

Rahul Sood vs The State Govt Of Nct Of Delhi & Anr on 2 April, 2025

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 7th Feb

Pronounced on: 02nd

CRL.M.C. 5085/2017

RAHUL SOOD
S/o Satish Chander Sood,
R/o V-37/17,
DLF Phase-III,
Gurugram - 122002

Through: Mr. Rachin Midha, Ad
versus

1. GOVERNMENT OF NCT OF DELHI

2. SHRI. PRITAM K. JAIN,
Proprietor M/s. Rajeev Kumar Rishab Kumar,
2603, Ground Floor,
Nai Basti, Naya Bazar,
Delhi - 110006

.....R
Through: Mr. Satinder Singh Bawa, AP
State.

Mr. Tushar Rohmetra, Advo
R-2.

CRL.M.C. 5086/2017

RAHUL SOOD
S/o Satish Chander Sood,
R/o V-37/17,
DLF Phase-III,
Gurugram - 122002

Through: Mr. Rachin Midha, Ad
versus

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By:VIKAS ARORA
Signing Date:05.04.2025
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CRL.M.C. 5085/2017 & connected matters

1. GOVERNMENT OF NCT OF DELHI

2. SHRI. PRITAM K. JAIN,

Proprietor M/s. Rajeev Kumar Rishab Kumar,
2603, Ground Floor,
Nai Basti, Naya Bazar,
Delhi - 110006

.....Re

Through: Mr. Satinder Singh Bawa, APP
State.
Mr. Tushar Rohmetra, Advoc
R-2.

CRL.M.C. 5087/2017

RAHUL SOOD
S/o Satish Chander Sood,
R/o V-37/17,
DLF Phase-III,
Gurugram - 122002

Through: Mr. Rachin Midha, Ad
versus

1. GOVERNMENT OF NCT OF DELHI

2. NMR AGRO FOODS PVT. LTD.

2603, Ground Floor,
Nai Basti, Naya Bazar,
Delhi - 110006

(THROUGH ITS PROPRIETOR SHRI. PRITAM K. JAIN)

.....Respond

Through: Mr. Satinder Singh Bawa, APP
State.
Mr. Tushar Rohmetra, Advocate
R-2..

CRL.M.C. 5088/2017

RAHUL SOOD

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CRL.M.C. 5085/2017 & connected matters

S/o Satish Chander Sood,
R/o V-37/17,
DLF Phase-III,
Gurugram - 122002

Through: Mr. Rachin Midha, Adv

versus

1. GOVERNMENT OF NCT OF DELHI

2. SHRI. PRITAM K. JAIN,

Proprietor M/s. Rajeev Kumar Rishab Kumar,
2603, Ground Floor,
Nai Basti, Naya Bazar,

Delhi - 110006

.....R

Through: Mr. Satinder Singh Bawa, APP
State.
Mr. Tushar Rohmetra, Advoc
R-2.

CRL.M.C. 5089/2017

RAHUL SOOD
S/o Satish Chander Sood,
R/o V-37/17,
DLF Phase-III,
Gurugram - 122002

Through: Mr. Rachin Midha, Adv

versus

1. GOVERNMENT OF NCT OF DELHI
2. SHRI. PRITAM K. JAIN,
Proprietor M/s. Rajeev Kumar Rishab Kumar,
2603, Ground Floor,
Nai Basti, Naya Bazar,

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CRL.M.C. 5085/2017 & connected matters

Delhi - 110006

Through: Mr. Satinder Singh B
State.
Mr. Tushar Rohmetra,
R-2.

CRL.M.C. 5090/2017

RAHUL SOOD
S/o Satish Chander Sood,
R/o V-37/17,
DLF Phase-III,
Gurugram - 122002

Through: Mr. Rachin Midha, Ad

versus

1. GOVERNMENT OF NCT OF DELHI
2. SHRI. PRITAM K. JAIN,
Proprietor M/s. Rajeev Kumar Rishab Kumar,
2603, Ground Floor,
Nai Basti, Naya Bazar,
Delhi - 110006

....

Through: Mr. Satinder Singh Bawa, A
State.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M

E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid Petitions have been filed under Section 482 of the Cr.P.C. 1973, for quashing of the Complaint Cases bearing Nos. 2161/1/15 to 2166/1/15 under Section 138 read with Section 141 of Negotiable Instruments Act 1881 and the Summoning Orders dated 15.01.2016 and other proceedings emanating therefrom.

2. Briefly stated, the Complainant/Pritam K. Jain filed a Criminal Complaint, inter-alia alleging therein that M/s Amira Pure Foods Pvt. Ltd. (Accused No. 1) through Petitioner Rahul Sood (Accused No.6) in league with Smt. Anita Dang (Accused No. 2) being the Authorized Representative of the M/s Amira Pure Foods Pvt. Ltd. Company and others namely Shri. Shyam Poddar (Accused No. 3), Mr. Karan A. Chanana (Accused No. 4) and Shri. Anil Gupta (Accused No. 5) approached Respondent No. 2/Complainant for supply of rice.

3. For the supply of the agreed quantities of rice, Smt. Anita Dang/Accused No.2 issued Cheques amounting to Rs. 7,55,00,000/- on behalf of M/s Amira Pure Foods Pvt. Ltd. in discharge of its legal debts and liabilities against the total outstanding of Rs. 7,77,18,400/- which were allegedly dishonoured, details of which are given below:

Sr. No.	Cheque No.	Cheque Date	Cheque
1.	943369	09.05.2015	Rs.25,0
2.	943370	13.05.2015	Rs.25,0
3.	943378	14.05.2015	Rs.25,0
4.	943371	19.05.2015	Rs.25,0
5.	943377	11.05.2015	Rs.20,0
6.	943372	22.05.2015	Rs.20,0
7.	943379	18.05.2015	Rs.25,0
8.	943380	20.05.2015	Rs.25,0
9.	943381	23.05.2015	Rs.25,0
10.	943382	26.05.2015	Rs.25,0
11.	943383	26.05.2015	Rs.25,0
12.	943343	12.05.2015	Rs.20,0
13.	943344	15.05.2015	Rs.20,0
14.	943352	23.05.2015	Rs.20,00
15.	943391	16.05.2015	Rs.25,00
16.	943392	29.05.2015	Rs.25,00
17.	943393	03.06.2015	Rs.25,00

18.	943394	05.06.2015	Rs .25 ,00
19.	943395	06.06.2015	Rs .25 ,00
20.	943384	30.05.2015	Rs .25 ,00
21.	943386	09.05.2015	Rs .25 ,00
22.	943388	12.05.2015	Rs .25 ,00
23.	943389	19.05.2015	Rs .25 ,00
24.	943390	25.05.2015	Rs .25 ,00
25.	943396	08.06.2015	Rs .25 ,00
26.	943397	10.06.2015	Rs .25 ,00
27.	943400	14.06.2015	Rs .25 ,00
28.	943429	22.05.2015	Rs .25 ,00
29.	943399	11.06.2015	Rs .15 ,00
30.
TOTAL AMOUNT:			Rs . 7,55

4. Consequently, Complaints under Section 138 read with section 141 of the Negotiable Instruments Act 1881 were filed for dishonour of the said cheques, on which the Ld. M.M., vide Order dated 15.01.2016 took cognizance and directed issuance of process against all the accused persons including the Petitioner and further directed their presence.

5. Aggrieved, Rahul Sood has filed the present Petitions to challenge the summoning Order dated 15.01.2016.

6. It is submitted that the Petitioner was an independent Director and had no knowledge about issuance of the cheques in question. Further, neither the summons nor passed by the Ld. Magistrate have been served upon the Petitioner till date. The Petitioner had no knowledge of the Complaints filed against him or about the issuance of summons as they were never served or any subsequent Orders of the Ld. Magistrate.

7. The Petitioner has claimed that the Learned M.M. did not require the Complainant to place statutory records to corroborate his assertions of the Petitioner being in league with Accused persons including Accused No. 2 who issued cheques in favour of Complainant/Respondent No. 2, which were allegedly dishonored due to insufficiency of funds.

8. It is further submitted that the Petitioner cannot be accused of being vicariously liable for the actions of Accused No. 1/Company of which he is neither in charge of day to day activities nor in any way in knowledge of or connected with the transaction. The Ld. M.M. has issued summons against the Petitioner, without even prima facie satisfying herself as to whether the Petitioner had any role in the alleged offence as a Director on the Board of Accused No. 1 Company, or was in any manner, connected to the commission of the alleged offence.

9. It is submitted that the primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. Section 141 does not make all partners liable for the offence. The criminal, liability has been fastened on those who, at the time of the commission of the offence, was in charge of and was responsible to the firm for the conduct of the business of the firm. The obligation of the appellants to prove that at the time the offence was

committed they were not in charge of and were not responsible to the firm, for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. For this, reliance has been placed on Monaben Ketanbhai Shah and Anr. Vs. State of Gujarat and Ors., (MANU/SC/0596/2004).

10. The Petitioner has also placed reliance on Pepsi Food vs. Special Judicial Magistrate, 1998 5 SCC 749 wherein it is held that Courts or Magistrate cannot mechanically issue summons; he has to apply his mind and has to scrutinize the evidence brought on record and may put questions to the Complainant and his witnesses to elicit answers, to find out the truthfulness of the allegations or otherwise, and then examine if any offence is prima facie committed by all or any of the accused.

11. Reliance has also been placed on Pooja Ravinder Devidasini vs. State of Maharashtra and Ors. (Criminal Appeals No. 2604-2610 of 2014), decided on 17.12.2014 in similar situation, where in the entire Complaint neither the role of the appellant in the affairs of the Company nor in what manner the appellant is responsible for the conduct of business of the Company during the period in which the Cheques were issued by the Company which stood dishonoured, was explained, the petitioner was held to be not liable to be summoned under S.138 NI Act.

12. Reliance has also been placed on Chintan Arvind Kapadia & Anr. vs. State & Anr. in CrI. M.C. 3749/2012 decided on 12.02.2013, to state that the Court ought to appreciate the fact that the Petitioner is not liable for any of the alleged offences unless and until the role of the Petitioner in committing the alleged offence is specifically stipulated in the Complaint.

13. Reliance has also been placed on Siby Thomas vs. M/s Somany Ceramics Ltd., 2023 INSC 890.

14. The Respondent No. 2 in its Reply, has submitted that the Petitioner is not merely an Independent Director which is corroborated from DIR-12 Form which clearly stated that the Petitioner remained as a Director till 30/09/2016. There is no mention in the Form that the Petitioner was an independent Director.

15. Furthermore, specific averments were made in the Complaint that the Petitioner along with the other accused persons, had approached the Respondent No.2 for entering into an Agreement for supply of rice. The Accused/ Company had made RTGS payments in favour of the Respondent No.2 on 07/04/2015 & 11/04/2015 with the sanction of the Petitioner. It is further submitted that the specific role need not be mentioned in case of Directors of a Company, as per the law laid down by the Apex Court.

16. Reliance has been placed on Sunil Todi & Ors. v. State of Gujarat & Ors., Criminal Appeal 1446 of 2021, wherein it is held that: -

"44. The test to determine if the Managing Director or a Director must be charged for the offence committed by the Company is to determine if the conditions in Section 141 of the NI Act have been fulfilled i.e., whether the individual was in-charge of and responsible for the affairs of the company during the commission of the offence. ...

There are sufficient averments in the complaint to raise a prima facie case against them. It is only at the trial that they could take recourse to the proviso to Section 141 and not at the stage of issuance of process."

17. Reliance has also been placed on Mainuddin Abdul Sattar Shaikh v. Vijay D Salvi, (2015) 9 SCC 622, Vipin Kumar Gupta vs Sarvesh Mahajan, 2019 ACD 362, Rajesh Chetwal vs State, 2011 SCC OnLine Del 5768, and Sunil Bharti Mittal v. CBI, (2019) 4 SCC 609.

18. It is asserted that the Ld. M.M. has appreciated the factual matrix of the present case and has rightly summoned the Petitioner herein and that there is no ground for setting aside the impugned Order of summoning.

19. It is submitted that the grounds raised by the Petitioner would be relevant only during the Trial. Since past 7 years, trial has been stuck at the stage of issuance of summons as the other accused persons are either not traceable or have filed Application for permanent exemption from appearing before the Ld. Trial Court.

20. It is therefore, prayed that the Petitioner may be dismissed with exemplary costs.

21. Submissions heard and record perused along with Written Submissions.

22. The main ground on which quashing of the summoning Order and further proceedings emanating therefrom in relation to the Petitioner is sought, is that he was an Independent Director and had no role in the day to day affairs of the Company.

23. To appreciate this contention, it would be pertinent to reproduce Section 141 N.I. Act, which 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."

24. It is a penal provision creating vicarious liability which must be strictly construed. Mere 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, is not sufficient. 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.

25. Apex Court explained in the case of N.K. Wahi v. Shekhar Singh, (2007) 9 SCC 481 that to launch a prosecution against the 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. While the exact words of the Section may not be reproduced, but the role of the Director must be discernible from the averments made in the Complaint. In the absence of any averment or specific evidence, the Complaint would not be entertain-able.

26. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another, (2005) 8 SCC 89, the Apex Court held that mere designation as a Director is not sufficient; specific role and responsibility must be established in the Complaint.

27. The Apex Court in National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another, (2010) 3 SCC 330 defined the Principles as under:

"13. From the above discussion, the following principles emerge:

(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.

(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.

(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 the 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 the 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 the 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."

28. The role and responsibility of Non-Executive Directors was considered by Apex Court in the case of Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 wherein while taking into consideration that a non-executive Director plays a governance role and are not involved in the daily operations or financial management of the Company, held that to attract liability under section 141 of the NI Act, the accused must have been actively in-charge of the company's business at the relevant time. Mere Directorship does not create automatic liability under the Act.

29. Similar observations have been made in Ashok Shewakramani & Ors. vs State of Andhra Pradesh & Anr., (2023) 8 SCC 473 and reiterated in Hitesh Verma vs. M/s Health Care at Home India Pvt. Ltd. & Ors., Crl. Appeal No. 462/2025.

30. Recently, in the case of K.S. Mehta vs. M/s Morgan Securities & Credits Pvt. Ltd., in Crl. Appeal arising out of SLP Crl. No. 4774/2024 decided on 04.03.2025, the Apex Court in similar facts, after relying on the above cited precedents, has observed that there is no material on record to show that the Directors were responsible for the issuance of the cheques in questions, and further their involvement in the affairs of the Company was purely non-executive confined to governance,

overseeing and did not extend to financial decision making or operational Management. It was thus held, that since there is no direct nexus between the issuance of the cheques/financial transactions of the Company and the Appellant- Director, they cannot be held vicariously liable under Section 141 N.I Act.

31. It is thus, well established that in order to fasten the vicarious liability in terms of Section 141, the role of the Directors concerned should be specifically described in clear and unambiguous as to how the Directors concerned were alleged to be in charge and responsible for the conduct and affairs of the Company.

32. With these observations, the averments made against the Petitioner in the Complaint may be considered. It is evident that the Appellant was neither a signatory to the dishonoured cheques nor was he actively involved in the financial decision-making of the Company. Moreover, he resigned from the post of independent Non-Executive Director on 03.05.2017, duly notified through Form DIR-11 and DIR-12 to the Registrar of Companies.

33. The Complaints do not contain any specific averments detailing how the Appellant was responsible for the dishonoured cheques. Petitioner's role in the accused Company was limited to that of an independent non- Executive Director, with no financial responsibilities or involvement in the day-to-day operations of the company. Furthermore, he was not responsible for the conduct of its business.

34. A contention is raised that the DIR Form 12, did not reflect the name of the Petitioner as an Independent Director, but as explained, DIR form merely gives the names of Directors and does not specify if they are independent Directors, which is generally reflected in Memorandum/ Articles of Association.

35. In view of the above observations, the Petitioner cannot be held vicariously liable under section 141 of the NI Act.

36. Therefore, the summoning Orders dated 15.01.2016 in the aforesaid Complaints vis-a-vis the petitioner, Rahul Sood, is hereby set aside.

37. The Petitions are accordingly allowed. The pending Application(s), if any are accordingly, disposed of.

(NEENA BANSAL KRISHNA) JUDGE APRIL 02, 2025 rs By:VIKAS ARORA Signing
Date:05.04.2025 17:26:32