IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(249)

CRM-M-24223-2024 (O & M)
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Deepak Aggarwal …... Petitioner(s)

V/s

Rajinder Earthmover Filling Station Pvt. Limited and anr.
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kunal Dawar, Sr. Advocate, with
Mr. Mayank Aggarwal, Advocate,
Ms. Shruti Mandhotra, Advocate and
Mr. Saurav Bajaj, Advocate, for the petitioner.

Mr. Sahil Soi, Advocate,
for the respondents.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is is for the quashing of the criminal complaint NACT No.262/2018 dated 05.10.2018 under Section 138 r/w Section 141 of the Negotiable Instruments Act, 1881 titled as 'Rajinder Earthmover Filling Station Pvt. Ltd. vs. M/s A2Z Waste Management (Ludhiana) Limited and ors.' pending in the Court of JMIC, Dasuya, District Hoshiarpur, Punjab (Annexure P-4) alongwith all the consequential proceedings emanating therefrom qua the petitioner including the summoning order dated 16.01.2014 (Annexure P-5).

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The brief facts of the case are that a complaint u/s 138 of the Negotiable Instruments Act, 1881 was filed where it was averred that accused No.1 was a Company duly incorporated, Amit Mittal (accused No.2) was its Chief Managing Director, Sh. Balendra Pratap Singh Chohan (accused No.3) and Manoj Khetan (accused no.4) were authorized signatories, Manoj Gupta (accused no. 5), Sandeep Garg (accused no.6) and Abhay Garg (accused no. 7) were Directors and accused No.8/Petitioner was a Joint Managing Director of accused No.1 Company i.e. A2Z Waste Management (Ludhiana) Limited. It was further averred that the accused No.1 Company was awarded with work of the Integrated Solid Waste Management project in Ludhiana City by the Ludhiana Municipal Corporation vide Award dated 30.06.2011 and the accused No.1 Company entered into an agreement dated 25.05.2013 w.e.f. 16.05.2013 with the respondents to carry out activities of collection and transport of Municipal Solid Wastes and for the said purpose payments were to be made by accused No.1 Company. However, it was alleged that accused No. 3 and 4 being the authorized signatories issued cheque No. 000200 dated 17.09.2013 for an amount of Rs.4,05,00,000/-(Rs. four crore and five lacs) drawn on Bank of India Ludhiana Branch, which upon presentation was returned dishonored on 26.09.2013 where after the statutory notices were sent and when no payment was made, the impugned complaint was filed. A copy of the

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Impugned complaint dated 05.10.2018 is attached as Annexure P-4 to the petition. The relevant extract of the same reads as under:-

1. That the complainant No. 1 is a corporate body and is registered one, having its corporate identity number U45201PB2011PTC035411, hence is a legal person for the prosecution on its behalf, the memorandum and articles of association is enclosed.

2. That the complainant No. 2 is director of complainant No.1and is entitled to act on behalf of the complainant No.1 in the matters of its business and for prosecution of the court cases on its behalf.

3. That the accused No.1 was also a registered corporate body and the accused No. 2 was the chief managing director & the accused NO.8 was the joint managing director and the accused No. 5 to 7 were the directors and the accused No. 3 & 4 were the authorized signatories of accused No.1.

4. That above firm i.e. the accused No.1was awarded the integrated solid waste management (M.S.W) project in Ludhiana city, released by Ludhiana Municipal Corporation) Government of Punjab on D.B.0.0.2 basis) vide letter of award No. 56/ACK dated 30-06-2011 for municipal solid waste management services including collection transportation processing and disposal of Municipal Solid waste., in the Ludhiana city and to operate and maintain the project facilities under the agreement.

5. That the accused No.1 entered into an agreement dated 25.05.2013 (with effective from 16-05-2013) with the complainant No. 1 through the complainant No.2, to carry out

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the activities of collections and transport (CLT) of Municipal solid waste of the said project with the machineries and the employees engaged by the complainant firm against the payment to be made by accused firm to complainant firm, as per above agreement.

6. That the accused No.1 were under the liability to make the payment to complainant No.1 against the work rendered under the above contract. Thus Sh. Manoj Khetan and BalendraPartap Singh Chohan the authorized signatories issued a cheque No. 000200 for the amount of Rs. 4 Crores and 5 lacs against A/c No. 650020110000389 of their firm maintained in Bank of India Ludhiana Branch, Guru Teg Bahadur Market, G.T. Road Punjab for the discharge of the liability of their firm, against the work done by the complainant's firm, for the collection and transportation etc. of solid waste in Ludhiana city, under the above agreement. Thus the complainant were the holder of the cheque in due course of business.

3. The impugned complaint was filed at Dasuya, District Hoshiarpur against all the accused persons. The Petitioner was arrayed as accused no.8. Thereafter, summoning order dated 16.01.2014 was passed against all the accused by the JMIC Dasuya. A copy of the order is attached as Annexure P-5 to the petition.

4. However, the complaint was returned by the JMIC Dasuya to the complainant to be filed at Ludhiana and another summoning order dated 12.05.2015 was issued, in which only 2 accused persons were summoned i.e.

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accused No. 3 namely Manoj Khaitan and accused No. 4 namely Balinder Singh Chouhan, the signatories of the cheque. Qua the remaining accused, including the petitioner, the complaint was dismissed. A copy of the order dated 12.05.2015 is attached as Annexure P-6 to the petition.

5. The complainant challenged the said order dated 12.05.2015 in revision before the Additional Sessions Judge, Ludhiana. The same however was also dismissed vide order dated 25.07.2016. Thereafter, the complainant filed CRM-M-28935 of 2016 titled Rajinder Earthmover Filling Station Pvt. Ltd. and Another vs. A2Z Wate Management (Ludhiana) Ltd. and Other, against order 12.05.2015 (Annexure P-6) and order dated 25.07.2016. The said petition came to be allowed by this Court vide order dated 28.04.2017 as modified vide order dated 01.06.2018 and the second summoning order dated 12.05.2015 passed by the JMIC, Ludhiana was set aside and the order dated 16.01.2014 passed by the JMIC, Dasuya was restored. Copies of the orders dated 28.04.2017 and 01.06.2018 are attached as Annexures P-7 and P-8 respectively to the petition.

6. In terms of the liberty granted by this Court vide order dated 28.04.2017, three accused, namely, Amit Mittal, Manoj Kumar Gupta and the accused-company approached the Revisional Court at Hoshiarpur challenging their summoning order. The said Court, vide its impugned judgment dated 16.07.2019 allowed the revision petition filed by Amit Mittal setting aside the summoning order qua him. However, the revision

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petition preferred by the company and Manoj Gupta was ordered to be dismissed.

7. Against the said order, the complainant-Rajinder Earthmover Filling Station Private Limited through its Managing Director-Rajinder Singh filed a petition titled as 'Rajinder Earthmover Filling Station Private Limited and another vs. Amit Mittal' (CRR-2329-2019) challenging the order dated 16.07.2019 to the extent that it set aside the summoning order qua Amit Mittal. Similarly, Manoj Gupta filed a petition under Section 482 Cr.P.C. bearing No.CRM-M-33848 of 2019 titled as 'Manoj Gupta vs. Rajinder Earthmover Filling Station Private Limited and another' praying for quashing of the criminal complaint wherein he was summoned to face Trial under Section 138 of the Negotiable Instruments Act, 1991. A co-ordinate Bench of this Court vide its order dated 05.03.2024 allowed the revision petition (CRR-2329-2019) of the complainant thereby once again nominating Amit Mittal as an accused but also allowed the petition (CRM-M-33848-2019) i.e. the petition filed by Manoj Gupta thereby quashing the complaint and summoning order qua him.

8. Amit Mittal filed a Special Leave Petition (Crl.) No.3713/2024 titled as 'Amit Mittal vs. Rajinder Earthmover Filling Station Private Limited', which came to be dismissed by the Hon'ble Supreme Court vide order dated 18.03.2024. A copy of the said order is attached as Annexure P-10 to the petition.

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9. The instant petition has been preferred by the petitioner-Deepak Aggarwal seeking quashing of the complaint dated 05.10.2018 (Annexure P-4) and all the consequential proceedings arising therefrom including the summoning order dated 16.01.2024 (Annexure P-5) qua him on the grounds that he was never a Joint Managing Director/Director/employee/authorized signatory of cheque/authorized signatory in the A2Z Waste Management (Ludhiana) Limited i.e. the accused Company having Corporate Identification (CIN) No. U90002HR2011PLC043415.

10. The learned Senior counsel for the petitioner contends that the signatories on the cheque No.000200 dated 17.09.2013 for an amount of Rs.4,05,00,000/- drawn on Bank of India Ludhiana Branch, which was dishonoured on 26.09.2013 are Manoj Khaitan and Balendra Pratap Singh Chohan accused No. 4 and accused No.3 respectively. The cheque was issued on behalf of the accused Company i.e. A2Z Waste Management (Ludhiana) Limited having CIN No. U90002HR2011PLC043415. The petitioner has never been concerned with the affairs of the said Company and has never been a Joint Director/ Managing Director/ employee/ authorized signatory of the cheque/ authorized signatory of the agreement with the said Company. In fact the petitioner was working as an employee and designated as a Joint Managing Director in A2Z Green Waste Management Limited (named changed to Greeneffect Waste Management Limited), a separate legal entity having Corporate Identification (CIN)

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No.U45200DL2007PLC160927 from 01.04.2013 to 30.06.2017. The complainant wrongly averred that the petitioner was a Joint Managing Director. Had the directions issued in the judgments in ***Sudeep Jain versus Ece Industries Ltd. 2013(8) RCR(Criminal) 2483 and Anil Chanana and another versus M/s Guliya Ram Ruliya Ram 2019(1) RCR (Crl.) 388',*** been complied with at the time when the complaint was filed inasmuch as had the Form 32 and the Annual Returns of the accused Company been filed alongwith the complaint then, the concerned Court would have, at the very first instance come to the conclusion that the petitioner had nothing to do with the affairs of the company and could possibly have not summoned him as an accused to face Trial. In the alternative, the complainant would have made specific averments qua the role played by the petitioner in the affairs of the Company, even though, he was not holding any post and in which eventuality, the petitioner might have been summoned. A perusal of the complaint itself would reveal that other than mentioning the designation of the petitioner, there is no specific role attributed to him. He further contends that the legal notice was never served upon the petitioner. A notice was served upon the accused Company through co-accused/Amit Mittal addressing him as a Chief Managing Director. In the said notice, a reference has been made only to the signatories of the cheque, namely, Manoj Khaitan and Balrendra Pratap Singh Chohan. The petitioner has not been named therein. In fact, had the notice been received by the petitioner, he would

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have responded with the defence that is being raised in the present petition of he never being incharge of and responsible for the conduct of the business of the accused Company. He, thus, prays that the complaint dated 05.10.2018 (Annexure P-4) and all the consequential proceedings arising therefrom including summoning order dated 16.01.2014 (Annexure P-5) be quashed qua the petitioner.

11. The learned counsel for the respondent-complainant, on the other hand, contends that against the complaint and summoning order, Amit Mittal who was described as the Chief Managing Director of the Company had filed a revision petition before the Revisional Court at Hoshiarpur. The complainant and the summoning order was set aside qua him vide order dated 16.07.2019. The complainant-respondent/Rajinder Earthmover Filling Station Private Limited approached this Court by way of a petition bearing No.CRR-2329-2019 challenging the order dated 16.07.2019. This Court vide order dated 05.03.2024 (Annexure P-9) allowed the revision petition (CRR-2329-2019) preferred by the respondent-complainant and set aside the order dated 16.07.2019 qua Amit Mittal thereby nominating him once again as an accused**.** An SLP i.e. Special Leave Petition (Crl.) No.3713/2024 was preferred preferred against the said order which also stands dismissed by the Hon'ble Supreme Court vide order dated 18.03.2024. It has been argued in the said case that Amit Mittal was neither the Chief Managing Director nor a Director or an officer of the Company in any manner, yet, the quashing

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petition has been dismissed upto the Hon'ble Supreme Court. The case of the petitioner is on a similar footing. In fact, once the accused Company and the petitioner did not reply to the legal notice denying the liability of the petitioner on the premise that he was never an officer of the accused Company, a presumption has arisen that he is liable, though, the same is rebuttable. However, at this stage, the petitioner cannot claim innocence and it would be during the course of the Trial that the petitioner shall bring on record evidences that he (petitioner) was never an officer of the Company much less a Joint Managing Director. Therefore, the present petition is liable to be dismissed.

12. I have heard the learned counsel for the parties.

13. Section 141 of the Negotiable Instruments Act, 1881 reads as under:-

> ***141. Offences by companies.—(1)*** *If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*
>
> > Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

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6[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

14. The Hon'ble Supreme Court and this Court has categorically held that the liability of a person arises from being incharge of and responsible for the conduct of the business of the Company at the relevant time and not on the basis of merely holding a designation or office in a Company. Therefore, a person not holding any office or designation in a Company may be liable if he satisfies the primary requirement of being in charge of and responsible for the conduct of the business of the Company at the relevant time. The liability depends on the role played in the affairs of the Company and not on Designation or status in the company.

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In ***'S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and anr' 2005(4) RCR (Criminal) 141,*** the Hon'ble Supreme Court held as under. The relevant extract of the same is as under:-

> *"13. While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. The key words which occur in the Section are "every person". These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words "who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence etc." What is required is that the persons who are sought to be made criminally liable under Section 141 should be at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a Company 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 under the provision. The liability arises from being in charge of and responsible for conduct of business of the company at the relevant time when the offence was*

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committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for conduct of business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company and not on designation or status. If being a Director or Manager or Secretary was enough to cast criminal liability, the Section would have said so. Instead of "every person" the section would have said "every Director, Manager or Secretary in a Company is liable"....etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.

14. A reference to sub-section (2) of Section 141 fortifies the above reasoning because sub- section (2) envisages direct involvement of any Director, Manager, Secretary or other officer of a company in commission of an offence. This section operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of these offices in a company. In such a case, such persons are to be held liable. Provision has been made for Directors, Managers, Secretaries and other officers of a company to cover them in cases of their proved involvement.

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15. The conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable.

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20. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint 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 respondent falls within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be

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made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

21. In view of the above discussion, our answers to the questions posed in the Reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the

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incriminating act and will be covered under sub-section (2) of Section 141.

15. The ratio of the aforementioned judgment has been followed by this Court in the case of ***Dharampal Singhal versus IDBI Bank Limited (bearing No.CRM-M-10340-2014 decided on 28.07.2026).***

16. The Hon'ble Supreme Court in '***K.K. Ahuja versus V.K. Vohra & Anr. 2009(3) RCR(Criminal) 571, Sunita Palita & others versus M/s Panchami Stone Quarry 2022(4) RCR(Criminal) 118 and M/s Mansi Finance (Chennai) Ltd. versus M/ Lalitha and others 2026(3) RCR(Criminal) 146',*** has held that in the case of Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is incharge of and responsible for the conduct of the business of the Company because such officers are deemed to be incharge of and responsible for the conduct of the business of the Company. In the case of Director or an officer who has signed the cheque, he is *per se* liable and no specific averment is required. In the case of a Director or Secretary or Manager of a Company an averment is required that he was incharge of and responsible to the Company for the conduct of it's business and no further averment would be necessary. Other officers of the company, however, cannot be made liable under Sub-section (1) of Section 141 of the Negotiable Instruments Act, 1881 unless it is averred in the complaint about their position and duties in the Company and their role in regard to the issue

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and dishonour of the cheque disclosing consent, connivance or negligence. The relevant extract of the judgments are as under:-

In ***'K.K. Ahuja versus V.K. Vohra & Anr. 2009(3) RCR(Criminal) 571',*** the Hon'ble Supreme Court has held as under:-

> *20. The position under section 141 of the Act can be summarised thus :*
>
> (i) If the accused is the Managing Director or a Joint Managing Director, 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. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.
>
> (ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.
>
> (iii) In the case of a Director, Secretary or Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of Section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under section 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

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(iv) Other Officers of a company can not be made liable under sub-section (1) of section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, be 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.

In ***Sunita Palita & others versus M/s Panchami Stone Quarry 2022(4) RCR(Criminal) 118,*** the Hon'ble Supreme Court has held as under:-

30. As held in K.K. Ahuja v. V.K. Vora (supra) 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 sub-section (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.

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37. 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

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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 Section 138/141 of the NI Act.

In ***M/s Mansi Finance (Chennai) Ltd. versus M/ Lalitha and others 2026(3) RCR(Criminal) 146,*** the Hon'ble Supreme Court has held as under:-

27. While Section 138 of the NI Act creates the offence of dishonour of cheque, Section 141 of the NI Act extends criminal liability to every person who, at the time the offence was committed, was in-charge of and responsible to the company or association for the conduct of its business. The position in law on the scope and ambit of Section 141 of the NI Act is well established. In S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another (2005) 8 SCC 89, a three-Judge Bench of this Court held that for invoking vicarious liability under Section 141 of the NI Act, it is necessary to aver in the complaint that at the time the offence was committed, the person accused was in-charge of and responsible for the conduct of the business of the company. The relevant observations of this Court are as follows:

"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 liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case

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should be spelled out in the complaint 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. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become

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> *liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."*
>
> *(emphasis supplied)*

28. The principle was further explained in National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another (2010) 3 SCC 330, where this Court observed that vicarious liability cannot be inferred merely from holding an office or designation and the complaint must disclose how and in what manner the accused was responsible for the conduct of the business of the company. The relevant observations of this Court are reproduced hereinbelow:

> "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.
>
> ***
>
> 22. Therefore, this Court has distinguished the case of persons who are in charge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in

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order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company.

***

39. From the above discussion, the following principles emerge:

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

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

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

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

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

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

(emphasis supplied)

29. At the same time, in a recent decision in HDFC Bank Limited v. State of Maharashtra and Another (2025) 9 SCC 653 at Para 27, this Court clarified that the complaint need not mechanically reproduce the exact phraseology of Section 141 of the NI Act if the substance of the allegations, read as a whole, discloses the factual basis for such liability. The emphasis, therefore, is not on form but on substance in the sense that the criminal liability under Section 141 of the NI Act is person-specific and cannot be imposed merely by association. The complaint must, therefore, disclose sufficient factual foundation qua each accused and the role attributable to each must be independently discernible.

30. The High Court has quashed the proceedings against all the respondents on the ground that the complaint does not disclose specific averments as to how and in what manner they were in-charge of and responsible for the conduct of the affairs of the Society and that the allegations are omnibus in nature. In doing so, reliance has been placed upon the decisions of this Court in S.P. Mani and Mohan Diary (supra) and Ashok Shewakramani (supra). The proposition of law laid down in the foregoing decisions admits of no dispute. Mere designation as an office

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bearer of a company or society is not sufficient to attract Section 141 of the NI Act. Equally, a complaint containing only a bald reproduction of the statutory language without factual foundation cannot be sustained. However, it is clear that the complaint itself is required to be read as a whole and not in isolated fragments.

17. The Hon'ble Supreme Court in ***'Saroj Kumar Poddar versus State (NCT of Delhi) & Anr. 2007(1) RCR(Criminal) 741, Harshendra Kumar D. versus Rebatilata Koley etc. 2011(1) RCR(Criminal) 887, Mrs. Anita Malohotra versus Apparel Export Promotion Council and another 2011(4) RCR(Civil) 930', Gunmala Sales Private Limited versus Anu Mehta and others 2015(1) RCR(Criminal) 54 and Rajesh Viren Shah versus Redington (India) Limited 2024(2) RCR(Criminal) 13',*** has held that a Director who has not signed the cheque and had resigned from the Company when the cheque was dishonoured cannot be held to be liable, provided there is unimpeachable evidence brought on record of the factum of such resignation and the said information of resignation has been conveyed to the relevant statutory authorities. The relevant extract of the judgments are as under:-

In ***Saroj Kumar Poddar versus State (NCT of Delhi) & Anr. 2007(1) RCR(Criminal) 741,*** the Hon'ble Supreme Court has held as under:-

4. Cognizance was taken against the appellant and other accused persons. Inter alia on the premise that the appellant

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had resigned from the Directorship of the Company before the date of issuance of the cheques and much before the deposit thereof by the drawee with its bank, and thus, he was not liable for the action of the Company, applications for quashing of the orders taking cognizance of the offence in the said complaint petitions were filed by the appellant before the High Court of Delhi which were marked as Crl. M.C. Nos. 4583, 4580 and 4575 of 2003. By reason of the impugned judgment, the said petitions have been dismissed by the High Court stating :

> "The learned trial judge while dealing with the recalling order of the petitioner made specific mention of the fact that the cheque in question was post dated cheque issued through letter dated 10th May, 1997. If that be so the matter needs further probe by way of trial and the petitioner cannot claim complete innocence at this stage in view of the letter dated 10th May, 1997 prima facie indicating that the cheque in question was issued on this date and the petitioner was the Director of the Company on 10th May, 1997 as he himself admitted that he resigned from the company with effect from 19th June, 1997."
>
> XXXX XXXX XXXX

12. Apart from the Company and the appellant, as noticed hereinbefore, the Managing Director and all other Directors were also made accused. The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the Directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour

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of the cheque has not been stated. The allegations made in paragraph 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act.

XXXX XXXX XXXX

12. For the reasons aforementioned, we have no other option but to hold that the allegations made in the complaint petitions even if are taken to be correct in their entirety do not disclose any offence as against the appellant herein. The proceedings against him, thus, should have been quashed by the High Court. The impugned judgment, therefore, cannot be sustained which is set aside accordingly. The appeal is allowed.

In ***Harshendra Kumar D. versus Rebatilata Koley etc. 2011(1) RCR(Criminal) 887***, the Hon'ble Supreme Court has held as under:-

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 fairly settled 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

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documents - which are beyond suspicion or doubt - placed by accused, the accusations against him cannot stand, it would be travesty of justice if 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 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 March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the appellant had resigned from the post of Director of the Company. The acceptance of appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about 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

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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.

23. These appeals are, accordingly, allowed. The judgment of the Calcutta High Court dated September 6, 2007 and the summons issued by the Metropolitan Magistrate, Calcutta to the appellant are set aside. The complaints as against the appellant stand quashed.

In ***Mrs. Anita Malohotra versus Apparel Export Promotion Council and another 2011(4) RCR(Civil) 930***, the Hon'ble Supreme Court has held as under:

11. A reading of the above provisions make it clear that there is a statutory requirement under Section 159 of the Companies Act that every Company having a share capital shall have to file with the Registrar of Companies an annual return which include details of the existing Directors. The provisions of the Companies Act require annual return to be made available by a company for inspection (S. 163) as well as Section 610 which entitles any person to inspect documents kept by the Registrar of Companies. The High Court committed an error in ignoring Section 74 of the Indian Evidence Act, 1872. Sub-section (1) of Section 74 refers to public documents and sub-section (2) provides that public documents include "public records kept in any State of private documents". A conjoint reading of Sections 159, 163 and 610(3) of the Companies Act, 1956 read with sub-section (2) of Section 74 of the Indian Evidence Act, 1872 make it clear that a certified copy of annual return is a public

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document and the contrary conclusion arrived at by the High Court cannot be sustained. Annual Return dated 30.09.1999 which provides the details about the existing Directors clearly show that the appellant was not a Director at the relevant time. Had the High Court considered the contents of the certified copy of the annual return dated 30.09.1999 filed by the Company which clearly shows that the appellant herein (A3) has not been shown as Director of the Company, it could have quashed the criminal proceedings insofar as A3 is concerned.

12. In DCM Financial Services Limited v. J.N. Sareen and Another, 2008(3) RCR (Criminal) 152 : 2008(3) RCR (Civil) 270 : (2008)8 SCC 1, this Court, while considering Sections 138 and 141 of the Act came to the following conclusion which is relevant for our purpose :

> "21. The cheque in question was admittedly a post-dated one. It was signed on 3-4-1995. It was presented only sometime in June 1998. In the meantime the first respondent had resigned from the directorship of the Company. The complaint petition was filed on or about 20-8-1998. Intimation about his resignation was given to the complainant in writing by the first respondent on several occasions. The appellant was, therefore, aware thereof. Despite having the knowledge, the first respondent was impleaded as one of the accused in the complaint as a Director in charge of the affairs of the Company on the date of commission of the offence, which he was not. If he was proceeded against as a signatory to the cheques, it should have been disclosed before the learned Judge as also the High Court so as to enable him to apply his mind in that behalf. It was not done. Although, therefore, it may be that as an authorised signatory he will be deemed to be person in-charge, in the facts and circumstances of the case, we are of the opinion that the said contention should not be permitted to be raised for the first time before us. A person who had resigned with the knowledge of the complainant in 1996

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> could not be a person in charge of the Company in 1998 when the cheque was dishonoured. He had no say in the matter of seeing that the cheque is honoured. He could not ask the Company to pay the amount. He as a Director or otherwise could not have been made responsible for payment of the cheque on behalf of the Company or otherwise. [See also Saroj Kumar Poddar v. State (NCT of Delhi), Everest Advertising (P) Ltd. v. State, Govt. of NCT of Delhi and Raghu Lakshminarayanan v. Fine Tubes."

13. In Harshendra Kumar D. v. Rebatilata Koley and Others, 2011(1) RCR (Criminal) 887 : 2011(1) Recent Apex Judgments (R.A.J.) 559 (2011)3 SCC 351, while considering the very same provisions coupled with the power of the High Court under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') for quashing of the criminal proceedings, this Court held :

> "25. 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 fairly settled 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

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> High Court may look into the materials which have significant bearing on the matter at prima facie stage."

As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merit of the accusation, but if on the face of the document which is beyond suspicion or doubt placed by the accused and if it is considered the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under section 482 of the Code.

14. Inasmuch as the certified copy of the annual return dated 30.09.1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with section 74(2) of the Indian Evidence Act, 1872, we hold that the appellant has validly resigned from the Directorship of the Company even in the year 1998 and she cannot be held responsible for the dishonour of the cheques issued in the year 2004.

15. This Court has repeatedly held that in case of a Director, complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused Company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. [Vide National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another, 2010(2) RCR (Criminal) 122 : 2010(2) Recent Apex Judgments (R.A.J.) 22 : (2010)3 SCC

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330]. In the case on hand, particularly, in para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day to day affairs of the Company. We have verified the averments as regard to the same and we agree with the contention of Mr. Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day to day affairs of the Company. On this ground also, the appellant is entitled to succeed.

16. In the light of the above discussion and of the fact that the appellant has established that she had resigned from the Company as a Director in 1998, well before the relevant date, namely, in the year 2004, when the cheques were issued, the High Court, in the light of the acceptable materials such as certified copy of annual return dated 30.09.1999 and Form 32 ought to have exercised its jurisdiction under Section 482 and quashed the criminal proceedings. We are unable to accept the reasoning of the High Court and we are satisfied that the appellant has made out a case for quashing the criminal proceedings. Consequently, the criminal complaint No. 993/1 of 2005 on the file of ACMM, New Delhi, insofar as the appellant herein (A3) is quashed and the appeal is allowed.

In ***Gunmala Sales Private Limited versus Anu Mehta and others 2015(1) RCR(Criminal) 54***, the Hon'ble Supreme Court has held as under:-

31. In this connection, it would be advantageous to refer to Harshendra Kumar D v. Rebatilata Koley & Ors., 2011(1) RCR

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(Criminal) 887 : 2011(1) Recent Apex Judgments (R.A.J.) 559 : (2011)3 SCC 351 where process was issued by the Magistrate on a complaint filed under Section 138 read with Section 141 of the NI Act. The appellant therein challenged the proceeding by filing revision application under Section 397 read with Section 401 of the Code. The case of the appellant-Director was that he had resigned from Directorship. His resignation was accepted and notified to the Registrar of Companies. It was averred in the complaint that the appellant was responsible for the day-to-day affairs of the company and it was on his and other Directors assurance those demand drafts were issued. Despite this averment, this Court quashed the complaint taking into account resolution passed by the company, wherein it was reflected that the appellant had resigned from the post of Director much prior to the issuance of cheque and the fact that the company had submitted Form-32. It was argued before this Court that the documents furnished by the accused could not have been taken into account. Repelling this submission this Court observed as under :

> "24. In Awadh Kishore Gupta this Court while dealing with the scope of power under section 482 of the Code observed : (SCC p. 701, para 13)
>
> "13. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under section 482 of the Code, it is not permissible for the court to act as if it was a trial Judge."
>
> 25. 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

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or the materials which [pic] 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 fairly settled 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.

26. 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."

32. As already noted in Anita Malhotra, relying on Harshendra Kumar, this Court quashed the complaint filed under Section 138 read with Section 141 of the NI Act relying on the certified copy of the annual return which was a public document as per the Companies Act read with Section 74(2) of the Evidence Act, which established that the appellant/Director therein had resigned from the Directorship much prior to the issuance of cheques. This was done despite the fact that the complaint contained the necessary averments. In our opinion, therefore,

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there could be a case where the High Court may feel that filing of the complaint against all Directors is abuse of the process of court. The High Court would be justified in such cases in quashing the complaint after looking into the material furnished by the accused. At that stage there cannot be a mini trial or a roving inquiry. The material on the face of it must be convincing or uncontrovered or there must be some totally acceptable circumstances requiring no trial to establish the innocence of the Directors.

33. We may summarise our conclusions as follows :

> a) Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;
>
> b) If a petition is filed under section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.
>
> c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had

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resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers under section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

In ***Rajesh Viren Shah versus Redington (India) Limited 2024(2) RCR(Criminal) 13,*** the Hon'ble Supreme Court has held as under:-

7. We also notice this Court to have observed, in regards to the exercise of the inherent powers under section 482, CrPC, 1973 in cases involving negotiable instruments that interference would not be called for, in the absence of "some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court." This principle as

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held in S.M.S Pharmaceuticals (supra) was followed in Ashutosh Ashok Parasrampuriya and Anr. v. Gharrkul Industries Pvt. Ltd. and Others 2021 SCC OnLine SC 915.

8. We find the High Court, in the impugned order to have elaborately discussed the principles of law in regard to the quashing of such proceedings but, however, not dealt with the factual matrix. Ex facie, we find that the complainant has not placed any materials on record indicating complicity of the present appellant(s) in the alleged crime. Particularly, when the appellant(s) had no role in the issuance of the instrument, which is evident from Form 32 (Exh.P.59) issued much prior to the date on which the cheque was drawn and presented for realisation.

9. The veracity of Form-32 has neither been disputed by the Respondent nor has the act of resignation simpliciter been questioned. As such, the basis on which liability is sought to be fastened upon the instant appellant(s) is rendered questionable.

10. The record reveals the resignations to have taken place on 9th December 2013 and 12th March 2014. Equally, we find the cheques regarding which the dispute has travelled up the courts to have been issued on 22nd March 2014. The latter is clearly, after the appellant(s) have severed their ties with the Respondent- Company and, therefore, can in no way be responsible for the conduct of business at the relevant time. Therefore, we have no hesitation in holding that they ought to be then entitled to be discharged from prosecution.

11. In this view of the matter, the judgments captioned above of the High Court of Judicature at Madras, deserve to be set aside.

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Accordingly, all criminal proceedings pertaining to the instant appellant(s) arising out of the complaints filed by the respondent herein are quashed.

This Court in the case of ***'Bhupinder Kaur versus M/s Sohan Lal Mohan Lal and Anr. 2023(4) RCR(Criminal) 734'*** has held as under:-

12. Coming back to the facts of the instant case, it is apparent from the record that the petitioner was a Director of the accused firms only upto 20.08.2013. The said fact is discernible from Form-32 (Annexure P-2) and the annual return for the year 2014/2015 (Annexure A-1). The respondent/complainant has not been able to bring on record any document or other substantive evidence to establish the falsity of the said two documents. He has only stated that the veracity of the said documents were to be established during the course of the Trial. Apparently, the documents (Annexures P-2 and A-1) are public documents and their existence cannot be denied. In fact, the said documents are per se admissible in evidence. Once the petitioner has brought on record unimpeachable evidence in the shape of these documents, thus, merely because the accused including the petitioner did not reply to the legal notice denying her Directorship, no adverse inference can be drawn against the petitioner. Further, merely because the accused had entered into a compromise with other complainants in their complaints under the NI Act does not in any manner establish that the petitioner continued to be involved in the running of the day-to-day affairs of the company post her resignation as a Director.

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18. In ***'Sudeep Jain versus Ece Industries Ltd. 2013(8) RCR(Criminal) 2483',*** the Hon'ble Delhi High Court issued directions to the effect that the Magistrates would seek copies of Form 32 from the complainant at the time of filing of the complaint to *prima facie* satisfy itself as to who were the Directors of the accused Company at the time of the commission of the offence. These directions were issued with a view to reduce litigation. The relevant extract of the said judgment is as under:-

> *9. The prime objective of this Court is to remind all the Metropolitan Magistrates in Delhi to carefully scrutinise all the complaint cases being filed under Section 138 r/w 141 of the Negotiable Instruments Act, 1881 against the accused companies at the pre-summoning stage and make sure that notice be directed only to those directors or employees of the company who satisfy the principles laid down in the aforesaid judgments. Summons must be issued only after giving due consideration to the allegations and the materials placed on record by the complainant. Undeniably, as per the aforesaid legal pronouncements, Managing Director and the Joint Managing Director are deemed to be vicariously liable for the offence committed by the company because of the position they hold in the company. Problem arises in cases where all the persons holding office in the company are sought to be prosecuted by the complainant, irrespective of whether they played any specific role in the incriminating act. It is surprising to see that in plethora of cases, the complaint contains allegations even against those persons who might have been Directors at any point in time in the accused company, but had*

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resigned from such company much prior to the period when the alleged offence was committed. Issuing summons to all persons named in the complaint mechanically, without ascertaining whether they played any actual role in the transaction, not only pesters the innocent directors/employees named in the complaint, but also upsurges the load on the High Courts as the Magistrates once issuing the summoning orders against the accused, are precluded from reviewing their summoning orders in view of the decision of the Apex Court in Adalat Prasad v. Rooplal Jindal and Ors., (2004) 7 SCC 338 : AIR 2004 Supreme Court 4674. One can also not lose sight of the fact that once such innocent persons are summoned, they have no choice but to seek bail and face the ordeal of trial. Many of such persons also approach the High Court under Section 482 Cr.P.C. to seek quashing of the summoning order and the complaint filed against them and this further increases the burden on the already overburdened Courts.

10. With a view to ensure that the Metropolitan Magistrates dealing with the complaint cases filed under Section 138 r/w Section 141 of the Negotiable Instruments Act have a clear and complete picture of the persons arrayed by the complainant so as to hold them vicariously liable for the commission of the offence by the accused company, I am inclined to direct that the Magistrates must seek copies of Form-32 from the complainant to prima facie satisfy the Court as to who were the directors of the accused company at the time of commission of the alleged offence and on the date of filing of the complaint case. In addition to the above, the Magistrates must also seek information as given in the following table which is to be

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annexed by the Complainant on a separate sheet accompanying the complaint:-

a.	*Name of the accused Company;*
b.	*Particulars of the dishonoured cheque/cheques;*
.	*Person/Company in whose favour the cheque/cheques were issued*
.	*Drawer of the cheque/cheques*
.	*Date of issuance of cheque/cheques*
.	*Name of the drawer bank, its location*
	Name of the drawee bank, its location
.	*Cheque No. /Nos.*
.	*Signatory of the cheque/cheques*
c.	*Reasons due to which the cheque/cheques were dishonoured;*
d.	*Name and Designation of the persons sought to be vicariously liable for the commission of the offence by the accused Company and their exact role as to how and in what manner they were responsible for the commission of the alleged offence;*
e.	*Particulars of the legal notice and status*

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	of its service;
f.	*Particulars of reply to the legal notice, if any.*

11. The Registry is directed to send a copy of this order to all the Metropolitan Magistrates posted in various district courts of Delhi for necessary compliance. Registry is further directed to send a copy of this order to all the Bar Associations of various district courts of Delhi, so that they can apprise the members of the Bar about the aforesaid directions.

19. This Court in ***'Anil Chanana versus M/s Gyani Ram Ruliya Ram 2019(1) RCR(Criminal) 388',*** while agreeing with the observations made and directions issued by the Delhi High Court in ***Sudeep Jain (supra),*** directed that in all cases where the accused was a Company, before summons were issued to the accused persons, the Trial/Magistrate would direct the complainant to produce a copy of Form 32 and the Annual Returns filed by the Company in order to determine the persons who were the Directors on the date of commission of the offence. The relevant extract of the said judgment is as under:-

28. At this stage, it would be appropriate to refer to the judgment of the Delhi High Court in Sudip Jain (supra). Delhi High Court has held that in order to reduce litigation it would be appropriate for the concerned Magistrates to seek copies of Form No. 32 and the latest Annual Return filed by the Company

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so that only those persons who are Directors on the date of commission of the offence are summoned.

29. I respectfully agree with the observations made by the Delhi High Court. It is, thus, directed that in all cases where the accused is a 'Company', before issuing summons to the accused persons the trial Court/Magistrate shall direct the complainant to produce a copy of Form No. 32 and the annual Return filed by the Company in order to determine the persons, who were Directors on the date of commission of the offence. In cases where the accused-Director is the Chairman or Managing Director or Joint Managing Director or authorized signatory of the cheque, they may be summoned without any averment regarding their role in the conduct of the affairs of the Company. For summoning of any other Director or officer of the Company the necessary averment regarding their role in the conduct of the business of the Company, must be insisted upon. In respect of whole time Directors, mere reproduction of the words of Section 141 of the Act would be sufficient.

30. A copy of this judgment be sent to all District Judges in the States of Punjab and Haryana and to the District Judge of U.T. Chandigarh for compliance.

20. Coming back to the facts of the present case, there is no dispute that the accused Company is A2Z Waste Management (Ludhiana) Limited. The Director Identification (DIN) Number of the petitioner-Deepak Aggarwal is 06540266. The details of the companies of which the petitioner is a Director are available on the Website of Ministry of Corporation Affairs (Annexure P-3). While the petitioner is a Director of multiple companies, he

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is not a Director of the accused Company. Similarly, the Corporation Identification (CIN) No. of the accused company is U90002HR2011PLC043415. The details of the Directors of the said Company are available on the Website of Ministry of Corporation Affairs (MCA) and would reveal that the petitioner was never ever a Director of the accused Company. These facts have remained uncontroverted by the counsel for the complainant whose only plea is that the defence of the accused-petitioner/Deepak Aggarwal that he was never the Director would be a matter of Trial. The argument raised by the learned counsel for the respondent, however, cannot be accepted in view of the judgments in ***'Saroj Kumar Poddar versus State (NCT of Delhi) & Anr. 2007(1) RCR(Criminal) 741, Harshendra Kumar D. versus Rebatilata Koley etc. 2011(1) RCR(Criminal) 887, Mrs. Anita Malohotra versus Apparel Export Promotion Council and another 2011(4) RCR(Civil) 930', Gunmala Sales Private Limited versus Anu Mehta and others 2015(1) RCR(Criminal) 54 and Rajesh Viren Shah versus Redington (India) Limited 2024(2) RCR(Criminal) 13',*** as per which the Director who has resigned from the company and has produced unimpeachable evidence of the same cannot be summoned to face Trial under the Negotiable Instruments Act, 1881. The case of the petitioner is on a better footing inasmuch as he was never ever a Joint Managing Director of the accused Company, so, the question of resigning does not arise.

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21. In fact, had the directions issued in the judgments of ***Sudeep Jain versus Ece Industries Ltd. 2013(8) RCR(Criminal) 2483 and Anil Chanana versus M/s Gyani Ram Ruliya Ram 2019(1) RCR(Criminal) 388*** been complied with by the concerned Magistrate inasmuch as if the said Court had satisfied itself as to who were the Directors of the accused Company when the cheques were dishonoured, the petitioner might not have been summoned. On the other hand, if the complainant was made aware of the fact that the petitioner was never an officer of the Company, he could have made additional averments in the complaint specifying the role of the petitioner in the affairs of the Company even though, he did not hold any office. It is pertinent to mention here that neither has the role of the petitioner been spelt out in the complaint nor during the course of the hearing of the present case. Therefore, non-compliance of the directions issued in ***Sudeep Jain and Anil Chanana (supra)*** have caused irreparable harm to the petitioner.

22. The case of Amit Mittal is on a different footing. A perusal of the legal notice would reveal that it was addressed to Sh. Amit Mittal as the Chief Managing Director of the A2Z Waste Management (Ludhiana) Limited. A reply to the said notice was issued on behalf of the Company. However, the Company did not deny the designation of Sh. Amit Mittal. In fact, the legal notice shown to this Court only refers to Sh. Amit Mittal and two signatories of the cheque Sh. Manoj Khaitan and Sh. Balendra Pratap

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Singh Chohan. Had the notice been received by the petitioner, he would have possibly responded to say that he had nothing to do with the affairs of the accused Company. However, no such notice was ever received by the petitioner. It appears that the Company also did not respond to the role of the petitioner as the name of the petitioner is not mentioned in the said notice dated 04.10.2013. Be that as it may, the fact of the matter as established from the record is, that the petitioner never ever was incharge of and responsible for the conduct of the business of the Company either as a Joint Managing Director or as a person not holding any post.

23. In view of the aforementioned discussion, I find considerable merit in the present petition and therefore, the same is accepted. The complaint NACT No.262/2018 dated 05.10.2018 (Annexure P-4) and all the consequential proceedings arising therefrom including the summoning order dated 16.01.2014 (Annexure P-5) stand quashed qua the present petitioner alone.

24. In furtherance of the directions issued by the Delhi High Court in ***Sudeep Jain versus Ece Industries Ltd. 2013(8) RCR(Criminal) 2483*** and this Court in ***Anil Chanana versus M/s Gyani Ram Ruliya Ram 2019(1) RCR(Criminal) 388*** and before parting with this judgment, this Court deems it necessary to issue certain directions with a view to streamlining the process of adjudication of complaints filed under Section 138 of the Negotiable Instruments Act, 1881, particularly in cases where the

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accused is a body corporate, namely, a private limited company or a public limited company. It has been noticed that a substantial number of complaints under Section 138 NI Act are filed without adequate verification of the corporate status of the accused entity, and without ascertaining the actual persons who were in charge of, and responsible to, the company for the conduct of its business at the time the offence is alleged to have been committed. This has, on several occasions, resulted in erroneous impleadment of persons who had already ceased to be directors, or who never held the position of a director/authorised signatory at the relevant point in time, thereby causing unnecessary harassment to such individuals and consequential delay in the trial. In order to obviate such difficulties and to ensure that only the persons who were actually responsible for the affairs of the company at the relevant time are arraigned as accused, this Court directs that henceforth, every complainant filing a complaint under Section 138 NI Act against a company shall mandatorily annex to the complaint (i) the Corporate Identification Number (CIN) of the accused company, duly obtained from the Master Data available on the official portal of the Ministry of Corporate Affairs (www.mca.gov.in), so as to establish the correct corporate identity, date of incorporation, registered office, and current status (active/struck-off/under liquidation) of the accused company; and (ii) a certified copy of Form DIR-12 (Particulars of appointment of Directors and Key Managerial Personnel and changes among them), filed by the company

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with the Registrar of Companies, so as to demonstrate that the person(s) sought to be arraigned as accused were, in fact, holding the office of director or were otherwise in charge of and responsible for the day-to-day affairs of the company on the date the cheque in question was issued and/or dishonoured. The District & Sessions Judge of each District is directed to ensure that complaints under Section 138/141 NI Act against corporate accused are not registered without the aforesaid documents being annexed thereto, save and except where the complainant satisfies the Court, by way of a specific averment on affidavit, that such documents are not available despite due diligence, in which event the Magistrate shall record reasons before proceeding to take cognizance. This direction shall apply prospectively to all complaints filed under Section 138/141 NI Act from the date of this judgment

25. A copy of this judgment be sent to all the District & Sessions Judges in the States of Punjab and Haryana and to the District Judge U.T., Chandigarh for compliance.

26. The pending application(s), if any, shall stand disposed of accordingly.

September 02, 2026 **(JASJIT SINGH BEDI)**
sukhpreet **JUDGE**

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

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