the day-to-day affairs of the accused firm. [Ref: *Pepsi Foods Ltd. v. Special Judicial Magistrate* : (1998) 5 SCC 749]

14. The learned counsel for Respondent No. 1 disputed the contention of the petitioner and submitted that the petitioner was actively involved in the day-to-day affairs of the accused firm. He placed reliance on the judgements passed by the Hon'ble Apex Court in *S.P. Mani & Mohan Dairy v. Snehalatha Elangovan* : (2023) 10 SCC 685 and *Monaben Ketanbhai Shah v. State of Gujarat* : (2004) 7 SCC 15, wherein the Hon'ble Court observed that a complaint under Section 138 read with Section 141 of the NI Act, is required to be read as a whole and emphasized that Courts should refrain from taking a hyper-technical approach to quash the proceedings under provisions of the said Act.

15. He submitted that as per the petitioner's own admitted position, he was the majority partner of the accused firm, at the time of the execution of the Distributorship Agreement on 20.01.2016 as well as while issuing the security cheque, the bank guarantee, the purchase orders as well as while accepting the delivery of the goods supplied by Respondent No. 1.

16. He submitted that the retirement of the petitioner from the accused firm and the modification of the Partnership Deed was never communicated to Respondent No. 1, and the same is not in consonance with the procedure prescribed under Section 32 of the Indian Partnership Act, 1932, which mandates the retiring partner of the firm to inform a third party of his retirement, to discharge himself from the liabilities to the third party, for acts done by the firm before his retirement.

17. He disputed the signatures of Sh. Deepak Singla on copy of the Modified Partnership Deed dated 14.06.2016 and the letter dated 15.07.2016 and submitted that the grounds raised are factual defence of the petitioner/ accused and the same can only be raised at the stage of trial and cannot be decided under Section 482 of the CrPC. [Ref:

Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd. :

(2023) 14 SCC 770]

18. The learned counsel for Respondent No. 2 submitted that the present petition is based on false facts. He submitted that signatures of Respondent No. 2 on the modified Partnership Deed were procured by the petitioner by fraud, misrepresentation and deceit.

19. He submitted that in this regard, a complaint had been made to the SSP, Chandigarh, and after preliminary enquiry, FIR No. 133/2021 dated 08.06.2021 has been registered against the petitioner, under Sections 420, 465, 487, 468, 471, 120-B and 201 of the Indian Penal Code, 1860 ('IPC'), and the matter is now pending adjudication before the learned Chief Judicial Magistrate, Chandigarh. It is submitted that a suit bearing No. CS CJ/ 2340/2020 for declaration in respect of the Modified Partnership Deed dated 14.06.2016 has also been filed by Respondent No. 2 against the petitioner, and the same is pending adjudication before the learned Civil Judge, Chandigarh.

Analysis

20. In terms of Section 138 read with Section 141 of the NI Act, any person who is in charge or is responsible for the conduct of the company at the time of the commission of the offence, can be held vicariously liable for an offence under Section 138 of the NI Act. Section 141 of the NI Act reads as under:

"141. Offences by companies.--(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."

21. In accordance with Section 141 of the NI Act, in instances where the principal offender under Section 138 of the NI Act is a company, every person who at the time of commission of offence, was in charge of the business of the company, and was responsible for the conduct of business, is deemed to be guilty of the offence under Section 138 of the NI Act.

22. It is relevant to note that this Court can quash the summoning orders issued in NI Act cases, in exercise of its inherent jurisdiction under Section 482 of the CrPC, if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques. The Hon'ble Apex Court in the case of S.P. Mani & Mohan Dairy v. Snehalatha Elangovan (supra) had discussed the scope of interference by High Court against issuance of process and also summarised the law in reference to Section 141 of the NI Act as under:

"55. Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned.

56. Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the noticee. In such circumstances what more is expected of the complainant to say in the complaint.

57. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of Court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner.

58. Our final conclusions may be summarised as under:

58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the Court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141, respectively, of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

58.3. Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm.

But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners "qua" the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

58.4. If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court."

(emphasis supplied)

23. The Hon'ble Apex Court in the case of S.P. Mani & Mohan Dairy v. Snehalatha Elangovan (supra) held that an offence under Section 138 read with Section 141 of the NI Act is committed at various stages. Different persons may be responsible for the conduct of the company at the relevant time when each series of omission, necessary to constitute the offence under Section 138 read with Section 141 of the NI Act, is committed. It is also settled that every person, regardless of whether they are in charge of the company during each series of act necessary to constitute the offence under Section 138 read with Section 141 of the NI Act or not, could be proceeded against if they are in charge of the affairs of the company even during one of the omissions' that is necessary to constitute an offence under Section 138 read with Section 141 of the NI Act. Any person who is responsible for the conduct of the company at the time of issuance of the cheque as well as any person who is conducting the affairs of the company at the time of dishonour of the cheque and at the time of issuance of statutory notice, can be said to be the person responsible for the commission of the offence under the said provisions.

24. The main thrust of the petitioner's argument is that he was not the person responsible for the conduct of the accused firm at the time of issuance of the subject cheque dated 17.07.2016. It is claimed that the subject cheque was issued on 12.07.2016 whereas he had already resigned from the partnership on 14.06.2016.

25. The Modified Partnership Deed dated 14.06.2016 and the petitioner's ouster from the partnership has not been admitted by the respondents. Moreover, the letter dated 15.07.2016 sent to the Director of Respondent No. 1 has also been disputed by the respondents. Respondent No. 1 claims that the procedure prescribed under Section 32 of the Indian Partnership Act, 1932 has not been followed by the petitioner.

26. The fact of the petitioner's ouster from the partnership, therefore, cannot be termed as undisputed or uncontroverted for this Court to rely upon while exercising power under Section 482 of the CrPC. The same is in the nature of defence and would be decided during the course of trial.

27. Furthermore, the case of the petitioner is that the subject cheque dated 17.07.2016 was issued in lieu of the cheque which was given as a security towards the supply of products at the time of entering into the Distributorship Agreement dated 20.01.2016.

28. Concededly, the petitioner, at the time of the issuance of the security cheque, was a partner in the accused firm. The subject cheque is claimed to be given in exchange of the cheque which was issued at the time when the petitioner being partner was the person responsible for the conduct of the accused firm. Whether the petitioner can be held liable for dishonor of the replaced cheque, even if it is to be presumed that he had retired by that time, is a mixed question of facts and law which cannot be decided at this stage, without the evidence being led by the parties. Moreover, the retirement of the petitioner from the accused firm is also disputed and is subject matter of other litigations initiated by other partners. The said fact, thus, is not of such sterling nature to be considered while exercising power under Section 482 of the CrPC.

29. Therefore, from the totality of facts, it cannot be said at this stage that the petitioner was not the person responsible at the time of commission of offence committed by the accused partnership firm. To quash the proceedings by petition filed under Section 482 of CrPC, the petitioner is to place some unimpeachable and uncontroverted evidence which is beyond suspicion or doubt.

30. The factual issues that serve as defences in the case are not appropriate for determination under the powers conferred by Section 482 of the CrPC at this stage. It is well-established that this Court should refrain from expressing any views on disputed questions of fact in proceedings under Section 482 of the CrPC, as doing so could pre-empt the findings of the trial court. The relevant paragraphs of judgement passed by the Hon'ble Apex Court in *Gunmala Sales Private Ltd. Vs. Anu Mehta* : (2015) 1 SCC 103 in this respect, reads as under:

33. We may summarize our conclusions as follows:

a) Once in a complaint filed Under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed Under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars

about role of the Director in the complaint....Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers Under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

(emphasis supplied)

31. In such circumstances, at this stage, considering the material on record, the documents adduced by the petitioner cannot be said to be of such sterling and unimpeachable quality that it merits the quashing of the summons and consequential proceedings thereof. This Court can exercise its jurisdiction only upon unimpeachable and uncontroverted evidence being placed on record, however, in the absence of such evidence, the fact whether the accused person is responsible for the affairs of the accused company becomes a factual dispute, which is to be seen during trial.

32. Needless to say, it will be open to the petitioner to justify the arguments taken by him regarding his retirement from the accused firm and non-involvement in the transaction during the course of the trial.

33. In view of the above, this Court finds no reason to interfere with the impugned order passed by the learned Trial Court.

34. The present petition is dismissed in the aforesaid terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J APRIL 4, 2025