

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

CRM-M-34836-2024 (O&M)

Reserved on : 01.03.2025

Date of Pronouncement : 13.05.2025

NARENDER PAL AND ANOTHER

.....PETITIONERS

VERSUS

M/S A.R.COMPANY

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Dinesh Arora, Advocate, for
for the Petitioners.

Mr. R.P. Dangi, Advocate and
Mr. Sagar Dangi, Advocate
for the Respondent.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 482 Cr.P.C. for quashing of criminal complaint no. NACT/862 dated 06.08.2020 titled as M/S A.R.Company vs SKS Nirman Vaanijay Pvt. Ltd and ors under section 138 of Negotiable Instruments Act read with section 141 of the Negotiable Instruments Act 1881(Annexure P-1) pending in the court of Judicial Magistrate 1st class, Rohtak alongwith all subsequent proceedings emanating there from qua the petitioners.

2. Before delving into the legal aspect of this case, the brief facts leading to filing of present petition are that M/s SKS Nirman Vaanijay Pvt Ltd, co-accused company, is a construction company engaged in the construction of Roads under the Govt tenders while the complainant company is in business of supplying construction material. The present petitioners are (accused no. 3 and 4) Directors

of the company who are not responsible for the conduct and day to day affairs of the company. Rather, both the petitioners by way of executing Special Power of Attorney(Annexure P-3) have appointed Mr. Kapoor Singh Ahlawat/co-accused as the authorised signatory for all purposes wherein he is the sole director responsible for day to day conduct of the business of the company.

3. The instant petition pertains to the fact that the accused company placed an order with the complainant company wherein the latter company demanded advanced blank cheques which were issued by the accused company with cheques bearing no. 175223, no. 175224, no. 175225 and no. 175226. However, the complainant company at a later stage failed to deliver the materials and without any intimation presented the above mentioned cheques in the bank for encashment. However, in such scenario where the complainant company failed to fulfil its promise, no liability enforceable were upon the accused company, much less upon the petitioners to honor their commitment therefore the accused company did not bother about the cheque as well as payment in the bank account to honour those cheques.

4. Counsel for the petitioners contends that although the petitioners were directors of the company but were not engaged in day to day activities or the conduct of the business of the company, rather they had authorised their co-accused Mr. Kapoor Singh Ahlawat as the authorised signatory who was responsible for the conduct of the business of the company therefore, the petitioners cannot be merely made liable for the legally enforceable liability only for the designation they hold as a Director. It is further contended that being a Director of the office does not ipso facto make the person vicariously liable for the acts of the company under section 141 of the Negotiable Instruments Act 1881.

5. It is vehemently contended that the no averment in the complaint has been made as to what role the petitioners being Directors of the company were playing in day to day affairs of the company. He further contends that the complainant company has misused the cheques by presenting the cheques without supplying the agreed upon material and without giving proper intimation about encashing the cheques.

6. It is strenuously argued that the complainant company filed a complaint (Annexure P-7) bearing no NACT/790/2020 for dishonour of two cheques(no. 175223 and 175224), the perusal of the same would reveal that a specific stand has been taken by the complainant company that co-accused of the petitioners namely, Mr. Kapoor Singh Ahlawat is responsible for day to day affairs of the company. It is thereafter in the greed of minting money and to mount extra pressure upon the company, the complainant company has arrayed the present petitioners as an accused in the instant complaint.

7. On the other hand, counsel for the respondent contends that the complainant company had supplied building material to the petitioner company to the tune of Rs. 1,38,97,203/- during the period from 12.03.2019 to 05.08.2019 and as a result the petitioner company made part payment amounting of Rs. 22,55,927/- only and withheld the outstanding balance amount of Rs. 1,16,41,276/- and later the said payment was made by issuing four cheques bearing no. 175223, no. 175224, no. 175225, no. 175226.

8. He further contends that, the above mentioned cheques when presented for encashment were bounced and returned back with remarks “funds insufficient” and despite repeated requests, the petitioner complainant failed to make the complainant which compelled the complainant company to file complaint u/s 138 of Negotiable Instruments Act 1881.

9. It is vehemently argued that vide Special Power of Attorney dated 12.07.2015, the petitioners had authorized Mr. Kapoor Singh Ahlawat, Managing Director to conduct the business of the company that “ And we hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our above Attorney pursuant to and in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us”. Therefore, now the petitioners cannot wither away from their responsibilities just by shifting the blame to Mr. Kapoor Singh Ahlawat.

10. It is also argued that the complainant company neither asked to give the blank cheques nor any blank cheques were given to the accused company, rather the company gave cheques against the physical supply of the material by complainant company after supply of the material.

11. Heard learned counsel for the parties at length.

12. The present case in hand pertains to quashing of complaint under section 138 of Negotiable Instruments Act, 1881 wherein the petitioner has been alleged to have defraud the respondent-company whereas it has been alleged by the respondent-company that the petitioner has clearly admitted the cheques in question to have been signed by him in discharge of his legal liability. Before going into the merits of the case, it is pertinent to have a look at the provisions of section 138 of Negotiable Instruments Act, 1881 which reads as follows:-

"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 provisions of this Act, be punished with imprisonment for 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, [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.*

13. Some of the ingredients , which emerge on perusal of section 138 of the Negotiable Instruments Act are as follows:-

- (i) Cheque is drawn by a person on an account maintained by him with a banker;*
- (ii) The cheque is drawn for payment of any amount of money to another person from out of that account for discharge, in whole or in part of any debt or other liability;*
- (iii) The cheque drawn is returned by the bank unpaid.*

14. Before proceeding further, it will be relevant to have a look on the provisions of section 141 of the Negotiable Instruments Act, 1881, which related to offences by company or a firm, which reads as follows:-

"141 Offences by companies.-

(1) If the person committing an offence was committed, under Section 138 is a company, every person who, at the time the 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 secretary or other officer of the company such director, manager, 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."

15. From the perusal of the above provisions and the record in hand, it is crystal clear that though by virtue of Special Power of Attorney dated 12.09.2015 in the name of co-accused Mr. Kapoor Singh Ahlawat, the petitioners have appointed him as the authorized signatory for all purposes, who is involved in day to day affairs of the company and is responsible for the conduct of the business of the company but a fair reading to the Special Power of Attorney dated 12.09.2015 would also make it evidently clear that merely by appointing the co-accused Mr.Kapoor Singh Ahlawat as an authorized signatory, the petitioners cannot shy away from its duties as Director of the company wherein the Special Power of Attorney itself states that all acts, deeds things done by the said Attorney in exercise of the powers conferred to him shall always be deemed to have been done by us. For better clarity, the relevant paragraph has been reproduced herein below:-

“AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our above said Attorney pursuant to and in exercise of the powers conferred by this special power of attorney and that all acts deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.”

16. Moreover it is a settled proposition of law that In cases under Section 138 of the Negotiable Instruments Act (NI Act), directors, even non-signatories, can be held vicariously liable if they were actively involved in the company's affairs and responsible for its day-to-day operations at the time of the dishonored cheque. Hon'ble Supreme Court of India delivered a crucial interpretation of vicarious liability under Section 141 of the Negotiable Instruments Act, 1881, (“NI Act”) in its judgment in **“Ashok Shewakramani & Ors. Vs. State Of Andhra Pradesh and Shanmuga Spinners Criminal Appeal 879 of 2023”** and observed that the most important averment which is required by Section 141 (1) of the NI Act is that the directors/persons accused **were in charge of** and **were responsible** for the conduct of the Company. The Hon'ble Supreme Court further observed 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 to be read conjunctively in view of the use of the word **“and”** in between. In these matters, the Hon'ble Supreme Court held that an individual could be held vicariously liable for an offense under Section 138 of the NI Act, solely if they fulfilled the dual criteria of being **“in charge of”** and **“responsible to the company for the conduct of its business”** at the precise time the alleged offense was committed.

17. In the instant case, this ratio of the Apex Court discussed herein above coupled with the fact that the Special Power of Attorney dated 12.09.2015



clearly states that anything done by the authorised signatory on behalf of the company would be deemed to have been done by all of us, meaning thereby, the petitioners by no stretch of imagination can shed their responsibilities for the act done on behalf of the company merely because they were not an authorised signatory for the day to day activities of the company.

18. As a sequel of the above discussion and the law laid down by the Apex Court in Ashok Shewakramani (supra) , this court does not find merit in the instant petition and therefore dismiss the same without any costs.

19. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

13.05.2025
anuradha (v)

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No