IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(148) **CRM-M-10340-2014 (O & M)**
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Dharam Pal Singhal …... Petitioner(s)

V/s

IDBI Bank Ltd. ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Ojaswini Gagneja, Avocate,
for the petitioner(s).

Mr. Deepinder Singh, Sr. Advocate with
Mr. Dharamvir Singh, Advocate and
Mr. Meyank Sarpul, Advocate,
for the respondent.

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<u>JASJIT SINGH BEDI, J. (Oral)</u>

The prayer in the present petition under Section 482 of the Code of Criminal Procedure is for quashing of criminal complaint No. 17486/2012 dated 22.10.2012 (Annexure P-1), summoning order dated 23.10.2012 (Annexure P-2), passed by the Court of the Judicial Magistrate Ist Class, Chandigarh in a complaint filed under Sections 138 and 141 of the Negotiable Instruments Act, 1881 and all the consequential proceedings arising therefrom qua the petitioner.

2. The brief allegations levelled in the complaint are that in discharge of its legal liability, 09 cheques were issued by the accused-Company between March 2012 and May 2012, all of which were

dishonoured, leading to the filing of the complaint under Section 138 read with Section 141 of Negotiable Instruments Act, 1881 (Annexure P-1) and the consequential summoning order dated 23.10.2012 under Section 138 read with Sections 141/142 of Negotiable Instruments Act, 1881 (Annexure P-2), which are challenged in the present petition.

3. The learned counsel for the petitioner contends that the petitioner was appointed as Additional Director (Independent) on 12.11.2011 and resigned on 15.06.2013. The petitioner was not an active Director. He had no authorization to represent the company for negotiating a loan from the Bank. There are no documents accompanying the complaint (Annexure P-1) showing the involvement of the petitioner in the day-to-day running of the affairs of the company and only vague allegations have been levelled in the complaint (Annexure P-1) of him alongwith the co-accused being incharge of and responsible for the day-to-day affairs of the company. He is also not a signatory to the cheques. He, therefore, prays that the impugned summoning order (Annexure P-2) be quashed.

4. The learned Senior counsel for the respondent-Bank, on the other hand, contends that there are clear and categoric averments against all the accused including the petitioner who is an accused No.6 in the complaint (Annexure P-1). Not only are there categoric averments in terms of the Section 141 of the Negotiable Instruments Act but there is an averment to the effect that the accused No.2 to 6 including the petitioner came to negotiate with the respondent-Bank for the purpose of availing a loan. Once the necessary and specific averments regarding the role played by the

petitioner have been made in the complaint, then, whether or not he was incharge of or responsible for the affairs of the company shall be a matter of his defence which shall be adjudicated upon during the course of the Trial. He, therefore, prays that the present petition is liable to be dismissed.

5. I have heard the learned counsel for the parties.

6. Section 141 of the Negotiable Instruments Act, 1881 reads as under:-

> ***141. Offences by companies.—(1)*** *If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*
>
> Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:
> 6[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]
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> *(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence*

and shall be liable to be proceeded against and punished accordingly.

7. The Hon'ble Supreme Court in the case of '***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and anr'*** 2005(4) RCR (Criminal) 141, bearing Criminal Appeal No.664 of 2002 decided on 20.09.2005, it has been categorically held that the designation of a person of a company is not relevant, but the nature of the job that he performs in the company is. Every Director/officer of the company is not liable if he is not stated to be in charge of and responsible for running the business of the company. Conversely, if a person is stated to be in charge of and responsible for running the business of the company but does not hold any post, he can still be liable. The relevant extract of the judgment in ***S.M.S. Pharmaceuticals Ltd. (supra)*** is as under:-

> *"13. While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. The key words which occur in the Section are "every person". These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words "who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence etc." What is required is that the persons who are sought to be made criminally liable under Section 141 should be at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company.*

Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a Company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for conduct of business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company and not on designation or status. If being a Director or Manager or Secretary was enough to cast criminal liability, the Section would have said so. Instead of "every person" the section would have said "every Director, Manager or Secretary in a Company is liable"....etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.

14. A reference to sub-section (2) of Section 141 fortifies the above reasoning because sub- section (2) envisages direct involvement of any Director, Manager, *Secretary or other officer of a company in commission of an offence. This section operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of these offices in a company. In such a case, such persons are to be held liable. Provision has been made for Directors, Managers, Secretaries and other officers of a company to cover them in cases of their proved involvement.*

15. The conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable.

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20. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint 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 respondent falls within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is *satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.*

21. In view of the above discussion, our answers to the questions posed in the Reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that 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.

(c) The answer to question (c) has to be in

affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.

8. The Hon'ble Supreme Court in the case of ***'N.Rangachari versus Bharat Sanchar Nigam Ltd. 2007(2) RCR (Criminal) 875',*** has held that if the complaint contains necessary averments against the Director/Manager/Officer of the company in terms of Section 141 of the Negotiable Instruments Act, then, it is lawful to summon the said Director/Manager/Officer as an accused. The defence of the said accused that he was not in charge of and responsible for the affairs of the company is a matter of Trial and cannot be gone into in summary proceedings under Section 482 Cr.P.C. The relevant extract of the said judgment is as under:-

5. The appellant herein moved the High Court under Section 482 of the Code of Criminal Procedure seeking the quashing of the complaint insofar as it related to him. The appellant pleaded that he was nominated as Honorary Chairman without any remuneration, sitting *fee etc. by the investors and promoters of the Company of Data Access (India) Limited on 24.7.2004 and he was designated as Chairman of the Company. Being a nominated Chairman and holding an Honorary post in the Company, he was never assigned with any of the Company's financial or other business activities. He was the Chairman for name sake and was never entrusted with any job or business or constituted a signing authority. He had resigned effectively on 26.8.2004 when problems between the promoters and investors of Data Access (India) Limited started developing. The two cheques that were the subject matter of the complaint, were dated 31.8.2004, after the appellant had effectively resigned. He had not signed those cheques. He was not liable. According to him, the Data Access (India) Limited had two Managing Directors at the relevant time and they were the ones who were invested with substantial powers of management of the Company and as such the Managing directors were involved in the day to day affairs of the Company and not himself, who had only acted for a short period as Honorary Chairman. The complaint did not contain adequate averments to justify initiation of a criminal proceeding against him and hence the complaint was liable to be quashed.*

6. On behalf of B.S.N.L., it was contended that the Petition under Section 482 of the Code of Criminal Procedure was not maintainable and that the questions sought to be raised by the appellant were questions that had to be decided at the trial. The complaint disclosed sufficient materials justifying the commencement of the proceedings against Data Access (India) Limited and the *other two accused including the appellant. The appellant who was the Chairman of the Data Access (India) Limited was incharge of and responsible to the Company for the conduct of its business, and no occasion had arisen for quashing the complaint. The question whether a person is incharge of and responsible for the conduct of the business of the Company, is to be adjudged during the trial on the basis of the materials to be placed on record by the parties. That could not be decided at the stage of a motion under Section 482 of the Code of Criminal Procedure.*

7. The High Court, on going through the complaint in the context of Sections 138 and 141 of the Negotiable Instruments Act, came to the conclusion that the court could not decide the pleas put forward by the appellant in dealing with a petition filed under Section 482 of the Code of Criminal Procedure and that the defences sought to be put forward by the accused had to be established at the trial. Taking the view that the complaint disclosed adequate material for proceeding against the appellant in terms of Section 138 read with Section 141 of the Negotiable Instruments Act, the High Court refused to accede to the prayer of the appellant and dismissed the application filed under Section 482 of the Code of Criminal Procedure. Challenging the said order of the High Court, this appeal is filed by the appellant.

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13. A Company, though a legal entity, cannot act by itself but can only act through its directors. Normally, the Board of Directors act for and on behalf of the company. This is clear from Section 291 of the Companies Act *which provides that subject to the provisions of that Act, the Board of Directors of a Company shall be entitled to exercise all such powers and to do all such acts and things as the Company is authorised to exercise and do. Palmer described the position thus :*

> "A company can only act by agents, and usually the persons by whom it acts and by whom the business of the company is carried on or superintended are termed directors... ... ..."

It is further stated in Palmer that :

> "Directors are, in the eye of the law, agents of the company for which they act, and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors."

The above two passages were quoted with approval in R.K. Dalmia & ors. v. The Delhi Administration [(1963)1 SCR 253 at page 300]. In Guide to the Companies Act by A. Ramaiya (Sixteenth Edition) this position is summed up thus :

> "All the powers of management of the affairs of the company are vested in the Board of Directors. The Board thus becomes the working organ of the company. In their domain of power, there can be no interference, not even by shareholders. The directors as a board are exclusively empowered to manage and are exclusively responsible for that management."

Therefore, a person in the commercial world having a transaction with a company is entitled to presume that the directors of the company are incharge of the affairs of the company. If any restrictions on their powers are placed by the memorandum or articles of the company, it is for the directors to establish it at the trial. It is in that context that Section 141 of the Negotiable Instruments Act provides that when the offender is a company, every *person, who at the time when the offence was committed was incharge of and was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty of the offence along with the company. It appears to us that an allegation in the complaint that the named accused are directors of the company itself would usher in the element of their acting for and on behalf of the company and of their being incharge of the company. In Gower and Davies' Principles of Modern Company Law (Seventh Edition), the theory behind the idea of identification is traced as follows :*

> "It is possible to find in the cases varying formulations of the under-lying principle, and the most recent definitions suggest that the courts are prepared today to give the rule of attribution based on identification a somewhat broader scope. In the original formulation in the Lennard's Carrying Company case Lord Haldane based identification on a person "who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation". Recently, however, such an approach has been castigated by the Privy Council through Lord Hoffmann in the Meridian Global case as a misleading "general metaphysic of companies". The true question in each case was who as a matter of construction of the statute in question, or presumably other rule of law, is to be regarded as the controller of the company for the purpose of the identification rule."

But as has already been noticed, the decision in S.M.S. Pharmaceuticals Ltd. (supra) binding on us, has postulated that a director in a company cannot be deemed to be incharge of and responsible to the company for the conduct of his business in the context of Section 141 of the Act. Bound as we are by that decision, no *further discussion on this aspect appears to be warranted.*

14. A person normally having business or commercial dealings with a company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its Memorandum or Articles of Association. Other than that, he may not be aware of the arrangements within the company in regard to its management, daily routine, etc. Therefore, when a cheque issued to him by the company is dishonoured, he is expected only to be aware generally of who are incharge of the affairs of the company. It is not reasonable to expect him to know whether the person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the company and those in charge of it. So, all that a payee of a cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in charge of its affairs. The Directors are prima facie in that position.

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19. We think that, in the circumstances, the High Court has rightly come to the conclusion that it is not a fit case for exercise of jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the complaint. In fact, an advertence to Sections 138 and 141 of the Negotiable Instruments Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the Officers

> *incharge of the affairs of the company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not incharge of the affairs of the company. Reading the complaint as a whole, we are satisfied that it is a case where the contentions sought to be raised by the appellant can only be dealt with after the conclusion of the trial.*

9. The Hon'ble Supreme Court in the case of ***'National Small Industries Corp. Ltd. versus Harmeet Singh Paintal & Anr. 2010(2) RCR (Criminal) 122',*** has held that no specific averments qua a Managing Director or Joint Managing Director are required regarding the role played by them in running the affairs of the company as they are deemed to be liable. However, qua other officers, there must be specific averments more than reiteration of the mere language of Section 141 of the Negotiable Instruments Act. The relevant extract of the said judgment is as under:-

> *4. The appellant - National Small Industries Corporation Ltd. had filed 12 criminal complaints under Section 138 read with Sections 141 and 142 of the Act against M/s Jay Rapid Roller Limited, a Company incorporated under the Companies Act, its Managing Director - Shri Sukhbir Singh Paintal, and its Director - Shri Harmeet Singh Paintal. It is the claim of the appellant that so as to make the Managing Director and Director of the Company liable to be prosecuted under the provisions of*

the Act, they had specifically averred in the complaint that all the accused persons approached it for financing of bill integrated market support programme. It was also stated that the accused persons had issued cheques which were dishonoured on presentation against which the appellant had filed criminal complaints under the provisions of the Act against all the respondents herein. It is their further case that all the accused persons accepted their liability and delivered various cheques, which are the subject matter of the present appeals.

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6. In this factual matrix, the issue which arises for determination before this Court is whether the order of the High Court quashing the summoning orders insofar as the respondents are concerned is sustainable and what should be the averments in the complaint under Section 138 read with Section 141 of the Act against the Director of a Company before he can be subjected to criminal proceedings.

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9. 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 No. 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. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in-charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141.*

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11. In the light of the above provision and the language used therein, let us, at the foremost, examine the complainta filed by National Small Industries Corporation Limited and the DCM Financial Services Ltd. In the case of National Small Industries Corpn. Ltd., the High Court has reproduced the entire complaint in the impugned order and among other clauses, clause 8 is relevant for our consideration which reads as under :

> "8. That the accused No. 2 is the Managing Director and accused No. 3 is the Director of the accused company. The accused No. 2 and 3 are the in-charge and responsible for the conduct of the business of the company accused No. 1 and hence are liable for the offences."

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23. Section 291 of the Companies Act provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do. A company, though a legal entity, can act only through its Board of Directors. The settled position is that a Managing Director is prima facie in-charge of and responsible for the company's business and affairs and can be *prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in-charge of and responsible for the conduct of the business of the company. A combined reading of Sections 5 and 291 of Companies Act, 1956 with the definitions in clauses 24, 26, 30, 31 and 45 of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company :*

(a) the Managing Director/s;

(b) the whole-time Director/s;

(c) the Manager;

(d) the Secretary;

(e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;

(f) any person charged by the Board of Directors with the responsibility of complying with that provision;

Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors :

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

But if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in-charge of the business of the company" or by stating that "he *was in-charge of the day-to-day management of the company" or by stating that "he was in-charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act.*

24. 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 accused therein vicariously liable for offence committed by company along with averments in the petition containing that 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 accused is Managing Director or 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 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 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.

10. The Hon'ble Supreme Court in the case of ***'Ashutosh Ashok Parasrampuriya & Anr. Versus M/s Gharrkul Industries Pvt. Ltd. & Ors. 2021(4) RCR (Criminal) 483'***, has held as under:-

8. In the background of the above facts, respondent no. 1 filed a complaint against the appellants under section 138 of NI Act in which a specific averment was made that respondent no. 1 by considering the need of the appellants for financial assistance and their relations, provided such financial assistance to the appellants by executing Memorandum of Understanding, which was signed by Appellant no. 2-Dilip Shrikrishna Andhare. It is specifically contended that appellant no. 2 signed the said document with consent of all the remaining appellants in the presence of two attesting witnesses. It is the case of respondent no. 1-complainant as revealed from the complaint that all the appellants agreed that the amount provided by respondent no. 1 would be refunded within one or two years. The contents of the complaint *further reveal that respondent no. 1 had demanded balance-sheet of appellant no. 1 Company, which was provided and the appellants also confirmed the balance in their accounts by issuing letter dated 21st June, 2012. The cheque involved in the criminal case initiated by respondent no. 1 against the appellants is dated 2 nd June, 2012. It is further averred in para 5 & 7 of the complaint that all Directors of the appellant Company are responsible for its business and all the appellants are involved in the business of the Company and are responsible for all the affairs of the Company.*

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11. The learned trial Court taking cognizance of the complaint by order dated 10th November, 2012 issued summons to the appellants herein directing them to appear before the Court on 23rd November, 2012 and the appellants were granted bail on furnishing security of Rs.2,000/- by an Order dated 23rd November, 2012 by the Court of Chief Judicial Magistrate.

12. The order passed by the learned trial Judge summoning the present appellants came to be challenged in two separate criminal petitions filed under section 482 CrPC, 1973 seeking quashing/setting aside of the criminal complaints/Summary criminal case registered against them as well as the summons dated 10th November, 2012. Both the petitions were tagged together and came to be dismissed by the High Court under the order impugned dated 18th July, 2014.

13. Ms. Arundhati Katju, learned counsel for the appellants submits that there is no specific averment *made that they have committed the offence and are responsible for conduct of business of the Company, which is one of the essential ingredient/requirement and in the absence of such averment, merely because the appellants are the Directors of the Company, they are not to be held vicariously liable and cannot be made accused in the proceedings.*

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15. Mr. Sidhartha Dave, learned senior counsel for the appellants in Criminal Appeal @ SLP(Criminal) No. 7573 of 2014 further submits that they are the non-executive Directors of the Company and were not responsible for the conduct of the business of the Company which is the mandatory requirement for initiation of the proceedings under section 138 of NI Act and submits that the precondition as referred to under section 141 of NI Act not being complied with, the order passed by the learned trial Judge in summoning the present appellants is nothing but a clear abuse of process of law and the finding which has been recorded by the High Court in the impugned judgment is not legally sustainable in law and in support of his submission has placed reliance on the judgments of this Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another 2005(8) SCC 89 and Pooja Ravinder Devidasani v. State of Maharashtra and Another 2014(16) SCC 1.

16. Per contra, Mr. Pallav Shishodia, learned senior counsel for the respondents, while supporting the order passed by the High Court in the impugned proceedings, submits that the appellants in Criminal Appeal @ SLP(Criminal) No. 7573 of 2014 claimed themselves to *be a non-executive Directors but the record indicates that they are the Directors of the Company and in support thereof, Form No. 32 which has been obtained from the Registrar of Companies placed on record clearly indicates that all are the Directors of the Company as on 1st April 2007 and responsible to the Company for the conduct of business actively involved in the business of the Company and responsible for the affairs of the Company and there is nothing to indicate that they were appointed as non-executive Directors and what is being urged by the learned counsel for the appellants may be their defence which is a matter of trial and is not open to be examined at this stage and once the compliance of the statute has been made as required by law, their petitions have been rightly rejected by the High Court and needs no further indulgence of this Court.*

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20. In this regard, taking note of the three-Judge Bench decision of this Court in S.M.S. Pharmaceuticals Ltd. (supra) would be apposite. While dealing with an offence under section 138 of the NI Act, the Court explaining the duty of a Magistrate while issuing process and his power to dismiss a complaint under Section 203 without even issuing process observed thus:-

"5. ... a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words `if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding'. The words `sufficient ground for proceeding' again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."

21. After so stating, the Court analysed section 141 of the NI Act and after referring to certain other authorities answered a reference which reads as follows:-

19(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that 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.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under subsection (2) of Section 141."

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23. In the light of the ratio in S.M.S. Pharmaceuticals Ltd. (supra) and later judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and they are incharge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of section 141 of the NI Act has been made, it may not open for the High Court to interfere under section 482 CrPC, 1973 unless it comes across 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. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons.

24. The issue for determination before us is whether the role of the appellants in the capacity of the Director of the defaulter company makes them vicariously liable for the activities of the defaulter Company as defined under section 141 of the NI Act? In that perception, whether the appellant had committed the offence chargeable under section 138 of the NI Act?

25. We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not the signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the conclusions drawn in the afore-stated judgment that it is necessary to aver in the complaint filed under Section 138 read with section 141 of the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company.

26. This averment assumes importance because it is the basic and essential averment which persuades the Magistrate to issue process against the Director. That is why this Court in S.M.S. Pharmaceuticals Ltd.(supra) observed that the question of requirement of averments in a complaint has to be considered on the basis of provisions contained in sections 138 and 141 of the NI Act read in the light of the powers of a Magistrate referred to in sections 200 to 204 CrPC, 1973 which recognise the Magistrate's discretion to take action in accordance with law. Thus, it is imperative that if this basic averment is missing, the Magistrate is legally justified in not issuing process.

27. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the cheques were issued by the Company and dishonoured by the Bank, the appellants were the Directors of the Company and were responsible for its business and all the appellants were involved in the business of the Company and were responsible for all the affairs of the Company. It may not be proper to split *while reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to fulfil the requirement of section 141 of the NI Act. The complaint specifically refers to the point of time when the cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. In the given circumstances, we have no hesitation in overruling the argument made by the learned counsel for the appellants.*

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29. The submission of learned counsel for the appellants that they are the non-executive Directors in the light of the documentary evidence placed on record by Form No. 32 issued by the Registrar of Companies, both the appellants are shown to be the Directors of the Company, still open for the appellants to justify during course of the trial.

30. In our considered view, the High Court has rightly not interfered in exercise of its jurisdiction under section 482 CrPC, 1973 for quashing of the complaint.

11. In '***Bharat Poonam Chand Shah versus Dominos Printech India Pvt. Ltd. 2007(19) RCR (Criminal) 440'***, the Delhi High Court has held as under:-

2. The plea of the accused is that the accused was merely a sleeping director of the company and no specific role has been assigned by the complainant as to how the accused was managing the affairs of the company and only vague allegations have been made that the accused being a director, was responsible for management of the *company. The other plea taken by the accused is that at the time when instrument was executed, the accused had already resigned from the directorship and he was not liable for dishonour of the cheque and the instrument was not signed by him.*

3. When a cheque is issued by a company to a supplier or to any person against liability, the person only knows that the cheque was issued by the company. He may not be knowing the directors of the company. A creditor or supplier need not come in contact with directors of the company. He may be dealing with lower level management of the company. When a cheque is dishonoured, he makes efforts to find out as to who were the directors. This information he gets from the Articles of Association of the company or from ROC Office. The documents which are prepared by the companies for public consumption, like Annual Reports, Articles of Association and Returns filed with ROC Office do not disclose as to who are the sleeping directors and who are active directors. This information is within the special knowledge of the company i.e. Board of Directors managing the company as per law.

4. Section 106 of the Evidence Act provides that where a fact is in the special knowledge of a person, the burden of proving that fact lies on him. If any director of the company claims that despite being the director and legally responsible for management of the company in terms of the Companies Act, he was not the person looking after the affairs of the company, this fact has to be proved by him by cogent evidence before the trial Court concerned. Management of a company is an *internal affair of the company. A creditor or supplier is not supposed to know neither can be presumed to know as to who are the sleeping directors or actively involved directors in the management of the company or who were the directors only lending their names. Only a director can prove all this before the trial Court.*

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6. This Court under its inherent powers cannot adjudicate the facts as to who was the sleeping director or a non working director. It is undisputed that petitioner was the director of the company and the complainant has alleged him to be in charge of management. The resignation of the petitioner from the company, is a defense of the petitioner, which he can take before the trial Court concerned and this Court cannot quash a judicial order of summoning on the ground that the petitioner had resigned. The petitioner shall be given an opportunity before the Court concerned to prove that he was not a director at the relevant time. If an offence is committed by the company under 138 of Neotiable Instruments Act, all those who were directors of the company, except those excepted by law are responsible. The accused/petitioner is not covered by exception laid down by law.

12. In '***P. Apparasamy versus Kalaimani 2008(51) RCR(Civil) 401'***, the Madras High Court held as under:-

4. The petitioner, who is the third accused, would contend in the petition seeking quashment that he was not the signatory to the alleged cheques which gave rise to the criminal proceedings under Section 138 of the

Negotiable Instruments Act. There was no averment that he was in charge of and responsible for the conduct of the business of the partnership firm. No materials are also produced to show that he was responsible for the day to day affairs of the firm. No notice was issued to the petitioner individually prior to launching the complaint under Section 138 of the Negotiable Instruments Act. Therefore, the entire criminal proceedings initiated by the respondent under Section 138 of the Negotiable Instruments Act are liable to be quashed, it is contended.

5. The points that arise for determination are-

(i) whether there is necessary and sufficient averment in the complaint under Section 138 of the Negotiable Instruments Act laid by the respondent.

(ii) whether there shall be a necessary averment to indicate as to how and in what manner, the partners were responsible for the conduct of the business of the partnership firm.

(iii) whether the complainant is bound to give individual notice to each and every partner of the partnership firm.

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8. The averment found in the complaint, of course, is not the verbatim reproduction of the requirement under Section 141 of the Negotiable Instruments Act. But, on reading the entire averment found in the complaint as a whole, one can easily come to a conclusion that there is sufficient averment to the effect that the third accused also was in charge of and responsible for the conduct of the business of the fourth accused partnership firm. Therefore, it is held that there is necessary averment in the complaint in terms of Section 141 of the Negotiable Instruments Act.

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10. It is found from the above ratio that the Magistrate has to consider the complaint before issuing the process and he has the power to reject the complaint at the threshold itself if necessary and sufficient averment required under Section 141 of the Negotiable Instruments Act have not been found in the complaint. But, at the same time, the complaint cannot be read in isolation. The complaint includes the documents annexed therewith. In the instant case, the Managing Partner of the fourth accused partnership firm has issued reply to the statutory notice as follows:-

> "That my client and his brother-in-law in the normal course were in the habit of signing of the cheque leaves in the entire cheque books without being filled up in order to meet any emergent situation as may require."

The above averment found in the reply given by the Managing Partner of the fourth accused partnership firm would go to show that the third accused, who is none other than the brother-in-law of the first accused, was in charge of and responsible for the conduct of the business of the partnership firm. The aforesaid reply notice given by the first accused has been annexed along with the complaint launched under Sections 138 and 141 of the Negotiable Instruments Act by the respondent. The stand taken by the first accused on behalf of the partnership firm and the partners therein would go to show, prima facie, that the third accused also has played a vital role in the administration of the fourth accused partnership firm.

11. In view of the ratio laid down by the Supreme Court referred to above, the submission made by the learned *counsel appearing for the petitioner that the complaint should be separately scanned and analysed by the court without any reference to the reply notice given by the first accused is rejected outright. Further, the Managing Partner has given the reply notice not in his individual capacity but in his capacity as the Managing Partner of the partnership firm. His stand in the reply notice shall be construed as the stand of the other partners in the partnership firm. An agent cannot take a different stand from that of the partnership firm. Therefore, the further submission made on the side of the petitioner that the stand taken by the Managing Partner in the reply notice is not the stand of the third accused does not merit consideration.*

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13. In the case on hand, there is a clear averment to satisfy the requirement under Section 141 of the Negotiable Instruments Act. Further, the reply notice issued by the Managing Partner of the partnership firm unambiguously reflects the major role played by the third accused in the day to day administration of the partnership firm. When the complaint read along with the documents produced satisfies the necessary and sufficient averment as contemplated under Section 141 of the Negotiable Instruments Act, the lack of averment in the sworn statement of the de facto complainant in this case as to the specific role of the petitioner herein does not go to the root of the case.

14. In N.K.Wahi v. Shekhar Singh, (2007) 2 MLJ (Cri) 241 (SC) : 2007 ALL MR (Cri) 1445 (S.C.), the Supreme Court has held in para 8 as follows:-

> "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 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 entertain-able."
>
> "In the said judgment, it has been laid down that there should be a clear and unambiguous allegation as to how the Directors were in charge of and responsible for the conduct of the business of the company in the complaint laid under section 138 read with 141 of the Negotiable Instruments Act.
>
> 15. Relying on the aforesaid ratio laid down by the Supreme Court, this court in Capt. D. Karunakar, Etc. & Others v. Tamil Nadu News Print & Papers Limited, 2007 2 LW (Crl.) 806 has held that a complaint under Section 138 and 141 of the Negotiable Instruments Act, without an allegation in the complaint to indicate as to how and in what manner a Director of the Company was responsible for the conduct of the business of the Company, is liable to be quashed."

15. But, in the later judgment pronounced by the Supreme Court, in Rangachari, N. v. Bharat Sanchar Nigam Limited, 2007 (3) CTC 495 : 2007 ALL MR (Cri) 1437 (S.C.), it has been held in paragraphs 19, 24 and 25 as follows:-

> "19. A person normally having business or commercial dealings with a company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its Memorandum or Articles of Association. Other than that, he may not be aware of the arrangements within the company in regard to its management, daily routine, etc. Therefore, when a

cheque issued to him by the company is dishonoured, he is expected only to be aware generally of who are incharge of the affairs of the company. It is not reasonable to expect him to know whether the person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the company and those in charge of it. So, all that a payee of a cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in charge of its affairs. The Directors are prima facie in that position.

...

24. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the company and were in-charge of the affairs of the company. It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons in-charge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant.

25. We think that, in the circumstances, the High Court has rightly come to the conclusion that it is not a fit case for exercise of jurisdiction under section 482 of the Code of Criminal Procedure for quashing the complaint. In fact, an advertence to Sections 138 and 141 of the Negotiable Instruments Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the Officers in-charge of the affairs of the company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is

> something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not in-charge of the affairs of the company. Reading the complaint as a whole, we are satisfied that it is a case where the contentions sought to be raised by the appellant can only be dealt with after the conclusion of the trial."

In the aforesaid subsequent authority pronounced by the Supreme Court, it has been held that a complainant is supposed to know only generally as to who were in charge of the affairs of the company. The other administrative matters would be within the special knowledge of the Company and those who are in charge of it. Therefore, the complainant is expected to allege that the persons named in the complaint are in charge of the the affairs of the company. The Supreme Court has gone a step further and observed that it is only the Directors of the Company who have special knowledge about the role they had played in the company to show before the court that at the relevant point of time they were not in charge of the affairs of the company. In the said case, it has been simply averred to that the Directors of the Company were in charge of and responsible for the conduct of the business of the company. The Supreme Court, in the aforesaid judgment, has held that the said allegation is sufficient averment as required under Sections 138 and 141 of the Negotiable Instruments Act.

16. In view of the clarification found in the aforesaid authority reported in 2007 (3) CTC 495, the court holds that if the complainant, who is the payee or holder in due course, who may not be aware of the indoor administration of a company or the partnership firm, lodges a complaint under Section 138 and 141 of the

Negotiable Instruments Act with the averment that the Director or the Partners concerned were in charge of and responsible for the conduct of the business of the partnership firm concerned, then it will have to be construed that such an averment is a necessary and sufficient one as contemplated under Section 141 of the Negotiable Instruments Act. Then the burden is shifted to the Partner or the Director of the Company, who has got thorough knowledge about the indoor management of the company or partnership firm, to prove that he was not in charge of and responsible for the conduct of the business of the company at the relevant point of time. Therefore, I reject, without any hesitation, the submission made by the learned Senior Counsel appearing for the petitioner that the complaint which does not whisper any averment as to how and in what manner, the Partners of the partnership firm played a role is not maintainable. Even otherwise, the reply notice issued by the Managing Partner which forms part of the complaint, prima facie, shows that the petitioner herein had actually played a role in the day to day administration of the fourth accused partnership firm. Therefore, the court has to hold that the complainant has come out with a prima facie material to convince the learned Judicial Magistrate that the third accused was also in charge of and responsible for the conduct of the business of the fourth accused partnership firm.

13. Coming back to the facts of the present case, it would be apposite to examine the relevant extract of the impugned complaint

(Annexure P-1) enumerating the role of all the accused including the petitioner. The same is reproduced as under:-

> "4. The accused No.2 is the Managing Director and accused No.3 to 6 are the active Directors of the accused Company and they are fully responsible for conduct of the business of the accused Company. The day to day affairs of accused No.1 Company are managed by accused No.2 to 6 and as such they are in control of the affairs of the accused No.1 Company and liable for all the Acts and deeds committed on behalf of accused No.1 Company. The accused NO.2 to 6 are holding very important positions in the management of accused No.1 Company as indicated above and are incharge of and responsible to the Company for conduct of the business of the company. The accused No.2 to 6 have been regularly approaching the complainant for negotiation regarding the financial assistance granted to the complainant Company and it was, inter alia, on their assurances that the financial assistance was granted to the accused No.1 Company by the complainant.
>
> *5. That the accused No.1 Company through accused No.2 to 6 approached the complainant for financial assistants by way of working capital facility and the complainant sanctioned/enhanced a limit of Rs.40 Crores vide its Letter of Intent dated Febraury 11, 2012."*

14. A perusal of the averments above clearly establish that the accused Nos.2 to 6, including the petitioner, who is accused No.6 were stated to be incharge of and responsible for the conduct of the business of the company. It has also been categorically mentioned that it was accused

Nos.2 to 6 who approached the complainant for financial assistance on behalf of the accused No.1-Company.

15. Thus, there is a clear and categoric averment in Para 4 and 5 of the complaint (Annexure P-1) that accused No.2-Rajiv Goyal being the Managing Director and accused No.3 to 6, namely, Alka Goyal, Shiv Kumar Yadav, Bharat Bhushan Jain and Dharmpal Singhal (petitioner) who are directors of the company, were fully responsible for the conduct and business of the company and were incharge of its day-to-day affairs. Additionally, there is a specific allegation that accused No.1-Surya Pharmaceuticals Ltd.-company through accused Nos.2 to 6 approached the complainant for financial assistance by way of working capital. Whether this averment/allegation is correct or, on the other hand, the petitioner did not have any role in obtaining financial assistance for the company shall be adjudicated upon only during the course of the Trial. The internal workings of the company and the exact designation of an officer of the company cannot be known to a third person who deals with the company and its officials on a day-to-day basis. Therefore, once necessary averments are made in terms of Section 141 of the Negotiable Instruments Act and further, specific allegations are also levelled against particular Directors/Managers/Officers of the company, then, it would be a matter of their defence which would be established during the course of the Trial that they were not liable because they were not incharge of and responsible for running of the day-to-day affairs of the company.

16. Additionally, the co-accused of the petitioner, namely, Bharat Bhushan Jain had approached this Court by way of a quashing petition bearing No.CRM-M-54980-2018 which was dismissed vide order dated 21.07.2026 passed by this Court.

17. Keeping in view the aforementioned facts and circumstances, I find no merit in the present petition and the same stands dismissed.

18. The pending application(s), if any, shall stand disposed of accordingly.

July 28, 2026 **(JASJIT SINGH BEDI)**
sukhpreet **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No