



MAJESTY LEGAL
Advocates & Solicitors

VICARIOUS LIABILITY OF NON-EXECUTIVE DIRECTORS UNDER NI ACT

“K. S. MEHTA VERSUS M/S MORGAN SECURITIES AND CREDITS PVT. LTD.”

Hon'ble Supreme Court in case of *K. S. Mehta Versus M/S Morgan Securities And Credits Pvt. Ltd.*¹ reaffirmed that vicarious liability under Section 141 of the NI Act necessitates specific allegations establishing a director's direct involvement in financial affairs, and mere designation as a director does not suffice. The dispute originated from an Inter-Corporate Deposit (“ICD”) agreement dated 09.09.2002, executed between the accused company and the Respondent for a financial facility of ₹5,00,00,000 (Rupees Five Crores) against certain securities for a period of 180 days. Significantly, the Appellants neither attended the board meeting held on 09.09.2002, wherein the transaction was approved, nor were they signatories to the agreement or any related financial instruments.

Hon'ble Court underscored that non-executive and independent directors cannot be held liable under Section 138 read with Section 141 of the NI Act unless there are specific allegations demonstrating their direct involvement in the company's affairs at the relevant time. It further observed that the Appellants, being non-executive directors, had no executive or financial decision-making authority, as corroborated by ROC records and Corporate Governance Reports. Moreover, mere attendance at board meetings does not confer liability unless it is established that the director was directly responsible for financial transactions.

Accordingly, Hon'ble Court set aside the Delhi High Court's decision and quashed the criminal proceedings against the Appellants

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¹ SLP (Crl.) No. 4774 of 2024 etc.

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2025 INSC 315

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. _____ OF 2025
[Arising out of SLP (Criminal) No. 4774 of 2024]

K. S. MEHTA

...APPELLANT(S)

VERSUS

**M/S MORGAN SECURITIES AND
CREDITS PVT. LTD.**

...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. _____ OF 2025
[Arising out of SLP (Criminal) No. 5239 of 2024]

CRIMINAL APPEAL NO. _____ OF 2025
[Arising out of SLP (Criminal) No. 10143 of 2024]

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JUDGMENT

SATISH CHANDRA SHARMA, J.

1. Leave granted.
2. The present appeals arise from the common Impugned Judgment and Order dated 28.11.2023, passed by the High Court of Delhi at New Delhi (the “High Court”), whereby the High Court dismissed the petitions filed under Section 482 of the Code of Criminal Procedure, 1973 (the “CrPC”). The petitions sought the quashing of criminal proceedings initiated against the Appellant(s) under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (the “NI Act”).

BACKGROUND

3. The Appellant(s) K.S. Mehta, and Basant Kumar Goswami, were appointed as directors of M/s Blue Coast Hotels & Resorts Ltd. (Accused No. 1/Company) at different times. K.S. Mehta was appointed as an additional director on 29.06.2001, while Basant Kumar Goswami was appointed as a director on 16.04.1998. Appellant(s) were designated as non-executive director in compliance with clause 49 of the Listing Agreement prescribed by the Securities and Exchange Board of India (the “SEBI”). Their role was confined to governance oversight

without any executive authority or financial decision-making power in the company.

4. The dispute stems from an Inter-Corporate Deposit (“ICD”) agreement dated 09.09.2002, executed between the accused company and the Respondent to avail a financial facility of ₹5,00,00,000 (Rupees Five Crores) against certain securities for a period of 180 days. Notedly, the Appellant(s) were neither in attendance at the board meeting held on 09.09.2002, wherein the said transaction was approved, nor were they signatories to the agreement or any related financial instruments.

5. The liability towards repayment of the ICD culminated in the issuance of the following post-dated cheques:

- Cheque No. 842628 dated 28.02.2005 for ₹50,00,000/-.
- Cheque No. 842629 dated 30.03.2005 for ₹50,00,000/-.

Upon presentation, both cheques were dishonored due to insufficient funds. Following the dishonor, the Respondent issued legal notices demanding payment, but no remedial action was taken by the company. Consequently, criminal proceedings were initiated against all directors, including the Appellant(s).

6. Moreover, the executed ICD agreement contained an arbitration clause to be invoked in case of any dispute between

the parties. The Appellant(s) were unaware of such clause(s) or the terms of the agreement at the time of execution and only came to know of them later. A memorandum of settlement was executed on 27.05.2003 between the Respondent and the accused company, Accused No. 2, Accused No. 6, and Morepen Laboratories Ltd., to resolve financial disputes. Pertinently, the Appellant(s) were not a party to this settlement.

7. The Appellant/K.S. Mehta resigned from the company on 10.11.2012, whereas Appellant/Basant Kumar Goswami continued as non-executive director until 2014. Notwithstanding, the Registrar of Companies (“ROC”) records and Corporate Governance Reports (“CGR(s)”) submitted to the stock exchange confirmed their non-executive status and indicated that they did not draw any remuneration apart from a nominal meeting fee. Notedly, neither Appellant ever submitted Form 25(C), which is mandatory for executive and managing director drawing remuneration, further substantiating their lack of involvement in financial affairs of the company.

8. The following complaints under Section 138 NI Act were filed against the Appellant(s) before the Court of Additional Chief Metropolitan Magistrate, New Delhi:

1. Complaint No. 15857 of 2017, filed on 10.11.2005, *qua* Cheque No. 842629.

2. Complaint No. 15858 of 2017, filed on 25.10.2005, *qua* Cheque No. 842628.

9. The High Court dismissed the Appellant(s)' petition under Section 482 CrPC bearing CrI.M.C. No(s). 1643, 1645 and 1345 of 2019 seeking quashing of the proceedings pending before the Court of Additional Chief Metropolitan Magistrate, New Delhi.

SUBMISSION BY THE PARTIES

10. The learned counsel for the Appellant(s) submitted that they had no role in the company's financial transactions and were not vested with any responsibility in as much as its financial affairs were concerned. Learned counsel contended that the Appellant(s) were not a signatory to any of the dishonored cheque(s) and did not authorize their issuance. The Appellant(s) directorship was non-executive and limited to corporate governance oversight in compliance with SEBI regulations.

11. The learned counsel for the Appellant(s) submitted that their non-executive status negates any basis for vicarious liability under Section 141 of the NI Act. The learned counsel further relied upon the CGR(s) and ROC record(s), which consistently reflected the Appellant(s) non-executive roles, reinforcing their lack of involvement in operational or financial matters. In the absence of any specific allegations linking them to the issuance

or dishonor of the cheques, it was contended that the proceedings initiated against them were legally untenable.

12. The learned counsel for the Appellant relied on judicial precedents including *Kamalkishor Shrigopal Taparia v. India Ener-Gen Private Limited & Anr.*, 2025 SCC Online SC 321; *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr.*, (2005) 8 SCC 89; and *Pooja Ravinder Devidasani v. State of Maharashtra & Anr.*, (2014) 16 SCC 1 to substantiate that mere designation as a director does not create vicarious liability under Section 141 NI Act. There must be specific allegations of active participation in the conduct of business at the relevant time.

13. On the contrary, the learned counsel for the Respondent contended that the Appellant(s) name appeared as a director in the company at the relevant time, and was presumed to be involved in the company's affairs.

14. The learned counsel for the Respondent contended that the mere resignation of the Appellant(s) does not automatically absolve a director from liability under Section 141 NI Act and that the onus lies upon them to establish their non-involvement in the company's financial transactions. The learned counsel placed reliance on *Ashutosh Ashok Parasrampuriya & Anr. v. Gharrkul Industries Pvt. Ltd. & Ors.*, (2023) 14 SCC 770, to contend that the question of the Appellant(s) status as an

independent and non-executive director is a matter that should be determined during trial rather than at the quashing stage.

15. The learned counsel for the Respondent also emphasized on the Appellant(s) attendance at board meetings, asserting that it indicated knowledge of financial dealings, including the issuance of cheques towards repayment of the ICD.

ANALYSIS AND FINDINGS

16. This Court has consistently held that non-executive and independent director(s) cannot be held liable under Section 138 read with Section 141 of the NI Act unless specific allegations demonstrate their direct involvement in affairs of the company at the relevant time.

16.1. This Court in *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal & Anr.*, (2010) 3 SCC 330 observed:

“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 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.

22. Therefore, this Court has distinguished the case of persons who are incharge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company.

39. From the above discussion, the following principles emerge: (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction. (ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company. (iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the

accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with. (iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred. (v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with. (vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint. (vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”

16.2. In ***N. K. Wahi v. Shekhar Singh & Ors., (2007) 9 SCC 481*** this Court in *Para 8* observed:

“To launch a prosecution, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment

or specific evidence the net result would be that complaint would not be entertainable.”

16.3. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr., (2005) 8 SCC 89***, this Court laid down that mere designation as a director is not sufficient; specific role and responsibility must be established in the complaint.

16.4. In ***Pooja Ravinder Devidasani v. State of Maharashtra & Anr., (2014) 16 SCC 1***, this Court while taking into consideration that a non-executive director plays a governance role, they are not involved in the daily operations or financial management of the company, held that to attract liability under Section 141 of the NI Act, the accused must have been actively in charge of the company's business at the relevant time. Mere directorship does not create automatic liability under the Act. The law has consistently held that only those who are responsible for the day-to-day conduct of business can be held accountable.

16.5 In ***Ashok Shewakramani & Ors. v. State of Andhra Pradesh & Anr., (2023) 8 SCC 473***, this Court held:

“8. After having considered the submissions, we are of the view that there is non-compliance on the part of the second Respondent with the requirements of Sub-section (1) of Section 141 of the NI Act. We may note here that we are dealing with the Appellants who have been alleged to be the Directors of the Accused No. 1 company. We are not dealing with the

cases of a Managing Director or a whole- time Director. The Appellants Have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the Appellants. ”

16.6. In ***Hitesh Verma v. M/s Health Care At Home India Pvt. Ltd. & Ors., Crl. Appeal No. 462 of 2025***, this Court held:

“4. As the appellant is not a signatory to the cheque, he is not liable under Section 138 of the 1881 Act. “As it is only the signatory to the cheque who is liable under Section 138, unless the case is brought within the four corners of Section 141 of the 1881 Act, no other person can be held liable.... ”

5. There are twin requirements under sub-Section (1) of Section 141 of the 1881 Act. In the complaint, it must be alleged that the person, who is sought to be held liable by virtue of vicarious liability, 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. A Director who is in charge of the company and a Director who was responsible to the company for the conduct of the business, are two different aspects. The requirement of law is that both the ingredients of sub-Section (1) of Section 141 of the 1881 Act must be incorporated in the complaint. Admittedly, there is no assertion in the complaints that the appellant, at the time of the commission of the offence, was in charge of the business of the company. Therefore, on a plain reading of the complaints, the appellant cannot be prosecuted with the aid of sub-Section (1) of Section 141 of the 1881 Act. ”

17. Upon perusal of the record and submissions of the parties, it is evident that the Appellant(s) neither issued nor signed the dishonoured cheques, nor had any role in their execution. There is no material on record to suggest that they were responsible for the issuance of the cheques in question. Their involvement in the company's affairs was purely non-executive, confined to governance oversight, and did not extend to financial decision-making or operational management.

18. The complaint lacks specific averments that establish a direct nexus between the Appellant(s) and the financial transactions in question or demonstrate their involvement in the company's financial affairs. Additionally, the CGR(s) and ROC records unequivocally confirm their non-executive status, underscoring their limited role in governance without any executive decision-making authority. The mere fact that Appellant(s) attended board meetings does not suffice to impose financial liability on the Appellant(s), as such attendance does not automatically translate into control over financial operations.

CONCLUSION

19. Given the lack of specific allegations and in view of the aforesaid observations, the Appellant(s) cannot be held vicariously liable under Section 141 of the NI Act.

20. Accordingly, the Impugned Judgment and Order dated 28.11.2023 of the High Court is set aside, and the criminal proceedings against the Appellant(s) in Complaint No(s). 15858 and 15857 of 2017 pending before the Court of Additional Chief Metropolitan Magistrate, New Delhi are hereby quashed.

21. The appeals are allowed. No order as to costs.

.....**J.**
[B. V. NAGARATHNA]

.....**J.**
[SATISH CHANDRA SHARMA]

NEW DELHI
March 04, 2025