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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th March, 2025.

+ CRL.M.C. 3662/2018 & CRL.M.A. 28491/2018

SATEESH JAIN

.....Petitioner

Through: Mr. Chandra Shekhar, Mr. Manoj
Agarwal, Mr. Prashant Shekhar,
Advocates

versus

UCO BANK

.....Respondent

Through: Mr. Rajesh Rattan, Mr. Aditya
Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973¹ read with Article 227 of the Constitution of India, 1950, is directed against order dated 31st March, 2018 passed by the Additional Sessions Judge, Patiala House Courts in Criminal Revision No. 14/2016 (New Case No. 8596/2016) titled as "*Sateesh Jain v. UCO Bank*" as well as the order dated 28th January, 2016 passed by Metropolitan Magistrate in CC No. 751/1/14, wherein both the Courts have held that there was sufficient material on record to frame notice under Section 251 CrPC against the Applicant for the offence under Section 138 of the Negotiable Instruments

¹ "CrPC"



Act, 1881.²

Factual Background

2. The factual background leading to the filing of the present petition, as narrated in the petition, is as follows:

2.1 Accused No. 1, M/s Surya Vinayak Industries Ltd., secured a Short Term Loan³ of INR 50 Crore for a period of six months from the Respondent, UCO Bank, on 30th June, 2011. The pre-disbursement conditions for the sanction of the STL stipulated that Accused No. 1 would furnish post-dated cheques for both the principal instalment and interest. Accordingly, Accused No. 1 provided one undated cheque of INR 50 Crore and five undated cheques of INR 66,66,667/- each to the Respondent. The Petitioner (Accused No. 2) was one of the signatories of the cheques, and the director of Accused No. 1 at the time of issuance of these cheques.

2.2 The Petitioner tendered his resignation from Accused No. 1 on 26th March, 2012, which was subsequently accepted by the board on 15th May, 2012. Upon becoming aware that the Petitioner's resignation was impending, the Respondent filled in the date on the cheques as 12th May, 2012 and 14th May, 2012, which were prior to his resignation. The Respondent presented these cheques for encashment on 12th July, 2012, however they were returned unpaid on 13th July, 2012.

2.3 The Respondent, thereafter, served legal notice dated 07th August, 2012 on the Petitioner as well as other relevant persons associated with Accused No. 1. The Petitioner received the notice on 08th August, 2012, and in response, notified the Respondent of his resignation, providing copies of

² "NI Act"

³ "STL"



the resignation letter, its acceptance, and Form No. 32. However, despite the said intimation, the Respondent, while filing the impugned complaint, impleaded the Petitioner as one of the accused, citing his previous role as a director of Accused No. 1.

2.4 Pursuant to the complaint, the Metropolitan Magistrate, *vide* order dated 22nd September, 2014, summoned the Petitioner for the offence under Section 138 read with Section 141 of the NI Act. Subsequently, on 28th January, 2016, notice under Section 251 CrPC was served on Accused No. 1, along with Accused Nos. 2 and 11, being the signatories of the cheques in question. By the said order, proceedings *qua* the other accused were dropped, and they were acquitted for the said offence.

2.5 Aggrieved, the Petitioner preferred a revision petition against the aforesaid order. However, the revisional court dismissed the same, finding no infirmity or illegality in the order summoning and framing notice under Section 251 CrPC against the Petitioner.

2.6 Dissatisfied with this order, the Petitioner has now approached this Court seeking setting aside of the aforesaid impugned orders.

Petitioner's Case

3. Against the aforesaid factual backdrop, the Petitioner makes the following submissions:

3.1 The Petitioner was neither associated with Accused No. 1 in his capacity as a director, nor otherwise responsible for its day-to-day operations at the time of the alleged offence under Section 138 read with Section 141 of the NI Act.

3.2 Despite the Petitioner not holding the position of director at the relevant time, the Magistrate erroneously took cognizance of the matter and



issued summons.

3.3 In the proceedings before the Metropolitan Magistrate, the Petitioner contended the following grounds:

a. The offence under Section 138 of the NI Act is committed when, after service, the person on whose account the cheque was issued, fails to make payment within the time prescribed by law.

b. While the Petitioner was a signatory to the cheques, he affixed his signature solely in his capacity as a director of Accused No. 1, a position he held at the time of issuance. Reliance is placed on the ruling of this Court in *Kamal Goyal vs. United Phosphorus Ltd.*⁴

3.4 Accused No. 1 had issued six undated cheques to the Respondent. Upon becoming aware of the Petitioner's impending resignation, the Respondent, deliberately filled the dates 12th May, 2012 and 14th May, 2012 on the cheques, shortly before the Petitioner's resignation on 15th May 2012.

3.5 Furthermore, as per the judgment of the Supreme Court in *Bijay Agarwal vs. M/s. Medilines*,⁵ the Petitioner cannot be considered the drawer of the cheque merely on account of being a signatory to the cheque.

Analysis

4. At the outset, it is imperative to note that previously, this Court in CRL.L.P. 462/2016, by order dated 21st January, 2025, allowed a challenge to the impugned order dated 28th January, 2016, filed at the instance of UCO Bank, acquitting the other co-accused. As a result, the proceedings against the acquitted accused were directed to continue.

5. However, since the impugned order directed framing of notice under

⁴ 2010 SCC OnLine Del 447.

⁵ 2024 SCC OnLine SC 4094.



Section 251 CrPC against the Petitioner, he challenged the same in revision before the court of ASJ. The revisional court by order dated 31st March, 2018, declined to interfere in the summoning order and framing of notice under Section 251 CrPC. It must thus be clarified that although the impugned order pertains to both the summoning order as well as the framing of notice under Section 251 CrPC, the law on this issue has since been clarified in *Expeditious Trial of Cases Under Section 138 of the Negotiable Instruments Act, 1881, In re*⁶ wherein the Supreme Court, observed that Section 258 of the CrPC, which empowers the Magistrate to stop proceedings in summons cases, does not extend to complaints filed under Section 138 of the NI Act. Therefore, the Court now proceeds to address the challenge to the revisional order, specifically as to whether the Petitioner could have been summoned for the offence under Section 138 read with Section 141 of the NI Act.

6. The crux of the present dispute arises from the issuance of six cheques, some of which are dated 12th May, 2012, and others 14th May, 2012. The Petitioner asserts that he tendered his resignation from the Board of Directors on 15th May, 2012. Subsequently, when the cheques were presented for encashment, they were dishonoured on 13th July 2012, with the remark “*Payment stopped by Drawer.*” As a result, the Respondent, on 7th August, 2012, issued a legal notice to Accused No. 1 and its directors, including the Petitioner, informing them of the dishonour of the cheques. The Petitioner, on 8th August, 2012, responded by claiming that he had resigned from the Board on 15th May, 2012 and had duly filed Form 32. To substantiate his resignation, the Petitioner relied on the certified copy of

⁶ (2021) 16 SCC 116.



Form 32, allegedly filed on the MCA website.

7. However, the incontrovertible facts emerging from this case are that the Petitioner was serving as a whole-time director of Accused No. 1 at the time these cheques were issued, and was also one of the signatories of the cheques. Further, the Petitioner concededly resigned from Accused No. 1 subsequent to the issuance of the cheques. In fact, the Petitioner's resignation is just one day after the issuance of cheques dated 14th May, 2012.

8. The Petitioner has argued that the cheques were undated, and that the dates were later filled in by the Respondent after learning of his impending resignation. This argument has been strongly controverted by the Respondent, who contends that all the cheques were post-dated and were towards the discharge of Accused No. 1's liability towards the Respondent. The Respondent further argues that the delay in presenting the cheques beyond their due date was attributable to Accused No. 1 and its directors. Specifically, the Respondent claims that the accused persons had informed them that they were awaiting funds from other sources, and had requested that the cheques not be presented until the end of June. Relying on these assurances, the Respondent delayed presenting the cheques. This was affirmed by the Respondent in their evidence by way of affidavit before the Trial Court, as follows:

"That the officials of the Complainant Bank requested the accused persons to pay and clear the outstanding dues of the said loan account but the accused persons kept on delaying the repayment of the said loan on one pretext or the other and started avoiding the repeated calls of the officials of the Complainant Bank for payment of the bank's dues but on repeated follow up by the officials of the Complainant Bank, the accused persons No.2 and 11 came to the Complainant, Bank's Branch on 12.5.2014 and they being the authorized signatory of the said Accused No. 1 Company requested



the Bank to present the following cheques in discharge of the financial liabilities of the accused persons including that of the accused Company due and payable /to the Complainant Bank which are detailed as under:-

<i>Sr.No.</i>	<i>Cheque No.</i>	<i>Date</i>	<i>Amount</i>
<i>i)</i>	<i>184486</i>	<i>14.5.2012</i>	<i>Rs.50,00,00,000</i>
<i>ii)</i>	<i>184487</i>	<i>14.5.2012</i>	<i>Rs. 66,66,667/-</i>
<i>iii)</i>	<i>184488</i>	<i>14.5.2012</i>	<i>Rs. 66,66,667/-</i>
<i>iv)</i>	<i>184490</i>	<i>14.5.2012</i>	<i>Rs. 66,66,667/-</i>
<i>v)</i>	<i>184491</i>	<i>14.5.2012</i>	<i>Rs. 66,66,667/-</i>
<i>vi)</i>	<i>184492</i>	<i>12.5.2012</i>	<i>Rs. 66,66,665/-</i>

The aforesaid Cheques are tendered in evidence as Exh. CW- 2/12 to CW-2 /17, respectively.

The accused persons further informed the Complainant Bank that they were awaiting funds from other sources and requested the Complainant Bank not to present the aforesaid cheques till the June, end closing of 2012 and they further promised and assured that they would clear the entire dues of the Complainant Company by 30.6.2012 and the Complainant Bank looking into the promises and assurances made by the accused, persons did not present the aforesaid cheques for payment and waited till the end of 30.6.2014 in the hope that the accused persons would pay and liquidate the entire dues of the Bank on or before 30.6.2012. However, the accused persons miserably failed to pay and clear their entire dues on or before 30.6.2012 and all their promises turned out to be bundle of lies and as such deliberately, delayed in not making the payment of the Bank's dues."

9. Considering the facts outlined above, the Petitioner's argument that his resignation on 15th May 2012, prior to the presentation of the cheques, is sufficient for quashing the summoning order, is wholly untenable. In this regard, the Petitioner's reliance on ***Kamal Goyal*** is misplaced, as in that case, the petitioner had resigned from the accused company prior to the issuance of the cheques, and had also filed Form No. 32 with the Registrar of Companies prior to the issuance. Based on these facts, this Court had concluded that since the petitioner had resigned well in advance of the cheques being issued, he could not be held liable under Section 138 of the NI Act. However, in the present case, it is undisputed that the Petitioner's



resignation occurred after the cheques in question were issued, with both his resignation and Form No. 32 bearing the date of 15th May, 2012, which is subsequent to the issuance of the cheques dated 12th May, 2012 and 14th May, 2012.

10. Furthermore, the Petitioner's reliance on *Bijay Agarwal* is also untenable as that case concerned an entirely different issue related to the payment of compensation by a director of the accused company while being granted suspension of sentence for an offence under Section 138 of the NI Act. In contrast, the present case pertains to the question of the Petitioner's liability as a director of the accused company under Section 141 of the NI Act. Therefore, the findings in *Bijay Agarwal* are and inapplicable to the facts of the present case.

11. At this juncture, it is essential to highlight the legal principles relating to the liability of a director, who is also a signatory to the cheques, for the offence under Section 138 read with Section 141 of the NI Act. This issue was discussed in the judgement in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.*,⁷ whereby the Supreme Court, was *inter alia* considering the following issue:

“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.”

Analysing the law, the Court held that that both the Managing Director/Joint Managing Director and the signatory of the dishonoured cheque would be liable under Section 141 of the NI Act, irrespective of lack of specific

⁷ (2005) 8 SCC 89.



averments in the complaint. The holding of the Court is as follows:

*“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.**”*

[Emphasis Supplied]

12. In light of the above, the Petitioner, who is concededly the signatory of the disputed cheques, is liable for the actions of Accused No. 1 under Section 138 read with Section 141 of the NI Act.

13. Further, it must be highlighted that the Petitioner has invoked the jurisdiction of this Court under Section 482 of the CrPC, to set aside the impugned orders prosecuting him under the aforementioned sections. On this issue, it is apposite to emphasise that the Supreme Court, in *Ashutosh Ashok Parasrampuriya and Anr. v. Gharrkul Industries Pvt. Ltd. and Others*,⁸ after reviewing the legal principles outlined in *S.M.S. Pharmaceuticals Ltd.* and other precedents, clarified the standard for the exercise of inherent powers under Section 482 of the CrPC in matters concerning negotiable instruments, stating as follows:

*“In the light of the ratio in S.M.S. Pharmaceuticals Ltd. (supra) and later judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and they are incharge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of Section 141 of the NI Act has been made, **it may not open for the High Court to interfere under Section 482 CrPC unless it comes across some**”*

⁸ (2023) 14 SCC 770.



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. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons.”

[Emphasis Supplied]

Conclusion

14. The impugned order categorically gives the following reasons for rejecting the revision:

“11. It is not disputed that petitioner is one of the signatory to the cheque in question which was dishonoured. It is not disputed that the cheques in question and Form No. 32 were prior to the date of resignation as per the admitted position of the petitioner. It has been categorically held in the judgments relied upon by the Ld. Counsel for the respondent that it shall be matter of trial in case that the cheques have been issued after the resignation as per shown in Form No. 32. In the present case the petitioners are signatory of the dishonoured cheque and the Form No. 32 showing the resignation of the petitioner is after the date of the cheque and in my opinion therefore it shall be the matter of trial to prove if there is any vicarious liability against the petitioner for the offence under section 138 N.I. Act. The judgments relied upon are different on the facts and circumstances of the present case.

12. In these circumstances, I do not find any infirmity or illegality in the order passed by the Ld. MM while summoning the petitioner and framing notice against him. The revision petition is accordingly dismissed.

13. Trial Court record be sent back along with copy of this order. Revision file be consigned to record room.”

15. The Court finds no infirmity in the impugned order. The Petitioner is admittedly a signatory to the cheques issued to the Respondent for the discharge of Accused No. 1’s liability. He was serving as a full-time director of Accused No. 1 at the time of issuance of the cheques in question; and resigned from the company only subsequent to the date of the cheques. There are specific averments regarding the Petitioner’s role as the director of



Accused No. 1 in the complaint lodged by the Respondent. Therefore, there is indeed sufficient basis to proceed with the prosecution of the Petitioner under Section 138 of the NI Act.

16. Accordingly, the present petition is disposed of along with the pending application.

SANJEEV NARULA, J

MARCH 10, 2025/ab