



In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-13917 of 2022 (O&M)

**Reserved On: 25.09.2025
Pronounced On: 01.10.2025**

Sonia Kapil

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.

Present: Mr. Anjaneya Mishra, Advocate
for the petitioner(s).

Mr. Arun Kumar Gujjar, Assistant Advocate General,
Haryana, for respondent No.1.

Mr. Mrigank Sharma, Advocate
for respondent No.2.

Surya Partap Singh, J.

1. The quashing of order dated 29.11.2018 passed by the learned Judicial Magistrate 1st Class, Sonapat, hereinafter being referred to as trial Court only, has been sought.

2. By virtue of above mentioned order in a complaint filed by the respondent No.2/complainant, hereinafter being referred to as the respondent No.2 only, for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881, hereinafter referred as "the NIA" only, the cognizance has been taken against the petitioner.

3. Since the petitioner has been summoned to face trial as an accused, she is aggrieved of the above mentioned order.

4. It has been contended by learned counsel for the petitioner that the respondent No.2 is a company which was having business dealing with respondent No.4-M/s Compact Lamps Private Limited, and that there was a dispute with regard to payment between the two companies. According to petitioner, the entire affairs of respondent No.4 are being managed by the husband of petitioner, i.e. respondent No.3, and that the respondent No.3 has nothing to do with the business or liability of respondent No.4.

5. According to petitioner, she has been mechanically arrayed as an accused in the complaint by the respondent No.2 along with her husband, and that all the affairs of business of respondent No.4 are being managed by the respondent No.3 only, and therefore, the summoning of petitioner as an accused is illegal. It has been pleaded by the petitioner that the learned trial Court in an arbitrary and erroneous manner has issued summons to each and every accused named in the complaint, without considering the fact that there is no specific allegations in the complaint against the petitioner. It has also been alleged by the petitioner that the learned trial Court has also ignored that the mandate of Section 138 of the NIA has not be complied with, and therefore, the complaint is *per se* not maintainable at least qua the petitioner.

6. In addition to above, it has also been alleged by the petitioner that very genesis and basis to initiate a criminal complaint under Section 138 of the NIA gets vitiated if the notice is defective, and that in the instant case, the learned trial Court has ignored the defects in the notice also, as in the notice, the role played by the petitioner has not been specified and elaborated. While alleging that the filing of complaint against the petitioner

is *void ab initio*, the petitioner has invoked the extraordinary jurisdiction of this Court.

7. The respondent No.2 has opposed the above mentioned petition and filed a reply, wherein it has been alleged that the present petition is nothing but an abuse of process of law, and that the issues raised by the petitioner in the present petition are the issues which involve the question of fact for which the evidence is to be led by the petitioner during the course of trial. While alleging that the grounds taken in the present petition are false, the respondent No.2 has sought for dismissal of present petition.

8. Heard.

9. It has been contended on behalf of petitioner that in order to sustain the complaint under Section 138 of the NIA, in a case wherein the borrower is a company, the complainant is supposed to plead that the person arrayed as an accused is responsible for the day-to-day work of the accused company, or that he is directly involved in the management of that company. According to learned counsel for the petitioner, the above mentioned necessary component is missing in the complaint in question, and thus, the prosecution of the petitioner is not sustainable.

10. Per contra, the learned counsel for respondent No.2 has argued that the petitioner has falsely pleaded that she has nothing to do with the day-to-day management and affairs of the respondent No.4-company. As per learned counsel for respondent No.2, in fact, the petitioner and the respondent No.3 are the husband and wife and they have created a smog screen by depicting that the petitioner is not involved in the management of the respondent No.4-company. According to learned counsel for respondent

No.2, in fact, two companies have been created by the petitioner and the respondent No.3, and that they are managing the affairs in such a manner that in one company, the petitioner is the Managing Partner and in another one, the respondent No.3.

11. In addition to above, it has also been argued by learned counsel for the respondent No.2 that this is a question of fact as to whether the petitioner is involved in the management and day-to-day affairs of the respondent No.4-company, and that such question can be determined on appreciation of evidence in the trial only. While pleading that the quashing petition is not maintainable, the learned counsel for the respondent No.2 has sought for dismissal of present petition.

12. The record has been perused carefully.

13. At the threshold of discussion, it is relevant to mention that in the present case, there is no dispute with regard to the fact that the petitioner is not a signatory to the cheque in question. In such eventuality, the burden lies upon the respondent No.2 to prove that the petitioner is responsible for the existing liability of respondent No.4-company.

14. In order to prove the above mentioned fact, the first and foremost duty of the respondent No.2 is to plead that the petitioner is involved in day-to-day management and other affairs of the respondent No.4-company.

15. Qua above mentioned aspect, the contents of legal notice served prior to filing of complainant, and also the contents of complaint, are very much relevant. A bare perusal of the above mentioned notice and the complaint shows that there is no recital, either in the notice or in the

complaint, that the petitioner has anything to do with the management or dealings of the respondent No.4-company. While dealing with similar situation, the Hon'ble Supreme Court of India in the case of *Pooja Ravinder Devidasani v. State of Maharashtra and Another (2014) 16 Supreme Court Cases 1* has observed that for an offence under Section 138 of the NIA committed by the company to make a director liable, there must be a specific averment against the director showing as to how and in what manner he/she was responsible for the conduct and business of the company. According to Hon'ble Apex Court, only if he or she was Incharge and was responsible to the company for the conduct of business, or if it is proved that the offence was committed with consent or connivance of, or was attributable to any negligence on the part of the Director concerned, he/she may be prosecuted. It has been further clarified by Hon'ble Apex Court that simply because a person is a Director of the company does not make him/her liable for an offence under the NIA.

16. If the factual matrix of the present case are analyzed in the light of the above mentioned law, propounded by the Hon'ble Supreme Court of India, it transpires that the instant case is squarely covered by the principles of law laid down in the above mentioned case.

17. While dealing with similar situation, it has been observed by the Hon'ble Supreme Court of India that simply because a person is designated as a Director it does not mean that he is responsible for the offence committed by the company under Section 138 of the NIA. In the case of *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another (2005) 8 Supreme Court Cases 89*, the Hon'ble Supreme Court of India has ruled that

a specific role and responsibility being performed by a person as a Director must be established in the complaint.

18. In the case of *National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another (2010) 3 Supreme Court Cases 330*, it has been observed that “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 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”.

19. In the above mentioned case, the Hon’ble Supreme Court of India has also observed that “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”.

20. The Hon’ble Supreme Court of India has further observed that “Vicarious liability on the part of a person must be pleaded and proved and not inferred”.

21. A similar question was also dealt with by the Hon’ble Supreme Court of India in the case of *N.K.Wahi V. Shekha Singh (2007)9 Supreme Court Cases 481* wherein Hon’ble Apex Court has observed that “to launch

a prosecution, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge, and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case, but still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”

22. In the recent past also a similar view has been taken by the Hon’ble Supreme Court of India in the case of *Kamalkishor Shrigopal Taparia v. India Ener-Gen Private Limited and Another [Special Leave Petition (Criminal) Nos. 4051-4054 of 2020, decided on 13.02.2025]*.

23. Taking into consideration the fact that factual matrix of the instant case is squarely covered by the principles of law laid down by the Hon’ble Supreme Court of India in the above mentioned cases, it is hereby held that in the present case when the respondent No.2 has failed to specifically allege that the petitioner was in any way responsible for the management or day-to-day affairs or the existing liability of the respondent No.4, her prosecution merely on the basis of being wife of other director, or herself being a Director of the company, is not sustainable. Thus, it is hereby held that the prosecution of the petitioner by virtue of the above mentioned complaint is nothing but an abuse of process of law.

24. With regard to parameters to be taken into consideration in a quashing petition, the Hon’ble Supreme Court of India in the case of *M/s*

Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others

2021 SCC Online SC 315 has laid down the following principles:-

- “i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code of investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty);
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- vii) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

- viii) Extraordinary and inherent powers of the Court do not counter an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- ix) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the Court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
- x) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The Court is not required to consider on merits whether or not the merits of the allegations made out a cognizable offence and the Court

has to permit the investigating agency/police to investigate the allegations in the FIR.”

25. As a sequel to observations in the foregoing paragraphs, once as per settled law, the prosecution of the petitioner with regard to commission of offence, committed by the respondent No.4, is defective and it amounts to misuse of process of law, there is need for exercise of extraordinary jurisdiction vested in this Court by virtue of Section 482 Cr.P.C.

26. Thus, in the exercise of above mentioned jurisdiction, the impugned order dated 29.11.2018, passed by the learned trial Court, is hereby set aside qua the petitioner, and the complaint qua petitioner is hereby quashed, hence, the present petition stands allowed, accordingly.

27. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Surya Partap Singh)
Judge

October 01, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No