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**Naveen Kumar Aggarwal and Others Vs Dove Creation Pvt. Ltd. and Others**

**CRM-M-Nos. 36249, 36401, 38057 and 38206 of 2013 (O and M)**

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**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Nov. 13, 2014

**Acts Referred:**

Companies Act, 1956 - Section 162 220 303 303(2)#Criminal Procedure Code, 1973 (CrPC) - Section 397 482#Negotiable Instruments Act, 1881 (NI) - Section 138 141

**Citation:** (2016) ALLMR(Cri) 113 : (2015) 4 BC 426 : (2015) 3 RCR(Civil) 854 : (2015) 3 RCR(Criminal) 736

**Hon'ble Judges:** Ritu Bahri, J

**Bench:** Single Bench

**Advocate:** Rahul Gautam, Advocate for the Appellant; Gaurav Chopra, Advocate for the Respondent;

**Final Decision:** Allowed

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**Judgement**

Ritu Bahri, J.

1. This order shall dispose of the above four petitions wherein prayer is for quashing of Criminal Complaint No. 20686 of 2013 dated 09.07.2013

and Criminal Complaint No. 20677 of 2013 dated 09.07.2013 and summoning order dated 09.07.2013 passed by learned Judicial Magistrate 1st

Class, Ludhiana. In CRM-M-38057 and 38206 of 2013, brief facts of the petition are that the petitioner along with Rajesh Jain and Naveen

Kumar Aggarwal were appointed as Director (s) of Company-M/s. Miraaya Apparel and Trading Pvt. Ltd. However, on 16.02.2013, the

petitioner-Smriti Thing-baijam tendered resignation from the Board of Directors of the above said Company. The petitioner was residing at

Mumbai, Maharashtra with her family and children. Thereafter, a resolution was passed on 18.02.2013 (P-3) accepting and acknowledging the

resignation made by the petitioner. After accepting the resignation of the petitioner, the relationship of petitioner with respondent No. 2-company

stood severed and terminated from that date. Thereafter, the petitioner did not even attend/or participate in any further Board meeting of the

company. Petitioner stood absolved from her functions/responsibilities as a Director with immediate effect. The respondent No. 2-company was

required to follow up all consequential actions towards intimating all including the Registrar of Companies-about the petitioner's resignation.

2. In CRM-M-36249 and 36401 of 2013, petitioner Naveen Kumar Aggarwal became an additional director of M/s. Miraaya Apparel and

Trading Pvt. Ltd. on 14.05.2012. Thereafter, he resigned from the Board of Directors on 21.02.2013 and is full time employee of Bank of

America since 11.12.2006. The said change was communicated to the Registrar of Companies in June, 2013. A photocopy of Form 3 2 is

Annexure P-7 colly.

3. As per complaint No. 20686 of 2013, an amount of ` 46,31,605/- was due and payable by M/s. Miraaya Apparel and Trading Pvt. Ltd. in

favour of M/s. Dove Creations Pvt. Ltd., as a cheque bearing No. 000381 dated 27.05.2013 for ` 46,31,605/- was tendered by Rajesh Jain (one

of the Director) on behalf of M/s. Miraaya Apparel in favour of M/s. Dove Creations Pvt. Ltd., which on presentation was dishonoured and was

returned with remarks ""Exceeds arrangement"" by Bank memo dated 28.05.2013. In this background, the above said complaint under Section 138

of Negotiable Instruments Act had been registered by M/s. Dove Creations Pvt. Ltd. on 09.07.2013 (P-4).

4. In Complaint No. 20676 of 2013, an amount of ` 19,88,688/- was due and payable by M/s. Miraaya Apparel and Trading Pvt. Ltd. in favour

of M/s. Almighty Creations Pvt. Ltd., as a cheque bearing No. 000380 dated 27.05.2013 for ` 19,88,688/- was tendered by Rajesh Jain (one of

the Director) on behalf of M/s. Miraaya Apparel in favour of M/s. Almighty Creations Pvt. Ltd., which on presentation was dishonoured and was

returned with remarks ""Exceeds arrangement"" by Bank memo dated 28.05.2013. In this background, the above said complaint under Section 138

of Negotiable Instruments Act had been registered by M/s. Almighty Creations Pvt. Ltd. on 09.07.2013 (P-4).

5. The petitioners were served with the summons of the above said criminal complaints on 09.07.2013.

6. Learned counsel for the petitioners are seeking quashing of the complaints dated 09.07.2013 as well as summoning orders dated 09.07.2013

on the ground that before cheque was issued on 27.05.2013, the petitioners who were director of M/s. Miraaya Apparel and Trading Pvt. Ltd.

have tendered their resignation. Petitioner-Naveen Kumar Aggarwal has tendered his resignation on 21.02.2013, which was duly addressed to

Rajesh Jain (one of the Directors) and petitioner-Smriti Thingbaijam has tendered her resignation on 16.02.2013 and the Board of Directors have

approved and accepted the resignation of Smriti Thingbaijam on 18.02.2013. Thus, after acceptance of her resignation on 18.02.2013, no offence

under Sections 138/141 of Negotiable Instruments Act is made out against the petitioner.

7. On the other hand, Mr. Rahul Gautam contends that once the petitioner-Naresh Aggarwal has tendered his resignation on 21.02.2013, no case

under Sections 138/141 of Negotiable Act is made out against him.

8. On notice, a reply has been filed by M/s. Dove Creations and M/s. Almighty Creations Pvt. Ltd. wherein the stand taken by them was that

petitioners were in active control of the business of M/s. Miraaya Apparel and Trading Pvt. Ltd. The specific allegations have been made against

the petitioners that they were directors of M/s. Miraaya Apparel and Trading Pvt. Ltd. and were responsible in day to day affairs of the company,

who in discharge of its preexisting legally enforceable liability issued two above said cheques, which on presentation for encashment, were

dishonoured with remarks ""Exceeds arrangement"" by Bank, vide memo dated 28.05.2013. The defence taken by the petitioners that they had

resigned as Directors of the Company, will be considered at the final stage of the trial as the genuineness of both the documents in case of Smriti

Thingbaijam i.e. letter dated 16.02.2013 (P-2) and copy of Board resolution 18.02.2013 (P-3) are being disputed on account of being forged and

fabricated and this aspect cannot be gone in the proceedings under Section 482 Cr.P.C. Moreover, the information with regard to her resignation

by the Board of Directors was communicated to the Registrar of Companies on 16.09.2013 and before this date, the cheque had been presented

and had been dishonoured on 28.05.2013, thus there was a delay of 07 months in communication of the factum qua resignation of the petitioner,

which creates doubt over the authenticity of the documents (P-2 and P-3). As per Section 303 of the Companies Act, 1956, every Company has

to sent to the Registrar a return in duplicate containing the particulars specified in the Register. In the change among Directors, Managing Directors,

Managers or Secretaries specifying the date of change is also required to be furnished to the Registrar of Companies in the prescribed form within

30 days of such change.

9. In the case of Smriti Thingbaijam, the information regarding her resignation from the Company as Director, was sent after a gap of 07 months

i.e. on 16.09.2013. It was further stated in the complaint that the cheques were issued by the company, with the active connivance of the

petitioners, in discharge of its debt and legally recoverable liability after three previously cheques dated 30.01.2013 by accused No. 1-company

had been dishonoured on account of the stop payment instructions having been given by the company. The details of three cheques reads as

under:-

10. At the time of issuance of the above said cheques, the petitioners as per their own admission were director of the Company. These cheques

were not subject matter of the present complaint but the cheque No. 000380 and 000381 dated 27.05.2013 had been issued in continuation of

the previous transaction which had resulted in dishonour of the cheques in question. It has further been mentioned in the reply that after dishonour

of the cheque, which is subject matter of the present complaint, a statutory notice dated 03.06.2013 was served upon the accused-Smriti

Thingbaijam on her complete and correct address. Despite the receipt of the aforementioned notice, the accused failed to make the payment of the

cheque amount. Thereafter, the complaint was instituted and the summons were issued to the accused. Thereafter, Rajesh Jain, Director of

respondent No. 2 puts an appearance in the Court along with his counsel and was ordered to be released on bail on 12.09.2013 and thereafter,

the company informed the Registrar of Companies on 16.09.2013 regarding the resignation of the petitioner Smriti Thingbaijam.

11. Learned counsel for the respondents has referred to judgments i.e. Kailash Chand Jain Vs. M/s. Bibby Financial Services India Pvt. Ltd., ,

Paresh P. Rajda Vs. State of Maharashtra and Another, , K.K. Ahuja Vs. V.K. Vora and Another, and Pratik Jain Vs. Ved Prakash Kaushik and

Another, to contend that as per allegations in the complaint, there was specific allegations against the petitioners involvement in day to day affairs of

the functioning of the company. Even after resigning as Director, the complaint under Section 138 N.I. Act can be proceeded against the

petitioners.

12. Heard learned counsel for the parties and have gone through the facts of the case.

13. The question to be decided by this Court would be the role of the petitioners as Directors at the time of filing of the complaints dated

09.07.2013.

14. A perusal of the complaints shows that petitioners- Smriti Thingbaijam and Naveen Kumar Aggarwal were directors of the Company and

were dealing with the complainant-Companies i.e. M/s. Dove Creation Pvt. Ltd. and M/s. Almighty Creations from time to time, being in-charge

and responsible for all business affair of the accused company- M/s. Miraaya Apparel and Trading Pvt. Ltd. Pursuant to their business dealings, `

46,31,605/- and ` 19,88,688/- was outstanding and accused-present petitioners along with Rajesh Jain in consultation with each other during the

regular course of business and in active control of the business issued cheque bearing No. 000381 dated 27.05.2013 for ` 46,31,605/- and

cheque bearing No. 000380 dated 27.05.2013 for ` 19,88,688/-. As per the facts of the case, petitioner-Smriti Thingbaijam had resigned from

the post of Director on 16.02.2013 and her resignation was accepted by the Board of Directors on 18.02.2013 and Naveen Kumar Aggarwal

resigned from the post of Director on 21.02.2013, which was communicated to Registrar of Companies in June, 2013. In the complaints, on the

date of presentation of the complaint and on the date of issuance of the cheques on 27.05.2013, the petitioners ceases to be directors of the

Company and the role of the present petitioners would be examined in this background.

15. Learned counsel for the petitioners has referred to a judgment of Hon"ble the Supreme Court in a case of Saroj Kumar Poddar Vs. State

(NCT of Delhi) and Another, , wherein the Director had resigned from the Directorship of the Company before the date of issuance of the cheques

and thus, the Supreme Court had held that even if the essential ingredients of Section 138 of N.I. Act is made out, it relates principally to the

purported offence made by the Company, who had committed the offence. The vicarious liability of the Director who had resigned would not be

made out under Section 141 of N.I. Act. In paragraph 16, it has been held as under:-

16. The question came up for consideration before a 3-Judge Bench of this Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another,

wherein upon consideration of a large number of decisions this Court opined:

10. 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.

16. Thereafter, Hon"ble the Supreme had quashed the proceedings against the Director who had resigned prior to the issuance of the cheque.

17. In a landmark judgment of Hon"ble the Supreme Court National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and Another, where

this aspect has been considered in detail in para 13,14 and 15, which reads as under:-

(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 No. 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.

(14) A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a

statement that they are in-charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or

adequate fulfillment of the requirements under Section 141.

(15) In a catena of decisions, this Court has held that for making Directors liable for the offences committed by the company under Section 141 of

the Act, there must be specific averments against the Directors, showing as to how and in what manner the Directors were responsible for the

conduct of the business of the company.

18. Thereafter, Hon"ble the Supreme Court in a case of Harshendra Kumar D. Vs. Rebatilata Koley Etc., Recent Apex Judgments (R.A.J.) 559 :

2011 (3) SCC 351 has held that it is untenable to proceed against the Directors who had resigned prior to offence allegedly committed by

Company. While considering the power of the High Court, Hon"ble the Supreme Court in paragraph 25, has observed as under:-

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 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.

19. Recently, Hon"ble the Supreme Court in a case of Anita Malhotra Vs. Apparel Export Promotion Council and Another, while examining the

provisions of the Evidence Act, has held that the certified copies of annual return a coupled with sample copy of Form 32 should have been

accepted as proof of resignation of the applicant from the post of Director. In paragraph 22, it has been held as under:-

(22) 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 Corp. Ltd. Vs. Harmeet Singh Paintal and

Another, ]. 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.

20. In the catena of judgments as discussed above, has laid down that the Director who had resigned and was not involved in day to day

functioning of the Company, cannot be summoned to face the trial on the ground of vicarious liability, as per Section 141 of N.I. Act.

21. The judgment cited by learned counsel for the respondent above are not applicable to the facts of the present case as in these case, the

Directors who were made liable under Section 141 of N.I. Act had not resigned from the Company.

22. Petitioner-Smriti Thingbaijam had resigned from the Company on 16.02.2013 and the Board of Directors have accepted her resignation on

18.02.2013 and petitioner- Naveen Kumar Aggarwal had tendered his resignation on 21.02.2013 i.e. before the cheque was issued. The

Company had informed the Registrar of Societies about the resignation of Smriti Thingbaijam on 16.09.2013, after a gap of 07 months.

23. The argument has been raised by learned counsel for the respondent that why the company had informed the Registrar of Societies after a gap

of 07 months about the resignation of petitioner-Smriti Thingbaijam on 16.09.2013. It was an after thought, as the cheque had been dishonoured

on 28.05.2013 and the Company had informed on 16.09.2013 and as per Section As per Section 303 of the Companies Act, 1956, every

Company has to sent to the Registrar a return in duplicate containing the particulars specified in the Register. In the change among Directors,

Managing Directors, Managers or Secretaries specifying the date of change is also required to be furnished to the Registrar of Companies in the

prescribed form within 30 days of such change.

24. At this stage, reference can be made to judgment of Bombay High Court in a case of Saumil Dilip Mehta Vs. State of Maharashtra and

Others, wherein the Court was considering a case under the Companies Act under Section 303(2). Form 32. For all intents and purposes, the

Director once gives his resignation, he ceases to be a Director of the Company. He is not required to fill Form No. 32 or issue notice to Registrar

of Companies. In paragraph 7, it has been held as under:-

7. When a director has tendered his resignation and the Board of Directors has accepted and has acted on it, such Director cannot be held liable

for the liability incurred by the said Company after the date of acceptance of his resignation except the liability which has been incurred by him for

purchase of shares of the said company and nothing more.

25. Hon<sup>ble</sup> Delhi High Court in a case of B.N. Kaushik Vs. The Registrar of Companies, was considering the conviction of the Director under

Section 162/220 of the Companies Act, who had resigned as Director and his copy of resignation letter was sent to Registrar and receipt of

resignation letter was accepted by the Registrar and his conviction was set aside on the ground that sending of resignation letter was sufficient

compliance of the provisions of the Companies Act as well as circular No. 429400)-CL-II-59 dated 29.12.1959. In paragraph 11, it has been

held as under:-

11. The aforesaid judgment in Anita Chadha (supra), in my view, has no application to the facts of the present case for the reason that the facts of

the said case are clearly distinguishable. The petitioner in the instant case, had tendered his resignation on July 27, 1971 i.e. 11 to 15 years prior to

the alleged violations which pertained to the years 1982, 1983, 1984, 1985 and 1986. The receipt of the said resignation is specifically admitted

by the respondent and no material has been placed on record by the respondent to show that the same was not accepted or was objected to either

by the accused company or by the Registrar of Companies. The complaints are dated July 16, 1993, which goes to show that the same were

initiated more than 22 years after the Registrar of Companies had admittedly been communicated the letter of resignation of the petitioner and had

accepted the same in terms of its own circular.

26. In the facts of the present case, Petitioner-Smriti Thingbaijam had resigned from the Company on 16.02.2013 and the Board of Directors have

accepted her resignation on 18.02.2013 and petitioner-Naveen Kumar Aggarwal had tendered his resignation on 21.02.2013 i.e. before the

cheque was issued, and is full time employee of Bank of America since 11.12.2006. The said change was communicated to the Registrar of

Companies in June, 2013. A photocopy of Form 32 is Annexure P-7 colly. In the case of Smriti Thingbaijam, the Registrar of Companies was

informed about her resignation on 16.09.2013 and in the case of petitioner- Naveen Kumar Aggarwal, the Registrar of Companies was informed

about his resignation in June, 2013. But this gap would not make the petitioners liable for dishonour of the cheques, which was presented on

27.05.2013 and was dishonoured as they had resigned from the post of Directors and their resignation had been duly conveyed to the Registrar of

Companies. Thus, they were not involved in day to day affairs of the company and no liability can be thus fastened upon them. In the light of the

above discussion, Criminal Complaint No. 20686 of 2013 dated 09.07.2013 and Criminal Complaint No. 20677 of 2013 dated 09.07.2013 and

summoning order dated 09.07.2013 passed by learned Judicial Magistrate 1st Class, Ludhiana are hereby quashed.

Accordingly, the petitions are allowed.