



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

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*Reserved on: 31st July, 2025
Pronounced on: 07th August, 2025*

+ **CRL.M.C. 591/2017, CRL.M.A. 49604/2018**
 + **CRL.M.C. 593/2017, CRL.M.A. 49614/2018**
 + **CRL.M.C. 594/2017**
 + **CRL.M.C. 595/2017, CRL.M.A. 49606/2018**
 + **CRL.M.C. 596/2017, CRL.M.A. 49616/2018**
 + **CRL.M.C. 597/2017**

RTDC LTD.

Through Mr. Sanjeev Sharma,
(General Manager & AR)
Ground Floor, Bikaner House
Pandara Road, New Delhi

.....Petitioner

Through: Mr. Shafiq Khan, Advocate.

versus

1. **STATE OF NCT of DELHI**Respondent No. 1

2. **SH. ROHEN TREHAN**

C-8/8410, Vasant Kunj,
New Delhi-110062

.....Respondent No. 2

Through: Mr. Shoaib Haider, APP.
Mr. Vikram Pandey, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid six Petitions have been filed under Section 482 of



Criminal Procedure Code, 1973 read with Article 227 of Constitution of India by the Petitioner/Complainant seeking setting aside of impugned Order dated 22.10.2016 of Ld. ASJ in Revision Petitions, whereby the Respondent No.2 Rohen Trehan (accused no.3) has been discharged, by setting aside the Order dated 08.07.2016 of Ld. MM dismissing the Application under Section 251 Cr.P.C, for offence under Section 138/141 Negotiable Instruments Act, 1881.

2. ***Briefly stated***, Complainant, Rajasthan State Government Undertaking is registered under The Companies Act, 1956 (as amended Act of 2013) and is represented herein by its General Manager Shri Sanjeev Sharma, who is duly authorized and competent to represent the Complainant.

3. ***Accused No.1*** *M/s Luxury Trains Pvt. Ltd.* is engaged in the business of arranging/booking luxury trains for its clients. ***Accused no. 2***/Sajjive Trehan & ***Accused No. 3***/Rohen Trehan are the *Directors* and ***Accused no. 4***/Romi Trehan was the *Chief Executive Officer* of Accused No. 1, who are responsible for the management and control of the day-to-day affairs of the Accused Company.

4. Complainant operates two luxury trains, “*Palace on Wheels*” and “*Royal Rajasthan on Wheels*” on different routes and gives an opportunity to experience the charm of the most exotic destinations of Rajasthan and partly in Uttar Pradesh like Agra and Varanasi, in most refined lodging and cuisine at budgeted prices. The Accused Company *M/s Luxury Trains Pvt. Ltd.* approached the Complainant RTDC for booking of cabins/travelling tickets, etc., for its clients on the train. Accordingly, the Complainant engaged the



services of the Accused Company, who in the course of business issued several cheques in discharge of its liability.

5. The said Cheques were presented by the Complainant, but were dishonoured and returned *vide* Return Memos dated 24.10.2014 with remarks “*Exceeds Arrangement*”. Consequently, Legal Notice dated 25.10.2014 was sent calling upon the Accused persons to make the payment against the dishonoured cheques within 15 days.

6. However, the Accused persons failed to make the payments. Consequently, seven Complaint for offences under Section 138/141 N.I. Act were filed on 24.11.2014. The aforesaid 06 complaints are the subject matter of the present proceedings.

7. The ***Ld. M.M.*** after examining the contents of the Complaint, issued summons to all the Accused persons, *vide* Order dated 26.11.2014 which was never challenged.

8. The Respondent/Accused No. 3/Rohen Trehan moved an Application under **Section 251 Cr.P.C. seeking discharge** by alleging that there is no specific averment that the Respondent was “*in charge and responsible*” for the management and control of the affairs of the Company.

9. The Petitioner however, contended that the role of the accused cannot be denied because he was one of the main Directors without whom the management and control of the Accused Company is not possible, for which reliance was placed on *Adalat Prashad vs Rooplal Jindal*, 2004 AIR (SCW) 5174 and *Deventra Kishanlla Dagalia vs Dwarkesh Diamonds Pvt. Ltd.* 2013 AIR SCW 6735. It was further asserted that the Respondent has placed no documentary evidence to support his contention that he had no role in the



Company.

10. The **Ld. M.M dismissed the Application** vide Order dated 08.07.2016 for discharge on behalf of the Respondent by observing that the Respondent has failed to furnish any sterling incontrovertible material which may make out a case in his favour. Further, since Company only had two Directors, so every act was within the knowledge of both the Directors.

11. The Respondent No. 2/Sh. Rohen Trehan preferred 7 Revision Petitions out of which 6 were allowed *vide* Order dated 22.10.2016 and he was discharged while one Revision Petition was dismissed *vide* Order dated 07.09.2016

12. Aggrieved by the discharge of Respondent No. 2/Rohen Trehan in the Complaints under Section 138 N.I. Act, the Complainant/RTDC has preferred the aforesaid 06 Petitions.

13. The impugned Order is challenged on the ground that the Ld. ASJ failed to appreciate the material placed on record in the Complaint for invoking Section 141 N.I. Act. Ld. ASJ erred in discharging as the Respondent who did not produce any material to substantiate his contention, especially after issuance of Summons. It is asserted that the Discharge of the Respondent was unwarranted, and the Order should be set aside on the ground that the learned ASJ has erred in not appreciating and appraising the material evidence placed on record and the necessary averments made in the Complaint for invoking Section 141 N.I. Act for prosecuting the Respondent for committing an Offence under Section 138 NI Act.

14. It is a trite law that once the Accused persons were summoned, the Complaint must proceed against the Directors/Accused persons unless he



furnishes some sterling unconvertible material or acceptable circumstances to substantiate his contentions. The Respondent has miserably failed to establish any defence in his favour. Further, the law in Gunmala Sales Pvt. Ltd. vs. Anu Mehta, (2015) 1 SCC 103, has been ignored on the requirement of producing sterling material once the Summons has been issued.

15. It is further submitted that while allowing the Petitions, the Ld. ASJ erred in ignoring the principles of law under Section 138/141 N.I. Act and analyzing the intent behind the words ‘in charge and responsible’ as covered in Section 141 NI Act. In this regard, reliance is placed on KK Ahuja vs. VK Vora, (2009) 94 SCL 140 (SC). The role played by the Respondent was sufficiently provided for in the Complaint and that’s why the Ld. M.M issued Summons against the Accused No. 3, in this regard reliance is placed on N. Ranagachari vs. Bharat Sanchar Nigam Limited, MANU/SC/7316/2007.

16. The Ld. ASJ has erred in not appreciating the FORM-32, Memorandum of Association, Articles of Association and designation of the Respondent as the Managing Director, which is in contravention of the law laid down in SMS Pharmaceuticals Ltd. vs Neeta Bhalla, JT 2007 (4) SC 230.

17. Further, the Ld. ASJ has failed to appreciate that all the averments in the Complaint regarding commission of an Offence under Section 138 r/w 141 NI Act and the summons being issued on the basis of Complaint, against him. Also, there were only two Directors in the Company.

18. Thus, it is prayed that the impugned Order dated 22.10.2016 allowing the Six Revision Petitions be set aside.



19. During the present proceedings, the Respondent could not be served. Amicus was appointed on behalf the Respondent No.2 by this Court *vide* Order dated 03.04.2025.

Submissions Heard and Record Perused.

20. Before considering the Petition on merits, it is significant to observe that the Respondent No. 2 along with other Accused persons had been summoned *vide* Order dated 26.11.2014 by learned M.M in a Complaint Case under Section 138 NI Act. Thereafter, the Respondent No. 2 had moved an Application under Section 251 Cr.P.C. seeking his discharge. Under the Cr.P.C, there is no provision for seeking discharge by the Accused once he has been summoned, in a summons case. The only option for him is to challenge the Summoning Order. The discharge under Section 251 Cr.P.C. can be sought only in the warrants trial cases. The learned MM, therefore, fell in error in entertaining the Application under Section 251 Cr.P.C., which is not applicable to the Summons trial case.

21. Be as it may, no serious prejudice was caused to the Complainant as the Application filed by the Respondent No. 2 was dismissed by the Ld. M.M. However, wrong track once taken can lead to further damage as happened in the present case, when learned ASJ erroneously entertained the Revision Petitions against the dismissal Order under Section 251 Cr.P.C. and even went to the extent of discharging the Respondent No. 2.

22. Now, since the learned ASJ has discharged the Respondent No. 2, who had been summoned *vide* Order dated 26.11.2014 for Offences under Section 138/141 N.I. Act, the present Revision Petitions may be considered on merit to ascertain if there was any ground for discharge of the



Respondent No. 2.

23. Unfortunately, for the Complainant, the Respondent No. 2/Rohen Trehan upon his discharge in the Complaint Cases, left shores of the Country and his father Sh. Sajjive Trehan, the only other Director, was also declared a Proclaimed Offender.

24. In any case, the present Petitions need to be considered on the merits as to whether Respondent No.2 has been rightly discharged in the Complaint under Section 138/141 NI Act during the trial. The Complainant had asserted in his Complaint under Section 138 NI Act that the Accused *M/s Luxury Trains Pvt. Ltd.* had two Directors, namely, Sajjive Trehan and Rohen Trehan. Mrs. Romi Trehan was the CEO of the Company.

25. These assertions also find mentioning in the Legal Notice that was served before filing of the Complaints. Form-32 of Accused No. 1 Company which has been filed on record, reflects that it is a Private Limited Company having only two Directors i.e. Sajjive Trehan and Rohen Trehan.

26. Accordingly to ***Section 174 of the Companies Act***, minimum of 02 Directors are necessarily required for a Company to function. No major or minor action can be done by a Company without it being first duly approved by the Board Resolution passed in the meeting convened by the Board of Directors. Where in a Company, there are only two Directors, then they will be necessarily be required to satisfy the quorum for the Board Meetings. In this scenario, it cannot be said that either of the two Directors is not responsible for the day-to-day affairs of the Company.

27. The learned MM, therefore, rightly observed that by virtue of being one of the two Directors in a Private Limited Company, the Respondent No.



2 cannot assert that he was not in charge or responsible for the affairs of the Company.

28. It is not in dispute that the dishonoured cheque in question has been issued by the Company i.e. Accused No. 1/*M/s Luxury trains Pvt. Ltd.* It is also not in dispute that the Accused No. 3/Rohen Trehan is one of the only two the directors of the Accused No. 1 Company. Consequently, the liability of Respondent No. 2 has to be seen from his being a Director in the Accused No. 1 Company.

29. The Apex Court in *Aneeta Hada vs. M/s Godfather Travels & Tours Pvt. Ltd.*, AIR 2012 SC 2795, has observed that “*the Company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a Company commits an offence, then certain categories of persons in charge as well as the Company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain.*”

30. Law in regard to the liability of Directors stands settled in *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla* (2005) 8 SCC 89 wherein the requirements of Section 141 were defined. Apex Court had reiterated and clarified that essentially in a case under Section 141, there ought to be a specific averment in the pleadings of the Complainant that at the time the Offence was committed, the person accused was in charge of and responsible for the conduct of the business of the Company. It was held that a Director would not be liable simply because they are holding that position.



It needs to be shown that the Director being made liable should be in charge of and responsible for the conduct of the business of the Company at the time of committing the offence. Further, that the persons holding the office of “Managing Director” or “Joint Managing Director”, by virtue of the very nature of their role, renders them in charge of and responsible for the conduct of the business of the Company, and liable under Section 141.

31. In Gunmala Sales Pvt. Ltd (supra) the Apex Court has held that, “ordinary basic averment qua a director in the complaint would be sufficient to send him to trial and it could be argued that his further role could be brought out during trial.

32. The Complainant aside from asserting that being one of the two Director of the Company, was involved in the affairs of the Company, cannot necessarily assert more about their actual involvement in the affairs of the Company. It is for the Respondent No. 2 to demonstrate how despite being one of the two Directors of the Company, he was not involved in the day-to-day affairs of the Company.

33. In the recent case of HDFC Bank Ltd. vs. State of Maharashtra and Anr., 2025 INSC 759, the Apex Court has held that criminal proceedings under Section 138 N.I Act against a **Company Director** cannot be dismissed solely because the Complaint does not precisely replicate the wording of Section 141. The Court underscored that the essence of the allegations is more important than their form. If the Complaint sufficiently indicates that the Director was actively involved in the Company’s day-to-day operations and played a role in the transactions in question, this is enough to meet the threshold for vicarious liability under Section 141(1) NI Act, even if the



statutory expression “*in charge of and responsible for the conduct of the business*” is not quoted verbatim.

34. Thus, the Ld. MM had rightly held that the Complainant has rightly arrayed Rohen Trehan as Accused No. 3 on the ground that he is one of the only two Directors in the Accused Company. Specific averment to the fact that he is in charge of and is responsible for the conduct of business of the Accused company, has also been categorically made by the Complainant in para 2 of the Complaint.

35. The learned ASJ has fell in error in concluding that the averments in the Complaint that Respondent No. 2 being the Director, was not sufficient to define his role in the day-to-day engagement in the affairs of the Company. The Impugned Order of learned ASJ, therefore, suffers from patent illegality and is hereby set aside. It is held that the Respondent No. 2 being the Director of the Company is liable to be sued in the Complaint under Section 138 NI Act.

Relief:

36. In view of the aforesaid discussion, the Petitions are allowed, and the impugned Order is set aside.

37. The Petitions are accordingly disposed of along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 07, 2025

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