

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 16526 of 2017**

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RAKHIDEVI UMASHANKAR AGARWAL W/O UMASHANKAR SHYAMLAL
AGARWAL
Versus
RELIGARE FINVEST LTD & ANR.

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Appearance:

ADITYA A GUPTA(7875) for the Applicant(s) No. 1
MOHIT A GUPTA(8967) for the Applicant(s) No. 1
MR AR GUPTA(1262) for the Applicant(s) No. 1
MS HELLY PANCHAL, ADVOCATE FOR KALPESH R PATEL(7896) for the
Respondent(s) No. 1
MR MANAN MAHETA, APP for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 24/01/2025

ORAL ORDER

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant-original accused no.3 seeks to invoke the inherent powers of this Court praying for quashing of the proceedings of the Criminal Case No.2986 of 2017 pending before the learned Chief Judicial Magistrate, Ahmedabad Rural for the offence punishable under Sections-138 of N.I. Act.

2. The case of the complainant can be summarized as under:-

2.1 It is the specific case of the complainant that the

complainant is the finance company registered as per the rules and regulations of the RBI as well as Government and engaged in the activities of providing finance to the needy persons. The accused persons have approached the office of the complainant and demanded loan of Rs.23,73,500/- and at that relevant point of time, the accused persons signed the agreement and cheque was issued by the accused persons in favour of the complainant and also, given oral assurance that as and when the cheque was deposited in the bank, in that event, the cheque would be honoured. It is the case of the complainant that when the cheque bearing No.974621 of Canara Bank was presented in the bank, at that time, the same was returned with an endorsement of 'insufficient balance'. The said returned memo alongwith cheque was received on 16.02.2017. Therefore, the complainant issued a notice on 28.02.2017 through his advocate to the accused, which was sent through R.P.A.D. and the same was duly served to the accused persons. Despite the serving of demand notice, the accused persons neither reply to the notice nor pay the amount of loan. Therefore, the complainant constrained to register the complaint against the accused persons.

2.2 The complainant has filed complaint against all the accused persons alongwith all relevant documents and materials available with him. After considering and appreciating all those documents and materials available on record, the court concerned thought it fit that prima-facie case is made out against accused persons and passed an order for issuance of process under Section-204 of Cr.P.C. against the accused persons. As soon as order of issuance of process

served to the accused persons, the applicant-accused no.3 has approached this court. Hence, the present application.

3. Heard learned advocate, Mr. Aditya Gupta for the applicant-accused no.3; learned APP Mr. Manan Maheta for respondent no.2 - State of Gujarat and Ms. Helly Panchal, learned advocate, who appears on behalf of Mr. Kalpesh Patel, learned advocate for respondent no.1- complainant.

4. Mr. Aditya Gupta, learned advocate for the applicant submits that it is well within the knowledge of one and all that at the time of registration of private complaint, more particularly, for offence under Section-138 of N.I. Act, the complainant has to scrupulously follow statutory provision mentioned in the N.I. Act. He further submits that admittedly, as per the case of the prosecution, the accused persons have issued cheque in favour of complainant in the year 2017 i.e. on 13.02.2017 and the said cheque was deposited by the complainant in the bank, which was returned with an endorsement that 'insufficient fund'. He further submits that the accused no.1 is the Private Limited Company, whereas, the accused nos.2 to 4 are the Directors of the Company. He further submits that the applicant herein is one of the Directors of the Company and she is not the signatory of the said cheque. He further submits that the husband of the applicant is also one of the Director of the Company and he is the signatory of the cheque. He further submits that the applicant herein has tendered her resignation on 24.07.2013 to the board of Directors of V.S. Texmills Pvt. Ltd. He further submits that considering the averments made in the resignation

application, the Board of Directors has passed resolution on 25.07.2013 by accepting the resignation of the present applicant herein from the company and on the strength of the said resolution, Form-32 is prepared and submitted before the Office of Registrar of Companies. A copy of the said documents are also placed with the memo of present application, which clearly goes on to show that the applicant herein had tendered the resignation, which was accepted by the Board of Directors and the applicant is not associated with the company from 24.07.2013. He further submits that the said cheque was deposited on 25.01.2017 way-back after a lapse of four years from the date of resignation of the applicant herein. Therefore, when the said transaction took place between the parties, the applicant herein was not at all Director of the said company, therefore, she cannot be held liable for the action took place with the company after the resignation tendered by her. Mr. Gupta, learned advocate further submits that in-fact, if Hon'ble Court would go through the allegations levelled against accused persons in the body of complaint, in that event, it would be found out that not a single averments made with regard to involvement of present applicant in day-to-day affairs of the company is mentioned and therefore, the applicant herein cannot be held vicariously liable for the said offence.

5. Mr. Gupta, learned advocate put reliance upon the decision of the Hon'ble Apex Court in case of **Jugesh Sehgal Vs. shamshet Singh Goga** reported on **(2009) 14 SCC 683** and submitted that a person who had drawn the cheque, can be held vicariously liable for the offence under Section-138 of the Act. Therefore, the prosecution launched against the

applicant- accused no.3 is required to be quashed and set aside.

6. Ms. Helly Panchal, who appears on behalf of Mr. Kalpesh Patel, learned advocate for the respondent no.1 - complainant submits that the applicant is the one of the Director of the company and she is also involved in the day-to-day activities of the company and therefore, being one of the Director of the Private Limited Company, she has been arraigned as an accused at the time of registering the complaint. She further submits that at the time of institution of the application, the applicant has come with the specific case that in the year 2013, she has tendered her resignation, which was accepted by the Board of Directors of the Company and subsequently, those facts are also brought to the notice of the Registrar of Companies. She further submits that in-fact, for the purpose of compliance of the provisions mentioned in the statute, the notice issued under Section-138(b) of N.I. Act, which was duly served to the applicant, despite serving of notice, she has not given reply to the said notice. She further submits that under the bonafide impression, the applicant is one of the directors of the company, her name was reflected in the board of directors, therefore, a notice has been issued and subsequently, arraigned as an accused. Considering the above-stated factual aspects, the complainant had rightly filed the complaint against all the accused persons and the court concerned had considered all those facts and passed an order for issuance of process under section-204 of Cr.P.C. against all the accused persons and there is no error apparent on the fact of law can said to have been made out. Therefore, the present application

is required to be dismissed at threshold.

7. Learned APP Mr. Manan Maheta appearing for the respondent no.2 – State has submitted that essentially, there is dispute between two private persons and the learned advocate represents the complainant and therefore, he need not to submit anything and adopt the arguments canvased by the learned advocate appearing for the respondent – complainant. However, he submits that at the time of passing the order below Exh.1, the court concerned has already considered all the materials placed by the complainant alongwith the memo of application and prima-facie, it seems that there is no error of law and fact could be said to have been made by the court concerned for the purpose of issuance of process. Therefore, there being no merit in this application, the same may be rejected.

8. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration in this application is whether any case has been made out by the applicant for quashing of the complaint, in exercise of my inherent powers under Section 482 of the Code of Criminal Procedure.

9. At this stage, I would like to refer the decision of Hon'ble Apex Court in the case of '**K.K Ahuja Vs. VK Vora** reported in **MANU/SC/1111/2009**, wherein, the Hon'ble Apex Court has held as under:-

7. In *Sabitha Ramamurthy vs. RBS Channabasavaradhya - 2006 (10) SCC 581*, this Court re-stated the requirements of section 141 of Act thus, in the context of a petition for quashing the process under Sec.482 Cr PC:

"It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted..... In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist strict compliance with the statutory requirements."

[emphasis supplied]

8. In *Saroj Kumar Poddar v State (NCT of Delhi) - 2007 (3) SCC 693*, while dealing with an appeal against the refusal to quash the order taking cognizance, by an Ex-Director who had resigned from the Board prior to the date of issuance of the cheque, this Court held that making some bald averment was not sufficient. In that case, the complaint contained the following averments:

"That Accused 1 is a public limited company incorporated and registered under the Companies Act, 1956, and Accused 2 to 8 are/were its Directors at the relevant time and the said Company is managed by the Board of Directors and they are responsible for and in charge of the conduct and business of the Company, Accused 1. However, cheques referred to in the complaint have been signed by Accused 3 and 8 for and on behalf of Accused 1 Company."

In spite of the averment that accused were Directors at the relevant time and were responsible for and in charge of the conduct of the business of the company, this Court held that allegations in the complaint, even if taken to be correct in their entirety, did not disclose any offence by the appellant, on the following reasoning :

"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 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."

[emphasis supplied]

10. Having regard to section 141, when a cheque issued by a company (incorporated under the Companies Act, 1956) is dishonoured, in addition to the company, the following persons are deemed to be guilty of the offence and shall be liable to be proceeded against and punished :

(i) 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;

(ii) any Director, Manager, Secretary or other officer of the company with whose consent and connivance, the offence under section 138 has been committed; and

(iii) any Director, Manager, Secretary or other officer of the company whose negligence resulted in the offence under section 138 of the Act, being committed by the company.

While liability of persons in the first category arises under

sub-section (1) of Section 141, the liability of persons mentioned in categories (ii) and (iii) arises under sub-section (2). The scheme of the Act, therefore is, that a person who is responsible to the company for the conduct of the business of the company and who is in charge of business of the company is vicariously liable by reason only of his fulfilling the requirements of sub-section (1). But if the person responsible to the company for the conduct of business of the company, was not in charge of the conduct of the business of the company, then he can be made liable only if the offence was committed with his consent or connivance or as a result of his negligence.

10. In the case of **Anita Hada Vs. M/s. Godfather Travels & Tours Pvt. Ltd.** reported in **AIR 2012 SC 2795**, the Hon'ble Apex Court has held as under:-

36. In the case of Anil Hada, (AIR 2000 SC 145 : 1999 AIR SCW 4228) (supra), the two-Judge Bench posed the question: when a company, which committed the offence under Section 138 of the Act eludes from being prosecuted thereof, can the directors of that company be prosecuted for that offence. The Bench referred to Section 141 of the Act and expressed the view as follows:-

"12. Thus when the drawer of the cheque who falls within the ambit of Section 138 of the Act is a human being or a body corporate or even firm, prosecution proceedings can be initiated against such drawer. In this context the phrase "as well as" used in sub-section (1) of Section 141 of the Act has some importance. The said phrase would embroil the persons mentioned in the first category within the tentacles of the offence on a par with the offending company. Similarly the words "shall also" in sub-section (2) are capable of bringing the third category persons additionally within the dragnet of the offence on an equal par. The effect of reading Section 141 is that when the company is the drawer of the cheque such company is the principal offender under Section 138 of the Act and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per the section. Hence the actual offence should have been committed by the company,

and then alone the other two categories of persons can also become liable for the offence.

13. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused, and hence the prosecuted accused is not liable to be punished. The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act."

On a reading of both the paragraphs, it is evincible that the two-Judge Bench expressed the view that the actual offence should have been committed by the company and then alone the other two categories of persons can also become liable for the offence and, thereafter, proceeded to state that if the company is not prosecuted due to legal snag or otherwise, the prosecuted person cannot, on that score alone, escape from the penal liability created through the legal fiction and this is envisaged in Section 141 of the Act. If both the paragraphs are appreciated in a studied manner, it can safely be stated that the conclusions have been arrived at regard being had to the obtaining factual matrix therein. However, it is noticeable that the Bench thereafter referred to the dictum in Sheoratan Agarwal (supra) and eventually held as follows:-

"We, therefore, hold that even if the prosecution proceedings against the Company were not taken or could not be continued, it is no bar for proceeding against the other persons falling within the purview of sub-sections (1) and (2) of Section 141 of the Act."

11. I have gone through the record and proceedings and also, considering the arguments canvassed by the learned advocates for the respective parties and I have also gone through the decisions of the Hon'ble Apex Court. It is found out from the materials available on record that the applicant accused no.3 is not the signatory of the cheque and she has tender her resignation way-back in the year 2013. It is well settled that where the Court finds that the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the applicant. As per the above-stated case laws, the liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, in the present case, the applicant -accused has tendered her resignation way-back in the year 2013 and the cheque in question was presented in the bank in the year 2017 and therefore, after a lapse of more than four years, she cannot be held liable for an offence under Section-138 of N.I. Act. The criminal liability on account of dishonour of cheque primarily falls on drawer company and extends to its officers only when the condition stated in Section 141 are fulfilled. Therefore, this court is of the opinion that the prosecution launched against the applicant-accused is required to be quashed.

12. For the foregoing reasons, I am inclined to allow this application and the same is accordingly allowed. The proceedings of the Criminal Case No.2986 of 2017 pending before the learned Chief Judicial Magistrate, Ahmedabad Rural,

is hereby ordered to be quashed qua the present applicant herei is concerned. All consequential proceedings pursuant thereto shall stand terminated.

Rule is made absolute to the aforesaid extent. Direct service is permitted.

A. B. VAGHELA

(DIVYESH A. JOSHI,J)