



\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29.02.2024

+ **CRL.M.C. 456/2022 & CRL.M.A. 2059/2022**

SHIKHA SHAH Petitioner

Through: Mr.Ashwin Vaish,
Mr.V.Thomas, Advs.

versus

RENU PROMOTERS PVT LTD Respondent

Through: Mr.Akhil Sachar, Ms.Sunanda
Tulsyan, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 06.12.2021 passed by the learned Principal District and Sessions Judge, South-East District, Saket Courts, New Delhi (hereinafter referred to as the 'PD&SJ') in CrI.Rev. No.106/2021 titled *Smt.Shikha v. Renu Promoters Pvt. Ltd.*, by which the learned PD&SJ has dismissed the revision petition filed by the petitioner herein.
2. The Revision Petition was filed by the petitioner herein challenging the order dated 03.12.2019 passed by the learned Metropolitan Magistrate-03, (NI Act), South-East District, Saket



installments of the loan. It is alleged that the accused no.1 with the consent of the petitioner herein and the accused no.2, who both are the Directors of the accused no.1, under the signatures of the accused no.2, handed over a cheque for a sum of Rs.2,35,00,000/- to the respondent with specific understanding that the respondent shall be at liberty to encash the said cheque and the same shall be honoured on presentation.

6. It is alleged that relying upon the assurance, the cheque was duly presented by the respondent on 19.09.2019, however, the same was returned dishonoured with the remark '*Account Blocked*'.
7. It is alleged that the respondent sent a legal notice dated 03.10.2019 to the accused, including the petitioner, however, no reply was received thereto within the stipulated period.
8. Based on the above averments, the subject complaint was filed before the learned Trial Court.

Proceedings leading to the present petition:

9. After hearing the arguments and considering the pre-summoning evidence, the learned Trial Court summoned the accused, including the petitioner vide order dated 03.12.2019.
10. Aggrieved of the said order, the petitioner challenged the same by way of a revision petition before the learned PD&SJ, which came to be dismissed by the Order impugned herein.

Submissions of the learned counsel for the petitioner:

11. The learned counsel for the petitioner, placing reliance on the judgment of the Supreme Court in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr.*, (2005) 8 SCC 89, submits that the



complaint lacks the basic and essential averments and, in the absence thereof, the petitioner cannot be summoned in the said complaint. He submits that there is no averment made in the complaint that the petitioner was in-charge of or was responsible to the accused no.1 company for the conduct of the business of the said company. He further submits that mere averment that the cheque was issued with the consent of the petitioner, would not be sufficient to charge the petitioner of the offence under Section 138 read with Section 141 of the NI Act.

Submissions of the learned counsel for the respondent:

12. On the other hand, the learned counsel for the respondent, placing reliance on the judgment of the Supreme Court in *S.P.Mani & Mohan Dairy v. Dr.Snehalatha Elangovan*, (2023) 10 SCC 685, submits that Section 141 of the NI Act is in two parts, while the Sub-section (1) of Section 141 of the NI Act makes a person, who is in-charge of or was responsible to the company for its conduct, liable for the acts of the company, Sub-section (2) of Section 141 of the NI Act makes an official of a company including, *inter alia*, a Director on whose consent, connivance or neglect the offence is committed by the company, liable to be proceeded against.
13. He submits that in the present case, the respondent has not only pleaded that the petitioner being a Director of the accused no.1 company was in-charge of and in control of the affairs of the accused no.1 company, but has also pleaded that the cheque which has been dishonoured was issued with the consent of the



petitioner. He submits that, therefore, the summoning order has rightly been passed by the learned Trial Court.

14. He further submits that to the legal notice, a joint reply was given by the accused, including the petitioner herein. He submits that in the said reply also, there is no denial by the petitioner to the fact that the cheque was issued with her consent.

Analysis & findings:

15. I have considered the submissions made by the learned counsels for the parties.
16. In the present case, the complaint filed by the respondent *inter alia* makes the following averments:

“4. That the Accused no.1, through Accused No.2 who has business/commercial relations with the Director of the Complainant Company, Mr.Dinesh Gupta approached the Complainant in the month of June, 2018 seeking financial assistance. Due to the long standing business relationship and the fact that the Accused No.2 and Accused No.3 were also tenants of the Complainant’s Sister company i.e. M/s BDR Developers Private Limited, the Complainant advanced a loan of a sum of Rs.1,85,00,000/- (Rupees One Crore Eighty-Five Lakhs Only) transferred via RTGS No.HDFCR5201861482339519 bearing Account No.50200010626080, HDFC Bank having its branch at Okhla Ind Area Phase II to the Accused No.1. Statement of Account of the Complainant reflecting the payment of Rs.2,35,00,000/- is annexed herewith as Annexure A-2.

xxxx

7. That in the month of February, 2019, the Accused No.2 approached the Complainant and expressed his financial exigencies and difficulties in paying the



monthly interest/instalments of the loan discharged. The Accused No.2 made a representation to the Complainant Company that there may be a moratorium in further monthly payments interest instalments till 01.09.2019 and the Accused shall discharge the legally enforceable debt in the month of September, 2019, in a consolidated manner at one instance. Accordingly, in order to ensure that the legally enforceable debt is duly discharged, the Accused No.1 with the consent of the Accused Nos.2 and 3, who are the Directors of the Accused No.1 Company under the signatures of Accused No.2 entrusted a cheque bearing number, 905748 dated 19.09.2019 drawn at Canara Bank, Jaitpur Branch, New Delhi-110044 for a sum of Rs. 2,35,00,000/-to the Complainant with the specific understanding that the Complainant shall be at liberty to encash the cheque dated 19.09.2019 for a sum of Rs. 2,35,00,000/- and that the said cheque shall be honoured on presentation.”

17. A reading of the above paragraphs of the Complaint would show that the respondent has asserted that the accused no.1, that is, the company, with the consent of the accused nos.2 and 3, that is, including the petitioner herein, who are the Directors of the accused no.1 Company, under the signatures of the accused no.2, husband of the petitioner herein, issued the cheque, which ultimately was returned dishonoured.
18. Though, the petitioner in the Complaint also asserts that to the legal notice issued by the respondent, no reply had been received till the filing of the complaint, the respondent has now placed on record a copy of the reply dated 20.11.2019 received from the accused, including the petitioner herein. In paragraph 5 of the



legal notice dated 03.10.2019 as well, the respondent had made a similar averment as contained in the Complaint. The same is reproduced hereinbelow:

“5. That in the month of February, 2019 you the Noticee No. 2 approached my Client and expressed your financial exigencies and difficulties in paying the monthly interest/installments of the loan discharged. You the Noticee No.2 make a representation to my Client that there may be a moratorium in further monthly payments of interest/installments till 01.09.2019 and the Noticees shall discharge the legally enforceable debt in the month of September, 2019, in a consolidated manner at one instance. Accordingly, in order to ensure that the legally enforceable debt is duly discharged, the Noticee No.1 with the consent of the Noticee Nos. 2 and 3, who are the Directors of the Noticee No. 1 Company under the signatures of Noticee No. 2 entrusted a cheque bearing number 905748 dated 19.09.2019 drawn at Canara Bank, Jaitpur Branch, New Delhi-110044 for a sum of Rs. 2,35,00,000/-to my Client with the specific understanding that my Client shall be at liberty to encash the cheque dated 19.09.2019 for a sum of Rs. 2,35,00,000/- and that the said cheque shall be honoured on presentation.”

19. In the reply dated 20.11.2019, which was issued on behalf of all the accused including the petitioner herein, there is no denial of the petitioner to the fact that she is not a Director of the accused no.1 company or that the cheque was not issued with her consent.



20. In *S.P.Mani & Mohan Dairy* (supra), after taking note of the earlier judgments including the judgment in *SMS Pharmaceuticals* (Supra), the Supreme Court has explained the contours of Section 141 of the NI Act for invoking vicarious liability of a Director in case of a company, as under:

“25. Evidently, the gist of Section 138 is that the drawer of the cheque shall be deemed to have committed an offence when the cheque drawn by him is returned unpaid on the prescribed grounds. The conditions precedent and the conditions subsequent to constitute the offence are drawing of a cheque on the account maintained by the drawer with a banker, presentation of the cheque within the prescribed period, making of a demand by the payee by giving a notice in writing within the prescribed period and failure of the drawer to pay within the prescribed period. Upon fulfilment of these requirements, the commission of the offence which may be called the offence of “dishonour of cheque” is complete. If the drawer is a company, the offence is primarily committed by the company.

26. By virtue of the provisions of sub-section (1) of Section 141, the guilt for the offence and the liability to be prosecuted and punished shall be extended to every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of its business; irrespective of whether such person is a Director, manager, secretary or other officer of the company. It would be for such responsible person, in order to be exonerated in terms of the first proviso, to prove that the offence was committed without his knowledge or despite his due diligence.

27. Under the separate provision of sub-section (2), if it is proved that the offence was committed with the consent or connivance of



or was attributable to the neglect on the part of any Director, manager, secretary or other officer of the company, such person would also be deemed to be guilty for that offence. Obviously, the burden of alleging and proving consent, connivance or neglect on the part of any Director, etc. would rest upon the complainant. The non obstante clause with which sub-section (2) opens indicates that the deeming provision is distinct and different from the deeming provision in sub-section (1) in which the office or designation of the person in charge of and responsible to the company for the conduct of its business is immaterial.

28. While the essential element for implicating a person under sub-section (1) is his or her being in charge of and responsible to the company in the conduct of its business at the time of commission of the offence, the emphasis in sub-section (2) is upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. Thus, the important and distinguishing feature in sub-section (1) is the control of a responsible person over the affairs of the company rather than his holding of an office or his designation, while the liability under sub-section (2) arises out of holding an office and consent, connivance or neglect.

29. While all the persons covered by sub-section (1) and sub-section (2) are liable to be proceeded against and also punished upon the proof of their being either in charge of and responsible to the company in the conduct of its business or of their holding of the office and having been guilty of consent, connivance or neglect in the matter of commission of the offence by the company, the person covered by sub-section (1) may, by virtue of the first proviso, escape only punishment if he proves that the offence was committed without his knowledge or despite his due diligence.



prosecuted, then, if it be his defence that the offence was committed without his or her knowledge or that he or she has exercised all due diligence to prevent the commission of such offence, the burden to prove that would be on him or her and can only be discharged at the stage of evidence.

xxxxx

42. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:

42.1. Vicarious liability can be fastened on those who are in-charge of and responsible to the company or firm for the conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;

42.2. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;

42.3. If the substance of the allegations made in the complaint fulfils the requirements of Section 141, the complaint has to proceed in regard to the law.

42.4. In construing a complaint a hypertechnical approach should not be adopted so as to quash the same. 42.5. The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141, respectively, should be kept in mind by the Court concerned.

42.6. These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within the statutory period even after the issue of notice.

42.7. The power of quashing should be exercised very sparingly and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed.



42.8. *The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking.*

43. *The inter-relationship between Sections 138 and 141, respectively, of the NI Act has been succinctly explained by this Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89, in the following words:*

“2. ... 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 in charge 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.”

xxxxx

53. *In the case on hand, we find clear and specific averments not only in the complaint but also in the statutory notice issued to the respondent. There are specific averments that the cheque was issued with the consent of the respondent herein and within her knowledge. In our view, this was sufficient to put the respondent herein to trial for the alleged offence. We are saying so because the case of the respondent that at the time of issuance of the cheque or at the time of the commission of the offence, she was in no manner concerned with the firm or she was not*



give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned.

56. Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the notice. In such circumstances what more is expected of the complainant to say in the complaint.

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

58. Our final conclusions may be summarised as under:



58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

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



they were not in charge of the affairs of the company or the firm.

58.3. Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners “qua” the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

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

(Emphasis supplied)

21. From the above, it is apparent that the power under Section 482 of the Cr.P.C. to quash a complaint has to be exercised very sparingly and where, read as a whole, the complaint does not lay the foundation for the offence and if the substance of the allegations made in the complaint fulfill the requirement of Section 141 of the NI Act, the complaint has to proceed in



accordance with law. It is not necessary to reproduce the language of Section 141 of NI Act verbatim in the complaint, and the complaint is required to be read as a whole. Section 141 of the NI Act is in two parts. While Sub-section (1) of Section 141 of the NI Act extends the liability to be prosecuted to every person who, at the time the offence was committed, was in-charge of and was responsible to the company for the conduct of its business, irrespective of whether such person is a Director, Manager, Secretary or other Officer of the Company, Sub-section (2) of Section 141 of the NI Act makes any person with whose consent or connivance or due to whose neglect as a Director, Manager, Secretary, or other Officer of the company, the offence has been committed by the Company, vicariously liable. The burden of proving the consent, connivance or neglect on behalf of the Director or other Officer of the company would rest upon the complainant.

22. In *S.P.Mani & Mohan Dairy* (supra), the Supreme Court on the facts has held that where there is a specific averment of the cheque being issued with the consent of the accused therein and with her knowledge, this would suffice to summon the accused to trial for the alleged offence. The Court further held that where no reply is given to the statutory notice, a presumption would be drawn against the accused. The accused is expected to clarify his or her stand in the reply to the said notice.



23. In the present case, both the above factors are equally present. The respondent in its legal notice and also in the complaint, has made specific averments that the cheque in question was issued with the consent of the petitioner, who is a Director of the accused no.1 company. Though the complaint was filed with an averment that the reply to the legal notice had not been received, the respondent has now placed on record the copy of the reply dated 20.11.2019, which was received after the statutory period by the respondent from the accused including the petitioner herein. The same does not deny the above averment of the respondent that the cheque in question was issued with the consent the petitioner herein.
24. Applying the principles laid down by the Supreme Court in *S.P.Mani & Mohan Dairy* (supra), therefore, in my view, no fault can be found in the Impugned Order.
25. I would also remind myself of the limited jurisdiction that this Court exercises when there are concurrent findings by two Courts. This Court, in exercising its power under Section 482 Cr.P.C., does not act as a Court of appeal. Its jurisdiction is confined to see that there is no miscarriage of justice. It cannot enter into a detailed examination of the evidence.
26. It is equally important to remind oneself of the limited scrutiny required at the stage of summoning the accused. The Court was not expected to minutely scrutinise the averments made in the Complaint as if they were statute. The Complaint has to be read as a whole and in reasonable manner, keeping in mind also the

