



2025:DHC:627



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.02.2025

+ **CRL.M.C. 3980/2019 & CRL.M.A. 33403/2019**

SANJAY DHINGRA

.....Petitioner

versus

WOORI BANK, GURGAON BRANCH

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Karan Batura & Mr. Jayant Chawla,
Advocates

For the Respondent : SI Rohit (P.S. Crime Branch)

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed against the order dated 26.11.2018 (hereafter '**impugned order**') passed by the learned Metropolitan Magistrate ('**MM**'), Patiala House Courts, New Delhi in CC No. 16287/2016 whereby summons were issued to the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').



2. Respondent No.1 was initially represented before this Court through the learned counsel. However, none had appeared on their behalf after 29.08.2022. It is pointed out that none had been appearing for the respondent before the learned Trial Court as well. By order dated 12.01.2024, it was made clear that in case none appears on behalf of the respondent on the next date of hearing, the arguments will be heard *ex parte*.

3. The brief facts of the present case are that the respondent bank/complainant extended a loan of ₹19,00,00,000/- to M/s. Kwality Limited/accused no. 4 on 01.02.2018. The petitioner is the Managing Director of M/s. Kwality Limited. It is alleged that M/s. Kwality Limited persistently neglected to repay the principal, interest and charges in respect of the loan. It is alleged that thereafter a legal notice dated 25.07.2018 was sent to M/s. Kwality Limited to make the outstanding payment, however no reply to the said legal notice was ever given to the complainant.

4. Subsequently, it is alleged that on 31.08.2018, the employees of the complainant visited the office of M/s. Kwality Limited wherein the petitioner provided them with a cheque bearing no. 064898 dated 30.09.2018 for a sum of ₹1,33,50,000/-. The said cheque was issued by Devidayal Radheshyam Traders Private Limited ('DRTPL') /accused no. 1 and signed by one Makardhwaj Kumar/accused no. 2, stated to be director DRTPL. It is alleged that thereafter, in order to confirm the veracity of the cheque, the employees of the complaint



visited the registered office of DRTPL where they met one Mr. Chandan who represented himself to be an accountant of DRTPL.

5. Subsequently, a call was made to Makardhwaj Kumar ('signatory of the subject cheque') to confirm the veracity of the cheque, and to ascertain whether the said Makardhwaj Kumar was aware that the said cheque was provided to the complainant. It is alleged that thereafter Makardhwaj Kumar not only confirmed the veracity of the cheque but also stated that the complainant could encash the same in discharge of the obligations of M/s. Kwality Limited towards the complainant.

6. It is alleged that thereafter the subject cheque was deposited for the purpose of encashment and the same was returned unpaid by the bank on 03.10.2018 with the remarks "*funds insufficient.*" Subsequently, a legal notice dated 08.10.2018 was sent to the accused persons being – DRTPL, Makardhwaj Kumar (director of DRTPL), Gyanesh Chand (director of DRTPL), M/s. Kwality Limited, and the petitioner (Managing Director of M/s. Kwality Limited). It is alleged that since the accused persons failed to make the payment despite the receipt of statutory notice, the subject complaint was filed under Section 138 of NI Act.

7. By the impugned order, the learned MM issued summons to the petitioner for the offence under Section 138 of the NI Act.

8. The learned counsel for the petitioner submitted that the learned MM erred in issuing summons upon the petitioner. He submitted that the petitioner was neither the director of DRTPL nor a signatory to the



impugned cheque. He submitted that the summons to the petitioner have been issued in a mechanical manner. He submitted in order to attract the rigours of Section 138 of the NI Act, it is imperative that the dishonoured cheque has to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person on account of discharge, in whole or in part of any debt or other liability.

9. He submitted that as per the own pleadings of the complainant, the subject cheque was issued from the account of DRTPL and not by the petitioner. He submitted that the petitioner is admittedly not the director of DRTPL and therefore the requisite ingredients of Section 138 read with Section 141 of the NI Act are not attracted. He submitted in accordance with Section 138 of the NI Act, penal provisions can be initiated only against the drawer of the cheque.

10. He submitted that in the present case that petitioner is neither the signatory to the dishonoured cheque nor is a director of DRTPL through the account of which the subject cheque was issued. He submitted that the proceedings have rightly been initiated against the accused company - DRTPL, and the authorised signatory being , Makardhwaj Kumar who has been arrayed as accused no. 2.

11. He submitted that the only allegation against the petitioner is that he was the one who handed over the cheque to the officials of the complainant. He submitted that even if the allegations made in the complaint are taken at the highest, yet it was DRTPL who had decided to repay the debt taken by M/s. Kwality Limited thereby making the



same a legally enforceable debt against DRTPL. He consequently submitted that no liability can be fastened on the petitioner, who is neither the signatory nor the issuer of the subject cheque.

12. In its reply, the complainant submitted that M/s. Kwaliti Limited failed to make repayments of the principal amount, interest and charges in respect of the loan from the beginning. It is submitted that M/s. Kwaliti Limited scheduled a meeting with the complainant on 31.08.2018 wherein the petitioner handed over the subject cheque to the complainant. It is submitted that the subject cheque was issued by DRTPL.

13. It is submitted that the veracity of the said cheque was confirmed by the complainant by visiting the office of DRTPL and a confirmation was obtained from Makardhwaj Kumar (Director of DRTPL). It is submitted that the said cheque, upon presentation, was dishonoured for the reason "*funds insufficient.*" It is consequently submitted that the petitioner was rightly summoned given his role in the fraudulent transaction.

Analysis

14. At the outset, it is relevant to note that this Court can quash complaints under the NI Act at the pre-trial stage in the 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 or that no offence is made out from the admitted facts. The



Hon'ble Apex Court in the case of ***Rathish Babu Unnikrishnan v. State (NCT of Delhi) : 2022 SCC OnLine SC 513*** had discussed the scope of interference by the High Court against the issuance of process under the NI Act as under:

“8. The issue to be answered here is whether summons and trial notice should have been quashed on the basis of factual defences. The corollary therefrom is what should be the responsibility of the quashing Court and whether it must weigh the evidence presented by the parties, at a pre-trial stage.

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16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression,



an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.”

(emphasis supplied)

15. In line with the dictum of the Hon’ble Apex Court in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)*** (*supra*), thus, while exercising the power under Section 482 of the CrPC to quash a complaint at the pre-trial stage, it is pertinent for this Court to examine whether the factual defence is of such impeachable nature that the entire allegations made in the complaint is disproved.

16. The petitioner is sought to be implicated in the present case by virtue of Section 138 read with Section 141 of the NI Act on account of being the director of the M/s. Kquality Limited at the relevant time when the cheque was issued. 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.”

17. 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 such time when the cheque was dishonoured, and no subsequent payment was made, 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.

18. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla : (2005) 8 SCC 89***, the Hon’ble Apex Court analysed Section 141 of the NI Act and observed as under:

“10. While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. The key words which occur in the section are “every person”. These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words:



‘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, etc.’

*What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and 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.** It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. **It follows from this 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 under the provision.** The liability arises from being in charge of and responsible for the conduct of 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. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. **Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a Director or manager or secretary was enough to cast criminal liability, the section would have said so.** Instead of “every person” the section would have said ‘every Director, manager or secretary in a company is liable’..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.”*

(emphasis supplied)

19. It must be borne in mind that Section 141 of the NI Act is a penal provision that aims to create vicarious liability on the accused.



For this reason, the provisions ought to be strictly construed. In the case of *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*: (2010) 3 SCC 330, the Hon'ble Apex Court had emphasised the necessity to detail the role of the director accused on account of the penal nature of Section 141 of the NI Act and held as under:

*“13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a 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. **But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.***

(emphasis supplied)

20. From a perusal of the record, it transpires that the petitioner is being sought to made an accused on account of being the Managing director of M/s. Kwality Limited, the borrower of the subject loan. It is not in doubt that when the principal offender under Section 138 of the NI Act is a company, then every person who is in charge of the affairs of the company, at such time when the subject cheque is dishonoured would be liable. However, it is evident from a perusal of the record that the petitioner is a Managing Director of M/s. Kwality Limited, admittedly, the borrower of the loan.

21. The subject cheque was admittedly issued by DRTPL, and signed by Makardhwaj Kumar, director of DRTPL. The only role



attributed to the petitioner in the instant case is that the petitioner had handed over the cheque admittedly issued by DRTPL to the complainant. However, merely because the subject cheque was handed over by the petitioner, the same does not shift the onus from the drawer in terms of Section 138 of the NI Act.

22. Section 138 of the NI Act reads as reproduced hereunder:

“138. Dishonour of cheque for insufficiency, etc., of funds in 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 a term which may extend to 68[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, [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 or other liability” means a legally enforceable debt or other liability.”



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23. From a plain reading of Section 138 of the NI Act, it materialises that liability is imputed on the person who draws the cheque on an account maintained by them. In the present case, even though the cheque was handed over by the petitioner who is the director of M/s. Kwality Limited, the same was not drawn by the M/s. Kwality Limited. The subject cheque was duly executed and issued by DRTPL. Considering that the petitioner is not the director of the accused company who is the drawer of the subject cheque, he cannot be made liable for the offence under Section 138 of the NI Act.

24. In the light of the aforesaid, the impugned order summoning the petitioner and the proceedings emanating from Complaint Case No. 16287/2016 for the offence under Section 138 of the NI Act is quashed *qua* the petitioner.

25. The present petition is allowed in the aforesaid terms.

26. Pending application(s), if any, also stands disposed of.

AMIT MAHAJAN, J

FEBRUARY 3, 2025