

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

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Judgment delivered on: 10.10.2025

+ **CRL.M.C. 642/2020 & CRL.M.A. 2674/2020**
+ **CRL.M.C. 643/2020 & CRL.M.A. 2686/2020**
+ **CRL.M.C. 656/2020 & CRL.M.A. 2724/2020**
+ **CRL.M.C. 657/2020 & CRL.M.A. 2728/2020**
+ **CRL.M.C. 660/2020 & CRL.M.A. 2737/2020**

NISHANT MUKUL

.....Petitioner

Through:

versus

NISCHAL AGGARWAL

.....Respondent

Through:

Advocates who appeared in this case:

For the Petitioner : Mr. Pramod Kumar Dubey, Sr. Adv. along
with Mr. Manoj Sharma, Mr. Amit Sinha,
Mr. Prince Kumar, Ms. Amrita Vats, Mr.
Ankit Vashisht & Mr. Satyam Sharma, Advs.

For the Respondent : Mr. Siddharth Khattar, Mr. Divij Andley,
Mr. Sanket Kumar & Mr. Gaurav Raj
Sharma through VC.

CORAM**HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present petitions have been filed by the petitioner under Section 482 of the Code of Criminal procedure, 1973 ('CrPC') seeking quashing of the summoning orders dated 17.02.2017 in



Complaint Case Nos. 9489/2017 and 9492/2017, 06.09.2017 in Complaint Case Nos. 13653/2017 and 13674/2017 and 16.10.2017 in Complaint Case No. 14166/2017. The petitioner also seeks the consequential relief of quashing of the aforesaid complaint cases filed under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') read with Sections 141/142 of the NI Act.

2. Briefly stated, it is the case of the respondent/complainant that he is the sole proprietor of M/s Shree Krishna Grit Company which is engaged in the business of trading cement, maurang, bajri, river sands and grit. It is alleged that the accused company approached the company of the respondent and placed certain purchase orders with it.

3. It is alleged that the company of the respondent timely delivered the goods to the accused company, whereafter, it raised invoices amounting to ₹30,60,424/- against the accused company.

4. It is alleged that in discharge of its liability the accused company paid a sum of ₹4,00,000/- to the company of the respondent through banking channels. The accused company, thereafter, issued 13 post-dated cheques for a total sum of ₹26,60,424/- all drawn on State Bank of Patiala. It is alleged that the directors of the accused company assured the respondent that the aforesaid cheques will be honored at the time of presentation.

5. It is alleged that when the respondent presented the aforesaid cheques for presentation out of the 13 cheques issued by the accused company, cheque bearing No. 075991 dated 31.07.2016 for a sum of ₹2,00,000/- was honored and rest of the cheques were dishonored.



6. It is alleged that cheque bearing No. 075992 dated 31.08.2016 for a sum of ₹2,00,000/- was returned *vide* return memo dated 15.11.2016, cheques bearing Nos. 075993 dated 31.09.2016 and 075994 dated 31.10.2016 for a sum of ₹2,00,000/- each were returned *vide* return memo dated 15.11.2016, cheques bearing Nos. 075995 dated 30.11.2016, 075996 dated 31.12.2016 and 075997 dated 31.01.2017 for a sum of ₹2,00,000/- each were returned *vide* return memo dated 16.02.2017, cheques bearing Nos. 075998 dated 28.02.2017, 075999 dated 31.03.2017 and 076000 dated 30.04.2017 for a sum of ₹2,00,000/- each were returned *vide* return memo dated 06.05.2017, cheques bearing Nos. 076001 dated 31.05.2017, 076002 dated 30.06.2017 for a sum of ₹2,00,000/- each and cheque bearing No. 076003 dated 31.07.2017 for a sum of ₹2,60,424/- were returned *vide* return memo dated 14.08.2017.

7. The respondent, thereafter, issued statutory legal demand notices to the directors of the accused company demanding payment of the aforesaid amount, and upon their failure to do so, the respondent filed the subject complaints before the learned Metropolitan Magistrate ('MM') and arrayed the petitioner as Accused No. 5.

8. As noted above, the learned MM by the aforesaid orders summoned the petitioner for the offence under Section 138 of the NI Act.

9. Aggrieved by the aforesaid summoning orders, the petitioner preferred an application before the learned MM seeking discharge. The learned MM *vide* order dated 13.08.2019 dismissed the



application filed by the petitioner noting that, proceedings under NI Act are summary in nature and a magistrate does not have the power to discharge the accused in summary trial cases.

10. The petitioner, thereafter, filed revision petitions before the learned Additional Sessions Judge ('ASJ') challenging the aforesaid order passed by the learned MM. The learned ASJ *vide* order dated 05.12.2019 dismissed the revision petitions filed by the petitioner.

11. Aggrieved, the petitioner has filed the present petitions.

12. The learned senior counsel for the petitioner submitted that the petitioner has been wrongly summoned in the present case. He submitted that the petitioner was never the signatory to the disputed cheques.

13. He submitted that the petitioner ceased to be a director of the accused company at the time of presentation of the disputed cheques. He submitted that the petitioner had resigned from the accused company on 01.08.2016 which is prior to the date of presentation of the disputed cheques and therefore, he cannot be said to be responsible for the day-to-day operations of the accused company at the time of commission of the offence.

14. He further submitted that no specific averments have been made against the petitioner in the complaint filed by the respondent. He submitted that merely stating that the cheques will be honored at the time of presentation will not attract the rigors of Section 141 of the NI Act.



15. *Per contra*, the learned counsel for the respondent vehemently opposed the arguments are raised by the by the learned senior counsel for the petitioner.

16. He submitted that when the accused company had placed the purchase order with the company of the respondent, the petitioner was still a director of the accused company and was responsible for its day-to-day operations.

17. He submitted that at the time of issuing the post-dated cheques in favor of the company of the respondent, the petitioner remained a director of the accused company and would be liable for the dishonor of the cheques.

18. He consequently prayed that the present petitions be dismissed.

19. I have heard the learned counsel for the parties and perused the record.

Analysis

20. At the outset, it is relevant to note that the High Court is empowered to quash complaints under the NI Act at the pre-trial stage in the exercise of its inherent jurisdiction under Section 482 of the CrPC if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques or that no offence is made out from the admitted facts. The Hon'ble Apex Court in the case of ***Rathish Babu Unnikrishnan v. State (NCT of Delhi) : 2022 SCC OnLine SC 513*** had discussed the scope of interference by the High Court against the issuance of process under the NI Act as under:



“8. The issue to be answered here is whether summons and trial notice should have been quashed on the basis of factual defences. The corollary therefrom is what should be the responsibility of the quashing Court and whether it must weigh the evidence presented by the parties, at a pre-trial stage.

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16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.”

(emphasis supplied)



21. In line with the dictum of the Hon'ble Apex Court in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)*** (*supra*), thus, while exercising the power under Section 482 of the CrPC to quash a complaint at the pre-trial stage, it is pertinent for this Court to examine whether the factual defence is of such impeachable nature that the entire allegations made in the complaint is disproved.

22. The petitioner is implicated in the present case by virtue of Section 138 read with Section 141 of the NI Act on account of him being a director of the accused company. Section 141 of the NI Act 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.”

23. It is well settled that under Sections 138/141 of the NI Act, the complainant is to make particular averments in the complaint, to the effect that the accused person was the director of the accused company at the relevant time and is responsible for its day-to-day affairs, and therefore is vicariously liable for the offence. Thereafter, the onus of proving that at the relevant time, the accused persons were not the directors of the accused company and were not responsible for its day-to-day affairs, lies upon the accused persons and the same is matter of trial.

24. In the present case, it is undisputed that the petitioner was a director at the time when the disputed cheques had been issued in favour of the respondent. It is only subsequent to the issuance of the disputed cheques that the petitioner had resigned from the accused company on 01.08.2016.

25. From a perusal of the record, there appears to be a discrepancy in regard to the designation of the petitioner. In FORM DIR-11 the petitioner is shown as an independent director, however, in FORM DIR-12 the petitioner is reflected as a director. Further, from a perusal of the master data dated 09.12.2016 as taken out by the respondent from the Registrar of Companies at the time of filing the complainant, it can be seen that the petitioner is still shown as a director of the accused company. While the veracity of such records will be tested



during the course of trial, the same does casts a doubt over the case of the petitioner.

26. It must be borne in mind that Section 141 of the NI Act is a penal provision that creates vicarious liability for the accused. The petitioner has been implicated on the premise that he was responsible for the day-to-day affairs of the company. It is also settled that every person, regardless of whether they are in charge of the company during each series of act necessary to constitute the offence under Section 138 read with Section 141 of the NI Act or not, could be proceeded against if they are in charge of the affairs of the company even during one of the omissions' that is necessary to constitute an offence under Section 138 read with Section 141 of the NI Act. This would include being in charge of the company at the time of drawing of the cheque, or the dishonour of cheque, or at the time of failure to pay after the receipt of notice [Ref: ***S P Mani and Mohan Dairy v. Dr. Snehalatha Elangovan* : (2023) 10 SCC 685**].

27. Undisputably, at the time of issuance of the disputed cheques, the petitioner was a director of the accused company and *prima facie* responsible for its day-to-day affairs, especially since the necessary averments have been made by the complainant in the respective complaints against the petitioner.

28. It is argued that no specific averment has been made against the petitioner in the complaints. In ***N. Rangachari v. Bharat Sanchar Nigam Ltd.* : MANU/SC/7316/2007**, the Hon'ble Apex Court held that a person transacting with a company is entitled to presume that



the Directors are in charge of its affairs, and it is for the Directors to establish to the contrary during trial. The relevant portion is as under:

“19. Therefore, a person in the commercial world having a transaction with a company is entitled to presume that the Directors of the company are in charge of the affairs of the company. If any restrictions on their powers are placed by the memorandum or articles of the company, it is for the Directors to establish it at the trial. It is in that context that Section 141 of the Negotiable Instruments Act provides that when the offender is a company, every person, who at the time when the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty of the offence along with the company. It appears to us that an allegation in the complaint that the named accused are Directors of the company itself would usher in the element of their acting for and on behalf of the company and of their being in charge of the company.”

(emphasis supplied)

29. Reference to the observations made in ***Gunmala Sales Private Ltd. Vs. Anu Mehta : AIR 2015 SC 1072*** are crucial to conclude the issue at hand. It was observed by the Hon’ble Apex Court that once the basic averments have been made by the complainant in the complaint, alleging that the director was in charge of the company and was responsible for the day-to-day affairs of the company, the proceedings against the accused person may commence.

30. In absence of any unimpeachable evidence to the contrary, the liability of the petitioner would remain at this stage and question in relation to the petitioner not being in-charge of the day-to-day affairs of the accused company at the relevant time becomes a factual dispute, which is not appropriate for determination under the



powers conferred by Section 482 of the CrPC at this stage.

31. It is well-established that this Court should refrain from expressing any views on disputed questions of fact in proceedings under Section 482 of the CrPC, as doing so could pre-empt the findings of the trial court. The relevant paragraphs of ***Gunmala Sales Private Ltd. Vs. Anu Mehta*** (*supra*) in this respect reads as under:

33. We may summarize 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. ...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 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.

32. In such circumstances, at this stage, the petitioner cannot be said to have produced material of such sterling and unimpeachable quality that merits the quashing of the summoning orders and consequential proceedings thereof. It cannot be said that the petitioner is not responsible for the functioning of the accused company or that the complaint is bereft of the requisite ingredients so as to proceed against the petitioner.

33. Needless to say, it will be open to the petitioner to justify the arguments taken by him regarding his resignation and non-involvement in the alleged offence during the course of the trial.

Conclusion

34. In view of the aforesaid discussion, I find no merit in the present petitions.

35. The present petitions are therefore dismissed. Pending Application(s), if any, also stand disposed of.

36. A copy of this order be placed in all the matters.

AMIT MAHAJAN, J

OCTOBER 10, 2025/“SK”