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

CRM-M-43141-2022

Date of Reserve : 02.04.2025

Date of Pronouncement : 21.04.2025

Ajay Kumar Arora

... Petitioner

Versus

Srei Equipment Finance Ltd.

.. Respondent

CORAM : HON'BLE MR. JUSTICE H.S.GREWAL

Present:- Mr. D.C. Mittal, Advocate and
Mr. Ujwal Mittal, Advocate for the petitioner.

Mr. Pawan Attri, Advocate for the respondent.

H.S. Grewal, J.

This petition has been filed under Section 482 of Code of Criminal Procedure for quashing of impugned complaint No.10278 dated 22.09.2017 titled as 'Srei Equipment Finance Ltd. versus Jitender Singh and others'(Annexure P-5), pending before the Court of Judicial Magistrate First Class, Chandigarh and the impugned summoning order dated 23.01.2018 (Annexure P-6) along with all consequential proceedings arising therefrom.

2. Learned counsel for the petitioner contended that the petitioner is a qualified Company Secretary and he was associated as an independent Non-Executive Director by M/s Kudos Chemie Limited. The petitioner was a Non-Executive Director of the said Company and he had resigned from being Director of the Company due to some personal constraints by submitting



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resignation dated 19.07.2013, which was duly accepted by the said Company and information in this regard was submitted with the office of Registrar of Companies vide Service Request No.B81493272 dated 12.08.2013. The resignation of the petitioner had duly been accepted and updated on the website of Ministry of Corporate Affairs. A certified copy of Form 32 obtained from the office of Registrar of Companies, which was submitted by Kudos Chemie Ltd. communicating resignation of the petitioner and a copy of the resignation letter dated 19.07.2013 are annexed as Annexures P-1 & P-2.

3. The instant complaint under Sections 138, 141 of Negotiable Instruments Act, 1881 (for short, "NI Act") read with Section 420 IPC, was filed on the allegation that a cheque bearing No.570933 dated 15.05.2017, for a sum of Rs.4 lacs drawn on Punjab National Bank in favour of the complainant was issued by the accused and had been returned unpaid for want of sufficient funds in the account of drawer of cheque vide Memo dated 04.08.2017. The complaint was filed on 18.09.2017.

4. It is submitted that the petitioner had already resigned from the company as Director at the relevant time and had not signed the aforesaid cheque. Moreover, the company has not been impleaded as a party in the complaint. In support of his submissions, learned counsel for the petitioner has relied upon the judgments of Hon'ble the Supreme Court in the cases of **National Small Industries Corporation Ltd. versus Harmeet Singh Paintal and another, 2010(2) Civil Court Cases 0115, Pooja Ravinder Devidasani Vs. State of Maharashtra and another, 2015(1) R.C.R. (Criminal) 271, and**



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the judgment of this Court in the case of **Amar Jeet Kalra versus Deepak Golcha**, bearing CRM-M-8989-2015, decided on 30.11.2017 (Annexure P-9).

5. On the other hand, learned counsel for the respondent contended that the summoning order has been passed by learned Magistrate and the remedy by way of revision before the Sessions Court is available to the present petitioner and as such, the present petition under Section 482 Cr.P.C. is not maintainable.

6. I have heard learned counsel for the parties and have carefully gone through the material available on record.

7. The brief facts of the case are that a complaint under Sections 138, 141 of NI Act, was filed on the allegation that a cheque bearing No. 570933 dated 15.05.2017, for a sum of Rs.4 lacs had been dishonoured on 04.08.2017 for 'insufficient funds'. It is not disputed that the petitioner was working as Non-Executive Director of M/s Kudos Chemie Limited till 19.07.2013 whereon he resigned from the company. The resignation of the petitioner was accepted much prior to the issuance of the aforesaid cheque. The petitioner is also not stated to be the signatory of the cheque. Moreover, the company has not been impleaded as a party in the complaint.

8. Hon'ble the Supreme Court in the case of **National Small Industries Corporation Ltd. versus Harmeet Singh Paintal and another(supra)** had held as under:-

"From the above discussion, the following principles emerge :

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the



criminal liability, there is no presumption that every Director knows about the transaction.

(ii) [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.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the [Companies Act, 1956](#) only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) The person sought to be made liable should be in-charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”

9. Similarly, in the case of **Pooja Ravinder Devidasani Vs. State of Maharashtra and another(supra)**, Hon’ble the Supreme Court had held as under:-

“27. Unfortunately, the High Court did not deal the issue in a proper perspective and committed error in dismissing the writ



petitions by holding that in the Complaints filed by the Respondent No. 2, specific averments were made against the appellant. But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the appellant in the commission of offence. It is settled law that to attract a case under [Section 141](#) of the N.I. Act a specific role must have been played by a Director of the Company for fastening vicarious liability. But in this case, the appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged.

28. In the entire complaint, neither the role of the appellant in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained. From the record it appears that the trade finance facility was extended by the Respondent No. 2 to the default Company during the period from 13th April, 2008 to 14th October, 2008, against which the Cheques were issued by the Company which stood dishonored. Much before that on 17th December, 2005 the appellant resigned from the Board of Directors. Hence, we have no hesitation to hold that continuation of the criminal proceedings against the appellant under [Section 138](#) read with [Section 141](#) of the N.I. Act is a pure abuse of process of law and it has to be interdicted at the threshold.”

10. A Coordinate Bench of this Court in the case of **Amar Jeet Kalra versus Deepak Golcha**(supra) had quashed the proceedings against the petitioner therein by relying upon the provisions of Sections 138 and 141 of NI



Act wherein it has been specified that a Director can be held responsible for the conduct of the business of the Company, but in the instant case, the facts are totally otherwise because the petitioner was not the Director of the Company on the date of issuance of cheque in question, rather he had resigned long back, which was duly accepted. More so, the petitioner is not signatory to the cheque. The continuation of proceedings against such a person is certainly a miscarriage of justice.

11. As per provisions of Sections 138 and 141 of the Act, a Director can be held liable on the principle of 'Vicarious Liability', but there must be specific averments against the said Director showing as to how and in what manner, he was responsible for the conduct of the business of the Company, but in the case in hand, the facts are totally different because the petitioner was not the Director of the Company on the date of issuance of cheque in question, rather he had resigned long back, which was duly accepted. More so, the petitioner is not signatory to the cheque. The continuation of proceedings against such a person is certainly a miscarriage of justice and the Court is to exercise the power in such like cases. Such a view was taken by Hon'ble the Supreme Court in case **Harshendra Kumar D. Vs. Rebatilata Koley etc., 2011(3) SCC 351** and in **National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and another (supra)**, wherein Hon'ble the Supreme Court was of the view that if a cheque issued by a company and plea taken that one of the Directors had resigned before the date of issuance of cheque and his resignation was duly accepted and notified, such person cannot be made accountable and the liability cannot be fastened upon him.

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12. In view of the above, the present petition is allowed and the impugned complaint No.10278 dated 22.09.2017 titled as 'Srei Equipment Finance Ltd. versus Jitender Singh and others'(Annexure P-5) and the impugned summoning order dated 23.01.2018 (Annexure P-6) and all subsequent proceedings arising therefrom are set-aside qua the present petitioner only.

(H.S.GREWAL)
JUDGE

21.04.2025
A.Kaundal

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