

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 14th OF MARCH, 2024

MISC. CRIMINAL CASE No. 6667 of 2024

BETWEEN:-

**RAJESH DUBEY S/O LATE SHRI M.P. DUBEY, AGED
ABOUT 65 YEARS, OCCUPATION: SERVICE
RETIRED R/O 412/4 NANDA NAGAR INDORE
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI AKSHAT AGRAWAL, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
M.G. ROAD INDORE (MADHYA PRADESH)**
- 2. SUDHIR TRADERS THROUGH PROPRIETOR
SUDHIR JAIN S/O CHIMANLAL JAIN, AGED
ABOUT 51 YEARS, OCCUPATION: BUSINESS 85
TIJORI GALI INDORE (MADHYA PRADESH)**
- 3. MRK PIPES LIMITED KHASRA NO. 3 AND 5
VILLAGE SAHIB RAMPURA RIICO
INDUSTRIAL KALA DERA TEHISL OMER
JAIPUR RAJASTHAN (RAJASTHAN)**

.....RESPONDENTS

**(BY MS. HARSHLATA SONI, P.L./G.A. FOR STATE AND MS. SAPNA
LUNKAD, ADVOCATE FOR RESPONDENT NO.3)**

.....
*This petition coming on for admission this day, the court passed
the following:*

ORDER

Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioner under Section 482 of the Cr.P.C., against the order of taking cognizance dated 07.04.2021, by the Judicial Magistrate First Class in Case No.NIA/5996/2021 whereby, cognizance under Section 138 of the Negotiable Instruments Act has been taken.

3] The order is challenged by the petitioner solely on the ground that the cheques dated 14.07.2020, 24.07.2020 and 31.07.2020 have been issued by the respondent No.3 MRK Pipes Limited, signed by the then Director of the Company and the petitioner's contention is that he has already retired from the Directorship of the aforesaid Company way back in the year 2013, with effect from 14.08.2013. The necessary entries regarding which, have already been entered in by the Registrar of Companies at Jaipur. A copy of Form No.DIR-11 is also placed on record to demonstrate that the date of filing of the resignation was 14.08.2013 and the effective date is also 14.08.2013. Thus, it is submitted that since the petitioner had already ceased to exist as the Director of the aforesaid Company, in such circumstances, the petitioner cannot be held vicariously liable for issuance of the cheque by the subsequent Directors of the Company, that too after a period of seven years. Thus, it is submitted that the petition be allowed and the cognizance taken by the Trial Court under Section 138 of N.I. Act be set aside.

4] Counsel for the petitioner has also relied upon a recent decision rendered by the Supreme Court in the case of ***Rajesh Viren Shah Vs. Redington (India) Limited*** passed in ***Special Leave Petition (Crl.)***

No.6905/2022 dated **14.02.2024**, in which also the Supreme Court has taken note of the fact that the Director who has resigned from his position and which fact stands recorded in the books as per the relevant rules and statutory provisions, cannot be held liable for certain negotiable instruments.

5] Prayer is opposed by the counsel appearing for the respondent No.2/complainant and it is submitted that no case for interference at this stage is made out, as the documents filed by the petitioner cannot be taken into account in this petition and the petitioner would have the opportunity to lead evidence before the Trial Court. It is also submitted that the transaction on account of which the cheques have been issued, took place when the petitioner was the Director of the Company and thus, he is also liable to answer the complaint.

6] Heard counsel for the parties and perused the record.

7] So far as the decision rendered by the Supreme Court in the case of ***Rajesh Viren Shah(Supra)*** is concerned, the relevant paras of which read as under:-

“10. The record reveals the resignations to have taken place on 9th December 2013 and 12th March 2014. Equally, we find the cheques regarding which the dispute has travelled up the courts to have been issued on 22nd March 2014. The latter is clearly, after the appellant(s) have severed their ties with the Respondent-Company and, therefore, can in no way be responsible for the conduct of business at the relevant time. Therefore, we have no hesitation in holding that they ought to be then entitled to be discharged from prosecution.

11. In this view of the matter, the judgments captioned above of the High Court of Judicature at Madras, deserve to be set aside. Accordingly, all criminal proceedings pertaining to the instant appellant(s) arising out of the complaints filed by the respondent herein are quashed.”

(Emphasis Supplied)

8] It is apparent from the aforesaid decision that the Supreme Court has held that when a Director resigns from his position from the Company, he cannot be held liable for the subsequent act of the Company, and if the cheques have been issued by the subsequent Directors, the Director who has already resigned from the Company, cannot be held liable for the same.

9] Thus, the same is the position in the case in hand as admittedly, the petitioner had resigned from the Company from the position of Director way back in the year 2013, whereas, the cheques have been issued in the year 2020 by the subsequent Directors. In such circumstances, when the relevant documents have also been placed on record, issued by the Registrar of the Companies at Jaipur, which are public documents, this Court has no hesitation to hold that the petitioner cannot be held vicariously liable for the acts of subsequent Directors of the Company.

10] In view of the same, the petition stands *allowed*, and the order dated 07.04.2021 taking cognizance u/s.138 of the N.I. Act is hereby set aside, so far as it relates to the petitioner.

11] Learned Judge of the Trial Court is requested to proceed further in accordance with law against the other accused persons.

Petition stands *allowed*.

(SUBODH ABHYANKAR)
JUDGE