

Subject: Application under Section 319 of Cr.P.C. / Section 358 of BNSS read with Section 141 of N.I. Act to arraign additional accused.

ORDER BELOW EXH. _____

1. The present application has been filed by the accused, Mr. Chintan Gajera, praying to implead/add Mr. Tushar Kalkani and Ms. Hetal Kalkani as accused in the present complaint. The applicant contends that he has resigned from the directorship of the accused Company and, at present, the proposed persons (Tushar Kalkani and Hetal Kalkani) are the Directors handling the day-to-day affairs; hence, they should be prosecuted instead of or along with him.
2. The Complainant has strongly opposed this application, submitting that the cheque in question bears the signature of the applicant (Chintan Gajera). Further, at the time the cheque was issued and dishonoured, the applicant was the Director in charge. The proposed new accused were not responsible for the transaction at the relevant time.
3. Heard the Ld. Advocates for both sides and perused the record. After considering the record it appears that Cheque in question bears the signature of the name as 'Chintan Gajera'. As per the settled proposition of law laid down by the Hon'ble Supreme Court in criminal appeal 1130-31/2003 K K Ahuja v. V K Vora held in para 20 that, "The position under section 141 of the Act can be summarized as follows:
(i) If the accused holds the position of Managing Director or a Joint Managing Director, it is unnecessary to specifically aver in the

complaint that they are in charge of and responsible to the company for the conduct of its business. An averment that the accused was the Managing Director or Joint Managing Director at the relevant time is sufficient. This is because the designation, incorporating the prefix 'Managing', clearly establishes their responsibility for the conduct of the company's business. (ii) In the case of a director or an officer of the company who executed the cheque on behalf of the company, a specific averment that they were in charge of and responsible to the company for the conduct of its business, or any specific allegation regarding consent, connivance, or negligence, is not required. The mere fact that the dishonoured cheque was signed by them on behalf of the company constitutes sufficient grounds for attributing responsibility under sub-section (2) of Section 141.

4. Section 141(1) of the Negotiable Instruments Act clearly mandates that “every person who, at the time the offence was committed, was in charge of, and was responsible to the company...” shall be deemed to be guilty.

Criminal liability under Section 138 crystallizes at the time the offence is committed i.e., when the cheque is returned unpaid and notice period expires. Liability cannot be fastened retrospectively on new directors (Tushar Kalkani and Hetal Kalkani) who may have joined the company later or were not in charge at the specific time of the offence.

5. The applicant's contention that he has resigned is of no consequence if he was the Director at the time of issuance of the cheque. A subsequent resignation does not absolve a Director of criminal liability for acts committed during their tenure, especially when they are the signatory to the dishonoured instrument. Reliance placed on *Laxmi Dychem vs. State of Gujarat*.

6. Therefore, the applicant Chintan Gajera was the Director and Signatory at the relevant time. The proposed accused (Tushar Kalkani and Hetal Kalkani) cannot be held vicariously liable for a criminal offence that occurred before their tenure or without their specific involvement at that time therefore the following order is passed:

: ORDER :

The application filed by accused Chintan Gajera to add Tushar Kalkani and Hetal Kalkani as additional accused is hereby **REJECTED**.

Pronounced in open court today.

Kotda Sangani.

Date: 31/12/25

Rutvij Falgunbhai Trivedi

J.M.F.C.

UIC GJ01748