

(2022) 08 DEL CK 0041

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1255, 1256 Of 2020, Criminal Miscellaneous Application No. 4837, 4838, 4844, 4845 Of 2020

Javahar Lal

APPELLANT

Vs

OVT India Pvt. Limited & Anr.

RESPONDENT

Date of Decision : 08-08-2022

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 141, 141(2), 148

Citation : (2022) 08 DEL CK 0041

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : A.P. Mohanty, Vivek Sarin, Astha Sehgal, Sakshi Shreya, Satish C. Kaushik

Final Decision : Allowed

Judgement

Asha Menon, J

1. The petitions are disposed of through this common order as they are between the same parties and in respect of connected complaint cases filed under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') for dishonor of cheques issued in respect of the same transaction.

2. The respondents had filed the complaints under Section 138 read with Section 141 of the N.I. Act against Pantel Technologies Pvt. Limited and its directors, the present petitioners Javahar Lal and Vivek Prakash. The learned Trial Court after considering the material on the record, took cognizance of the complaint and issued summons. The present petitions have been filed praying that the proceedings pending before the learned MM be quashed qua the petitioner arrayed as accused No.2 in the complaints.

3. Mr. A.P. Mohanty, learned counsel for the petitioner has argued relying on the judgment of the Supreme Court in Ramrajsingh vs. State of Madhya Pradesh (2009) 6 SCC 729 that the complaints qua the petitioner had to be quashed since

the complaints contained no averment to the effect that the petitioner was in-charge of and responsible to the company for the conduct of its business. It was submitted that in the absence of such averments, the petitioner could not be made vicariously liable for the commission of the offence by the company which has been arrayed in the complaints as accused No.1. The prosecution could be commenced only if there were specific allegations in the complaints as to the part played by the petitioner. However, there were no such allegations in the complaints. The learned counsel has prayed that the petition be allowed, and the complaint quashed as prayed for.

4. The respondents have filed a reply asserting that the petitioner was a Director of the accused company and execution of the MoU and Tripartite Agreements and other business decisions including the issuance of the cheques could have taken place only with the consent, permission and instructions and knowledge of the directors being the petitioner and the accused No.3 in the complaint cases. Mr. Vivek Sarin, learned counsel for the respondent No.1 submitted that more importantly the liability in respect of which the cheques in question have been issued arose out of the Tripartite Agreements which were signed by the petitioner. Therefore, the issuance of post-dated cheques in favour of the respondents for a sum of Rs. 23,57,43,675/- could not have been without the active consent of the petitioner. It was also submitted that the DIR-12 reflects that the petitioner was a director of the accused company. Therefore, he cannot claim to have had no role to play. The judgment of the Supreme Court in A.R. Radha Krishna vs. Dasari Deepthi (2019) 15 SCC 550 and of a Co-ordinate Bench of this Court in Unique Infoways Private Limited and Others vs. MPS Telecom Private Limited 2019 SCC OnLine Del 7808 have been relied upon by the learned counsel. It has also been asserted that the complaint refers to the role of the directors being the accused No.2 and 3 in the commission of the offence and there was no merit in the submissions of the petitioner.

5. I have heard the submissions of the learned counsel and considered the record and the cited judgments. It is trite that without specific allegations in the complaint reflecting the role of the accused, the persons named cannot be summoned in case under Section 138 read with 141 N.I. Act. As has been held in Ramrajsingh(supra) 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 was responsible for the conduct of the business. This averment is an essential requirement of Section 141 and has to be made in the complaint without which the requirements of Section 141 cannot be held to be satisfied. Being a Director of a company would not suffice to make the person liable under Section 141 N.I. Act. A Director cannot be deemed to be in-charge of and responsible to the company for the conduct of its business. It has to be averred as a fact that the accused Director was in-charge of and responsible for the conduct of the business. A Managing Director or Joint Managing Director could be considered to be in-charge of the company and responsible to the company for the conduct of its business. Therefore, by virtue of the office they held as

Managing Director or Joint Managing Director these persons would be covered under Section 141. So would the signatory of a cheque which stood dishonoured, as he is clearly responsible for the incriminating act and will be covered Sub Section 141 (2) of the N.I. Act.

6. Since Section 141 of the N.I. Act raises a legal fiction creating vicarious liability, strict compliance with statutory requirements was called for. A joint liability to pay a debt will not be sufficient to make a person vicariously liable under Section 148 N.I. Act as observed in *Alka Khandu Avhad vs. Amar Syamprasad Mishra & Anr.* (2021) 4 SCC 675. A civil liability cannot be confused with the criminal liability under Section 138 read with Section 141 N.I. Act.

7. *S.M.S. Pharmaceuticals Ltd. versus Neeta Bhalla & Anr.* (2005) 8 SCC 89, followed in several cases thereafter, including *Ramrajsingh(supra)* leaves no manner of doubt that the complaint must contain specific averments explaining the role of the Director, particularly that at the time of the commission of the offence, he was in-charge of and responsible for the conduct of the business of the company to attach vicarious liability upon a Director. Mere designation as Director will not suffice.

8. While it is correct that there can be no deemed liability of Directors, there is a simultaneous requirement that when the petitioner seeks the quashing of a complaint, there is an onus on the petitioner to furnish some kind of sterling and incontrovertible material or other reasonable circumstances to substantiate his contention that he was not in-charge of and responsible for the conduct of the business of the accused company. A complaint cannot be quashed merely on the ground that no particulars are given in the complaint about his role if the basic averment was sufficient to make out a case in the complaint. (*Gunmala Sales Pvt. Ltd vs. Anu Mehta and Ors* (2015) 1 SCC 103).

9. Turning to the petitions at hand, the copy of the complaint has been filed as Annexure P-1 in each petition. In the complaints, Pantel Technologies Private Limited is accused No.1, the petitioner Javahar Lal is accused No.2 and Vivek Prakash is accused No.3, both of whom have been described as Directors. In Para No.2 of the complaints, it is mentioned that accused No.2 and 3, that is, the petitioner and other Director had approached the complaint for the manufacture and supply of 12,000 STBs Units @12.75 per unit. This is stated to have been done for and on behalf of the accused No.1 company. The words further used, as has been pointed out by the learned counsel for the petitioner, are that the complaints merely state that the accused No.2 and 3 are the Directors of the accused No.1/company and responsible for the day to day affairs of the accused No.1/company.

10. On that basis, the learned counsel for the petitioner submits that the twin requirement under Section 141 N.I. Act of a clear averment to the effect that the accused was not only responsible for the day to day affairs of the company but also in-charge of the conduct/ business of the company were not fulfilled and,

therefore, material averments were absent. But it must be noted that it is not a single line of the complaint that will determine the matter. The complete averments in the complaints will have to be considered to check whether it is evident that the Director arraigned as accused, was in-charge of and was responsible for the conduct of the business of the company. The present complaints will have to be read completely.

11. There are averments that both the Directors had acted on behalf of the accused No.1 for the manufacture and supply by the complainant/respondent of 12,000 STBs Units at a particular price. The complainant has averred that it had entered into an MoU on 14th June, 2018 and had executed to Tripartite Agreement dated 18th September, 2018 and 2nd December, 2018 with the accused No.1 in this regard, whereafter the post dated cheques drawn in favour of the complainant were issued. The complaint further sets out how when the accused No.1 company failed to make timely payments, a demand notice was specifically issued for the payment of outstanding dues to the tune of Rs.27,13,10,296/-. The 15 cheques were presented which were then dishonored leading to the filing of the complaints. The dishonour of the cheques was brought to the notice of accused No.2 and 3 but no payments were made by any of the accused. Then the complaints were filed.

12. It would be useful to turn to the documents at this juncture. This Court had permitted the respondent to place on record the DIR-12. A perusal of this document would show that the petitioner was appointed the Additional Director of the accused company on 3rd April, 2019. This would mean that the petitioner was indeed the Director of the company at the time when the offence was committed. The petitioner has not placed on record any document of sterling quality to show that he was either not a Director of the accused company or had been in a non-executive role.

13. But again, that will not suffice. The MoU, the Tripartite and Sale Agreements placed on the record as P-2 and P-3 dated 18th September, 2018 and 2nd December, 2018 have been executed between M/s Pantel Technologies Private Ltd., M/s OVT India Pvt. Ltd. and Independent TV Ltd. The petitioner claims that he has not signed these agreements, which is substantiated from the very documents. The first Tripartite Agreement has been signed by Mr. Vijender Singh for and on behalf of. M/s Pantel Technologies Private Ltd., and the second agreement has been signed by Mr. Vivek Prakash i.e., accused No.3 in the complaint. In other words, the document relied upon by the respondents does not reflect the fact that the petitioner while being a Director of the accused company was participating in the conduct of the business by entering into trade agreements on behalf of the company. The averments do not find support from the very documents relied upon by the complainant/respondent.

14. Thus the petitioner is not responsible for and in-charge of the business of the accused company. It is not pleaded in the complaints that the dishonoured cheques had been signed by the petitioner. Nor has it been so urged before this

Court. Thus, the averments made in the complaints even if be fully accepted, the documents annexed thereto ex facie show that the petitioner though a Director of the accused company was not in-charge of or responsible for the conduct of its business. Thus, an essential ingredient of Section 141 N.I. Act based on which vicarious liability could be attached to the petitioner is missing.

15. The position of law being what it, is no two views can be taken in the present matters. The complaint cases qua the petitioner are required to be and are quashed.

16. The petitions are allowed along with the pending applications.

17. The judgment be uploaded on the website forthwith.