

Sachdeva Land And Finance Pvt Ltd vs Ms. Chahat Jain on 2 April, 2025

Author: Sanjeev Narula

Bench: Sanjeev Narula

\$~11 to 15

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:

+

CRL.M.C. 1957/2025

SACHDEVA LAND AND FINANCE PVT LTD

versus

MS CHAHAT JAIN

With

CRL.M.C. 1958/2025, CRL.M.C. 1959/2025, CRL.M.C. 196
& CRL.M.C. 1962/2025

For Petitioner: Mr. Sameer Rohatgi, Mr. Kartikey
Malika Sharma, Advocates in items

For Respondent: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA
JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present petitions filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 impugn a common order dated 28th November, 2024¹ passed in batch of criminal revisions petitions. By the said order, the "the impugned order"

Revisional Court has set aside separate summoning orders² issued by the Trial Court/JMFC/NI Act/Digital Court-01, North Rohini, Delhi, against the Respondent in five separate complaints.

2. The present proceedings stem from complaints instituted by the Petitioner under Section 138 of the Negotiable Act, 1881³ in respect of cheques issued by Insion Private Limited (Accused No. 1 in the complaint). The Petitioner alleges that they had extended a loan of INR 1.50 crores to Insion Private Limited, and cheques were issued by the accused company towards repayment of the said amount. Upon dishonour of the cheques on presentation, the Petitioner initiated proceedings under the NI Act, arraying the Respondent, a former director of the company, as Accused No. 3. Upon service of summons, the Respondent preferred criminal revision petitions, which culminated in the

passing of the impugned order by the Revisional Court.

3. Mr. Sameer Rohatgi, counsel for the Petitioner, argues that although Respondent had resigned from the post of director of Insion Private Limited (Accused No. 1) on 5th January, 2023, prior to the date of the alleged transaction dated 14th March, 2023 and 28th March, 2023, nonetheless, she remains liable under Section 141 of the NI Act. He submits that the complaints contain specific averments attributing continued involvement and responsibility to the Respondent in the affairs of the company even after dated 5th July, 2024 in CRL.M.C. 1957/2025; 21st October, 2023 in CRL.M.C. 1958/2025; 4th May, 2024 in CRL.M.C. 1959/2025; 5th July, 2024 in CRL.M.C. 1960/2025 and 18th July, 2024 in CRL.M.C. "the NI Act"

her resignation. The Revisional Court, disregarded these material assertions and erroneously interfered with the summoning orders.

4. In support of the afore-noted contentions, Mr. Rohatgi urges the following grounds for quashing the impugned order:

4.1. The Revisional Court failed to apply the legal principles laid down by the Supreme Court in multiple judgments, including S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan⁴ and S.M.S Pharmaceutical Limited v.

Neeta Bhalla⁵ wherein it has been clearly held that for a director to be held vicariously liable under Section 141 of the NI Act, the complaint must contain specific averments indicating that such person was in charge of, and responsible for, the conduct of the company's business at the relevant time. In the present case, the complaints filed by the Petitioner contain express assertions regarding the Respondent's involvement in the affairs of the company, which the Revisional Court has disregarded without proper analysis.

4.2. The Revisional Court overlooked the fact that the accused persons, including the Respondent, were allegedly engaged in a well-orchestrated conspiracy to defraud the Petitioner. The Respondent is the real sister of the co-accused, and her familial ties, coupled with the alleged concerted actions, underscore the element of collusion and reinforce her complicity. 4.3. Despite her purported resignation, the Respondent's continued association with the accused company is evidenced by the fact that her email (2023) 10 SCC 685 (2005) 8 SCC 89 address remains listed with the Registrar of Companies.⁶ This demonstrates that she continued to play an active role in the functioning of the accused company even after her formal exit. However, the Revisional Court failed to accept the same without any cogent reasoning. The complaints contain categorical and specific assertions about her decision-making authority and operational control over the company which the Revisional Court brushed aside without adequate reasoning.

4.4. The Revisional Court has erroneously relied on the Respondent's resignation to set aside the summoning orders. Under Section 141 of the NI Act, a person who was in charge of and responsible for the conduct of the company at the time the offence was committed remains vicariously liable. Liability is not determined merely by resignation but by the role played in the company's

functioning. The complaints disclose sufficient material to meet this threshold and therefore, the impugned order, which fails to consider this aspect, is unsustainable in law.

Analysis

5. The Court has considered the submissions advanced and examined the material placed on record. It is well settled that a Court, while exercising jurisdiction under Section 482 of the Cr.P.C or Section 528 of the BNSS, must act with circumspection and refrain from interdicting criminal proceedings at the threshold, except in the clearest of cases-where the allegations, even if accepted in entirety, do not disclose the commission of "RoC"

any offence. In the considered view of this Court, the present case falls within that narrow category. Even assuming the allegations to be true, the complaints fail to disclose the essential ingredients necessary to attract liability against the Respondent under Section 138 read with Section 141 of the NI Act. The sequence of events leading to the filing of the complaints has already been summarised in the impugned order and need not be reiterated in detail. For the limited purpose of adjudication, it would suffice to set out the particulars of the cheques which form the subject matter of the present complaints under Section 138 of the NI Act:

Complaint No.	case Amount cheque	of Date of cheque
1286/23	Rs. 25,00,000/-	01.03.2023
1292/23	Rs. 25,00,000/-	02.03.2023
1299/23	Rs. 25,00,000/-	02.03.2023
1300/23	Rs. 25,00,000/-	03.03.2023
1397/23	Rs. 25,00,000/-	31.03.2023

6. It is an admitted position that the Respondent had resigned from the Board of Directors of Insign Private Limited on 5 th January, 2023. This fact is not in dispute, and the complaints themselves proceed on the premise that she was a former director as on the date of the cheques in question. The complaints specifically aver that cheques forming the basis of the complaints were admittedly issued in March, 2023- subsequent to her resignation. In this backdrop, the contention advanced by the Petitioner that the Respondent continued to remain involved in the affairs of the company even after her resignation, and is therefore, liable under Section 141 of the NI Act, is not borne out either from the pleadings or the record.

7. The Revisional Court has examined this issue threadbare and applied the correct test for vicarious liability under Section 141 of the NI Act. The Revisional Court, relying on the Supreme Court's judgment in S.P. Mani & Mohan Dairy v. Dr. Snehalatha Elangovan,⁷ rightly observed that where there exists unimpeachable material, such as a duly recorded resignation and absence of any role in the cheque issuance, the complaint against such a person cannot be sustained. Mere prior association with the company or the fact that she is related to other co-accused cannot, by themselves, form the basis for continuing criminal proceedings under Sections 138 read with 141 of the NI Act. The relevant extract of the impugned order is as follows:

"10. In case referred by Ld. Counsel for the complainant/ respondent herein, is distinguishable on facts as in the said case, it was a partnership firm, wherein accused no. 2/ partner in firm, with consent and knowledge of accused no. 3, had issued the cheque in question. It was in the peculiar circumstances of the case when there were specific averments that the cheque in question was issued with the consent of the partner and it was with his knowledge, it was held sufficient to put the said partner to trial. Whereas in the present case, admittedly as per averments in the complaint itself, the revisionist/ A3 was an erstwhile director and she has not signed the cheque even as authorized signatory or in any other capacity.

11. In S.P.Mani's case, while dealing with the specific averment in the complaint, it was observed by the Hon'ble Supreme Court of India that "In the facts of a given case, on an overall reading of the (2023) 10 SCC 685 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. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. 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, incontrovertible 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;"

12. A director-whose resignation has been accepted by the company and that has been duly notified to the Registrar of Companies - cannot be made accountable and fastened with liability for anything done by the company after the acceptance of his resignation. The words 'every person who, at the time the offence was committed', occurring in Section 141 (1) of the NI Act are not without significance and these words indicate that criminal liability of a director must be determined on the date the offence is alleged to have been committed.

13. The contention of learned counsel appearing for the complainant that A-3/Revisionist had not responded to the legal notice or had earlier approached for loan or played some role before the issuance of cheque in the transaction has no merits as these questions are not relevant to attract liability u/ s 138 r/w 141 NI Act and therefore, are rejected.

14. In the present case, admittedly A-3/ Revisionist herein had ceased to be a director on the date even before the issuance of dishonoured cheque in question and in the complaint itself she has been described as erstwhile director. Unquestionably A-3/ Revisionist was neither director nor incharge or responsible for the affairs of accused company at the time the offence was allegedly committed in terms of Section 141 (1) of the NI Act."

[Emphasis Supplied]

8. It is a settled position in criminal jurisprudence that vicarious liability, where one person is held liable for the acts of another, is not ordinarily recognised unless explicitly provided for by statute. Section 141 of the NI Act carves out a statutory exception to this general rule. It incorporates a deeming fiction, enabling the prosecution of not only the company that issued the dishonoured cheque but also those individuals who, at the material time, were in charge of and responsible for its business. Section 141(1) reads as under:

"141. Offences by companies.- 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:"

[Emphasis Supplied]

9. However, in order to attract Section 141(1), it must be shown that the person, at the time the offence was committed, was in charge of and responsible to the company for the conduct of the business of the company. The Supreme Court has repeatedly emphasised that this deeming provision must be applied with precision. Elucidating the principle of vicarious liability under Section 141 of the NI the Supreme Court in *National Small Industries Corporation Limited v. Harmeet Singh Paintal*,⁸ observed as follows:

"12. It is very clear from the above provision that what is required is that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, 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. Every person connected with the company shall not fall within the ambit of the provision. Only those persons who were in-charge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action. It follows from the fact that if a Director of a Company who was not in- charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for a criminal offence under the provisions. The liability arises from being in-charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company."

[Emphasis Supplied]

10. The requirement, therefore, is twofold: the accused must have been (i) in charge of, and (ii) responsible for the conduct of the business of the company at the time the offence was committed. Mere designation as a director or past association with the company is not sufficient to attract vicarious liability under Section 141.

11. In National Small Industries Corporation Limited, the Supreme Court further clarified that certain categories of office-bearers, such as Managing Directors and Joint Managing Directors, are presumed to be "in (2010) 3 SCC 330 charge of and responsible for the conduct of the business of the company"

by virtue of their position alone. However, in the case of other directors, who do not hold executive roles or are not signatories to the dishonoured cheques, the complaint must include specific and detailed averments as to how and in what manner such a director was responsible for the conduct of the company's business at the relevant time. The Court further observed that bald or mechanical assertions are not sufficient; the complaint must disclose concrete particulars to show active participation in the affairs of the company or control over its day-to-day operations. In the absence of such specific pleadings, criminal liability under Section 141 of the NI Act cannot be fastened on non-executive directors or those not actively involved in the company's functioning at the time of the commission of the offence.⁹

12. In State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi v. Rajiv Khurana,¹⁰ the Supreme Court has held that where the person sought to be prosecuted is not a director but a non-director officer, the complaint must specifically spell out what duties were assigned to such officer and how, in what capacity, and to what extent he or she was responsible for the conduct of the business of the company.

13. However, the present case stands on an entirely different footing. It is not in dispute that the Respondent had resigned from the Board of Directors of the accused company prior to the date of issuance of the dishonoured cheques. This resignation is a matter of record. Consequently, at the time the Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 (2010) 11 SCC 469 offence is alleged to have been committed, the Respondent was neither a director nor held any official position in the company. She is also not the signatory of the dishonoured cheques.

14. The Petitioner has proceeded on the premise that the Respondent, despite her resignation, remained actively involved in the affairs of the company and, in conspiracy with the other accused persons, defrauded the Petitioner. However, a plain reading of the complaints reveals that there is no categorical assertion that the Respondent continued to hold any official designation or perform any defined function in the company post her resignation. There is no material on record to suggest that the Respondent exercised control over the affairs of the company at the relevant time, particularly after her resignation as director. The mere fact that her email address continued to reflect on the website of the RoC Ministry of Corporate Affairs does not, by itself, establish that she

retained any decision-making authority or functional role within the company. In the absence of a formal designation or specific averments demonstrating her responsibility in the conduct of the company's business on the date the offence is alleged to have been committed, the deeming fiction under Section 141(1) of the NI Act cannot be invoked against her.

15. Even assuming, arguendo, that the Respondent, by virtue of her former position as a director, continued to exercise some residual control or influence over the affairs of the company, the only conceivable statutory basis for fastening liability upon her would be under Section 141(2) of the NI Act, which reads as follows:

"(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."

16. However, to invoke Section 141(2), it is not sufficient to merely allege that the person was formerly associated with the company or that she had some past dealings with the complainant. The complaint must disclose specific and compelling facts indicating that the offence was committed with her consent, connivance, or due to her neglect. In *S.M.S. Pharmaceuticals Limited*, the Supreme Court held that a mere bald assertion or general statement that a person was in charge of and responsible for the conduct of the company's business is not sufficient. There must be cogent and specific averments demonstrating the nature and extent of such involvement. These principles squarely apply here.

17. In the present case, a careful perusal of the complaints reveals that the allegations against the Respondent are vague, generalised and bereft of any particulars that would indicate her role in the commission of the alleged offence. There is no material to suggest how, and in what manner, she consented to or connived in the issuance of the dishonoured cheques or that her neglect was the proximate cause of the same. In the absence of such foundational pleadings, the threshold for invoking vicarious liability under Section 141(2) is also not met.

18. The Revisional Court has correctly appreciated the factual matrix and applied the settled legal principles to conclude that the summoning orders against the Respondent could not be sustained. This Court finds no cogent reason to interfere with the impugned order in exercise of its revisional jurisdiction under Section 528 of the BNSS.

19. Accordingly, the present petitions, along with all pending applications, are dismissed.

SANJEEV NARULA, J APRIL 2, 2025/ab