



2024: DHC: 3916



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

Reserved on: 26.04.2024
Pronounced on: 15.05.2024

+ **CRL.M.C. 6094/2022 & CRL.M.A. 23877/2022**
+ **CRL.M.C. 6095/2022 & CRL.M.A. 23881/2022**
+ **CRL.M.C. 6096/2022 & CRL.M.A. 23889/2022**
+ **CRL.M.C. 6097/2022 & CRL.M.A. 23894/2022**

HARPREET SAHNI & ANR. Petitioners
Through: Mr.Sanjay Madan, Adv.
versus

SHRICHAND HEMNANI Respondent
PUJA HEMNANI Respondent
ASHA HEMNANI Respondent
VINOD HEMNANI Respondent
Through: Mr.Neeraj Gupta &
Mr.Kamal Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. These petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 20.12.2019 passed by the learned Metropolitan Magistrate-02 (NI Act), North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'Trial Court') in Complaint Case No.5505/2019, titled *Shrichand Hemnani v. Mother's Pride Punjabi Bagh & Ors.* (in CRL.M.C. 6094/2022); Complaint case No. 5503/2019 titled *Puja Hemnani v. Mother's Pride Punjabi Bagh &*



Ors. (in CRL.M.C. 6095/2022); Complaint case No. 5504/2019 titled *Asha Hemnani v. Mother's Pride Punjabi Bagh & Ors.* (in CRL.M.C. 6096/2022) and Complaint case No. 5501/2019 titled *Vinod Hemnani v. Mother's Pride Punjabi Bagh & Ors.* (in CRL.M.C. 6097/2022) (hereinafter collectively referred to as the 'Complaint Cases'), filed by the respondent(s) herein, under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act').

2. As common questions of law and facts arise in these petitions, and common submissions have been made by the learned counsels for the parties, these petitions are being considered and disposed of by way of this common judgment.

3. To appreciate the submissions made by the learned counsels for the parties, the following background facts leading to the filing of the present petitions deserve notice:

- a) The above complaint cases have been originally filed by the respondent(s) herein, making 10 (ten) accused including Presidium Eduvision Trust, through its Trustees.
- b) In the Complaints, it is averred that somewhere in December, 2014, the respective respondent(s)/complainant(s) had contacted either the accused no.3, that is, Ms.Sudha Gupta, Chairman of Mother's Pride Punjabi Bagh and Presidium Eduvision Trust or/and the accused no.2, that is, Presidium Eduvision Trust, through its trustees, for admission of the child in the school of Mother's Pride Educational Institute Pvt. Ltd.. It was alleged that the accused nos.3 to 10 came in contact of the respondent(s) and the family members, and represented and



assured them about their position, *inter alia*, in the accused no.2, that is, Presidium Eduvision Trust, and also claimed about their relationship with the Mother's Pride Educational Institute Pvt. Ltd..

- c) It is alleged that based on their representation, the respondent(s) have allegedly extended loans to the accused, in the joint name of accused no.1-Mother's Pride Punjabi Bagh and the accused no.2-Presidium Eduvision Trust. It is alleged that the accused were to pay interest at the rate of 19.5% *per annum* on the loan amount for the period of the loan. It is alleged that till the month of June, 2018, accused nos.1 to 10 paid interest on the said loan, however, thereafter they defaulted in payment of interest;
- d) It is claimed that on 01.12.2018, when the respondent(s) deposited the cheques issued by the accused nos.1 to 10 for repayment of the loan, the same were dishonoured with the remark '*Funds Insufficient*'. It is averred that the respondent(s) thereafter issued respective legal notices dated 28.01.2019 to the accused nos.1 to 10 to repay the cheque(s) amount, however, the same was not paid. The respondent(s) in the original complaint(s) also pleaded and made similar allegations, including as under (in Complaint Case No.5505/2019):

"20. That it was represented by Accused nos 1 to 10 that the accused no. 1 is a unit of Mothers Pride Education Institution Pvt. Ltd. and it was further represented by them that Accused no. 3 is chairman of entire Mothers Pride Group and also of addressee no. 1 & 2. Accused no. 4 is proprietor of Accused no. 1 and she alongwith accused nos. 3, 5, 6, 7, 8, 9



and 10 negotiated the entire deal/transaction personally. Accused nos. 3 to 10 are also authorized signatory and person in charge of the entire business transaction of accused nos 1 & 2.

It was also informed to the complainant that **Presidium Eduvision Trust is the senior wing of the Mothers Pride Education institution for school going kids. Accused nos. 1 and 2 in connivance of each other have taken the loan amount and issued the repayment cheques.**

Accused nos. 1 to 10 have hatched a conspiracy in connivance of each other against Complainant and cheated him and his family with huge amount, accordingly, Accused are responsible for all the aforesaid acts and deeds.

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23. That accused nos. 1 and 2 are being run managed by Mothers Pride Education Institution Pvt. Ltd. and accused nos. 3 to 10 are actively involved in handling and is in charge of the day to day affairs and business of accused no. 1 and accused no.2. Accused nos 3 to 10 have personally entered into transactions and convinced the complainant to enter into the said transaction. Accused nos 1-10 falsely and dishonestly represented and assured the Complainant about the repayment of loan amount vide aforesaid cheque. However, conduct of accused nos 1-10 clearly proves that they have cheated Complainant with malafide intentions and caused huge wrongful losses to Complainant by making false representations and gained wrongful gains for themselves. Accused has induced Complainant with his false assurances and representations to enter into the said transaction and to extend the loan facility to accused. Accused's intentions were malafide from day one and accused has cheated the Complainant.”



- h) The said application was allowed by the learned Trial Court by the Impugned Order, and the Trust and its three Trustees have been summoned as accused in the Complaint Cases filed by the respondent(s).
4. The petitioners have filed the present petitions being aggrieved of the said Order which summons the petitioners as accused in the above Complaint Cases.

Submissions of the Learned Counsel for the Petitioners:

5. The learned counsel for the petitioners submits that for maintainability of a complaint under Section 138 of the NI Act read with Section 142 of the NI Act, service of notice under Proviso (b) to Section 138 of the NI Act on the accused is mandatory. He submits that in the Complaint Cases, admittedly, the alleged demand notice dated 28.01.2019 was not addressed to the petitioners in their individual capacity. He submits that, therefore, the complaint(s) against the petitioners are not maintainable and the petitioners cannot be summoned in the same. In support, he places reliance on the judgments of the Supreme Courts in *Ashok Shewakramani & Ors. v. State of Andhra Pradesh & Anr.*, (2023) 8 SCC 473; the judgment of the High Court of Gujarat in *Somesh Sarjivan Jain v. State of Gujrat & Anr.* Neutral Citation no. 2012:GUJHC:11959; High Court of Madhya Pradesh in *Sanjay Singh Bisen v. Devendra Verma*, (Order/Judgment dated 02.02.2023 in Criminal Revision no.2611/2018); *Sandeep Sabuu v. Gwalior Vyapar Mela Pradhikaran* 2016 SCC OnLine MP 67; and of this Court in *Amit*



Kumar Mishra v. The State Govt. of NCT of Delhi & Anr. 2020 SCC OnLine Del 2199.

6. He further submits that merely by amending the complaints and now, in the relevant paragraphs, making averments against *inter alia* the petitioners, and by merely changing the number of the accused, the respondent(s) cannot be said to have satisfied the requirements of Section 141 of the NI Act. He submits that, therefore, even otherwise the Complaint Cases, as against the petitioners, are liable to be dismissed.

Submissions of the Learned Counsel for the Respondent(s):

7. On the other hand, the learned counsel for the respondent(s) submits that the Trust (the accused no.2 in the Complaint Cases) had been issued the legal/demand notice dated 28.01.2019, to be served through its Trustees. The respondent(s) were not aware of the Trustees of the said Trust till the deposition of the official of the Axis Bank. He submits that though the respondent(s) had dealt with the petitioners, they were not aware of their status as Trustees of the accused no. 2. He submits that the notice addressed to the Trust through its Trustees, is sufficient notice to the Trustees themselves in their individual capacity as well. In support, he placed reliance on the judgment of the Supreme Court in ***Kirshna Texport & Capital Markets Ltd. v. Ila A. Agrawal & Ors.*** (2015) 8 SCC 28.

8. Placing reliance on the judgment of the Supreme Court in ***Hardeep Singh v. State of Punjab & Ors.*** (2014) 3 SCC 92, he submits that the purpose of Section 319 of the Cr. P.C. is to ensure



that the real culprit should not get away unpunished. He submits that once it is discovered that the petitioners are the Trustees of the accused no.2 Trust and are also alleged to be involved in the alleged transactions with the respondent(s), they are liable to be proceeded against in terms of Section 141 of the NI Act. He submits that the purpose of Section 319 of the Cr. P.C. is to address such a situation.

9. He also places reliance on the judgment of the High Court of Madras in *Abraham Memorial Educational Trust v. C. Suresh Babu*, 2012 SCC OnLine Mad 2986, to contend that under Section 141 of the NI Act, all the Trustees of a Trust would be equally liable to be proceeded against under Section 138 of the NI Act.

Analysis And Findings:

10. I have considered the submissions made by the learned counsels for the parties.

11. Section 138 of the NI Act is reproduced herein below:

“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 provision 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 of other liability” means a legally enforceable debt or other liability.”

(Emphasis Supplied)

12. Proviso (b) to Section 138 of the NI Act read with Section 142 of the NI Act shows that for the maintainability of a complaint for an offence under Section 138 of the NI Act, the payee or the holder in due course of the cheque, as the case may be, should make a demand for the payment of the said amount of money by giving a notice in writing ‘*to the drawer of the cheque*’ within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The notice, therefore, is to be given ‘*to the drawer of the cheque*’.



(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."

16. Section 141 of the NI Act states that where the offence under Section 138 of the NI Act is committed by a company, every person who, at the time the offence was committed, was in-charge and was responsible to the company for the conduct of the business of the company, shall be *'deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly'*. Explanation (a) to Section 141 of the NI Act states that for the purpose of Section 141 of the NI Act, the term 'company' means any body corporate and includes a firm or other association of individuals. It is not disputed by the petitioners that a Trust will be covered by the above definition of the term 'company' and, therefore, the Trustees would be persons who would be responsible to the Trust for the



conduct of its business and be in-charge of its business and, therefore, deemed to be guilty of the offence under Section 138 of the NI Act. Reference in this regard can also be made to the judgment of the High Court of Madras in *Abraham Memorial Educational Trust* (Supra).

17. As noticed hereinabove, the only plea of the petitioners is the lack of notice under Proviso (b) to Section 138 of the NI Act and the purported lack of pleadings in the Complaint Cases against the petitioners herein in their individual capacity.

18. As far as the lack of notice under Proviso (b) to Section 138 of the NI Act is concerned, as has been held hereinabove, the said provision requires notice to be sent to the ‘drawer’. Admittedly notice(s) in the present Complaint Cases has been sent to the drawer, that is, the accused no.2-Trust.

19. In *Kirshna Texport and Capital Markets Ltd.* (supra), the Supreme Court, considering the provision of Proviso (b), Section 141 and Section 7 of the NI Act has held as under:

“15. With these principles in mind, we now consider the provisions in question. According to Section 138, where any cheque drawn by a person on an account maintained by him is returned by the bank unpaid for reasons mentioned in the said section such person shall be deemed to have committed an offence. The proviso to the section stipulates three conditions on the satisfaction of which the offence is said to be completed. The proviso inter alia obliges the payee to make a demand for the payment of the said amount of money by giving a notice in writing to “the drawer of the cheque” and if “the drawer of the cheque” fails to make the payment of the said amount within 15 days of the receipt of the said notice, the stages stipulated in the proviso stand



fulfilled. The notice under Section 138 is required to be given to “the drawer” of the cheque so as to give the drawer an opportunity to make the payment and escape the penal consequences. No other person is contemplated by Section 138 as being entitled to be issued such notice. The plain language of Section 138 is very clear and leaves no room for any doubt or ambiguity. There is nothing in Section 138 which may even remotely suggest issuance of notice to anyone other than the drawer.

***16.** Section 141 states that if the person committing an offence under Section 138 is a company, every Director of such company who was in charge of and responsible to that company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e. a company would be run by living persons who are in charge of its affairs and who guide the actions of that company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the Directors must individually be issued separate notices under Section 138. The persons who are in charge of the affairs of the company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such company. It is precisely for this reason that no notice is additionally contemplated to be given to such Directors. The opportunity to the “drawer” company is considered good enough for those who are in charge of the affairs of such company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of defence to be considered at the appropriate stage in the*



in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company under Section 138 and would be liable without even being issued individual notices.”

21. The above judgments would squarely apply to the facts of the present cases. There is no requirement for separate notice(s) to be issued to each of the Trustees of the accused no.2-Trust to make them vicariously liable and to be proceeded against in terms of Section 138 of the NI Act read with Section 141 of the NI Act. The notice having been served on the Trust through its Trustees, all the Trustees are deemed to have been duly served with the legal/demand notice(s), thereby meeting the requirement of Proviso (b) to Section 138 of the NI Act.

22. As far as the plea of the learned counsel for the petitioners that the respondent(s) has merely changed the number of the accused in the complaints and there is a lack of necessary pleadings in the complaint cases in this regard, I again find no merit in the same.

23. In the Amended Complaint case(s), the respondent(s) has made the following averments (reproduced from Complaint Case No.5505/2019; the other Complaints also contain similar allegations/pleadings):

“22. That only after evidence of CWI (Bank Officer of accused's bank), Complainant came to know that accused no. 11 and 12 are also trustees of the accused no. 2. Prior to that accused nos. 11 and 12 never disclosed that they are trustees of the accused no. 2. Accused nos. 11 and 12 always persuaded the complainant to give the loan. accused nos. 11

