

Rajinder Earthmoverfilling Station ... vs Amit Mital on 5 March, 2024

Author: Pankaj Jain

Bench: Pankaj Jain

Neutral Citation No:=2024:PHHC:03

CRR No.2329 of 2019 (O&M) and
CRM-M No.33848 of 2019 (O&M)

2024:PHHC:030869
2024:PHHC:030870

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 27th of February, 2024
Pronounced on 5th of March, 2024

CRR No.2329 of 2019 (O&M)

Rajinder Earthmover Filling Station Private Limited and another
.....Petitioners

versus

Amit Mittal
.....Respondent

CRM-M No.33848 of 2019 (O&M)

Manoj Gupta
.....Petitioner

versus

Rajinder Earthmover Filling Station Private Limited and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. S.P. Soi, Advocate
for the petitioners in CRR No.2329 of 2019 and
for the respondents in CRM-M No.33848 of 2019.

Mr. Kunal Dawar, Advocate
for the petitioner in CRM-M No.33848 of 2019 and
for the respondent in CRR No.2329 of 2019.

PANKAJ JAIN, J.

By way of this common order, I intend to dispose off the afore-captioned two petitions arising out of the same complaint.

2. Manoj Gupta one of the accused in the complaint has invoked jurisdiction of this Court under Section 482 Cr.P.C. seeking quashing of the

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CRR No.2329 of 2019 (O&M) and
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Criminal Complaint No.95 of 2013 titled as 'Rajinder Earthmover Filling Station Private Limited and another vs. M/s A2Z Waste Management (Ludhiana) Limited and others' wherein he has been summoned vide impugned summoning order dated 16th of January, 2014 to face trial for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and the order passed by the Revisional Court dated 16th of July, 2019 affirming the same.

3. Revision is at the behest of the complainant who is aggrieved of judgment/order passed by revisional Court dated 16th of July, 2019 whereby the revision preferred by Amit Mittal one of the accused who was also summoned to face trial under Section 138 of the N.I. Act in the aforesaid complaint has been allowed and summoning order qua him has been set

aside.

4. Rajinder Earthmover Filling Station Private Limited (hereinafter referred to as 'the complainant') preferred a complaint under Section 138 of the N.I. Act before Judicial Magistrate 1st Class, Dasua regarding dishonour of cheque for a sum of Rs.4 crores 5 lacs against eight accused persons. As per the memo of parties in the complaint, accused No.1 is the Company, accused No.2 Amit Mittal is alleged to be the Chief Managing Director of the Company. Accused No.3 and 4 are the authorized signatories of the Company. Accused No.5, 6, 7 are stated to be the Directors of the Company. Accused No.8 is claimed to be the Joint Managing Director of the Company. Petitioner in petition filed under

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CRR No.2329 of 2019 (O&M) and
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Section 482 Cr.P.C. Manoj Gupta is stated to be the Director and is accused No.5. After recording the preliminary evidence, Judicial Magistrate 1st Class, Dasua passed order dated 16th of January, 2014 and issued process against all the accused. As per dictum of law laid down in the case of 'Dushrath Rup Singh Rathore vs. State of Maharashtra and another', 2014 AIR (SC) 3519, Ld. Judicial Magistrate 1st Class, Dasua returned the complaint to be filed before the Courts at Ludhiana. Complainant filed the

complaint along with all the documents in the Court at Ludhiana on 16th December, 2014. After receiving the complaint JMIC, Ludhiana passed order dated 12th of May, 2015 issuing process afresh. Vide order dated 12th of May, 2015, JMIC, Ludhiana issued process only against respondents No.3 and 4 i.e. the authorized representatives of the Company who signed the cheque and dismissed complaint qua other accused. The matter was brought before this Court at the behest of the complainant in CRM-M No.28935 of 2016. The same was decided vide judgment dated 28th of April, 2017. This Court ordered as under:

"In that view of the matter, in effect, JMIC, Ludhiana had reviewed the order dated 16.01.2014 passed by JMIC, Dasuya and that is without jurisdiction and contrary to the law laid down by the Apex Court in Para 16 in Adalat Prasad's case (supra). The submission that the said point had not been raised in the petition does not appeal to me since it is the duty of this Court not to allow creeping in of any judicial indiscipline as has happened in the instant case. JMIC, Ludhiana could not have ignored the order dated 16.01.2014 made by JMIC, Dasuya as the said order dated 16.01.2014 had the legal sanctity unless set aside by higher Court or had become non est by operation of any law. The plea of

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estoppel raised by the learned counsel for the respondents has been stated to be rejected since no estoppel operates against law. At any rate, the reading of the impugned order made by JMIC, Ludhiana does not even show that JMIC, Ludhiana bothered to look at the order dated 16.01.2014 that was made by JMIC, Dasuya. The decision in Dashrath Rupsingh Rathod's case (supra) does not even remotely state that the earlier orders made by the transferor Court

before return of the complaint would automatically become null and void or would have no force or that the transferee Ludhiana Court would be entitled to make contradictory orders. Next, to sum up, the impugned order dated 12.05.2015 made by Judicial Magistrate 1st Class, Ludhiana will have to be quashed and set aside. In the result, I make the following order:-

"In that view of the matter, in effect, JMIC, Ludhiana had reviewed the order dated 16.01.2014 passed by JMIC, Dasuya and that is without jurisdiction and contrary to the law laid down by the Apex Court in Para 16 in Adalat Prasad's case (supra). The submission that the said point had not been raised in the petition does not appeal to me since it is the duty of this Court not to allow creeping in of any judicial indiscipline as has happened in the instant case. JMIC, Ludhiana could not have ignored the order dated 16.01.2014 made by JMIC, Dasuya as the said order dated 16.01.2014 had the legal sanctity unless set aside by higher Court or had become non est by operation of any law. The plea of estoppel raised by the learned counsel for the respondents has been stated to be rejected since no estoppel operates against law. At any rate, the reading of the impugned order made by JMIC, Ludhiana does not even show that JMIC, Ludhiana bothered to look at the order dated 16.01.2014 that was made by JMIC, Dasuya. The decision in Dashrath Rupsingh Rathod's case (supra) does not even remotely state that the earlier orders made by the transferor Court before return of the complaint would automatically become null and void or would have no force or that the transferee Ludhiana Court would be entitled to make contradictory orders. Next, to sum up, the impugned order dated 12.05.2015 made by JMIC Ludhiana will have to be quashed and set aside. In the result, I make the

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following order:-

ORDER

(i) CRM-M-28935 of 2016 stands disposed of;

(ii) The order dated 12.05.2015 (Annexure P-3) passed by JMIC, Ludhiana is quashed and set aside and the order dated 16.01.2014 (Annexure P-2) passed by JMIC, Dasuya is restored;

(iii) Liberty is reserved in favour of the respondents-

accused, if so advised, to put to challenge the order dated 16.01.2014 (Annexure P-2) passed by JMIC, Dasuya before the higher Court;

(iv) The issue of limitation shall be considered sympathetically. Parties to appear before JMIC Ludhiana on 31.07.2017 which shall then proceed further according to law.

5. In terms of the liberty granted by this Court, three of accused namely Amit Mittal, Manoj Gupta and the Company approached Revisional Court at Hoshiarpur. The Revisional Court vide impugned judgment dated 16th of July, 2019 allowed the revision petition filed by Amit Mittal setting aside the summoning order qua him. Revision petition preferred by the company and Manoj Gupta was ordered to be dismissed. Revisional Court held that the list of Directors/Managers/Secretary as on 16th of August, 2013, 31st of October, 2014, 31st of March, 2016 and 31st of March, 2017 have been placed on record which show that Manoj Gupta is mentioned therein as Director since the inception of the company whereas name of the Amit Mittal does not find mention in any of the records produced by the 5 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 complainant or the revisionist. Simple mentioning in the complaint that Amit Mittal is Chief Managing Director of the accused-company is not sufficient to make out prima facie case against him. Revisional Court further held that since there is no denial on the part of Manoj Gupta that he was not responsible for the conduct of the business of company he is liable to be summoned.

6. Counsel representing Manoj Gupta has argued that the petitioner is neither the Managing Director of the accused company nor is signatory to the cheque and there is no role assigned to him in the whole complaint, thus he cannot be summoned invoking Section 141 of the N.I. Act as the basic allegations against him are missing. Mr. Dawar while referring to the provisions contained under Section 141 of the Act submits that a person does not become offender under Section 138 of the N.I. Act only for being Director of the company. He submits that a Director who is not a signatory to the cheque cannot be summoned to face trial under Section 138 of the N.I. Act until and unless the complainant specifically alleges that such director at the time of commission of offence was incharge of and was responsible to the company for the conduct of the business of the company. He has taken the Court through the averments made in the complaint to contend that the complaint is totally bereft of even the basic allegations and the Trial Court as well as revisional Court erred in issuing process against the petitioner in the absence of said basic allegations. Further reliance is being placed upon Sunita Palita and others vs. Panchami Stone Quarry, 6 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 (2022) 10 SCC 152, Pooja Ravinder Devidasani vs. State of Maharashtra and another, 2015(3) SCC (Cri) 378, T.C. Khetan & others vs. M/s Pragati Associates and others, 2015 (6) R.C.R (Criminal) 726, Har Sarup Bhasin vs. M/s Origo Commodities India Pvt. Ltd. (Delhi), 2020 (2) RCR (Criminal) 843, Chanakya Bhupen Chakravarti and another

vs. Mrs. Rajeshri Karwa, 2019(3) PLR 18, Yashovardhan Birla vs. Cecil Webber Engineering Limited and other, 2023 (2) DCR 1 and Rajeev Jain and others vs. Ashtech Industries, 2023 SCC Online Del 3779.

7. Per contra, Mr. Soi Counsel for the complainant submits that the issue as to whether the petitioner Manoj Gupta is related to the company has been prima facie proved. It has been proved on record that the petitioner is a Director. It is thus matter of trial whether he was responsible and incharge of the company at the time of commission of offence. He submits that the Court should not interfere at the instance of the accused in the absence of some unimpeachable and incontrovertible evidence which proves that the director cannot be said to have any concern with the issuance of cheque. Reliance is being placed upon S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan (2023) 10 SCC 685, Siby Thomas vs. M/s. Somany Ceramics Ltd., (2024) 1 SCC 348, Ashok Shewakramani & Ors. vs. State of Andhra Pradesh & Anr., (2023) 8 SCC 473, Bhupinder Kaur vs. M/s Sohan Lal Mohan Lal and another, 2023(4) R.C.R.(Criminal) 734, Gazal Chadha vs. Rajpal Bansal, 2023(3) R.C.R.(Criminal) 523.

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8. In the revision Mr. Soi appearing for the complainant has assailed the order passed by the Additional Sessions Judge, Hoshiarpur submitting that the complainant served legal notice dated 4th of October, 2013 on the respondent. In the legal notice, respondent Amit Mittal was addressed as Chief Managing Director of the accused-company. There was no denial to the same. He further submits that revisional Court erred in quashing the process issued against the respondent only for the reason that he is not named in Form 32 of the Company showing the list of Directors/Managers/Secretary. It is because of the conduct of the respondent Amit Mittal that the complainant had reason to believe that he was working as Chief Managing Director of the Company. Till date the respondent has never denied that fact. The relevant time for denial thereof was when Company replied to the legal notice. The respondent having failed to do so cannot be allowed to wriggle out of the offence. Whether the respondent is a Chief Managing Director or not being a pure question of fact, Revisional Court erred in exercising its jurisdiction to quash the process against respondent Amit Mittal.

9. Per contra, Mr. Dawar has supported the order passed by the Revisional Court to the extent that the process has rightly been quashed against respondent Amit Mittal. It has been contended that apart from bald averment in the complaint referring respondent Amit Mittal as Chief Managing Director, there is nothing on record to show that respondent Amit Mittal was indeed working as Chief Managing Director. The Revisional 8 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 Court has rightly relied upon the list of Directors produced by the accused Company before it to hold that respondent Amit Mittal having not been mentioned in the list of directors, is not liable to face prosecution. He submits that the list of directors produced on record is evidence of unimpeachable character and thus there is no error in the order passed by the Revisional Court quashing the process relying upon the same.

10. I have heard counsel for the parties and have gone through records of the case with their able assistance.

11. Facts are not much in dispute. The points that fall for consideration of this Court are:

(i) Whether Manoj Gupta who is admittedly the Director of the accused-Company can be summoned to face trial in the light of the averments made in the complaint?

(ii) Whether Amit Mittal who is claimed to be the Chief Managing Director of the accused-company by the complainant, is liable to be summoned to face trial for proceedings under Section 138 of the N.I. Act?

12. In order to answer the afore-posers, it will be appropriate to peruse the bare provisions of law as contained under Section 138 and 141 of the N.I. Act:

"138. Dishonour of cheque for insufficiency, etc., of funds in 9 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 the account.--Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4 [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, 5 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.--For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

10 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 "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.

13. Without going farther back it will be apt to trace the evolution 11 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 of law from the Larger Bench judgment in S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla, (2005) 8 SCC 89, wherein the following three questions came for consideration before the Larger Bench :

"(a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company?

(b) whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and,

therefore, deemed to be guilty of the offence unless he proves to the contrary ?

(c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors of Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against?"

14. The Larger Bench answered the same as under:

"21. In view of the above discussion, our answers to the questions posed in the Reference are as under :

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company.

This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 12 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that 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.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section

141."

15. The issue was again addressed by Apex Court in the case of Rallis India Ltd. vs. Poduru Vidya Bhusan, (2011) 13 SCC 88 observing as under :

"xx xx xx 13 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M)

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12. 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, proviso to 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 knowledge or he had exercised due diligence to prevent the commission of such offence, he will not be liable of punishment. Needless to say, 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 acquitted.

13. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless parties are given opportunity to lead evidence, it is not possible to come to definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the Respondents ceased to be the partners of the firm.

14. Before concluding the present discussion, we also take this opportunity to strike a cautionary note with regard to the manner in which High Courts ought to exercise their power to quash criminal proceedings when such proceeding is related to offences committed by companies. The world of commercial 14 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 transactions contains numerous unique intricacies, many of which are yet to be statutorily regulated. More particularly, the principle laid down in Section 141 of the Act (which is *pari materia* with identical sections in other Acts like the Food Safety and Standards Act, the erstwhile Prevention of Food Adulteration Act etc. etc.) is susceptible to abuse by unscrupulous companies to the detriment of unsuspecting third parties. In the present case, there are several disputed facts involved - for instance, the date when the partnership came into being, who were the initial partners, if and when the Respondents had actually retired from the partnership firm etc.

15. Strictly speaking, the ratio of the SMS Pharmaceuticals (*supra*) can be followed only, after the factum that accused were the Directors or Partners of a Company or Firm respectively at the relevant point of time, stands fully established. However, in

cases like the present, where there are allegations and counter-

allegations between the parties regarding the very composition of the firm, the above rule of 'specific averment' must be broadly construed. Indeed, it would be nothing short of a travesty of justice if the Directors of a Company of Partners of a Firm, who, having duped a third-party by producing false documents (like a fake partnership deed) or making false statements (that some others were in charge of the Company/Firm), at a subsequent stage, seek protection from prosecution on the ground that they were not directly indicted in the complaint - such a proposition strikes against one of the very basic tenets of the law of natural justice, which is, that none shall be allowed to take advantage of his own default. Of course, the above observation is of a general nature, and has no bearing on the present case, but nonetheless, the power to quash a criminal proceeding with respect to an offence under Section 141 of the Act, must be exercised keeping this advisory note and caveat in mind."

16. Whole of the issue was again sieved in National Small 15 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 Industries Corp. Ltd. vs. Harmeet Singh Paintal, (2010) 3 SCC 330 wherein Apex Court concluded as under:

"xx xx xx

24. 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 accused therein vicariously liable for offence committed by company along with averments in the petition containing that 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 accused is Managing Director or 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 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 complaint.

(vii) The person sought to be made liable should be incharge 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."

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17. After analyzing the whole thread of the aforesaid precedents, Supreme Court in Gunmala Sales Private limited vs. Anu Mehta, (2015) 1 SCC 103 held as under:

"xx xx xx

33. We may summarise 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. It may do so having come across some unimpeachable, uncontrovertible 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 17 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 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."

18. In another elaborate judgment passed in S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan, 2022 AIR (Supreme Court) 4883 Apex Court concluded as under:

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47. Our final conclusions may be summarised as under:-

a.) 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.

b.) 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

19 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 company or the firm."

19. In a recent judgment passed in Rajesh Viren Shah vs. Redington (India) Limited, 2024 INSC 111, Apex Court observed as under:

"5. Coming to the judicial position, we notice a judgment of this Court in Monaben Ketanbhai Shah v. State of Gujarat (2004) 7 SCC 15 wherein it was observed that:-

"...The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. 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 the complainant makes necessary averments in the complaint and establishes that fact..."

6. A Bench of three learned Judges in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. (2005) 8 SCC 89 observed:-

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. ...A clear case should be spelled out in the complaint made against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out..."

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7. We also notice this Court to have observed, in regards to the exercise of the inherent powers under section 482, CrPC, 1973 in cases involving negotiable instruments that interference would not be called for, in the absence of "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 process of Court." This principle as held in S.M.S Pharmaceuticals (supra) was followed in Ashutosh Ashok Parasrampuriya and Anr. v. Gharrkul Industries Pvt. Ltd. and Others 2021 SCC OnLine SC

915."

20. In Siby Thomas's Case (supra) Supreme Court reiterated and relied upon earlier precedents in Gunmala Sales Private limited and S.P. Mani and Mohan Dairy's case (supra). From the afore-stated journey of the law, the proposition of law that emerges thus is as under:

(a) Section 141 of the N.I. Act makes a Director of a Company liable for the offence punishable under Section 138 of the N.I. Act where he is incharge of and responsible to the company for conduct of business of the company at the time the offence was committed.

(b) Merely being a Director of a company is not sufficient to make a person liable under Section 141 of the N.I Act.

(c) A Director in a company cannot be deemed to be incharge of and responsible to the company for conduct of its business.

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(d) It is primary responsibility of the complainant to make specific averments in the complaint so as to make the accused- Director vicariously liable invoking Section 141 of the N.I. Act.

(e) There is no such requirement under the law for the complainant to show that the accused-Director was aware about each and every transaction. A Director/Partner becomes liable where it has been averred and proved that at the time of commission of the offence he/she was incharge of and was responsible for conduct of the business of the Company/firm. Thus, at the time of issuance of process the Trial Court should be satisfied that the complainant has discharged his primary responsibility by making specific averment in the complaint that the accused being sought to be summoned as Director/Partner was incharge and was responsible for the conduct of the business of the Company/firm.

(f) High Court should not interfere with the cognizance of the complaints taken by the Trial Court except in a situation where the complaint is bereft of basic averments regarding role of the director and where it comes across some unimpeachable and incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which clearly indicate that the director could not have been concerned with the issuance of the cheque(s) and asking him to stand the trial 22 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 would be an abuse of process of the Court. In the case of Gunmala Sales Private Limited vs. Anu Mehta (supra) while

illustrating such eventualities, Apex Court has taken instance of a Director suffering from terminal illness and a Director who had resigned long before the relevant time of commission of offence.

21. Applying the afore-stated parameters culled out from the binding precedents to the present case, this Court finds that in order to answer the first issue it needs to be kept in mind for the sake of repetition that Manoj Gupta is the Director of the company. In the complaint the averment raised is as under:

"2. That the complainant no. 2 is director of complainant no.1 and is entitled to act on behalf of the complainant no.1 in the matters of its business and for prosecution of the court cases on its behalf.

3. That the accused no.1 was also a registered corporate body and the accused no. 2 was the chief managing director & the accused No.8 was the joint managing director and the accused no.5 to 7 were the directors and the accused no. 3 & 4 were the authorized signatories of accused no.1"

23. Thus, it is evident that apart from mentioning Manoj Gupta accused No.5 as the Director of the company, there is no averment raised in the complaint that accused Manoj Gupta being Director, was incharge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed.

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24. In view of above, this Court finds that the Courts below erred in summoning Manoj Gupta on the basis of a complaint which was totally bereft of the basic averments to hold him vicariously liable by invoking Section 141 of the N.I. Act.

25. Coming on to the issue No.2, this Court finds that in the complaint Amit Mittal has been arraigned as Chief Managing Director of the accused-company. The complainant has placed on record copy of the legal notice dated 4th of October, 2013 issued on Amit Mittal in his capacity as Chief Managing Director in the accused-Company under Section 138 of the N.I. Act. Reply thereto dated 10th of October, 2013 issued under the instructions from the accused-Company through their counsel has also been placed on record as Annexure P-4 which shows that there is no denial to Amit Mittal having been addressed as Chief Managing Director. Thus, this Court finds Amit Mittal having been arraigned as Chief Managing Director is liable to be tried for offence punishable under Section 138 read with Section 141 of the N.I. Act by virtue of his position only. The issue:

'Whether he was in fact holding the position of Chief Managing Director in the accused-company or not?', is matter of trial and cannot be conclusively adjudicated upon at this stage. Prima facie there being material in form of reply to the legal notice issued on instructions from the accused-Company by their counsel, this Court finds that the revisional Court erred in quashing the process against the respondent Amit

Mittal.

26. As a result of the aforesaid discussion. the afore-stated petitions 24 of 26 Neutral Citation No:=2024:PHHC:030869 CRR No.2329 of 2019 (O&M) and 2024:PHHC:030869 CRM-M No.33848 of 2019 (O&M) 2024:PHHC:030870 are allowed. It is thus ordered as under:

(i) Revision petition preferred by the complainant/petitioner i.e. CRR No.2329 of 2019 is allowed.

(ii) Impugned judgment/order dated 16th of July, 2019 passed by Additional Sessions Judge, Hoshiarpur quashing the process against Amit Mittal is set aside.

(iii) CRM-M No.33848 of 2019 is allowed.

(iv) Process issued against Manoj Gupta vide order dated 16th of January, 2014 passed by Judicial Magistrate 1st Class, Dasua is ordered to be quashed holding that the complaint lacks basic averments against Manoj Gupta.

(v) Order passed by Judicial Magistrate 1st Class, Dasua dated 16th of January, 2014 against Amit Mittal summoning him to face trial under Section 138 read with Section 141 of the N.I. Act in complaint bearing No.95 of 2013 dated 1st of November, 2013 titled as 'Rajinder Earthmover Filling Station Pvt. Ltd. and another vs. M/s A2Z Waste Management (Ludhiana) Limited and others, is restored.

(vi) Parties to appear before the Trial Court on 20th of March, 2024.

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27. The present matter is pending consideration at the stage of process since 2014, this Court is quite sanguine that the Trial Court shall make an endeavour to decide the complaint expeditiously.

28. A copy of this order be kept on the file of other connected case.

March 05, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes

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