



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 9556/2022

Pankaj Anand Mudholkar S/o Shri Anand Mudholkar, Aged About 59 Years, 201, Serne Apartments, Near Shalby Hospital, Pahladnagar, Ahmedabad 380015.

-----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Ghanshyamdas Bajaj, Son Of Motilal Bajaj, Resident Of Khari Bajar, Gangapur City, Dist. Sawai Madhopur (Rajasthan).

-----Respondents

Connected With

S.B. Criminal Miscellaneous (Petition) No. 3018/2023

Neelu Sanjay Gupta W/o Late Shri Sanjay Gupta, Aged About 58 Years, R/o B-202, Dhananjay Tower, Nr. Shamal Row House, Satellite Road, Ahmedabad-380015.

-----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Ghanshyamdas Bajaj Son Of Motilal Bajaj, Resident Of Khari Bajar, Gangapur City, Dist. Sawaimadhapur, Rajasthan.

-----Respondents

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|--------------------|---|--|
| For Petitioner(s) | : | Mr. Satish Kumar Khandal Mr. Sandeep Bansawal |
| For Respondent(s) | : | Mr. Chandragupt Chopra, PP |
| For Complainant(s) | : | Mr. Rajneesh Gupta |

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

20/04/2024

1. These misc. petitions under Section 482 Cr.P.C. have been preferred by the petitioners herein for quashing of proceedings of



complaint No.10057/14, filed under Section 138 of the Negotiable Instrument Act, 1881 (in short the 'NI Act') by respondent No.2, before learned Judicial Magistrate, No.2, Gangapur City, Sawaimadhopur.

2. It is the case of the petitioners and so contended by their counsel that the proceedings have been initiated by respondent No. 2 against the petitioners before the learned Trial Magistrate, under Section 138 of the N.I. Act purportedly on the ground that petitioners were active Directors in Neesa Leisure Ltd., (hereinafter referred to as "the company") where respondent No.2 made two fixed deposits on 12.09.2013 and 21.09.2013 of Rs.4,00,000/- (Four Lakh Rupees) each. According to him, cheque bearing No. 032149 dated 11.03.2014 for an amount of Rs. 4,00,000/- (Four Lakh Rupees) was issued by one Manoj Singhal, who happens to be Managing Director of the company and another cheque bearing No. 056468 dated 20.03.2014 for an amount of Rs. 4,00,000/- (Four Lakh Rupees), was issued by authorized officer of the company. The said cheques were dishonored and returned to the complainant's banker with remark 'insufficient funds'. As per the complaint submitted by respondent No.2, the both the cheques were purportedly issued by Manoj Singhal, Managing Director of the Company and authorized officer of the Company respectively in discharge of the legally enforceable liability towards him.

3. It is submitted that Smt. Neelu Gupta and Shri Pankaj Anand Mudholkar, petitioners herein, ceased to be Directors in the said company, on 22.03.2013 and 25.06.2013 respectively which is at least a year prior to the issuance of the cheques in question. After



resignation from the company, petitioners were not responsible for the acts of the company as they were not concerned at all with the affairs of the company. The resignations of the petitioners were also notified to the Registrar of Companies/Ministry of Company Affairs (herein after referred to as "MCA" for brevity) by the Managing Director of the Company by way of filing Form 32 and same is a public document.

4. According to counsel for the petitioners, respondent No. 2 has suppressed these publicly available documents by not filing these documents along with the complaint against the petitioners. He submits that the Company's Master Data available on the website of MCA also does not reflect the name of the petitioners as Directors. However, the learned Trial Magistrate in a mechanical manner only by considering averments made by the complainant in the complaint took cognizance of the offence under section 138 of N.I. Act and issued process without applying any judicial mind and without recording any satisfactory reasons as to whether *prima facie* offence under Section 138 of the N.I. Act is made out against the petitioners or not for issuing process.

5. He submits that legal notice dated 03.04.2014 allegedly sent by the respondent No. 2, was never received by the petitioners as they were not available on the said address i.e. address of the company. It is also to be noted that no tracking report was filed by respondent No.2 before the learned Trial Magistrate showing that the said notice was delivered to the petitioners. Even the averments made in the complaint filed by respondent No. 2 are sketchy and in no way demonstrate how the complaint is maintainable against the petitioners. The essential ingredients for



maintaining a complaint under Section 138 of the NI Act are totally lacking and absent with respect to the petitioners. It is submitted that respondent No. 2 has failed to show in what manner and how the petitioners were responsible for the affairs of the company. The issuance of summons was contrary to the settled position of law in terms of the judgments of the Supreme Court and Delhi High Court which are referred as under:

(i) Harshendra Kumar D. v. Rebatilata Koley and Others, reported in (2011) 3 SCC 351; **(ii) J.N. Bhatia & Ors. v. State & Anr.**, reported in 2006 SCC Online Del 1598 and **(iii) Rajesh Viren Shah v. Redington (India) Limited**, reported in 2024 AIR (SC) 1047.

6. In support of his submissions, he has drawn attention of this Court to various documents like Form 32, Company Master data, cheques dated 11.03.2014 and 20.03.2014, cheque return memo slip, the complaint and pre-summoning evidence filed before the learned Trial Magistrate. He states that it is a fit case where the proceedings initiated against the petitioners by respondent No. 2 needs to be set aside.

7. On the other hand, learned counsel appearing for respondent No.2 contends that the learned Trial Magistrate on the basis of the material available on record, took cognizance for offence under Section 138 NI Act and has only issued summons to the petitioners. It is not the final conclusion of the trial. The petitioners are within their right to appear before the learned Trial Magistrate and put forth their defence that they have not committed any offence. In other words, the invocation of the jurisdiction of this Court is totally uncalled for.



8. He further submits that merely showing the resignation letters of the petitioners from Directorship of the said company do not entitle them an acquittal from the alleged offence committed under section 138 of NI Act because it is a disputed question of fact, which would be decided by the trial court after affording full opportunity of being heard to both the parties. He stressed on the fact that it was the chairman of the company and its Directors, including the petitioners, who had insisted the complainant to invest his money in the company and at the relevant time when money was invested, petitioners were directors in the said company and so they cannot escape from the criminal liability by simply stating that at the time of delivery of the cheques in question they were not directors in the company. In fact, according to him, petitioners participated in the deliberations that had taken place between him and other members of the company.

9. I have heard and considered the submissions advanced at bar and have gone through the material available on record.

10. It is a conceded case, that summons have been issued by learned Trial Magistrate to the petitioners on the complaint filed by respondent No.2. The primary ground of challenge as contended by learned counsel for the petitioners is that petitioners were not the Directors when the cheques in question were issued and presented, inasmuch as the petitioners had resigned from the said company much before, on 22.03.2013 and 25.06.2013 respectively. In support of their submission, petitioners and their counsel relied upon Form 32 submitted to the Registrar of Companies/MCA by Managing Director of the company with regard



to the fact that the petitioners have ceased to be Directors in the said company.

11. There is no dispute that the petitioners have been named as accused Nos. 4 & 5 respectively in the complaint. On a specific query to the learned counsel for respondent No.2, that whether he disputes Form 32 as annexed by the petitioners in their respective petitions as Annexure-4 (page No.27) and Annexure-5 (page No.26), the answer was in the negative. In other words, he does not dispute Form 32 annexed by the petitioners which depicts that the petitioners ceased to be Directors in the said company. This factum surely suggests that the petitioners having resigned from the directorship of the said company were not the Directors when cheques in question were issued and presented for encashment by the complainant in his Bank.

12. In cases where the accused has resigned from the Company and Form 32 has also been submitted with the Registrar of Companies, in such cases, if the cheques are subsequently issued and dishonoured, it cannot be said that such an accused is in charge of and responsible for the conduct of the day-to-day affairs of the company, as contemplated in Section 141 of Negotiable Instrument Act. It is also well settled law that mere repetition of the phraseology of Section 141 of NI Act that the accused is in-charge and responsible for the day-to-day conduct and affairs of the Company would not be sufficient and facts stating as to how and in what manner the accused was so responsible must be averred. It is also evident from the record that the petitioners were not Directors and were nowhere involved in the affairs of the company when money was invested by the complainant and had



resigned from the directorship of the company much prior from the date of delivery of cheques.

13. Hon'ble Delhi High Court, in case of **J.N. Bhatia & Ors. (supra)**, wherein it was held as under:

"16. However, difficulty arises when the complainant states that the concerned accused was Director and also makes averment that he was in charge of and responsible for the conduct of its day-to-day business, but does not make any further elaboration as to how he was in charge of and responsible for the day-to-day conduct of the business. The question would be as to whether making this averment, namely, reproducing the language of Sub-section (1) of Section 141 would be sufficient or something more is required to be done, i.e., is it necessary to make averment in the complaint elaborating the role of such a Director in respect of his working in the company from which one could come to a prima facie conclusion that he was responsible for the conduct of the business of the company.

24. Thus, what follows is that mere bald allegation that a particular person (or a Director) was responsible for the conduct of the business of the company would not be sufficient. That would be reproduction of the language of Sub-section (1) of Section 141 and would be without any consequence and it is also necessary for the complainant to satisfy



how the petitioner was so responsible and on what basis such an allegation is made in the complaint.

32. It can, therefore, be safely concluded that the view, which is now accepted by the Supreme Court, is that mere repetition of the phraseology contained in Section 141 of the NI Act, i.e. "the accused is in charge of and responsible for the conduct of the day-to-day affairs of the company", may not be sufficient and' something more is to be alleged to show as to how he was so responsible.

48. In this petition specific averment is made by the petitioner that he was neither a Director of the company nor at all incharge of the company nor involved in day-to-day running of the company at the time of commission of the alleged offence in February and March, 1999 when the cheques were dishonoured. What is stated is that the petitioner had resigned from the company on 4.2.1998 and copy of Form 32 was also submitted with the Registrar of Companies. Certified copy of Form 32 issued by the office of the Registrar of Companies is enclosed as per which, the petitioner resigned with effect from 4.2.1998. Cheques in question are dated 31.12.1998, which were issued much after the resignation of the petitioner as the Director and were dishonoured subsequently and notice of demand is also dated 8.2.1999 on which date the petitioner was not the Director, as certified copy of Form 32 obtained from



the Registrar of Companies is filed indicating that the resignation was also intimated on 26.2.1998, which can be acted upon in view of judgment of this Court in Saria Kumar Dr. (Mrs.) v. Srei International Finance Ltd. (supra). The summoning order qua the petitioner is liable to be quashed. It is accordingly quashed and the complaint qua him is dismissed”.



14. This Court is conscious of the well settled preposition of law that the High Court while entertaining a petition filed to quash the criminal proceedings shall not consider the defence of the accused or conduct a roving inquiry in respect to the merits of the complaint but if the documents filed by the accused/petitioner are beyond suspicion or doubt or nature of unimpeachable and upon consideration, demolish the very foundation of the accusation levelled against the accused in the complaint then in such a matter it would be desirable for the High Court to look into the said document(s) which are germane even at the initial stage and grant relief to the person concerned under Section 482 Cr.P.C in order to prevent injustice or abuse of process of law. Considering the aforesaid facts and submissions, in my considered opinion petitioners were able to make out a case in their favour to invoke inherent jurisdiction of this Court.

15. I fortify my view from the Judgment of the Hon'ble Apex Court in case of **Harshendra Kumar D.** (supra) wherein it was has held as under:-

“15. Every company is required to keep at its registered office a register of its directors, managing director, manager



and secretary containing the particulars with respect to each of them as set out in clauses (a) to (e) of sub-section (1) of Section 303 of the Companies Act, 1956. Sub-section (2) of Section 303 mandates every company to send to the Registrar a return in duplicate containing the particulars specified in the register. Any change among its directors, managing directors, managers or secretaries specifying the date of change is also required to be furnished to the Registrar of Companies in the prescribed form within 30 days of such change. There is, thus, statutory requirement of informing the Registrar of Companies about change among directors of the company. In this view of the matter, in our opinion, it must be held that a director - whose resignation has been accepted by the company and that has been duly notified to the Registrar of Companies - cannot be made accountable and fastened with liability for anything done by the company after the acceptance of his resignation. The words 'every person who, at the time the offence was committed', occurring in Section 141 (1) of the NI Act are not without significance and these words indicate that criminal liability of a director must be determined on the date the offence is alleged to have been committed..

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16. On 4-3-2004, the Company informed the Registrar of Companies in the prescribed form (Form 32) about the resignation of the appellant from the post of Director of the Company and, thus, the change among Directors.

19. The above documents placed on record by the appellant have not been disputed nor controverted by the complainants. As a matter of fact, it was not even the case of the complainants before the High Court that the change among Directors of the Company, on resignation of the appellant with effect from 2-3-2004, has not taken place. The argument on behalf of the complainants before the High Court was that it was not permissible for the High Court to





look into the papers and documents relating to the appellant's resignation since these are the matters of defence of the accused person and defence is a matter for consideration at the trial on the basis of evidence which cannot be decided by the High Court. The complainants in this regard relied upon a decision of the Single Judge of that Court in Fateh Chand Bhansali.

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21. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is a fairly settled law now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents -- which are beyond suspicion or doubt -- placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

22. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not





taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company. As noticed above, the appellant resigned from the post of Director on 2-3-2004. The dishonoured cheques were issued by the Company on 30-4-2004 i.e., much after the appellant had resigned from the post of Director of the Company. The acceptance of the appellant's resignation is duly reflected in the Resolution dated 2-3-2004. Then in the prescribed form (Form 32), the Company informed to the Registrar of Companies on 4-3-2004 about the appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court."

16. In a recent judgment, Hon'ble Supreme Court of India vide its judgment dated February 14, 2024, in the case titled **Rajesh Viren Shah v. Redington (India) Limited** reported in AIR 2024 (SC) 1047 considered the issue involved in this petition with regard to directors' liability after resignation and emphasizes the importance of evidence in establishing culpability. It underscores the principle that directors cannot be held responsible for the company's actions once they have formally resigned and severed ties with the organization. The judgment serves to protect



individuals from unjustified legal proceedings based on events that occurred after their disassociation from the company. It has been held that a Director who has resigned from such post cannot be held liable for failure in realization of cheques issued by the Company as they cannot be held responsible for the conduct of business at the relevant time post their resignation. The Supreme Court observed that the position of law as to the liability that can be fastened upon a Director for non-realization of a cheque is no longer res integra. It was also noted by the Hon'ble Supreme Court that the relevant statutory provision i.e., Section 141 of the NI Act, which states that every person who at the time of the offence was responsible for the affairs/conduct of the business of the company, shall be held liable and proceeded against under Section 138 of the NI Act, with exception thereto being that such an act, if done without his knowledge or after him having taken all necessary precautions, would not be held liable.

17. Hon'ble Supreme Court further noted that if it is proved that any act of a company is proved to have been done with the connivance or consent or may be attributable to (i) a director; (ii) a manager; (iii) a secretary; or (iv) any other officer – they shall be deemed to be guilty of that offence and shall be proceeded against accordingly.

18. While discussing the legal aspect on the liability of a director, the Hon'ble Supreme Court took note of the judgment passed in case titled ***Monaben Ketanbhai Shah v. State of Gujarat*** (2004) 7 SCC 15 wherein it was observed as under:



"...The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when the complainant makes necessary averments in the complaint and establishes that fact..."

19. Apart from the above cited cases, Supreme Court also took note of the judgment passed by a Division Bench (three Judges) of the Hon'ble Supreme Court in the case titled '**S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr.** (2005) 8 SCC 89' wherein it was observed as under:

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. ...A clear case should be spelled out in the complaint made against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out..."

20. Thus, Hon'ble The Supreme Court has made it categorically clear in catena of judgments that directors who have resigned from their posts cannot be held liable for the dishonor of cheques





issued by the company. This decision sets a precedent that directors cannot be held responsible for the company's actions after they have resigned, as they are no longer actively involved in its operations.

21. Summoning orders are issued in these cases against the petitioners herein namely Smt. Neelu Gupta and Shri Pankaj Anand Mudholkar and they are named as accused Nos. 4 & 5 in the complaint. They have taken similar plea that they have tendered their resignation on 22.03.2013 and 25.06.2013 respectively and same was accepted on the very same day. Thereafter, Form 32 was filed with the Registrar of Companies. Cheques were allegedly issued on 11.03.2014 and 20.03.2014, after their resignation and same were dishonoured much thereafter when they were not even the directors in the company. Apart from bald allegation that they were in charge of the affairs of the company, nothing is stated as to how they were in charge of and/or responsible for the conduct of the day-to-day business of the company. The allegations qua the petitioners herein contained in all these complaints are as under:

"The accused Nos. 2 to 5 are the Directors who are responsible for the day-to-day affairs of the company (accused No.1) and are jointly and severally liable for the acts and liabilities of the accused No.1- company."

22. On the basis of these bald averments, I am afraid, proceedings could not have been maintained against the petitioners herein, as it is not specifically stated as to how the



petitioners were in charge of and responsible for the affairs of the company.

23. In view of above discussion and facts of present case narrated above as well as law enunciated by Hon'ble Apex Court and Delhi High court in above noted cases, I am of the considered view that prosecution of the petitioners for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 is bad in law. Resultantly, present petitions deserve to be allowed and are hereby allowed and the proceedings initiated by the respondent No.2 against qua the petitioners through complaint case No. 10057/14 under Section 138 of the NI Act, pending before the learned Judicial Magistrate, No.2, Gangapur City, Sawaimadhopur, and the resultant proceedings including summons issued thereon are quashed. However, the proceedings of the criminal case qua the remaining accused persons shall continue.

(ANIL KUMAR UPMAN),J

GAUTAM JAIN /