



2025:DHC:1169



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:24.02.2025

+ **CRL.M.C. 4497/2019 & CRL.M.A. 35347/2019**

ADARSH SARAN & ANR Petitioners

versus

CENTRAL BANK OF INDIA & ORS Respondents

+ **CRL.M.C. 2520/2020 & CRL.M.A. 17835/2020**

ALOK KHANNA Petitioner

versus

CENTRAL BANK OF INDIA Respondent

Advocates who appeared in this case:

For the Petitioner(s) : Mr. Siddharth Aggarwal, Senior Advocate with Mr. Bhavya Sethi and Ms. Meghn Majhi, Advs. for the petitioners in CRL.M.C. 4497/2019.

Mr. Himanshu Dubey, Adv. for the petitioner in CRL.M.C. 2520/2020.

For the Respondent(s) : Mr. Vikash Kumar, Adv. for R-1 in CRL.M.C. 4497/2019.

Mr. Ajay Vikram Singh and Ms. Priyanka Singh, Advs. for R-7 in CRL.M.C. 4497/2019.

Mr. Vikash Kumar, Adv. for the respondent in CRL.M.C. 2520/2020.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**



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JUDGMENT

1. The present petitions are filed seeking quashing of summoning order dated 24.03.2018 (hereafter '**impugned order**') passed by the learned Metropolitan Magistrate ('**MM**'), Patiala House Courts, New Delhi in complaint case bearing CC No. 36097/2016.

2. The subject complaint was filed by the respondent in CRL.M.C. 2520/2020 (hereafter '**complainant**') under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') against the accused company – M/s West Haryana Highways (hereafter '**accused company**') and its directors pursuant to the dishonour of the cheque issued by the accused company. The accused company is engaged in the business of construction/laning of roads.

3. It is alleged that the accused company approached the complainant for a grant of a term loan for the purpose of six/four laning of existing two lane road from Delhi-Haryana Border to Rohtak. It is alleged that on the request of the accused company, the complainant *vide* Sanction letter dated 25.04.2008 sanctioned a Senior Term Debt of ₹100 crores. Subsequently, it is averred that the accused company through its directors *vide* letter dated 30.10.2013, approached the complainant for restructuring of the existing debt of ₹88 crores. It is alleged that on the request of the accused company, the complainant agreed to restructure the existing debt of ₹88 crores



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on the terms and conditions as stipulated in the letter dated 31.12.2013.

4. It is alleged that the Interest During Construction ('IDC') dues were pending to the complainant. It is alleged that upon the request of the accused company, the complainant purchased the Cheque No. 013805 dated 30.09.2014 issued by the accused company through its authorised signatories in amounting to ₹1.5 crores for the payment of the IDC dues to the complainant. The complainant duly credited ₹1.5 crores to the account of the accused company as consideration for the said cheque. The said cheque, upon presentation, got dishonoured and returned unpaid *vide* return memo dated 16.10.2014 with remarks "*Funds Insufficient.*" The subject cheque was once again presented for encashment on the assurance of the accused company. However, on this occasion as well, the same returned unpaid *vide* return memo dated 05.12.2014 for the reason "*funds insufficient.*" Subsequently, upon the non-payment of the cheque amount within the statutory period despite the receipt of demand notice, the complainant filed a complaint under Section 138 of the NI Act.

5. The learned MM, by the impugned order, issued summons to the accused company being the drawer of the subject cheque, to Mahesh Kumar Chaturvedi and Suresh Sharma being signatory of the dishonoured cheque, and the petitioners along with two other directors being directors of the accused company and responsible for managing the day-to-day affairs of the accused company.



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Arguments advanced on behalf of the petitioners in CRL.M.C. 4497/2019

6. The learned senior counsel for the petitioners submitted that the summoning order is liable to be quashed *qua* the petitioners. He submitted that merely because the petitioners were directors of the accused company at the relevant time when the offence was committed does not suffice for the offence under Section 138 read with Section 141 to be attracted *qua* the petitioners. He submitted that the petitioners had no role to play in the transactions or the business of the company and were not responsible in any manner in managing the day-to-day affairs of the company.

7. He submitted that the petitioners were neither signatory to the subject cheque nor was the cheque issued under their knowledge. He submitted that the allegations against the petitioners are general and vague in nature and that they have been implicated solely for the reason that they were directors of the accused company. He submitted that the complainant, in its complaint, has failed to show how the petitioners had knowledge or were involved in the transaction alleged in the complaint.

8. He submitted that an incontrovertible document to the effect that the petitioners, at the time of issuance of the cheque, were not responsible for managing the day-to-day affairs of the company is the Annual Return of the accused company duly filed before the Registrar of Companies for the year 2014-2015 which demonstrates that the



petitioners had not attended a single meeting during the said financial period in which the subject cheque was issued and/or dishonoured.

9. He submitted that in addition to the said documents, there are several emails exchanged between the petitioners and the active directors (before and after receiving of the legal demand notice) indicating the absence of knowledge of working and management of the accused company during the relevant period of issuance of cheque. He submitted that as per the provisions of Section 167(1)(b) of the Companies Act, the petitioners even ceased to be directors. He submitted that the Registrar of Companies were informed about the non-compliance of the provisions of the Companies Act by the accused company as none of the meetings for more than 12 months preceding July 2015 were either intimated or attended by the petitioners thereby indicating the inactiveness of the petitioners herein. He submitted that in response to the said communication, the Registrar of Companies *vide* communication dated 14.09.2015 called for explanation along with documentary evidence.

Arguments advanced on behalf of the petitioner in CRL.M.C. 2520/2020

10. The learned counsel for the petitioner submitted that the petitioner has wrongly been roped in the present case. He submitted that the petitioner is neither the signatory of the subject cheque nor is responsible for managing the day to day affairs of the company. He



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submitted that the petitioner had no role to play in the granting of the loan by the complainant to the accused company.

11. He submitted that the petitioner was appointed merely as a *Non-Executive Additional Director* on 27.12.2012 of the accused company and with effect from 30.09.2013. He submitted that the designation of the petitioner changed from Non-executive additional director to Non-Executive Director. He submitted that the petitioner had no role to play in the business of the company and was not in charge of managing the day-to-day affairs of the company. In this respect, the petitioner has also placed on record, Form No. 32 which demonstrated that the petitioner was merely a *Non-Executive Director*.

12. He submitted that the complainant has further sought to pin liability on the petitioner by virtue of the fact that the petitioner had signed the balance sheet of the accused company. He submitted that the signing of the balance sheet of the company is a requirement under the Companies Act, 2013 and the same would not tantamount to mean that the petitioner is responsible for managing the day-to-day affairs of the company.

13. He submitted that a perusal of the complaint makes it clear that no specific averment with respect to the role of the petitioner or his involvement in the day to day affairs has been made by the complainant. He submitted that the allegations are general in nature which cannot be considered to implicate the petitioner especially when he was only a Non-Executive Director of the accused company. He



submitted that in the absence of any specific averment to the contrary which particularly provides for the role of the petitioner in managing the day-to-day affairs of the accused company, the petitioner cannot be proceeded against as per the contours of the NI Act.

Arguments advanced on behalf of the complainant qua the Petitioners in CRL.M.C. 4497/2019

14. The learned counsel for the complainant submitted that the present petition is liable to be dismissed since the grounds raised by the petitioners are triable in nature, and any interference at this stage is unwarranted. He submitted that the petitioners were responsible for the day-to-day affairs of the company, and they were also full time directors of the accused company. He submitted that the petitioners have annexed several internal communications like emails which substantiate that the petitioners were at the helm of the affairs of the accused company during the relevant time. He submitted that the defences raised by the petitioners are subject matter of trial and cannot be looked into at this stage.

Arguments advanced on behalf of the complainant qua the Petitioner in CRL.M.C. 2520/2020

15. The learned counsel for the complainant submitted that the grounds raised by the petitioner are subject matter of trial and no interference, at this stage, is warranted. He submitted that the petitioner was responsible for the day-to-day affairs of the company



and had also signed the balance sheet of the accused company for the Financial Year 2014-2015 during which the transaction pertaining to the issuance of the subject cheque took place.

Analysis

16. At the outset, it is relevant to note that this Court can quash complaints under the NI Act at the pretrial 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)

17. 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.

18. The petitioners are 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 directors of the accused company 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.”

19. 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.

20. It is trite law that a person cannot be arrayed as an accused person merely due to association with the accused company in capacity of a Director. 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)

21. Similarly, the Hon’ble Apex Court in ***K.K. Ahuja v. V. K. Vora*** : (2009) 10 SCC 48 observed as under:

“20. Section 291 of the Companies Act, 1956 provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do. A company though a legal entity can act only through its Board of Directors. The settled position is that a Managing Director is prima facie in charge of and responsible for the company’s business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in charge of and responsible for the conduct of the company’s business.”



22. Recently, the Hon'ble Apex Court in *Susela Padmavathy Amma v. M/s. Bharti Airtel Limited : 2024 INSC 206* while quashing the proceedings under Section 138 read with Section 142 of the NI Act against the director of the company observed as under:

“10. It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-to-day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.”

23. 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)

Petitioners in CRL.M.C. 4497/2019

24. The petitioners are sought to be implicated on the ground that the petitioners were responsible for the day-to-day affairs of the company. It has been alleged that since the petitioners have annexed numerous internal communications like emails, it only translates to mean that the petitioners were at the helm of the affairs of the accused company, and are responsible for the conduct of the business of the accused company.

25. It is settled that different persons may be responsible for the conduct of the company at the relevant time when each series of omission, necessary to constitute the offence under Section 138 read with Section 141 of the NI Act, is committed. It is also settled that every person, regardless of whether they are in charge of the company during each series of act necessary to constitute the offence under Section 138 read with Section 141 of the NI Act or not, could be proceeded against if they are in charge of the affairs of the company even during one of the omissions' that is necessary to constitute an offence under Section 138 read with Section 141 of the NI Act. This



would include being in charge of the company at the time of drawing of the cheque, or the dishonour of cheque, or at the time of failure to pay after the receipt of notice. [Ref: *S P Mani and Mohan Dairy v. Dr. Snehalatha Elangovan* : (2023) 10 SCC 685]

26. Recently, the Hon'ble Apex Court in *Ashok Shewakramani and Others v. State of Andhra Pradesh and Another* : (2023) 8 SCC 473 while interpreting the words “was in charge of” and “was responsible to the company for the conduct of the business of the company” as appearing in Section 141(1) of the NI Act observed as under:

“22. In the light of sub-section (1) of Section 141, we have perused the averments made in the complaints subject-matter of these three appeals. The allegation in Para 1 of the complaints is that the appellants are managing the Company and are busy with day-to-day affairs of the Company. It is further averred that they are also in charge of the Company and are jointly and severally liable for the acts of Accused 1 Company. The requirement of sub-section (1) of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section (1) of Section 141 of the NI Act must be a 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. Merely because somebody is managing the affairs of the Company, per se, he does not become in charge of the conduct of the business of the Company or the person responsible for the Company for the conduct of the business of the Company. For example, in a given case, a manager of a Company may be managing the business of the Company. Only on the ground that he is managing the business of the Company, he cannot be roped in based on sub-section (1) of Section 141 of the NI Act.”



23. *The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the Company. This is hardly relevant in the context of sub-section (1) of Section 141 of the NI Act. **The allegation that they are in charge of the Company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the Company for the conduct of the business. Only by saying that a person was in charge of the Company at the time when the offence was committed is not sufficient to attract sub-section (1) of Section 141 of the NI Act.***

24. *Sub-section 1 of Section 141 reads thus: “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.]” (emphasis supplied)*

On a plain reading, it is apparent that the words “was in charge of” and “was responsible to the Company for the conduct of the business of the Company” cannot be read disjunctively and the same ought be read conjunctively in view of use of the word “and” in between.”

(emphasis supplied)



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27. In the present case, the petitioners are sought to be roped in the case only on the ground that since the petitioners had annexed numerous internal communications such as emails, it only translates to mean that the petitioners were at the helm of the affairs of the accused company. In line with the dictum of the Hon'ble Apex Court in *Ashok Shewakramani and Others v. State of Andhra Pradesh and Another (supra)* and Section 141(1) of the NI Act, to fasten liability, the petitioner ought to be in charge of and responsible for the conduct of the company at the time of commission of the offence. The Hon'ble Apex Court noted that merely because a person is managing the affairs of the company *per se* does not tantamount to mean that he was in charge of the conduct of the business of the company or responsible for the company for the conduct of the business of the accused company. It must be shown that the director was not only in charge of but also responsible to the company for the conduct of the business of the company.

28. It is undisputed that the petitioners were not a signatory to the subject cheque. The Annual Return of the accused company in the nature of Form No. MGT-7 has also been appended which materialises that the petitioners had failed to attend any Board Meeting/Committee Meeting during the financial year in which the transaction took place. This Court has also perused several emails appended with the petition which materialise that the petitioners consistently sought information of the working of the accused company during the period of issuance and subsequent dishonour of



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the subject cheque. Further, letters dated 22.07.2015 have also been appended by the petitioners which state that the petitioners' office stood vacated in accordance with Section 167(1)(b) of the Companies Act, 2013 on account of the petitioners not having attended any meeting for a period of 12 months due to non-receipt of any notice/communication.

29. From a perusal of the record, it is apparent that during the series of the omission necessary to constitute an offence under Section 138 read with Section 141 of the NI Act, the petitioners were not in charge of and also responsible for the conduct of the business of the company.

Petitioner in CRL.M.C. 2520/2020

30. The petitioner is sought to be implicated on the ground that the petitioner is responsible for the day-to-day affairs of the company. It has been contended that since the petitioner is a full-time director, and signatory of the accused company's balance sheet for the Financial Year 2014-2015 during which the transaction pertaining to the issuance of the subject cheque took place, the petitioner is liable for the conduct of the business of the accused company.

31. From the perusal of the complaint, it is apparent that only general allegations have been made against the petitioner. It is settled law that Independent/ Non-Executive Directors do not have specific



role in day-to-day functioning of the company, unless specific allegations have been made pointing towards the contrary.

32. The Hon'ble Apex Court in the case of *Sunita Palita v. Panchami Stone Quarry* : (2022) 10 SCC 152, relying on a catena of judgments, quashed the proceedings under Sections 138/141 of the NI Act against the appellants therein who were independent, non-executive directors of the accused company. The relevant portion of the aforesaid judgment is reproduced hereunder:

“41. A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable under those provisions....It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development), etc. into criminal proceedings under the NI Act, only because of their designation.

*42....The materials on record clearly show that these appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] a **non-executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would***



obviously be responsible for the company and/or its business and affairs.

44...The High Court observed that in the petition it had specifically been averred that all the accused persons were responsible and liable for the whole business management of the accused Company, and took the view that the averments in the complaint were sufficient to meet the requirements of Section 141 of the NI Act.

45. As held by this Court in *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal* [*National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] quoted with approval in the subsequent decision of this Court in *Pooja Ravinder Devidasani v. State of Maharashtra* [*Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] the impleadment of all Directors of an accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of Section 141 of the NI Act.

46. In any event there could be no justification for not dispensing with the personal appearance of the appellants, when the Company had entered appearance through an authorised officer. As held by this Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* [*Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] summoning an accused person cannot be resorted to as a matter of course and the order must show application of mind.”

(emphasis supplied)

33. In line with the dictum of the Hon’ble Apex Court in *Sunita Palita v. Panchami Stone Quarry* (*supra*), it is clear that a person cannot be made vicariously liable under the provisions of Section 141 of NI Act, merely by stating that he was in-charge and responsible for



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the day-to-day-conduct of the accused company at the relevant time when the offence was committed. Further, merely because the petitioner signed the balance sheet of the accused company for the Financial Year 2014-2015 during which the alleged transaction took place does not suffice to state that the petitioner was in charge of and responsible for the conduct of the business of the accused company.

34. The petitioner has appended an unimpeachable document in the nature of Form 32 which clearly manifests that the petitioner was a Non Executive director of the accused company with effect from 30.09.2013. From a perusal of the complaint, it is apparent that the same lacks necessary averments to endorse what active role was played by the petitioner, and how he was responsible for the conduct of the business of the accused company.

Conclusion

35. In the light of the aforesaid discussion, the present petitions are allowed and the proceedings emanating from CC No. 36097/2016 for the offence under Section 138 read with Section 141 of the NI Act *qua* the petitioners are quashed. Pending application(s), if any, also stands disposed of.

36. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

FEBRUARY 24, 2025