



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

% **Reserved on: 4th February, 2025**
Pronounced on: 2nd May, 2025

+ **CRL.M.C. 3878/2018**

UTTAM KUMAR DAGA

S/o Mr. Hari Ratan Daga

R/o 374, Salt Lake City, Block-CF,

Kolkata-700064, West Bengal

.....Petitioner

Through: Mr. Mrinal Beri, Advocate.

versus

1. **THE STATE (NCT of DELHI)** ...Respondent No.1

2. **ROHIT CHAUHAN**

S/o Mr. P.S. Chauhan,

R/o CSC-1/16, DDA Market,

Sector-6, Rohini, Delhi-110085

...Respondent No.2

Through: Mr. Shoaib Haider, APP for State.

Mr. Abhishek Kaushik & Dr. Navin
Kumar Sehrawat, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*), has been filed for quashing of the **Complaint Case bearing No. 879/2017** titled "**Rohit Chaudhary vs. Dadheech Infrastructures Pvt. Ltd.**" under Section 138 read with Section



141 of Negotiable Instruments Act, 1881 (*hereinafter referred to as "N.I. Act"*) and other proceedings emanating therefrom.

2. **Briefly stated**, M/s Dadheech Infrastructure Pvt. Ltd., a Company having its registered office in West Bengal, is engaged in the business of construction works. The accused Nos. 2-4 being its Directors, are persons in charge and responsible for all acts of the Company. The Complainant, the proprietor of M/s Shri Ram Builders, is engaged in the business of construction and supply of Building raw materials.

3. They entered into a business arrangement whereby the Complainant started supplying the materials to accused No. 1 Company on a regular basis, as per the terms of instruction of its Directors/accused persons.

4. In September 2014, the Complainant reconciled the account with the accused persons, and as per the Ledger Account, **the net due closing balance amount due from the accused Company was Rs. 22,53,968/-** which was also acknowledged by Accused No.2/Sanjeev Kumar Sharma and the employees of accused No. 1 Company, namely, Jitender (Accountant) and Mr. Laxmi Aggarwal (Purchase Dept.) who signed the *Ledger Account Statement*.

5. Despite the Complainant's multiple requests from October to December 2014 for payment, accused Nos.2-4 asked for extensions, claiming financial constraint to pay the outstanding amount.

6. Eventually, on 20.03.2015, accused No. 2/Sanjeev Kumar Sharma on behalf of all the accused persons executed a Note Promissory/Pronote, acknowledging the debt of Rs.22,53,968/- and undertook to clear the outstanding said amount within 20 days. The accused No. 2 also assured the



Complainant that their vendor, HSCC (INDIA) Ltd. shall be intimated to directly pay the aforesaid outstanding amount to the Complainant.

7. Thereafter on 23.09.2015, the accused persons made a part payment of Rs. 5,00,000/- to the Complainant.

8. In September-October 2016, on the request of Complainant, the accused issued Two cheques towards full and final amount as mentioned below:-

S. No.	Cheque No.	Drawn on	Dated	Cheque Amount
1.	521021	SBI Kolkata Ballygunge Branch	04.10.2016	Rs.12,53,968/-
2.	521020	SBI Kolkata Ballygunge Branch	20.12.2016	Rs.10,00,000/-
<u>TOTAL AMOUNT:</u>				Rs. 22,53,968/-

9. The Complainant as requested by the accused persons, presented the aforesaid cheque for encashment on 10.11.2016 with its banker Delhi State Cooperative Bank Ltd. Branch. However, the said cheque was returned unpaid with bank's remarks as "**Funds Insufficient**" vide Return Memo on 20.11.2016.

10. The accused persons when intimated about the dishonour of cheque, requested the Complainant to re-present the said cheque along with other cheque bearing No. 521020 amounting Rs. 10,00,000/- on 20.12.2016. However, both the cheques again were dishonoured for "**Funds Insufficient**" vide Return Memo dated 27.12.2016.



11. Receiving no response from the accused persons, Complainant issued a Legal Notice dated 24.01.2017 to all accused persons, for the payment of Rs. 22,53,968/-. Despite receipt of legal Notice on 28.01.2017 and 30.01.2017, the accused persons failed to remit the demanded amount to the Complainant.

12. Consequently, Complaint under Section 138 read with Section 141 N.I. Act was filed.

13. The Ld. M.M. *vide* Order dated 16.03.2017 took cognizance and directed issuance of summons against all the accused persons including the Petitioner, Uttam Kumar Daga.

14. ***Aggrieved by the summoning, Petitioner filed the present Petition for quashing of the Complaint.***

15. It is submitted on behalf of the Petitioner, as per Respondent No. 2/Complainant's own admission, the cheques were issued in September-October 2016 while **the Petitioner had already resigned as Director of Accused No. 1 Company on 14.05.2015 which was also approved by the Board of Directors in the meeting on 19.05.2015.** A Notice of Petitioner's resignation was duly given to the Registrar of Companies as *Form No. DIR-11* (pursuant to proviso to Section 168(1) of Companies Act, 2013 and Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

16. It is submitted that in order to fasten vicarious liability under Section 141 N.I. Act, it is imperative for the Complainant to specifically aver and establish how and in what manner, the Petitioner was responsible for the conduct of the business of the accused Company. Furthermore, in light of



the proviso to Section 141(1), the Complainant must also clearly plead the capacity in which the Petitioner was in charge of and responsible for the day-to-day affairs of the Company particularly at the time when the cheques in question was issued. It is the settled law that “*merely being a Director doesn’t make a person responsible or in control of the Company*”.

17. Thus, the Complaint qua the Petitioner is liable to be quashed.

18. ***The Respondent No. 2/Complainant in his Counter-Affidavit*** has vehemently opposed the Petition.

19. It is submitted that it has been specifically averred in the Complaint that the Petitioner as Director along with the other accused persons/Directors of the accused Company, were persons in charge of and responsible for the conduct and management of the day-to-day affairs of the accused Company, at the time of the transactions in question.

20. Further, the outstanding amount of Rs.22,53,968/- was determined and acknowledged by the accused persons/Directors and the two employees of the accused Company (Jitender and Laxmi Aggarwal).

21. Furthermore, although the Petitioner resigned as Director on 14.05.2015, the resignation came after the acknowledgment of the debt liability and execution of the *Promissory Note* by one of the Directors on behalf of the accused Company.

22. The Petitioner was aware of the deteriorating financial condition and the existing liabilities of the accused Company, and therefore to escape from the liabilities, the Petitioner resorted to resign from the Directorship of the accused Company. The Petitioner is trying to base his story on false and manipulated facts. Thus, there is no merit in the Petition.



23. **Submissions heard and record perused.**

24. The *first question* which arises is *whether the Petitioner was a Director of the accused Company at the time of issuance of the cheques in question?*

25. At the outset, it is to be noted that the resignation of the Petitioner as the Director of the accused Company on 14.05.2015, is not in dispute. The Petitioner had sent his resignation letter to the Board of Directors of M/s Dadheech Infrastructures Pvt. Ltd. on 14.05.2015. This fact is also corroborated by the *Form No. DIR-11* which states that the Petitioner was appointed as an Additional Director on 25.09.2014 and has filed his resignation on 19.05.2015. The Company has also received confirmation of the resignation.

26. The Apex Court in the case of Adhiraj Singh vs. Yograj Singh and Ors., arising out of S.L.P. (Crl.) No(s). 16051-16052/2023 decided on 02.12.2024, while considering a similar situation wherein post-dated cheques were issued on 12.07.2019 after the resignation of the Director, it was held as under:-

*“Once the facts are plain and clear that **when the cheques were issued by the Company, the appellant had already resigned and was not a director in the Company and was not connected with the company, he cannot be held responsible for the affairs of the Company in view of the provisions as contained in Section 141 of the NI Act.**”*

27. In the present case, the two cheques bearing No. 521021 and 521020 totalling to Rs. 22,53,968 were dated 04.10.2016 and 20.12.2016, respectively, while the Petitioner had already resigned as Director on



14.05.2015 i.e. prior to the dates on which the impugned cheques were issued.

28. Further, from the perusal of the Complaint, it is evident that the Appellant was neither a signatory to the dishonoured cheques nor the promissory note. There are general averments regarding the accused directors who had knowledge of the 'legally enforceable debt' but the Complaint conspicuously lacks any specific averment articulating the precise manner in which the Petitioner bore the responsibility of the two dishonoured cheques.

29. In view of the above observations, the Petitioner cannot be held vicariously liable under Section 141 N.I. Act.

30. Thus, the Criminal Complaint bearing No. 879/17 and all consequential proceedings arising therefrom, are hereby quashed against the Petitioner.

31. The present Petition is allowed and accordingly disposed of, along with pending Application(s) if any.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 02, 2025
RS