

**HIGH COURT OF PUNJAB AND HARYANA**

*Bench: Hon'ble Mr. Justice Jasjit Singh Bedi*

*Date of Decision: 26 September 2023*

**CRM-M-25090-2021 (O&M)**

BHUPINDER KAUR

... Petitioner

**Versus**

M/S SOHAN LAL MOHAN LAL AND ANR

... Respondents

**Section, Acts, Rules, and Article:**

Section 138, 141 of the Negotiable Instruments Act, 1881

Section 482 of the Criminal Procedure Code, 1973

**Subject:** Cheque Bounce - Criminal Liability - Resignation as Director, Cheque Dishonor - Vicarious Liability - Interpretation of Sections 138 and 141 of the Negotiable Instruments Act, 1881 – Liability of Directors.

**Headnotes:**

*Criminal Complaint - Quashing of proceedings under Section 138 of the NI Act - Allegation of cheque dishonour - Accused petitioner's contention of resignation as Director - Reliance on Form-32 and Annual Returns - Dispute regarding petitioner's involvement in company affairs - Interpretation of documents in summary proceedings - Relevance of legal notice response. [Para 2-8]*

*Criminal Liability - Resignation as Director - Cheque Dishonor - Vicarious Liability - Petitioner, who was a Director of the accused firms only until 20.08.2013, faced allegations of cheque dishonor for a cheque issued on 20.01.2018 - Documents, including Form-32 and annual returns, clearly indicated the petitioner's resignation - No substantive evidence provided to dispute the authenticity of these documents - No adverse inference can be drawn against the petitioner for not responding to the legal notice denying her Directorship - Liability cannot be affixed upon the petitioner for events occurring after her resignation - Complaint, orders of summoning, and subsequent proceedings quashed against the petitioner alone, while proceedings continue against other accused, including the Company. [Para 12-14]*

**Referred Cases:**

- Anil Khadkiwala Versus State (Government of NCT of Delhi) and another, 2019(3) R.C.R. (Criminal) 971
- Sudhir Kumar Windlass Director and others Versus Union of India, CRL.O.P.No.28111 of 2014, decided on 03.07.2019

- Mrs. S. Valliammal Versus Omprakash, 2007(26) R.C.R. (Criminal) 20
- Ashok Muthanna, Managing Director M/s Fidelity Industries Ltd. Versus WiproFinance Ltd., 2001(2) R.C.R. (Criminal) 443
- S.P. Mani & Mohan Dairy Versus Dr. Snehalatha Elangovan, 2022(4) R.C.R. (Criminal) 743.
- Anil Khadkiwala
- Versus State (Government of NCT of Delhi) and another, 2019(3) R.C.R. (Criminal) 971
- Sudhir Kumar Windlass Director and others Versus Union of India, CRL.O.P.No.28111 of 2014, decided on 03.07.2019
- Mrs. S. Valliammal Versus Omprakash, 2007(26) R.C.R. (Criminal) 20
- Ashok Muthanna, Managing Director M/s Fidelity Industries Ltd. Versus WiproFinance Ltd., 2001(2) R.C.R. (Criminal) 443
- S.P. Mani & Mohan Dairy Versus Dr. Snehalatha Elangovan, 2022(4) R.C.R. (Criminal) 743

Representing Advocates:

Mr. J.S. Ghuman, Advocate for the petitioner.

Mr. Udit Garg, Advocate for respondent Nos.1 and 2.

\*\*\*\*\* **JASJIT SINGH BEDI, J.** \*\*\*\*\*

**CRM-40045-2023**

The present application has been filed by the applicant-petitioner for placing on record the Annual Report of the company dated 30.09.2015 as Annexure A-1. For the reasons mentioned in the application, the same is allowed and the Annual Report of the company dated 30.09.2015 as Annexure A-1 is taken on record.

**CRM-M-25090-2021**

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of Criminal Complaint No.NACT/729/2018 dated 02.07.2018 (Annexure P-1), the summoning order dated 04.08.2018 under Section 138 of the NI Act (Annexure P-3), the order dated 08.03.2021 (Annexure P-4) whereby the application along with the revision petition filed by the petitioner stands dismissed and subsequent proceedings arising therefrom.

2. The brief facts of the case as emanating from the pleadings are that the complainant firm (M/s Sohan Lal Mohan Lal, Commission Agents, Talwandi Bhai Tehsil and District Ferozpur through its partner Sh.Vijay Kumar son of Mohan Lal) had been supplying paddy/basmati on credit to the accused firm of which accused No.1 (Bhupinder Kaur, Director of Golden Agrarian Pvt. Ltd.

Sadik Road, Faridkot, Tehsil and District Faridkot) and accused No.2 (Sukhveer Singh Samra, Director of Golden Agrarian Pvt. Ltd. Sadik Road, Faridkot, Tehsil and District Faridkot) were the Directors and accused No.5 (Harinder Singh Samra, Authorised Signatory of Golden Agrarian Pvt. Ltd. Sadik Road, Faridkot, Tehsil and District Faridkot) was an authorised signatory in the banks of the accused company. Over a period of time, an amount of Rs.58,08,350.95/- became due on the part of the accused Firm. In partial discharge of their liability, the accused issued a Cheque No.889783 dated 25.01.2018 for an amount of Rs.3,00,000/-favouring the Complainant firm from their Company's Account No.0978002100359107 at the Punjab National Bank, Main Bazar Faridkot with the assurance that the said cheque would be honoured. However, the cheque in question was dishonoured with the remarks 'Funds Insufficient'. A legal notice was sent to the accused making a demand of the payment of the cheque amount. However, no reply was furnished to the said legal notice.

3. Thereafter, the complaint under Section 138 read with Section 142 of the Banking Public Financial Institutions and Negotiable Instruments Act, 1881 came to be instituted at the instance of the complainant No.1/respondent No.1-firm M/s Sohan Lal Mohan Lal, Commission Agents, Talwandi through its partner Vijay Kumar (complainant No.2/respondent No.2) against Bhupinder Kaur, Director of Golden Agrarian Pvt. Ltd. (petitioner) Sadik Road, Faridkot, Tehsil and District Faridkot, Sukhveer Singh Samra, Director of Golden Agrarian Pvt. Ltd. Sadik Road, Faridkot, Tehsil and District Faridkot, Golden Agrarian Pvt. Ltd. Sadik Road, Faridkot, Tehsil and District Faridkot through its Director Bhupinder Kaur, Golden Agrarian Pvt. Ltd. Sadik Road, Faridkot, Tehsil and District Faridkot through its Director Sukhveer Singh Samra and Harinder Singh Samra, Authorised Signatory of Golden Agrarian Pvt. Ltd. Sadik Road, Faridkot, Tehsil and District Faridkot. The copy of the complaint dated 02.07.2018 is attached as Annexure P-1 to the petition.

4. Based on the aforementioned complaint dated 02.07.2018 (Annexure P-1), the summoning order was passed on 04.08.2018 under Section 138 of the NI Act. A copy of the said order is attached as Annexure P3 to the petition.
5. Against the aforementioned summoning order, a revision petition was preferred which came to be dismissed. A copy of the order dated 08.03.2021 passed by the Additional Sessions Judge, Ferozpur is attached as Annexure P-4 to the petition.
6. The instant petition has been preferred against the complaint dated 02.07.2018 (Annexure P-1), the summoning order dated 04.08.2018 (Annexure P-3) and the revision petition dated 08.03.2021 (Annexure P-4).
7. The learned counsel for the petitioner contends that the petitioner was a Director only upto 20.08.2013 after which she resigned from her post. Reliance is placed on the Form-32 filed in terms of the provisions of the Companies Act as per which the petitioner is shown to have ceased to remain a Director. The copy of the said Form-32 is attached as Annexure P-2 to the petition. He has also referred to his application dated 19.09.2023 whereby he has placed on record Annexure A-1, the Annual Returns of the company which shows that it was incorporated on 16.10.2012 and that in the year 2014/2015, there were only two Directors namely, Harinderjeet Singh Samra and Malkiat Singh and not the petitioner. He, therefore, contends that since the petitioner was neither a signatory to the cheque nor a Director at the time when the cheque was issued and when it came to be dishonoured, no liability could be affixed upon her as the Form-32 and the Annual Returns which were public documents under the Evidence Act, 1872 would conclusively establish that the petitioner had ceased to be a Director on 20.08.2013. Reliance is placed on the judgments in **Anil Khadkiwala Versus State (Government of NCT of Delhi) and another, 2019(3) R.C.R. (Criminal) 971, Sudhir Kumar Windlass Director and others Versus Union of India, CRL.O.P.No.28111 of 2014, decided on 03.07.2019, Mrs. S. Valliammal Versus Omprakash,**

**2007(26) R.C.R. (Criminal) 20 and Ashok Muthanna, Managing Director M/s Fidelity Industries Ltd. Versus WiproFinance Ltd., 2001(2) R.C.R. (Criminal) 443.**

8. The learned counsel for respondents, during the pendency of the instant petition has filed a reply dated 02.12.2022 which is already on record. While referring to the reply, he contends that as per the documents supplied to the answering respondents including the Articles of Association (Annexure R1) when the paddy/basmati was supplied to the accused, the petitioner was one of the Directors of the accused company. As the petitioner had effected a compromise in most of the complaints filed by other commission agents, it was apparent that she was involved in the day-to-day running of the company. So far as Form-32 (Annexure P-2) and the Annual Return for the year 2014/2015 (Annexure A-1) were concerned, the existence of said documents is not denied but he contends that the said documents could not be relied upon in the instant summary proceedings to quash the complaint and summoning order qua her, moreso when no reply to the legal notice was submitted by the petitioner or her co-accused denying her Directorship of the accused company. Reliance is placed on the judgment of the Hon'ble Supreme Court in **S.P. Mani & Mohan Dairy Versus Dr. Snehalatha Elangovan, 2022(4) R.C.R. (Criminal) 743.**
9. I have heard the learned counsel for the parties.
10. Before proceeding further in the matter, it would be apposite to refer to the relevant provisions of the Negotiable Instruments Act.

**Section 138 of the NI Act, 1881 reads as under:-**

*138. Dishonour of cheque for insufficiency, etc., of funds in the account. — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have*

*committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:*

*Provided that nothing contained in this section shall apply unless-*

*(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*

*(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

*(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

*Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.*

**Section 141 of the NI 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:*

*[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.*

*Explanation.— For the purposes of this section,—*

*(a) “company” means any body corporate and includes a firm or other association of individuals; and*

*(b) “director”, in relation to a firm, means a partner in the firm.]*

11. The various judgments referred to by both the parties are as under:-

The Hon'ble Supreme Court in the case of **Anil Khadkiwala**

**Versus State (Government of NCT of Delhi) and another, 2019(3) R.C.R.**

**(Criminal) 971**, held as under:-

7. *The complaint filed by respondent no.2 alleges issuance of the cheques by the appellant as Director on 15.02.2001 and 28.02.2001. The appellant in his reply dated 31.08.2001, to the statutory notice, had denied answerability in view of his resignation on 20.01.2001. This fact does not find mention in the complaint. There is no allegation in the complaint that the cheques were post-dated. Even otherwise, the appellant had taken a specific objection in his earlier application under Section 482, Cr.P.C., 1973 that he had resigned from the Company on 20.01.2001 and which had been accepted. From the tenor of the order of the High Court on the earlier occasion it does not appear that Form 32 issued by the Registrar of Companies was brought on record in support of the resignation. The High Court dismissed the quashing application without considering the contention of the appellant that he had resigned from the post of the Director of the Company prior to the issuance of the cheques and the effect thereof in the facts and circumstances of the case. The High Court in the fresh application under Section 482, Cr.P.C., 1973 initially was therefore satisfied to issue notice in the matter after noticing the Form 32 certificate. Naturally there was a difference between the earlier application and the subsequent one, inasmuch as the statutory Form 32 did not fall for consideration by the Court earlier. The factum of resignation is not in dispute between the parties. The subsequent application, strictly speaking, therefore cannot be said to a repeat application squarely on the same facts and circumstances.*

8. *In Mohan Singh (supra), it was held that a successive application under Section 482, Cr.P.C., 1973 under changed circumstances was maintainable and the dismissal of the earlier application was no bar to the same, observing:*

*"2. .. Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under section 561A of the*

*CrPC, 1973 to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents Nos. 1 and 2 were constrained to make a fresh application to the High Court under Section 561A to quash the proceeding. It is difficult to see how in these circumstances it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the Order made by it on the earlier application. Section 561A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years....."*

9. *In Harshendra Kumar D. v. Rebatilata Koley Etc., 2011(1) RCR (Criminal) 887 : 2011 Cr.L.J. 1626, this Court held: "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 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."*

10. *Atul Shukla (supra) is clearly distinguishable on its facts as the relief sought was for review/recall/modify the earlier order of dismissal in the interest of justice. Consequently, the earlier order of dismissal was recalled. It was in that circumstance, it was held that in view of Section 362, Cr.P.C., 1973 the earlier order passed dismissing the quashing application could not have been recalled. The case is completely distinguishable on its own facts.*

11. *The Company, of which the appellant was a Director, is a party respondent in the complaint. The interests of the complainant are therefore adequately protected. In the entirety of the facts and circumstances of the case, we are unable to hold that the second application for quashing of the complaint was not maintainable merely because of the dismissal of the earlier application.*

12. *The impugned order of the High Court is set aside. The appeal is allowed and the proceedings against the appellant alone are quashed.*

(emphasis supplied)

In **Sudhir Kumar Windlass Director and others Versus Union of India, CRL.O.P.No.28111 of 2014, decided on 03.07.2019**, held as under:-

6. *The petitioners before this Court are arrayed as A4 and A5. The Form-32 that has been filed before this Court clearly shows that the petitioners resigned as Directors from the A1 Company on 14.09.2010. The offence in this case is said to have been taken place in the year 2013 much after the resignation of the petitioners. It is also clear from the information received by the respondent, from the Ministry of Corporate Affairs that it is only A1 to A3 who are signatories of the Company.*

7. *The Hon'ble Supreme Court of India in the case of Anita Malhotra v. Apparel Export Promotion Council reported in (2012) 1 (SCC) 520 has categorically held that Form-32 is a public document which is sterling in quality and the same can be relied upon even though it is produced on the side of the defence.*

8. *This Judgment will squarely apply to the facts of the present case.*

9. *The criminal proceedings as against the petitioners is an abuse of process of Court and it requires interference by this Court in exercise of its jurisdiction under section 482 of Cr.P.C., 1973*

10. *In the result the proceedings in C.C.No.4426 of 2014 on the file of the IV Metropolitan Magistrate, Saidapet is quashed, insofar as the petitioners are concerned. It is made clear that the Court below shall continue the proceedings as against the other accused persons.*

11. *Accordingly, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in C.C.No. 4426 of 2014, within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.*

(emphasis

supplied) In **Mrs. S. Valliammal Versus Omprakash, 2007(26) R.C.R. (Criminal) 20** held as under:-

*"11. It is pertinent to point out that it is incumbent on the part of the complainant before filing the complaint alleging that the fourth accused, the petitioner herein, is a Director of the first accused-company to have verified Form-32. Simply because the complainant in the complaint has alleged that the petitioner is one of the Directors of the first accused-company and she was incharge of and responsible for the conduct of the business of the company the same cannot make the petitioner liable for prosecution, when Form-32 clearly establishes that she had already resigned from the Directorship of company as early as 24.09.1999 and evidencing the same Form-32 has been filed with the Registrar of Companies and certified copy of the same has also been produced. When Form-32 which is an unimpeachable document of sterling quality and whose genuineness is not disputed has been produced before this Court, it will be perversity of justice to direct the petitioner to face the trial and prove her case.*

12. *In the decision reported in AIR 2005 Supreme Court 359 (referred to supra) the Apex Court after referring to the decision reported in (1994) 4 S.C.C. 142 (referred to supra) has observed as follows:-*

*"In the present case, however, the question involved is not about the exercise of jurisdiction under section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing"*

*The above passage makes it abundantly clear that in the petition filed under Section 482 of the Criminal Procedure Code seeking to quash the proceedings if the accused filed an unimpeachable evidence of sterling quality, such evidence can be accepted and proceedings can be quashed. As*

held in the decision reported in (2001) 2 C.T.C. 78 (referred to supra) Form-32 is a public document.

13. As pointed out above, the genuineness of the certified copy of Form-32 produced by the petitioner is not in dispute. Therefore, if by accepting the contention of the learned counsel for the respondents the petitioner is directed to produce Form-32 before the trial court and seek acquittal it will amount to perversity of justice.

14. Section 482 of the Criminal Procedure Code is meant to secure the ends of justice. Therefore, this is a fit case to invoke the provisions contained in Section 482 of the Criminal Procedure Code especially to secure the ends of justice. Accordingly, the above criminal original petitions are allowed.

All further proceedings in C.C.No.1808 of 2006 on the file of the Judicial Magistrate No.IV, Salem and C.C.No.481 of 2006 on the file of the Judicial Magistrate No.II, Erode, are hereby quashed so far as the petitioner is concerned.

(emphasis supplied)

In **Ashok Muthanna, Managing Director M/s Fidelity**

**Industries Ltd.Versus WiproFinance Ltd., 2001(2) R.C.R. (Criminal) 443,**  
it

was held as under:-

4. In regard to the first point in relation to the second petitioner V.G. Subbaraman (A3), I find merit in the contention of the learned counsel for the petitioners, inasmuch as Form No. 32 issued by the Registrar of Companies, which has been produced before this Court and the same has not been disputed by the counsel for the respondent/complainant, would reveal that the said second petitioner retired on 28.3.1998 itself and as such, he did not function as a Director either on the date when the cheques were issued (i.e.) on 23.1.1999 or when the cause of action arose for non-payment of the cheque amount on receipt of the statutory notice on 10.7.1999.

5. Though the said document does not form part of the complaint and other records accompanied with the complaint, this can be taken into consideration by this Court, since the contents of the said document, which is a public document, is not disputed by the learned counsel for the respondent.

6. As held by the supreme Court in Satish Mehra v. Delhi Administration and another, 1996(3) Crimes 85 (S.C.) the Court is within its powers to consider even materials which the accused may produce even before the commencement of trial of the purpose of deciding whether the accused could be discharged when those documents are not in dispute.

7. In the present case, as noted above, the document Form No.32 would reveal that the second petitioner was not the director who was in-charge of

*and responsible for the affairs of the company during the relevant period and as such, the proceedings as against the second petitioner are liable to be quashed and, accordingly quashed.*

(emphasis supplied)

The Hon'ble Supreme Court in **S.P. Mani & Mohan Dairy Versus**

**Dr. Snehalatha Elangovan, 2022(4) R.C.R. (Criminal) 743**, held as

under:-

43. *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 in-charge or responsible for day-to-day affairs of the firm cannot be on the basis of mere bald assertion in this regard. The same is not sufficient. To make good her case, the respondent herein is expected to lead unimpeachable and incontrovertible evidence. Nothing of the sort was adduced by the respondent before the High Court to get the proceedings quashed. The High Court had practically no legal basis to say that the averments made in the complaint are not sufficient to fasten the vicarious liability upon the respondent by virtue of section [141](#) of the NI Act.*
44. *We may also examine this appeal from a different angle. It is not in dispute, as noted above, that no reply was given by the respondent to the statutory notice served upon her by the appellant. In the proceedings of the present type, it is essential for the person to whom statutory notice is issued under section [138](#) of the NI Act to give an appropriate reply. The person concerned is expected to clarify his or her stance. If the person concerned has some unimpeachable and incontrovertible material to establish that he or she has no role to play in the affairs of the company/firm, then such material should be highlighted in the reply to the notice as a foundation. If any such foundation is laid, the picture would be more clear before the eyes of the complainant. The complainant would come to know as to why the person to whom he has issued notice says that he is not responsible for the dishonour of the cheque. Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing*

*of the complaint is not just to 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.*

- 45. 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 noticee. In such circumstances what more is expected of the complainant to say in the complaint.*
- 46. 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.*
- 47. Our final conclusions may be summarised as under:-*
  - a.) 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.*
  - b.) 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.*

*c.) Needless to say, the final judgement 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.*

*d.) 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) 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.

13. Therefore, once the petitioner has already resigned from the Directorship of the company on 20.08.2013 and the instant cheque came to be issued on 20.01.2018 no liability can be affixed upon the petitioner. However, the other Directors and the accused/company would continue to remain liable subject, of course, to the outcome of the Trial qua them.
14. In view of the aforementioned discussion, I find considerable merit in the present petition and therefore, the complaint dated 02.07.2018 (Annexure P-1), the order of summoning dated 04.08.2018 (Annexure P-3), the order in revision petition dated 08.03.2021 (Annexure P-4) and all subsequent proceedings arising therefrom stand quashed against the petitioner alone. However, the proceedings shall continue against the other co-accused including the Company.
15. As the complaint pertain to the year 2018, the Trial Court is directed to conclude the Trial as expeditiously as possible but in any case not later than six months from the next date fixed before it.

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