



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

304

Date of decision: April 01, 2025

**CRM-M-19391-2024 (O&M), CRM-M-19400-2024 (O&M),
 CRM-M-19447-2024 (O&M), CRM-M-19533-2024 (O&M),
 CRM-M-19592-2024 (O&M), CRM-M-19982-2024 (O&M),
 CRM-M-19907-2024 (O&M), CRM-M-19609-2024 (O&M),
 CRM-M-19696-2024 (O&M), CRM-M-19987-2024 (O&M),
 CRM-M-19987-2024 (O&M), CRM-M-19909-2024 (O&M),
 CRM-M-19997-2024 (O&M), CRM-M-19998-2024 (O&M),
 CRM-M-57585-2024 (O&M), CRM-M-57587-2024 (O&M),
 CRM-M-57589-2024 (O&M), CRM-M-57591-2024 (O&M),
 CRM-M-57593-2024 (O&M), CRM-M-57594-2024 (O&M),
 CRM-M-57595-2024 (O&M), CRM-M-57596-2024 (O&M),
 CRM-M-57597-2024 (O&M), CRM-M-57599-2024 (O&M),
 CRM-M-57774-2024 (O&M), CRM-M-57129-2024 (O&M),
 CRM-M-57487-2024 (O&M), CRM-M-57491-2024 (O&M),
 CRM-M-57496-2024 (O&M), CRM-M-57551-2024 (O&M),
 CRM-M-57571-2024 (O&M), CRM-M-57575-2024 (O&M),
 CRM-M-57578-2024 (O&M), CRM-M-57579-2024 (O&M),
 CRM-M-57580-2024 (O&M), CRM-M-57581-2024 (O&M),
 CRM-M-57582-2024 (O&M), CRM-M-60785-2024,
 CRM-M-57767-2024, CRM-M-62133-2024,
 CRM-M-62131-2024, CRM-M-62130-2024,
 CRM-M-62075-2024, CRM-M-62160-2024,
 CRM-M-62154-2024, CRM-M-62157-2024,
 CRM-M-62098-2024, CRM-M-62080-2024,
 CRM-M-62164-2024, CRM-M-62127-2024,
 CRM-M-62097-2024, CRM-M-62159-2024,
 CRM-M-62095-2024, CRM-M-62082-2024,
 CRM-M-62158-2024, CRM-M-62147-2024,
 CRM-M-62161-2024, CRM-M-62165-2024,
 CRM-M-62142-2024, CRM-M-62162-2024,
 CRM-M-62120-2024, CRM-M-62104-2024,
 CRM-M-60732-2024, CRM-M-60809-2024**

RAHUL SOOD

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rakesh Nehra, Senior Advocate
with Mr. Saransh Sabharwal, Advocate
for the petitioner.

Mr. Yuvraj Shandilya, AAG, Haryana.

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Mr. Shubham Kaushik, Advocate and
Mr. Mohit Sharma, Advocate
for respondent No.2 (in CRM-M-57129-2024,
CRM-M-57582-2024, CRM-M-62130-2024,
CRM-M-62104-2024).

Mr. Ankush Bharti, Advocate
for respondent No.3 (in CRM-M-62154-2024).

Mr. Harsh Vasu Gupta, Advocate
for respondent No.2 (in CRM-M-62159-2024
and CRM-M-62165).

Mr. Shantanu Bansal, Advocate
for respondent No.2 (in CRM-M-60732-2024).

MANJARI NEHRU KAUL, J. (ORAL)

1. Since these petitions arise from the same set of allegations and involve the same accused, and raise identical questions of law, they are being disposed of by this common order.
2. The instant petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of the complaints filed under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') as well as the summoning orders and all consequential proceedings, including the order declaring him a 'Proclaimed Offender'.
3. The primary contention of the petitioner is that he was merely an Independent, Non-Executive Director of M/s Amira Foods Private Limited (hereinafter referred to as 'the company') and had no role in the day-to-day functioning or financial affairs of the company.
4. It has been contended by the learned counsel for the petitioner that the petitioner was initially engaged by the company in his professional capacity for legal advisory services, since he is an Advocate by profession,

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and was subsequently appointed as an Independent Director on 30.09.2011. However, the petitioner tendered his resignation on 05.10.2015, which was accepted on 16.10.2015, as is evident from a perusal of form DIR-12 (Annexure P-6). It has been emphasized that the cheques in question were not issued by the petitioner but by the authorized signatory of the company. While drawing the attention of this Court to the complaints, annexed as Annexure P-1, it has been submitted that they clearly disclosed that the petitioner has merely been arrayed in the memo of parties without any substantive averments, let alone specific allegations, linking him to the alleged offence.

5. Relying on *SMS Pharmaceuticals Ltd. v. Neeta Bhalla & Anr., (2005) 8 SCC 89*, it has been further submitted that liability under Section 141 of the Act can only be fastened upon those, who were incharge of and responsible for the conduct of the business of the company, at the time the offence was committed. Mere association with the company in the capacity of a Director is insufficient. In the absence of specific allegations demonstrating how and in what manner the petitioner was responsible for the business of the company, it is argued by the learned counsel for the petitioner that the statutory requirements are not fulfilled.

6. It is further contended by the learned counsel for the petitioner that the majority of the cheques in question were issued after the petitioner had resigned from the company. Form DIR-11 (Annexure P-4) reflects that the petitioner's resignation took effect on 16.10.2015. For those few cheques that may have been issued during his tenure, it is submitted that the

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petitioner had no authority or control over financial decisions and was never a signatory. In support, learned counsel has placed reliance on ***Pooja Ravinder Devidasani Vs State of Maharashtra and others, 2014 (16) SCC 1***, wherein the Hon'ble Supreme Court held that in the absence of specific averments establishing the role of an Independent Director in the conduct of the business of the company, no liability under Sections 138 and 141 can be imposed.

7. It is also pointed out by the learned counsel for the petitioner that the petitioner was again requested to join the Board on 01.07.2016 solely to meet quorum requirements for a statutory meeting and he resigned once more on 01.09.2016 w.e.f. 30.09.2016. His rejoining, too, was in a limited, Non-Executive capacity without any involvement in financial matters. Form DIR-12 (Annexure P-8) supports this claim. It is reiterated by the learned counsel that at no point was the petitioner a signatory to the impugned cheques, nor is there any material suggesting his involvement in the financial management of the company.

8. In essence, the petitioner's case rests on the following key assertions: -

- i. He was an Independent, Non-Executive Director with no role in the day-to-day affairs or financial management of the company;
- ii. He was not a signatory to any of the cheques;
- iii. He had resigned from the company prior to the issuance of most of the cheques and during the period he was on the Board, he had no authority over finances;



- iv. The complaints are devoid of any specific allegations linking the petitioner to the alleged offence.
9. *Per contra*, learned counsel for the respondents submits that the question of whether the petitioner was responsible for the conduct of the company's business is a matter that can only be determined during trial and not at the stage of quashing. However, when a pointed query was put, learned counsel candidly admitted that the petitioner was an Independent Director and that the complaints do not contain any specific averments with regard to his role in the daily affairs or financial transactions of the company.
10. I have heard learned counsel for the parties and perusal the material placed on record.
11. At the outset, it would be apposite to reproduce Section 141 of the Act, which delineates the parameters attributing vicarious liability to individuals other than the drawer of the cheque:-

“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 subsection 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.

(ii) 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.”

12. In ***SMS Pharmaceuticals Ltd. v. Neeta Bhalla & Anr., (2005) 8 SCC 89***, the Hon’ble Supreme Court authoritatively interpreted Section 141 of the Act and laid down the essential pre-conditions for fastening liability on Directors of a company. The Court held:-

““20. It will be seen from the above provisions that Section 138 casts criminal liability punishable with imprisonment or fine or with both on a person who issues a cheque towards discharge of a debt or liability as a whole or in part and the cheque is dishonoured by the Bank on presentation. Section 141 extends such criminal liability in case of a company to every person who at the time of the offence, was incharge of, and was responsible for the conduct of the business of the company. By a deeming provision contained in Section 141 of the Act, such a person is vicariously liable to be held guilty for the offence under Section 138 and punished accordingly. Section 138 is the charging section creating criminal liability in case of dishonour of a cheque and its main ingredients are:

*i) Issuance of a cheque. ii) Presentation of the cheque
iii) Dishonour of the cheque iv) Service of statutory notice on the person sought to be made liable, and v) Non-compliance or non-payment in pursuance of the notice within 15 days of the receipt of the notice.”*



13. Applying the aforesaid principles to the present case, and in view of the admitted position that the petitioner was an Independent Director, coupled with the absence of any specific averments in the complaint regarding his role in the conduct of the business of the company or the issuance of the cheques, it is evident that the statutory requirement under Section 141 of the Act is not satisfied.

14. Furthermore, in ***Pooja Ravinder Devidasani (supra)***, the Hon'ble Supreme Court emphasized that Independent Directors, who are not involved in the day-to-day affairs of the company, cannot be held liable under Section 138 read with Section 141 of the Act in the absence of specific allegations of their participation of the business operations. It would be apposite to refer to the observations made by the Hon'ble Supreme Court in ***Pooja Ravinder Devidasani (supra)***: -

““17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company - M/S Elite International Pvt. Ltd. on 1st July, 2004 and had also executed a Letter of Guarantee on 19th January, 2005. The cheques in question were issued during April, 2008 to September, 2008. So far as the dishonor of Cheques is concerned, admittedly the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a nonexecutive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the Company but does not involve in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the Company, one who actively looks after the day-to-day activities of the Company and particularly responsible for the conduct of its business. Simply because a person is a Director of a Company, does not make him liable under the N.I. Act. Every person connected



with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, 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 for an offence under Section 141 of the N.I. Act. In National Small Industries Corporation (supra) this Court observed:

“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.

A Company may have a number of Directors and to make any or all the Directors as accused in a complaint merely 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 is not a sufficient or adequate fulfillment of the requirements under Section 141.””

15. More recently, the Hon'ble Supreme Court in ***Kamalkishor Shrigopal Taparia V/s India Ener-Gen Private Limited, 2025 INSC 223***, reiterated the settled position that vicarious liability under Section 141 of the Act must be clearly pleaded and substantiated with specific assertions in the complaint and held as under:-



“16. Upon perusal of the record and submissions of the parties, it is evident that the Appellant was neither a signatory to the dishonoured cheques nor was he actively involved in the financial decision-making of the company. Moreover, he resigned from the post of independent non-executive director on 03.05.2017, duly notified through Form DIR-11 and DIR-12 to the Registrar of Companies.

17. The complaints do not contain any specific averments detailing how the Appellant was responsible for the dishonoured cheques.

18. Petitioner’s role in the accused company was limited to that of an independent non-executive director, with no financial responsibilities or involvement in the day-to-day operations of the company. Furthermore, he was not responsible for the conduct of its business.

19. The legal precedents cited above, including Pooja Ravinder (supra), clearly hold that non-executive directors cannot be held liable under section 138 NI Act unless specific evidence proves their active involvement.”

16. In the present case, the complaints are silent *qua* any active role of the petitioner in the business of the company. The admitted position, as noted during course of arguments, is that the petitioner was merely an Independent Director, had resigned prior to the issuance of most cheques, and was not a signatory to any of them. Even for the limited period during which he rejoined the Board, there is no material brought forth or any material to suggest his involvement in the financial decisions of the company.

17. In view of the above, permitting the continuation of criminal proceedings against the petitioner would amount to an abuse of the process of law. The complaints, summoning orders, and subsequent proceedings, including the declaration of the petitioner as a ‘Proclaimed Offender’/‘Proclaimed Person’ in the criminal complaints in



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question, cannot be sustained in the absence of the foundational ingredients required under Section 141 of the Act.

18. In the facts and circumstances enumerated hereinabove, this Court deems it fit to allow the instant bunch of petitions; the complaints, summoning orders, and subsequent proceedings, including the declaration of the petitioner as a 'Proclaimed Offender'/'Proclaimed Person' in the criminal complaints in question, are quashed *qua* the petitioner only.

19. Accordingly, the present bunch of petitions stands allowed.

20. Photocopy of this order be placed on the files of the connected cases.

April 01, 2025
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*