IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MMO No. 1317 of 2024
Date of Decision: 05.08.2026

Soham Sarkar ...Petitioner

Versus

Yog Raj & another …Respondent

Coram:
The Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?[1] Yes.

For the Petitioner: Mr. Jyotirmay Bhatt, Advocate.

For the Respondent: Mr. Munish Datwalia and Mr. Ram Kumar, Advocate, for respondent No.1.

Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for the respondent-State

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Sandeep Sharma, J. (Oral)

By way of instant petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, petitioner herein, while praying to set aside order dated 19th September, 2019, passed by learned Additional Chief Judicial Magistrate, Sundernagar, District Mandi, Himachal Pradesh, has also prayed for quashing of criminal complaint bearing No. 330 of 2019 filed at the behest of respondent-complainant under Section 138 Negotiable Instruments Act***(hereinafter referred to as the 'Act')***

[1] Whether reporters of the local papers may be allowed to see the judgment?

2. Precisely, the facts of the case, as emerge from the pleadings adduced on record by the respective parties, are that respondent No.1 **(hereinafter referred to as the 'complainant')** instituted a complaint under Section 138 of Negotiable Instruments Act in the Court of learned Additional Chief Judicial Magistrate, Sundernagar, District Mandi, Himachal Pradesh, alleging therein that he had invested amount in M/s Minance Technology Private Limted Company in high frequency margin trading in the month of April, 2018. He alleged that he had invested sum of Rs. 25, 00,000/- by way of three separate online transactions. Two transactions of Rs. 10,00,000/- each were done on 3rd/ 4th April, 2018 and third transaction of Rs. 5,00,000/- was done on 5th April, 2018 from the account of the complainant maintained in Kotak Mahindra Bank Branch, Jayanagar, Bangalore. Complainant subsequently asked accused No. 2, Sh. Anurag Bhatia, Director of M/s Minance Technologies Private Limited, to refund the amount and to issue a certificate as to what amount is payable to the complainant by the company. Pursuant to aforesaid request, above named accused Mr. Anurag Bhatia issued a certificate dated 12.07.2019 on behalf of M/s Minance Technologies Private Limited, in which total amount payable to complainant was reflected as Rs. 30,94,495/-. Above named accused- company issued three post-dated cheques bearing No. 000024, dated

17.07.2019, amounting to Rs. 9,28,000, cheque No. 000026, dated 17.09.2019, amounting to Rs. 12,37,000/-, and cheque No. 000025, dated 23.09.2019, amounting to Rs. 9,28,000/-. Cheques, as detailed hereinabove, on their presentation to the bank concerned were dishonoured on account of "insufficient funds" in the bank account of the accused-company. In the aforesaid background, complainant Yog Raj instituted complaint under Section 138 of the Act in the competent Court of law, arraying company, as detailed hereinabove, through petitioner, who remained Director of the company for some time. On account of his being arraigned as an accused, petitioner has approached this Court in the instant proceedings, praying therein to quash and set aside the summoning order as well as complaint on the ground that accused company could not have been sued through him, rather it was required to be sued through Accused No. 2 Anurag Bhatia, who besides being Director, was also authorized signatory of the accused company.

3. It is averred in the petition that petitioner was introduced as non-executive Director on 31.07.2019 and he resigned on 13.09.2019, meaning thereby he only remained on the post of Director for 48 days. It is also averred in the petition that cheques, which came to be dishonoured, were issued by Accused No. 2, Anurag Bhatia, being Director-cum-authorized signatory,

and when such cheques were issued, petitioner was not Director of the company. It is also averred in the petition that there is no specific mention, if any, with regard to day-to-day role, if any, played by the petitioner in managing the company's affairs.

4. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Jyotirmay Bhatt, learned counsel for the petitioner, is that Court below, while issuing process against the petitioner, failed to take note of the fact that cheques allegedly issued by accused No. 2, Anurag Bhatia, in favour of the complainant towards discharge of enforceable liability, were never signed by him in the capacity of Director. Mr. Bhatt further submitted that though it is not in dispute that petitioner herein was director of the company at the time of dishonouring of the cheques, but neither he had signed the cheques, nor he was Director at the time of issuance of the cheques and as such, there was no occasion, if any, to arraign him as an accused in the complaint. Mr. Bhatt, further submitted that Court concerned, while issuing process, ignored aforesaid important aspect of the matter, as a result of thereof, petitioner, who had no role, if any, in the issuance of the cheques, is being made to face trial, which, in all probabilities, is bound to fail qua him.

5. While making this Court peruse the contents of the complaint filed by the respondent/complainant, Mr. Bhatt further argued that there is no averment with regard to the role, if any, played by the petitioner, being Director of the company, in day-to-day management of the company. He submitted that merely being a Director of the company would not render petitioner responsible or liable for the act, if any, of the company, rather, to enforce liability on the Director of the company, complainant ought to have specifically pleaded in the complaint factum with regard to the role, if any, played by him or her, while taking investments, if any, made by the complainant, for which subsequently cheques came to be issued by accused No. 2, Anurag Bhatia, who, besides being Director of the company, was the authorized signatory. Mr. Bhatt, submitted that there is no whisper in the complaint with regard to connivance or the intention of the petitioner to receive investment on behalf of the accused-company, for which subsequently one of the Directors issued a cheque on behalf of the accused-company.

6. To substantiate aforesaid submissions, Mr. Bhatt placed reliance upon following judgments: 1. **Susela Padmavathy Amma v. M/ Bharti Airtel Limited, 2024 SCC OnLine SC 311, 2. Sunita Palita v. Panchami Stone Quarry, (2022) 10 SCC 152, 3. Alka Khandu Avhad v. Amar Syamprasad Mishra and Anr., (2021) 4 SCC 675.**

7. To the contrary, Mr. Munish Datwalia, learned counsel representing the respondent/complainant, while supporting the impugned order, whereby summons came to be issued to the petitioner, vehemently argued that once it is not in dispute that at the time of dishonouring of the cheques, petitioner was one of the Director of the company, petitioner cannot be permitted to state that he, being a non-executive Director, had no responsibility or control over day-to-day affairs of the accused-company. He further submitted that otherwise also, question with regard to liability, if any, of the petitioner to pay the amount on behalf of company can be decided in a full-fledged trial. He further submitted that since cheques in question, though were not signed by the petitioner, but were issued by accused No. 2 on behalf of company, petitioner herein, being Director of the company, is also liable to be prosecuted. He further submitted that though there are specific averments with regard to liability and day-to-day role played by petitioner herein, being Director of the company, but even if it is presumed that there are no sufficient pleadings, petitioner cannot dispute that respondent/complainant before initiating proceedings under Section 138 of the Act, served him with legal notice, specifically stating therein his liability to pay the amount on account of investment made by the complainant. He submitted that since petitioner never replied to the notice nor made payment, averments

contained in notice are deemed to be admitted. If it is so, petitioner herein otherwise cannot be permitted to escape liability on the ground that there are no sufficient pleadings in the complaint with regard to day-to-day role of petitioner in management of the company. He further submitted that effect of non-signing of cheques by petitioner towards liability of company to pay amount to respondent/complainant can only be ascertained by learned trial Court after evaluating pleadings and evidence adduced on record by the respective parties, in case full-fledged trial is permitted to be conducted. He further submitted that even at this stage, no document has been produced on record by the petitioner to establish the fact that he had no liability, if any, towards respondent/complainant, for his having made investment in the company.

8. I have heard learned counsel for the parties and gone through the record carefully.

9. Before ascertaining the genuineness and correctness of the submissions and counter submissions having been made by the learned counsel for the parties vis-à-vis prayer made in the instant petition, this Court deems it necessary to discuss/elaborate the scope and competence of this Court to quash the criminal

proceedings while exercising power under Section 482 of Cr.P.C.,(now Section 528 of BNSS).

10. Hon'ble Apex Court in judgment titled ***State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335*** has laid down several principles, which govern the exercise of jurisdiction of High Court under Section 482 Cr.P.C. (now Section 528 of BNSS). Before pronouncement of aforesaid judgment rendered by the Hon'ble Apex Court, a three-Judge Bench of Hon'ble Court in ***State of Karnataka vs. L. Muniswamy and others, 1977 (2) SCC 699***, held that the High Court is entitled to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. Relevant para is being reproduced herein below:-

> "7....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the

> prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the 511 inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

11. Subsequently, Hon'ble Apex Court in **Bhajan Lal (supra),** has elaborately considered the scope and ambit of Section 482 Cr.P.C. Subsequently, Hon'ble Apex Court in ***Vineet Kumar and Ors. v. State of U.P. and Anr.***, while considering the scope of interference under Sections 397 Cr.PC and 482 Cr.P.C, (now Sections 438 and 528 of BNSS). by the High Courts, has held that High Court is entitled to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to quash. Hon'ble Apex Court has further held that the saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. a court proceeding ought not to be permitted to degenerate into a weapon of harassment or

persecution. In the aforesaid case, the Hon'ble Apex Court taking note of seven categories, where power can be exercised under Section 482 Cr.PC, as enumerated in **Bhajan Lal** (supra), i.e. where a criminal proceeding is manifestly attended with malafides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, quashed the proceedings.

12. Hon'ble Apex Court in ***Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293,*** while drawing strength from its earlier judgment titled as ***Rajiv Thapar and Ors v. Madan Lal Kapoor, (2013) 3 SCC 330***, has reiterated that High Court has inherent power under Section 482 Cr.PC(now Section 528 of BNSS), to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charge, but such power must always be used with caution, care and circumspection. While invoking its inherent jurisdiction under Section 482 of the Cr.P.C. (now Section 528 of BNSS)., the High Court has to be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts and the material adduced on record itself overrules the veracity of the allegations contained

in the accusations levelled by the prosecution/complainant. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 Cr.P.C. (now Section 528 of BNSS) to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. In the aforesaid judgment titled **Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293,** the Hon'ble Apex Court has held as under:-

> "22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C.") has been dealt with by this Court in Rajiv Thapar & Ors. vs. Madan Lal Kapoor wherein this Court inter alia held as under: (2013) 3 SCC 330, paras 29-30) 29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the

prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. 30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power High Court of H.P. vested in the High Court under Section 482 of the Cr.P.C.:-

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

13. Hon'ble Apex Court in Asmathunnisa v. State of A.P. (2011) 11 SCC 259, has held as under:

"12. This Court, in a number of cases, has laid down the scope and ambit of the High Court's power under section 482 of the Code of Criminal Procedure. Inherent power under section 482

Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified 9 by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

13. The law has been crystallized more than half a century ago in the case of R.P. Kapur v. State of Punjab AIR 1960 SC 866 wherein this Court has summarized some categories of cases where inherent power can and should be exercised to quash the proceedings. This Court summarized the following three broad categories where the High Court would be justified in exercise of its powers under section 482:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

" 14.In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736, according to the court, the process against the accused can be quashed or set aside :

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no 10 prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the d iscretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like".

15. This court in State of Karnataka v. L. Muniswamy & Others (1977) 2 SCC 699, observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice requires that the proceedings ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the court

> observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the Legislature. This case has been followed in a large number of subsequent cases of this court and other courts."

14. Hon'ble Apex Court in **Asmathunnisa (supra)** has categorically held that where discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like, High Court would be justified in exercise of its powers under S. 482 Cr.P.C. (now Section 528 of BNSS).

15. From the bare perusal of aforesaid exposition of law, it is quite apparent that while exercising its inherent power under Section 482 Cr.P.C.,(now Section 528 of BNSS), High Court can proceed to quash the proceedings, if it comes to the conclusion that allowing the proceedings to continue would be an abuse of process of the law.

16. Now being guided by the aforesaid law laid down by the Hon'ble Apex Court from time to time, this court would make an endeavour to find out "whether the case at hand is a fit case to exericise power under Section 482 Cr.P.C (now Section 528 of BNSS) to quash the summoning order dated 19th September,

2019, passed by learned Additional Chief Judicial Magistrate, Sundernagar, District Mandi, Himachal Pradesh as well as criminal complaint bearing No. 330 of 2019, titled **Yog Raj versus The Minance Technologies Private Limited?.**

17. Admittedly, in the case at hand, petitioner was not Director of the company at the time of issuance of cheques. Cheques in question were actually issued by another Director, namely Anurag Bhatia, who besides being Director of accused company, was also authorized signatory of the accused-company. It is also not in dispute that petitioner was non-executive Director of the accused-company, and he, after his having joined the company as Director, resigned from Directorship within a period of 48 days.

18. Interestingly, in the case at hand, complainant chose to array accused company through petitioner, despite knowing that cheques in question were actually issued by Anurag Bhatia, Director-cum-authorized signatory. Though Mr. Anurag Bhatia, Director-cum-authorized signatory, has been arrayed as an accused, but company has been sued through present petitioner, who admittedly had no say in the affairs of the company on account of his being non-Executive Director.

19. Leaving everything aside, this Court finds that there is no whisper in the complaint with regard to day-to-day role of the

petitioner being Director of the accused company. There are no pleadings that petitioner, being Director of the company, had any knowledge with regard to investments made by the complainant as well as responsibility of the accused company to return the amount. There is no averment that cheques, which ultimately became subject matter of proceedings under Section 138 of the Act, were issued with the prior knowledge and consent of the petitioner, rather, it is admitted case of the complainant that amount was invested by the complainant on the persuasion of Anurag Bhatia, who otherwise being Director-cum-authorized signatory, was overall in-charge of the accused company.

20. At this stage, it would be apt to take note of judgment passed by Hon'ble Apex Court in case titled ***Susela Padmavathy Amma v. M/ Bharti Airtel Limited, 2024 SCC OnLine SC 311,*** relevant paras whereof read as under:

> "21. It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-today functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

22. In the case of *Pooja Ravinder Devidasani v. State of Maharashtra* this Court observed thus:

"17. …… 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 NI Act. In National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed : (SCC p. 336, paras 13-14)

"13. 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.

14. 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 fulfilment of the requirements under Section 141."

(emphasis in original)

18. In Girdhari Lal Gupta v. D.H. Mehta [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162], this Court observed that a person "in charge of a business" means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see State of Karnataka v. Pratap Chand [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act,

there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company. 21. In Sabitha Ramamurthy v. R.B.S. Channabasavaradhya [Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621], it was held by this Court that : (SCC pp. 584-85, para 7)

"7. … it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company."

(emphasis supplied)

By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act."

23. It could thus clearly be seen that this Court has held that merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not ipso facto make the director vicariously liable.

24. A similar view has previously been taken by this Court in the case of K.K. Ahuja v. V.K. Vora.

25. In the case of State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi v. Rajiv Khurana, this Court reiterated the position thus:

"17. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of the company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasis that in the case of non Director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable."

26. In the case of Ashoke Mal Bafna (supra), this Court observed thus:

"9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action. (See Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675].)

10. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company."

27. A similar view has been taken by this Court in the case of Lalankumar Singh v. State of Maharashtra to which one of us (B.R. Gavai, J.) was a party."

21. Reliance is also placed upon judgment rendered by the Hon'ble Apex Court in ***Sunita Palita v. Panchami Stone Quarry, (2022) 10 SCC 152,*** relevant paras whereof read as under:

"28. In Pooja Ravinder Devidasani v. State of Maharashtra [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] this Court held as under : (SCC pp. 9-10, paras 17-20)

"17. … Non-executive Director is no doubt a custodian of the governance of the company but is not involved 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 is 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 NI 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 NI Act. InNational Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed : (SCC p. 336, paras 13-14)

'13. 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.

14. 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 fulfilment of the requirements under Section 141.'

18. In Girdhari Lal Gupta v. D.H. Mehta [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189 : 1971 SCC (Cri) 279] , this Court observed that a person "in charge of a business" means that the person should be in overall control of the dayto-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see State of Karnataka v. Pratap Chand [State of Karnataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company."

(emphasis in original and supplied)

29. As held in K.K. Ahuja v. V.K. Vora [K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181] when the accused is the Managing Director or a Joint Managing Director of a company, 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. This is because the prefix “Managing” to the word “Director” makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under subsection (2) of Section 141 of the NI Act by averring in the complaint, their position and duties in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

36. The High Court also rightly held that the Managing Director or Joint Managing Director would admittedly be in charge of the company and responsible to the company for the conduct of its business by virtue of the office they hold as Managing Director or Joint Manging Director. These persons are in charge of and responsible for the conduct of the business of the company and they get covered under Section 141 of the NI Act. A signatory of a cheque is clearly liable under Sections 138/141 of the NI Act.

37. The High Court, however, failed to appreciate that none of these appellants were Managing Director or Joint Managing Director of the accused Company. Nor were they signatories of the cheque which was dishonoured.

41. A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable under those provisions. As held by this Court in, inter alia, S.M.S. Pharmaceuticals [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , the liability under Sections 138/141 of the NI Act arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, and not on the basis of merely holding a designation or office in a company. It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development), etc. into criminal proceedings under the NI Act, only because of their designation.

42. Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] . The materials on record clearly show that these appellants were independent, nonexecutive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra

> [Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378] a non-executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-today running of the accused Company. Moreover, when a complaint is

22. Hon'ble Apex Court in **Alka Khandu Avhad v. Amar Syamprasad Mishra and Anr., (2021) 4 SCC 675**, has held as under:

> "8. We have heard the learned counsel appearing on behalf of the respective parties at length, considered material on record and also considered the averments and allegations in the complaint. It emerges from the record that the dishonoured cheque was issued by original Accused 1 husband of the appellant. It was drawn from the bank account of original Accused 1. The dishonoured cheque was signed by original Accused 1. Therefore, the dishonoured cheque was signed by original Accused 1 and it was drawn on the bank account of original Accused 1. The appellant herein-original Accused 2 is neither the signatory to the cheque nor the dishonoured cheque was drawn from her bank account. That the account in question was not a joint account. In the light of the aforesaid facts, it is required to be considered whether the appellant herein-original Accused 2 can be prosecuted for the offence punishable under Section 138 read with Section 141 of the NI Act?
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> 10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque."

23. Reliance is also placed upon judgment passed by the ***High Court of Judicature at Bombay titled Aarti Shailesh Shah***

v. Satish Vasant Dharukkar and Anr. in Criminal Application No. 747 of 2023.

24. Careful perusal of aforesaid judgments, if read in its entirety, clearly suggests that joint account holder cannot be prosecuted unless cheque has been signed by each person, who is joint account holder. It is only the drawer of the cheque who can be made as an accused in any proceedings under Section 138 of the Act. The words 'such person' employed in Section 138 of the Act depicts the legislative intent to restrict the liability upon the person who has issued/signed the cheque.

25. Similarly, this Court finds no force in the submission of learned counsel for the respondent that statutory notice was served upon the petitioner regarding dishonour of cheques in question, who in turn, was under obligation to give an appropriate reply clearing his stance that he has no role to play in the affairs of the company or partnership concern for the reason that aforesaid aspects of the matter can only be dealt with by the learned trial court in the totality of evidence adduced on record by the respective parties. Learned counsel for the respondent further submitted that if the Directors, on whom the said notice is alleged to have been served, keeps quiet and does not say anything in the reply, then complainant has all the reason to believe that what he

stated in the notice has been accepted by the noticee, but this court is not impressed with the aforesaid submission of learned counsel for the respondent because it is nowhere stated in the pleadings that the petitioner was in charge of the day-to-day activities of the company and said offence was committed with the consent, connivance or knowledge of the petitioner. Moreover, when petitioner has not signed and issued the cheque, it is not understood that how he can be prosecuted under the aforesaid provisions of law.

26. Judgments passed by the Hon'ble Apex Court in **P. Rajarathinam and S.P. Mani and Mohan Dairy cases supra**, which have been relied upon by the learned counsel for the respondent, may not be of much help as far as case of the respondent is concerned. Findings and observations given in the aforesaid judgments are in context of appreciation of pleadings as well as evidence adduced on record by the complainant, in afore cases for holding accused guilty of his having committed offence punishable under Section 138 of the Act. Observation made by the Hon'ble Apex Court, that averments contained in the notice issued prior to initiation of proceedings under Section 138 of the Act are also relevant to ascertain liability, if any, of the accused pursuant to his having issued cheque towards discharge of lawful liability, cannot be made applicable in the instant case to conclude that

there are sufficient pleadings in the complaint on behalf of the respondent-complainant that petitioner herein is/was liable to discharge his liability being Director of the accused-company. Since it is not in dispute that cheques in question were issued by accused No.2, Anurag Bhatia and there are no pleadings with regard to knowledge and connivance, if any, of the petitioner qua issuance of cheques, if any, towards discharge of lawful liability of the accused-company, averments made in this regard in notice may not be sufficient to dissuade this court from accepting contention raised by the petitioner that no case is made out against him under Section 138 of the Act from the bare perusal of the complaint. Moreover, if afore judgment is read in their entirety, they support the case of the petitioner in as much as findings returned by the Hon'ble Apex Court that till the time specific pleadings are not made in the complaint with regard to role, if any, played by the petitioner being director of the company in the day to day affairs of the company with his knowledge or connivance, he cannot be prosecuted under Section 138 of the Act.

27. Having scanned the entire evidence, this Court has no hesitation to conclude that since petitioner, being non-executive Director of the company, had not signed and issued the cheques in question, coupled with the fact that there are no pleadings in the complaint with regard to role played by the petitioner in day-to-day

affairs of the company, no case much less under the aforesaid provisions of law is made against the petitioner.

28. Since for the discussion made herein above, case of the prosecution is likely to fail in any eventuality, this Court finds the case at hand to be fit for exercising power under Section 482 Cr.P.C (now Section 528 of BNSS) to quash the summoning order as well as consequent proceedings. Trial, if any, pursuant to aforesaid summoning order, if permitted to continue, would unnecessarily subject the petitioner to ordeal of the protracted trial, which is bound to culminate in acquittal of the accused.

29. Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court (supra), present petition is allowed and summoning order dated 19th September, 2019, passed by learned Additional Chief Judicial Magistrate, Sundernagar, District Mandi, Himachal Pradesh as well as consequent proceedings i.e. criminal complaint No. 330 of 2019, titled Yog Raj versus The Minance Technologies Private Limited and others, are quashed and set-aside qua the petitioner.

30. Needless to say, respondent/complainant is always at liberty to file appropriate application before the Court below to seek amendment of parties/ pleadings and sue the company through

accused No.2, Anurag Bhatia, who is otherwise one of the accused in the complaint.

The petition stands disposed of in the aforesaid terms, alongwith all pending applications.

(Sandeep Sharma)
Judge

August 05, 2026
(shankar)