

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 5126/2023

Rohitesh Nagda S/o Sh. Balmukund Nagda, Aged About 33
Years, 29, Ramsingh Ji Ki Baadi, Hiranmagri Sector 11, Udaipur.
Dist. Udaipur (Raj.)

----Petitioner

Versus

Lahar Singh Singhvi S/o Lt. Sh. Sundarlal Ji, Aged About 71
Years, 30, Ek Sukhadia Circle, Dist. Udaipur (Raj.).

----Respondent

For Petitioner(s) : Mr. Avin Chhangani.
For Respondent(s) : None.

HON'BLE MR. JUSTICE ARUN MONGA
Order

12/09/2024

1. Quashing of an order dated 20/02/2023 passed by learned Special Judicial Magistrate (N.I. Act Cases) No.4, Udaipur, in Case No.1552/2017 (Lahar Singh Vs. Rohitesh Nagda), under Section 138 of N.I. Act, vide which, the application filed by the petitioner for dismissing the complaint of respondent as he has arrayed the company as opposite party in his complaint, was rejected. The cheque in question is stated to have been issued by the company i.e. Kalika Hotel and Restaurant Pvt. Ltd.

2. Relevant facts, shorn of unnecessary details, that the petitioner, is a director of the aforesaid company.

2.1 While duly contesting the said complaint, the petitioner filed an application on 20/09/2022, stating that the cheque in question for an amount of Rs.1,25,400/- was issued in the name of the company, i.e., *Kalika Hotel and Restaurant Pvt. Ltd.* Despite this, the respondent (complainant) did not implead the company as a party to the complaint. Therefore, proceedings under Section 138

of the N.I. Act cannot continue in the absence of the company. On this ground, the petitioner prayed for the dismissal of the complaint filed by the respondent.

2.2 However, the learned trial court, by its impugned order dated 20/02/2023, dismissed the application filed by the petitioner stating that the complainant had prosecuted the accused Rohitesh Nagda in his personal capacity, not as the director of his company. Thus, there was no requirement of prosecuting the company in this case, even if it had issued the cheque. The court did not agree with the argument that a director of a company cannot be prosecuted without prosecuting the company itself. Hence the instant petition.

3. In the aforesaid backdrop, I have heard learned counsel for the petitioner and perused the case file as well as order impugned.

4. Notice was issued to the respondent. He is duly served, but has chosen not to appear.

5. First and foremost, reference may be had to Apex Court judgment rendered in ***Aneeta Hada Vs. Godfathers Travels & Tours Pvt. Ltd.: (2012) 5 SCC 661***. Relevant Para No.64 of the same, being apposite, is reproduced hereinbelow:

“56. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term “as well as” in the section is of immense significance and, in its tentacle, it brings in the company as well as the Director and/or other officers who are responsible for the acts of the company and,

therefore, a prosecution against the Directors or other officers is tenable even if the company is not arraigned as an accused. The words “as well as” have to be understood in the context.

57. *In RBI v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424] it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in Deewan Singh v. Rajendra Pd. Ardevi [(2007) 10 SCC 528] and Sarabjit Rick Singh v. Union of India [(2008) 2 SCC 417 : (2008) 1 SCC (Cri) 449].*

58. *Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.*

59. *In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.”*

6. Having had regard to the facts of the present case, as narrated hereinabove, I see no reason why the benefit of ratio

rendered by the Supreme Court be not accorded to the petitioner herein.

7. Concededly, the cheque was issued by the company named *Kalika Hotel and Restaurant Private Limited*, who is not made party to the complaint instituted by the respondent. The same being a serious legal lacuna, cannot be countenanced and the complaint has to be therefore necessarily dismissed.

8. It is so ordered. Petition is allowed.

9. Order dated 20/02/2023 passed by learned Special Judicial Magistrate (N.I. Act Cases) No.4, Udaipur, in Case No.1552/2017, is quashed. Complaint filed by the respondent is dismissed.

10. In the parting, I may hasten to add here that even otherwise it appears to be a case of landlord and tenancy dispute, qua which, collateral proceedings are already going on between the parties.

11. In the premise, in any case, the respondent is not remediless qua the claim of his money from the petitioner and he is at liberty to enforce the same in accordance with law, if so advised.

(ARUN MONGA),J

243-Sumit/-

Whether Fit for Reporting: Yes / No