



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Reserved on: 16.01.2025
Pronounced on: 15.02.2025

1. CRM-M-27027-2016 (O&M)
Kuljinder Singh ...Petitioner
Versus
Bhatana Alloys Pvt. Ltd. ...Respondent
2. CRM-M-1112-2017 (O&M)
Kuljinder Singh ...Petitioner
Versus
Bhatana Alloys Pvt. Ltd. ...Respondent
3. CRR-1081-2023 (O&M)
Bhatana Alloys Pvt. Ltd. ...Petitioner
Versus
Yadvinder Singh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mansur Ali, Advocate
for the petitioner(s) in CRM-M-27027-2016 &
CRM-M-1112-2017.

Mr. Alok Mittal, Advocate
for the respondent in CRM-M-27027-2016 &
CRM-M-1112-2017 and for the petitioner
in CRR-1081-2023.

Harpreet Singh Brar, J.

1. This common order shall dispose of all the abovementioned petitions as they arise from similar factual matrix. However, for the sake of brevity, the facts are taken from CRM-M-27027-2016.



CRM-M-27027-2016 (O&M) 2
& 02 connected cases

2. The present petition has been preferred under Section 482, Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of complaint No.9117 dated 11.12.2014 under Sections 138, 141 read with 142 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act') as well as summoning order dated 21.03.2015 (Annexure P-3) passed by the learned Judicial Magistrate Ist Class, Chandigarh.

3. Briefly, the facts, as alleged, are that petitioner, namely Kuljinder Singh and Ajit Singh are promoters and in charge of M/s Aakar India Developer Pvt. Ltd. The said company was in the business of iron and steel goods with the respondent. In order to settle the outstanding amount of Rs.17,04,157/-, a post dated cheque bearing no.161702 dated 15.04.2014 for Rs.14,00,000/- was issued in favour of the respondent. The said cheque was signed by the petitioner-Kuljinder Singh, being its Director/authorised signatory. On presentation for encashment, the same was dishonoured and returned vide memo dated 03.05.2014, with the remarks- 'account closed.' Thereafter, a legal notice dated 31.05.2014 was served on the accused. Since the accused failed to pay the amount within the stipulated time, the complaint (supra) was instituted.

4. Learned counsel for the petitioner(s)-accused *inter alia* contends that the petitioner-Kuljinder Singh was a Director and by virtue of it, an Authorised Signatory till he resigned on 25.06.2012. At the time of presentation of the cheque for encashment, the petitioner-Kuljinder Singh had resigned and respondent-Yadvinder Singh was the director. Respondent No.2 was well aware of the fact that Yadvinder Singh had taken over as Director,



CRM-M-27027-2016 (O&M) 3
& 02 connected cases

and as such, he cannot feign ignorance qua the same. Further still, the complaint was initially filed before learned Chief Metropolitan Magistrate (South), Saket Courts, New Delhi on 14.07.2014. However, the same was returned to respondent No.2-complainant as the said Court lacked territorial jurisdiction. Therefore, respondent No.2 ought to have sought condonation of delay before proceedings were initiated in complaint (*supra*) before learned Judicial Magistrate Ist Class, Chandigarh. Moreover, the summoning order dated 21.03.2015 has been passed in a mechanical manner and the petitioner has only been summoned for the reason of being the signatory of the disputed cheque. Further still, the petitioner had left the country on 31.05.2015 while the proclamation was issued against him on 03.11.2015. Subsequently, he was declared a proclaimed person vide order dated 10.02.2016. As such, since the petitioner was never served, the entire process stands vitiated.

5. *Per contra* learned counsel for the respondent submits that the petitioner was the Director/Authorised Person at the time of issuance of the disputed cheque, which duly bears his signature. In fact, the learned trial Court has erred in only summoning the petitioner in the complaint(*supra*) as Yadvinder Singh and Ajit Singh were also actively involved in day to day activities of the accused company. As such, by virtue of Section 141, NI Act, every person responsible for managing the affairs of the company on a daily basis will be vicariously liable. Reliance in this regard is placed on the judgment rendered by the Hon'ble Supreme Court in ***SMS Pharmaceuticals Ltd. vs. Neeta Bhalla and another (2005) 8 SCC 89.***



CRM-M-27027-2016 (O&M) 4
& 02 connected cases

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the disputed cheque was issued under the signature of the petitioner, who was the Director and the Authorised Signatory at the time. However, the petitioner had resigned from the said post on 25.06.2012 and Yadvinder Singh was appointed as his successor.

7. Section 141 of the NI Act reads as follows:

Section 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.” (emphasis added)

It is evident that the legislative intention behind the aforementioned provision was to create vicarious liability. It further clarifies that such liability would only be placed on all such persons who were responsible for conducting day to day business of the said company. A two Judge Bench of the Hon'ble Supreme Court in *S.P. Mani and Mohan Dairy vs. Dr. Snehlata Elangovan, 2022 SCC Online SC 1238* speaking through Justice J.B. Pardiwala, held as follows:

*“46. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. **But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention.** He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or Partner.*

47. Our final conclusions may be summarised as under:-

a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant



to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

*c.) Needless to say, the final judgement and order would depend on the evidence adduced. **Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners `qua? the firm.** This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely*



prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

*d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. **He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.**” (emphasis added)*

8. Further still, a two Judge Bench of the Hon’ble Supreme Court in ***K.K. Ahuja vs. V.K. Vora and another (2009) 10 SCC 48*** has categorically held that signature of a Director of the company would automatically attract liability under Section 141(2), NI Act. Speaking through Justice R.V. Raveendran, the following was observed:

“20. The position under section 141 of the Act can be summarised thus :

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

*(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. **The very fact that the dishonoured cheque was signed by him on behalf***



of the company, would give rise to responsibility under sub-section (2) of Section 141.

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(emphasis added)

9. However, while the petitioner was the Authorised Person to sign the disputed cheque on behalf of the accused, at the time of its issuance, he did not have any association with the company since his retirement on 25.06.2012. Respondent was also made aware of the fact that Yadvinder Singh will now be acting as the Director of the company, post the petitioner’s resignation. In spite of that, the petitioner was arraigned as an accused without highlighting how he was responsible for overseeing the encashment of the disputed cheque even after resignation from the company. A two Judge Bench of the Hon’ble Supreme Court in *DCM Financial Services Ltd. Vs. J.N. Sareen and another (2008) 3 SCC(Cri) 401*, speaking through Justice S.B. Sinha, the following was held:

*“20. The cheque in question was **admittedly a post dated one.** It was signed on 3rd April, 1995. It was presented only sometimes in June, 1998. In the meantime he had resigned from the directorship of the Company. The complaint petition was filed on or about 20th August, 1998. **Intimation about his resignation was given to the complainant in writing by the 1st respondent on several occasions. Appellant was, therefore, aware thereof.** Despite having the knowledge, the 1st respondent was impleaded one of the accused in the complaint as a Director Incharge of the affairs of the Company on the date of commission of the offence, which he was not. **If he was proceeded against as a signatory to the cheques, it should have been disclosed before the learned Judge as also the High Court so as to enable him to apply his mind in that behalf.** It was not done. Although, therefore, it may be that as an authorised signatory he will be deemed to be person incharge, in the facts and circumstances of the case, we are of the opinion that the said contention should not be*



*permitted to be raised for the first time before us. **A person who had resigned with the knowledge of the complainant in 1996 could not be a person incharge of the Company in 1998 when the cheque was dishonoured.** He had no say in the matter of seeing that the cheque is honoured. He could not ask the Company to pay the amount. He as a Director or otherwise could not have been made responsible for payment of the cheque on behalf of the Company or otherwise. (See also Shiv Kumar Poddar v. State (NCT of Delhi), (2007)3 SCC 693; Everest Advertising Pvt. Ltd. v. State (NCT of Delhi), 2007(2) RCR (Criminal) 575 : 2007(2) RCR (Civil) 738 : 2007(2) RAJ 412 : (2007)5 SCC 54 and Raghu Lakshminarayanan v. Fine Tubes, 2007(2) RCR (Criminal) 571 : 2007(2) RCR (Civil) 728 : 2007(2) RAJ 332 : (2007)5 SCC 103.*

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22. When post dated cheques are issued and the same are accepted, although it may be presumed that the money will be made available in the bank when the same is presented for encashment, but for that purpose, the harsh provision of constructive liability may not be available except when an appropriate case in that behalf is made out. (emphasis added)

Reliance can also be placed on the judgment rendered by the Hon'ble Supreme Court in ***Ashoke Mal Bafna vs. M/s. Upper India Steel Mfg. & Engg. Co. Ltd. 2018(14) SCC 202.***

10. In view of the discussion above, the aforementioned petitions are decided in the following manner:

1. The petitions bearing No. CRM-M-27027-2016 and CRM-M-1112-2017 are allowed and the complaint bearing No.9117 dated 11.12.2014 under Sections 138, 141 read with 142 of the Negotiable Instruments Act, 1881 as well as summoning order dated 21.03.2015 (Annexure P-3) passed by the learned Judicial Magistrate Ist Class, Chandigarh are quashed qua petitioner-Yadvinder Singh.



**CRM-M-27027-2016 (O&M)
& 02 connected cases**

10

2. As far as the petition bearing No. CRR-1081-2023 is concerned, it is clear that the operations of the accused-company were run by a close knit family as Yadvinder Singh, current director, and Ajit Singh are son and father. The complainant party was duly informed of the change in leadership after the resignation of Kuljinder Singh. A perusal of the summoning order dated 21.03.2015 (Annexure P-3) also indicates that only reason for summoning Kujinder Singh was that he was the signatory of the disputed cheque. However, that reasoning would not absolve Yadvinder Singh and Ajit Singh from all liability. In fact, all the accused also had a mutual open running account. Therefore, the summoning order dated 21.03.2015 (Annexure P-3) is set aside and the matter is remanded back to the learned trial Court, with a direction to consider the same afresh with respect to the liability of Yadvinder Singh and Ajit Singh, strictly in accordance with law.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

12. A photocopy of this order be placed on the file of other connected cases.

Reserved on : 16.01.2025
Pronounced on : 15.02.2025
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(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>