



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 10408 OF 2023

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BETWEEN:

MR. SUJITH SUDHAKARAN,
AGED ABOUT 37 YEARS,
DIRECTOR,
M/S. DREAMZ INFRA INDIA PVT. LTD.,
HAVING ITS OFFICE AT NO.577/B,
2ND FLOOR, OUTER RING ROAD
TEACHERS COLONY, KORAMANGALA,
NEAR SILK BOARD, BENGALURU – 560 034.

...PETITIONER

(BY SRI. PRAKASH B. N., ADVOCATE)

AND:

MR. LALU JACOB MAMMEN,
S/O K.M.MAMMEN,
AGED ABOUT 39 YEARS,
RESIDING AT KUNNEL NALANKA
NADUVILEMURI, THALAVADY POST,
ALAPPUZHA DISTRICT, KERALA – 689 572.

...RESPONDENT

(BY SRI. NACHE GOWDA B. H., ADVOCATE FOR
SRI. GEORGE JOSEPH, ADVOCATE)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN SO FAR AS PETITIONER
HEREIN (ACCUSED NO.3 IN THE COMPLAINT) INITIATED VIDE
DATED 29.11.2014 IN C.C.NO.32008/2014





(PCR.NO.17734/2014) PENDING ON THE FILE OF XIX
ADDL.C.M.M., BENGALURU.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner-accused No.3 in C.C.No.32008 of 2014 is
at the doors of this Court calling in question the proceedings so
registered for offence punishable under Section 138 of the
Negotiable Instruments Act, 1881 ('Act' for short).

2. Heard Sri.Prakash B.N., learned counsel appearing
for the petitioner, Sri.Nache Gowda B.H, learned counsel
appearing for the respondent.

3. Facts in brief, germane, are as follows:

3.1. The respondent institutes proceedings under the Act,
by issuing a notice for two cheques dated 27.09.2014 and
29.09.2014. The complaint comes to be registered on
29.11.2014. The concerned Court takes cognizance of the



offence and registers C.C.No.32008 of 2014 and issues summons.

3.2. Learned counsel appearing for the petitioner submits that on the said two dates, the petitioner was not the director or an office bearer of the Company M/s Dreamz Infra India Pvt. Ltd., in any capacity. Learned counsel submits that if he was Director, Additional Director and involved in the affairs of the business of the Company, it would have been altogether different circumstance, particularly on two dates of issuance of the cheques i.e., 27.09.2014 and 29.09.2014. He would submit in that light, the very proceedings instituted against the petitioner is an abuse of the process of law.

3.3. Learned counsel appearing for the complainant contends that the petitioner was the Director in the year 2012, continued to be the Director up to the date of issuance of cheques and later transposes as Additional Director but has been involved in the affairs of the Company throughout and has hoodwinked several people and not only the petitioner. The issue does not relate to one or two cases. There are several cases against the petitioner for having done identical offences. He would submit that all these are a matter of trial and the



petitioner should come out clean there and not a proceeding under Section 482 of the Cr.P.C.

4. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

5. The afore-narrated facts lie in a narrow compass. The dates of the instruments i.e., the cheques involved in the case at hand are 27.09.2014 and 29.09.2014. This factor is not in dispute. The petitioner's entry and exit into the Company is even according to the records of the Ministry of Corporate Affairs, is as follows:

Ministry Of Corporate Affairs
View Director / Designated Partner Details
Date : 20-11-2025 3:05:22pm

SUJITH SUDHAKARAN

Details

DIN/DPIN	05124633
Name of Director/Designated Partner	SUJITH SUDHAKARAN

List of Associated Companies

Sr. No	CIN/FCRN	Company Name	Company Status	Designation	Category	Original Date of appointment	Date of Appointment at Current Designation	Date of cessation (if applicable)
1	U70109KA2012PLC062065	DREAMZ INFRA INDIA LIMITED	Under CIRP	Additional Director	Promoter	14/09/2015	14/09/2015	22/03/2015
2	U70100KA2013PTC070964	BIG SKY SHELTERS INDIA PRIVATE LIMITED	Strike Off	Managing Director	Promoter	12/09/2013	12/09/2013	

www.mca.gov.in/content/mca/global/en/mca/master-data/MDS/director-master-info.html?DIN=ipbE6RN46y2Tn5LF2EIQ%3D%3D



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Director Master Info								
Sr. No	CIN/FCRN	Company Name	Company Status	Designation	Category	Original Date of appointment	Date of Appointment at Current Designation	Date of cessation (if applicable)
3	U70100KA2011PTC061706	SQUARE FOOT HOME PROPERTIES PRIVATE LIMITED	Strike Off	Director	-	-	16/12/2011	30/12/2011
4	U70109KA2012PLC062065	DREAMZ INFRA INDIA LIMITED	Under CIRP	Director	-	-	16/01/2012	08/04/2013
5	U70109KA2012PLC062065	DREAMZ INFRA INDIA LIMITED	Under CIRP	Additional Director	-	-	14/09/2015	22/03/2016
6	U51909KA2013PTC068903	TGS E COMMERCE PRIVATE LIMITED	Active	Director	-	-	03/05/2013	21/08/2013

List of Associated LLPs

Sr. No	LLPIN	LLP Name	LLP Status	Designation	Original Date of appointment	Date of Appointment at Current Designation	Date of cessation (if applicable)
No data available							

6. The petitioner enters the Company as a Director on 16.01.2012 when the Company was under the CIRP. He ceases to be the Director of the Company on 08.04.2013. Then lies a vacuum up to the date when he enters the Company as an Additional Director on 14.09.2015 and resigns or ceases to be an Additional Director even on 22.03.2016. The cheques are admittedly issued on 27.09.2014 and 29.09.2014. In those dates, the petitioner was not involved in the affairs of the Company even according to the notings in the official website of Ministry of Corporate Affairs, as the petitioner was in the Company between 16.01.2012, ceases to be in the Company on 08.04.2013, again enters the Company on 14.09.2015 and ceases to be in the Company on 22.03.2016. The cheques are



issued in the interregnum. The petitioner admittedly is not the signatory to the cheque, ostensibly so as he could not be the signatory as he was not involved in the affairs of the Company. On this short point, the petition deserves to succeed, as the petitioner was neither Director nor Additional Director nor involved in the affairs of the Company, particularly on the dates on which the cheques were issued. If the cheques were issued during the period in which the petitioner was the Director or Additional Director of the Company, it would have been a circumstance altogether different. While that not being so, the petition deserves to succeed with the obliteration of the proceedings *qua* the petitioner-accused No.3.

7. It becomes apposite to refer to the judgments of the Apex Court interpreting the role of erstwhile Directors of a company for an offence under Section 138 of the Act.

7.1. In the case of **ASHOKE MAL BAFNA v. UPPER INDIA STEEL MFG. & ENGG. CO. LTD.**¹ the Apex Court quashed the case instituted under Section 138 of the Act against the Director of a company on the ground that the Director had resigned from his post prior to the date when the

¹ (2018) 14 SCC 202



cheques were dishonoured. The Apex Court also holds that under Section 141 of the Act, Directors of a company cannot be held vicariously liable for acts of the company without any proof that the Director was incharge of the day-to-day affairs of the company. The judgment reads as follows:

"3. The case of the appellant is that the respondent Company has unnecessarily made him a party to the complaint though he was not associated with the defaulter Company on the date of cause of action. The complaint in question is not pertaining to the cheques issued by him on 28-12-2004 in the capacity of Director of the defaulter Company. He had resigned from the post of Director w.e.f. 2-1-2006, long before the date on which cause of action arose in the present case. The cheques issued during his tenure as Director with the validity of six months, were neither deposited by the drawee nor dishonoured by the bank and after the lapse of six months' period they ceased to be negotiable instruments under the Act. The cheques against which the present complaint was lodged were issued by the defaulter Company on 6-7-2006 much later after his resignation and were dishonoured on 24-8-2006 against which the legal notice dated 6-9-2006 was served and subsequently the complaint in question has been filed. The learned counsel further argued that since the bounced cheques were not actually issued by the appellant, nor he was holding the post of Director at that point of time and he has nothing to do with that transaction therefore he is not liable. Simply for the reason that at one point of time, the appellant had played some role in the activities of the defaulter Company as a Director would not bind him to the constructive liability under Section 141 of the Act. In support of his argument, the learned counsel relied on a decision of this Court in *DCM Financial Services Ltd. v. J.N. Sareen* [*DCM Financial Services Ltd. v. J.N. Sareen*, (2008) 8 SCC 1 : (2008) 3 SCC (Cri) 401] .

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6. Before delving into the issue further, it would be apt to look into the principles of law settled by this Court on the subject.

7. In *Girdhari Lal Gupta v. D.H. Mehta* [*Girdhari Lal Gupta v. D.H. Mehta*, (1971) 3 SCC 189 : 1971 SCC (Cri) 279] , this Court observed that **a person "in charge of a business" means that the person should be in overall control of the day-to-day business of the Company.**

8. Interpreting the provisions of Section 141 this Court in *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal* [*National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] observed that **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 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 the accused was in charge of or was responsible to the Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes especially where such statutes create vicarious liability.**

9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action. (See *Pooja Ravinder Devidasani v. State of Maharashtra* [*Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675] .)



10. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

11. Turning to the case on hand, admittedly the cheques dated 28-12-2004 were issued while the appellant was Director of the Company with validity for a period of six months but during that period they were not presented for realisation at the bank. The appellant has resigned as Director w.e.f. 2-1-2006 and the fact of his resignation has been furnished by Form 32 to the Registrar of Companies on 24-3-2006 in conformity with the rules. Thereafter, the appellant had played no role in the activities of the defaulter Company. This fact remains substantiated with the statement filed by the defaulter Company on 20-2-2006 with the Registrar of Companies that in an advertisement of the Company seeking deposits (Annexure P-3), only the names of three Directors of the Company were shown as involved in the working of the Company and the name of the appellant was not therein. Indisputably, therefore, the cheques bounced on 24-8-2006 due to insufficient funds were neither issued by the appellant nor the appellant was involved in the day-to-day affairs of the Company.

12. Before summoning an accused under Section 138 of the Act, the Magistrate is expected to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and then to proceed further with proper application of mind to the legal principles on the issue. Impliedly, it is necessary for the courts to ensure strict compliance with the statutory requirements as well as settled principles of law before making a person vicariously liable.

13. The superior courts should maintain purity in the administration of justice and should not allow abuse of the process of court. Looking at the facts of the present case in the light of settled principles of law, we are of the view that this is a fit case for quashing the complaint. The High Court



ought to have allowed the criminal miscellaneous application of the appellant because of the absence of clear particulars about the role of the appellant at the relevant time in the day-to-day affairs of the Company.”

(Emphasis supplied)

7.2. The Apex Court in similar circumstances, in the case of **ANIL KHADKIWALA v. STATE (NCT OF DELHI)**² quashed the case instituted under Section 138 of the Act against the erstwhile director of a company. The judgment reads as follows:

“2. Respondent 2 filed a complaint under Section 142 read with Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the Act”) against the appellant who was the Director of M/s ETI Projects Ltd., the Company in question. It was alleged that the accused person had issued cheques dated 15-2-2001 and 28-2-2001, which were dishonoured upon presentation. **The appellant had preferred Criminal MP No. 1459 of 2005 for quashing the same. He took the defence, without any proof that he had already resigned from the Company on 20-12-2000 and which was accepted by the Board of Directors on 20-1-2001. The application was dismissed on 18-9-2007 after noticing the plea of resignation, solely on the ground that the cheques were issued under the signature of the appellant.**

3. The appellant then preferred a fresh application under Section 482 giving rise to the present proceedings. **The High Court noticing the reliance on Form 32 issued by the Registrar of Companies, under the Companies Act, 1956, in proof of resignation by the appellant prior to the issuance of the cheques, issued notice, leading to the impugned order of dismissal subsequently.**

² (2019) 17 SCC 294



4. The learned counsel for the appellant submitted that there was no bar to the maintainability of a second application under Section 482 CrPC in the peculiar facts and circumstances of the case, relying on *Supt. and Remembrancer of Legal Affairs v. Mohan Singh* [*Supt. and Remembrancer of Legal Affairs v. Mohan Singh*, (1975) 3 SCC 706 : 1975 SCC (Cri) 156 : AIR 1975 SC 1002] .

5. The learned counsel for Respondent 2 relied upon order dated 6-5-2019 of this Court in *Atul Shukla v. State of M.P.* [*Atul Shukla v. State of M.P.*, (2019) 17 SCC 299] to contend that such an application was not maintainable. The cheques being post-dated, the appellant cannot escape its answerability.

6. We have considered the respective submissions on behalf of the parties and are of the opinion that the appeal deserves to be allowed for the reasons enumerated hereinafter.

7. The complaint filed by Respondent 2 alleges issuance of the cheques by the appellant as Director on 15-2-2001 and 28-2-2001. The appellant in his reply dated 31-8-2001, to the statutory notice, had denied answerability in view of his resignation on 20-1-2001. This fact does not find mention in the complaint. There is no allegation in the complaint that the cheques were post-dated. Even otherwise, the appellant had taken a specific objection in his earlier application under Section 482 CrPC that he had resigned from the Company on 20-1-2001 and which had been accepted. From the tenor of the order of the High Court on the earlier occasion it does not appear that Form 32 issued by the Registrar of Companies was brought on record in support of the resignation. The High Court dismissed the quashing application without considering the contention of the appellant that he had resigned from the post of the Director of the Company prior to the issuance of the cheques and the effect thereof in the facts and circumstances of the case. The High Court in the fresh application under Section 482 CrPC initially was therefore satisfied to issue notice in the matter after noticing the Form 32 certificate. Naturally there was a difference between the earlier



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application and the subsequent one, inasmuch as the statutory Form 32 did not fall for consideration by the Court earlier. The factum of resignation is not in dispute between the parties. The subsequent application, strictly speaking, therefore cannot be said to a repeat application squarely on the same facts and circumstances.

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9. In *Harshendra Kumar D. v. Rebatilata Koley* [*Harshendra Kumar D. v. Rebatilata Koley*, (2011) 3 SCC 351 : (2011) 1 SCC (Civ) 717 : (2011) 1 SCC (Cri) 1139 : 2011 Cri LJ 1626] , this Court held : (SCC p. 362, paras 26-27)

"26. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. **In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company.**

27. As noticed above, the appellant resigned from the post of Director on 2-3-2004. The dishonoured cheques were issued by the Company on 30-4-2004 i.e. much after the appellant had resigned from the post of Director of the Company. The acceptance of the appellant's resignation is duly reflected in the Resolution dated 2-3-2004. Then in the prescribed form (Form 32), the Company informed to the Registrar of Companies on 4-3-2004 about the appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court."

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11. The Company, of which the appellant was a Director, is a party-respondent in the complaint. The interests of the complainant are therefore adequately protected. In the entirety of the facts and circumstances of the case, we are unable to hold that the second application for quashing of the complaint was not maintainable merely because of the dismissal of the earlier application.”

(Emphasis supplied)

7.3. In the case of **RAJESH VIREN SHAH v. REDINGTON INDIA LTD.**³ the Apex Court holds that a Director who has resigned from his post cannot be held liable for failure in realization of cheques issued by the company as he cannot be held responsible for the conduct of business at the relevant time post their resignation. The judgment reads as follows:

“3. The position of law as to the liability that can be fastened upon a Director for non-realisation of a cheque is no longer res integra. Before adverting to the judicial position, we must also take note of the statutory provision — Section 141 of the NI Act, which states that every person who at the time of the offence was responsible for the affairs/conduct of the business of the company, shall be held liable and proceeded against under Section 138 of the NI Act, with exception thereto being that such an act, if done without his knowledge or after him having taken all necessary precautions, would not be held liable. However, if it is proved that any act of a company is proved to have been done with the connivance or consent or may be attributable to : (i) a Director; (ii) a Manager; (iii) a Secretary; or (iv) any other officer

³ (2024) 4 SCC 305



— they shall be deemed to be guilty of that offence and shall be proceeded against accordingly.

4. Coming to the judicial position, we notice a judgment of this Court in *Monaben Ketanbhai Shah v. State of Gujarat* [*Monaben Ketanbhai Shah v. State of Gujarat*, (2004) 7 SCC 15 : 2004 SCC (Cri) 1857] wherein it was observed that : (SCC pp. 18-19, para 6)

"6. ... The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact."

5. A Bench of three learned Judges in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] observed : (SCC p. 102, para 18)

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. ... A clear case should be spelled out in the complaint made against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out."

6. We also notice this Court to have observed, in regard to the exercise of the inherent powers under Section 482CrPC, in cases involving negotiable instruments that interference would not be called for, in the absence of **"some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court.** (*Ashutosh Ashok Parasrampuriya*



case [*Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.*, (2023) 14 SCC 770 : 2021 SCC OnLine SC 915] , SCC para 24)" This principle as held in *S.M.S. Pharmaceuticals [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] was followed in *Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.* [*Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.*, (2023) 14 SCC 770 : 2021 SCC OnLine SC 915]

7. We find the High Court, in the impugned order [*Rajesh Viren Shah v. Redington (India) Ltd.*, Criminal OP No. 34923 of 2019, order dated 6-4-2022 (Mad)] ' [*Sanjay Babulal Bhutada v. Redington (India) Ltd.*, 2022 SCC OnLine Mad 9009] **to have elaborately discussed the principles of law in regard to the quashing of such proceedings but, however, not dealt with the factual matrix. Ex facie, we find that the complainant has not placed any materials on record indicating complicity of the present appellant(s) in the alleged crime. Particularly, when the appellant(s) had no role in the issuance of the instrument, which is evident from Form 32 (Ext. P-59) issued much prior to the date on which the cheque was drawn and presented for realisation.**

8. The veracity of Form 32 has neither been disputed by the respondent nor has the act of resignation simpliciter been questioned. As such, the basis on which liability is sought to be fastened upon the instant appellant(s) is rendered questionable.

9. The record reveals the resignations to have taken place on 9-12-2013 and 12-3-2014. Equally, we find the cheques regarding which the dispute has travelled up the courts to have been issued on 22-3-2014. 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.

10. 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)

7.4. In the case of **ADHIRAJ SINGH v. YOGRAJ SINGH**⁴ the Apex Court reiterates that a resigned director cannot be held liable for an offence under Section 138 of the Act, for cheques issued by the company after his resignation.

The judgment reads as follows:

“7. Having considered the submissions made by learned counsel for the parties, we find that in the present case on the date of issuance of the cheques, the appellant had already resigned. The fact regarding resignation is not in dispute. It is also not in dispute that the cheques issued by the Company were signed by another competent person on behalf of the Company. 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.

8. The judgment of *Malwa Cotton and Spinning Mills* (supra) is factually distinguishable from the present case. The resignation of the director accused therein, was submitted with the Registrar of Companies on 05.07.2001, after the issuance of the cheques therein, which were issued on various dates in December 2000 and February 2001, while the accused director maintained that he had intimated his resignation to the Company on 02.04.1999, i.e., before the issuance of cheques. In the light of such disputed facts, quashing of complaint was not allowed. On the contrary, as discussed, in the present case, the appellant's resignation dated 21.06.2019 was submitted before the Registrar of Companies on

⁴ 2024 SCC OnLine SC 5558



26.06.2019. Whereas the cheques in question, were issued on 12.07.2019, i.e., after his resignation.

9. In view of the said factual scenario and in absence of any other material brought before us, we are inclined to set aside the common order passed by the High Court and allow the quashing petitions as filed by the appellant before the High Court.

10. Accordingly, the appeals are allowed. The impugned order passed by the High Court is set aside. The quashing petitions filed by the appellant under Section 482 of the Cr. P.C. for quashing of the complaints qua him stand allowed.”

(Emphasis supplied)

7.5. The Apex Court in the case of **KAMALKISHOR SHRIGOPAL TAPARIA v. INDIA ENER-GEN (P) LTD.**⁵ holds that a Non-executive Director of a company, who had resigned from his post, prior to the date of the offence, who plays no active role in the functioning of the company cannot be held liable for an offence under Section 138 of the Act. The judgment reads as follows:

“11. It was submitted that the appellant had resigned from the company well before the offence occurred and that making him liable for an act committed post-resignation was a misuse of the legal process. Section 141 of the NI Act establishes vicarious liability only upon Directors who were in-charge of and responsible for the conduct of the business of the company at the relevant time.

12. On the contrary, the learned counsel for the respondent(s) submitted that the High Court rightly

⁵ (2025) 7 SCC 393



observed [*Kamalkishor Shrigopal Taparia v. India Ener-Gen (P) Ltd.*, 2019 SCC OnLine Bom 1545] that the role of the appellant was a matter to be examined during the trial. The respondent(s) counsel argued that the vicarious liability under Section 141 of the NI Act could extend to Directors, regardless of their executive or non-executive status.

13. The respondent(s) further submitted that the appellant, by virtue of his Directorship, was part of the decision-making apparatus of the company, therefore, could not escape liability at the pre-trial stage.

Analysis and findings

14. This Court has consistently held that a mere designation as a Director does not conclusively establish liability under Section 138 read with Section 141 of the NI Act. Liability is contingent upon specific allegations demonstrating the Director's active involvement in the company's affairs at the relevant time.

15. This Court in *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal* [*National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113 : (2010) 154 Comp Cas 313] observed: (SCC pp. 336, 338-39 & 345-46, paras 13, 22 & 39)

"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 in charge 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 the 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."

(emphasis in original)

16. In *N.K. Wahi v. Shekhar Singh* [*N.K. Wahi v. Shekhar Singh*, (2007) 9 SCC 481 : (2007) 3 SCC (Cri) 203 : (2007) 137 Comp Cas 939] this Court in (para 8) observed: (SCC p. 483)

"8. To launch a prosecution, therefore, 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 the 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."

17. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : (2005) 127 Comp Cas 563] , this Court laid down that **mere designation as a Director is not sufficient; specific role and responsibility must be established in the complaint.**

18. In *Pooja Ravinder Devidasani v. State of Maharashtra* [*Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : (2015) 190 Comp Cas 106] **this**



Court while taking into consideration that a non-executive Director plays a governance role, and 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.

19. Upon perusal of the record and submissions of the parties, it is evident that the appellant was neither a signatory to the dishonoured cheques nor was he actively involved in the financial decision-making of the company. Moreover, he resigned from the post of independent non-executive Director on 3-5-2017, duly notified through Forms DIR-11 and DIR-12 to the Registrar of Companies.

20. The complaints do not contain any specific averments detailing how the appellant was responsible for the dishonoured cheques.

21. The petitioner's role in the accused company was limited to that of an independent non-executive Director, with no financial responsibilities or involvement in the day-to-day operations of the company. Furthermore, he was not responsible for the conduct of its business.

22. The legal precedents cited above, including *Pooja Ravinder [Pooja Ravinder Devidasani v. State of Maharashtra]*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : (2015) 190 Comp Cas 106] , clearly hold that non-executive Directors cannot be held liable under Section 138 of the NI Act unless specific evidence proves their active involvement.

Conclusion

23. In view of the above observations, the appellant cannot be held vicariously liable under Section 141 of the NI



Act. The complaints do not meet the mandatory legal requirements to implicate him.”

(Emphasis supplied)

8. If the law laid down by the Apex Court in the afore-quoted judgments is applied to the facts of this case, what would unmistakably emerge is that, continuing criminal proceedings against the petitioner for offence punishable under Section 138 of the Act, would be an abuse of the process of law. Therefore, criminal proceedings against the petitioner-accused No.3 in C.C. No. 32008 of 2014 deserves to be quashed.

9. For the aforesaid reasons, the following:

ORDER

[I] The criminal petition is **allowed**.

[II] The proceedings in C.C. No.32008 of 2014 pending on the file of the 19th Additional Chief Metropolitan Magistrate, Bengaluru, *qua* the petitioner-accused No.3 stands quashed.



[III] It is made clear that the observations made in the course of the order would not become applicable to any other case pending against the petitioner or the parties or any other accused in the subject proceedings.

Sd/-
(M.NAGAPRASANNA)
JUDGE

CBC
List No.: 1 SI No.: 53
CT:SS