

*** “REPORTABLE”
 HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: February 13, 2009

+ Crl M.C. No. 3369/2007

VASU TECH LIMITED & ORS. Petitioners

Versus

RATNA COMMERCIAL ENTERPRISES LTD.
 Respondent

Crl M.C. No. 3370/2007

VASU TECH LIMITED & ORS. Petitioners

Versus

RATNA COMMERCIAL ENTERPRISES LTD.
 Respondent

Crl M.C. No. 3371/2007

VASU TECH LIMITED & ORS. Petitioners

Versus

RATNA COMMERCIAL ENTERPRISES LTD.
 Respondent

Crl M.C. No. 3372/2007

VASU TECH LIMITED & ORS. Petitioners

Versus

RATNA COMMERCIAL ENTERPRISES LTD.
 Respondent

Crl M.C. No. 3373/2007

VASU TECH LIMITED & ORS. Petitioners

Versus

RATNA COMMERCIAL ENTERPRISES LTD.
..... Respondent

Present : Mr. Siddharth Luthra, Senior Advocate
with Mr. Sanjiv Bahl, Mr. Ajay Shekhar,
Ms. Arundhati Katju, Advocates for the
Petitioners.

Mr. Arun Bhardwaj, Senior Advocate
with Mr. Sudhir Makkar, Mr. Vishal
Malhotra, Advocates for Respondent.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be
allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported
in the Digest ? Yes

J U D G M E N T

ARUNA SURESH, J.

1. By way of this common order I shall deal with five
petitions seeking quashing of Complaint Cases;
Nos.1745/1 of 2007, 1748/1 of 2007, 1751/1 of
2007, 1747/1 of 2007 and 1746/1 of 2007 filed
against the petitioners under Section 138/141 of

Negotiable Instruments Act (hereinafter referred to as 'N.I. Act') read with Section 420 Indian Penal Code (hereinafter referred to as 'IPC'), proceedings conducted therein and the summoning order dated 16th July, 2007 passed thereunder as they arise out of the same transaction involving the common question of law.

2. Complainant M/s. Ratna Commercial Enterprises Ltd. (respondent herein) had been advancing loan to the petitioners for funding its capital requirements for the purposes of development of a chip called 'VSU' totaling sum of Rs.54,08,93,273/-. A substantial portion of these amounts were advanced to Vasu Tech Limited (hereinafter referred to as 'Petitioner company') as short term loan repayable after one year and in certain cases repayable with the close of the financial year. Receipt of all these amounts was duly acknowledged by the petitioner company. A loan agreement was entered into between the complainant and petitioner company on 15th April, 2005 which spelt out the terms and

conditions of the loan including the condition that the amounts advanced to the petitioner shall carry interest at the rate of 12% per annum payable on the interest payment date. Simultaneously, a Deed of Guarantee in favour of the complainant was also executed by promoters of petitioner company, namely, Shri Dhruv Varma, Sh R.L. Varma (Petitioner No.2 and 3 herein) and M/s R.L. Varma & Sons (HUF), whereby the above named persons irrevocably and unconditionally guaranteed the due payment of loan to the complainant. A Memorandum of Understanding (MOU) dated 31.8.2006 was also executed between the parties. After execution of the agreement complainant advanced some more amount to petitioner company on specific terms and conditions as laid down in the Loan Agreement and the Guarantee Agreement was extendable to the further advances as well. The total amount advanced by the complainant to petitioner company exclusive of interest was to the tune of Rs.54,08,93,273/-. Petitioner company issued 16 post dated cheques for a total amount of

Rs.61,63,66,140/- towards the repayment of the loan amount / interest thereon.

3. The subject matter of the five complaints are 13 cheques all dated 1st April, 2007 details of which as under:-

Petition	Complaint Case	Cheque No.	Drawn on	Amount
Crl M.C No. 3369/2007	Complaint Case No. 1745/01	381112,	Central Bank, Jevantara Building, Parliament Street, New Delhi	1,03,272.00
		381121	-do-	1,14,746.00
Crl M.C No. 3370/2007	Complaint Case No. 1748/01	370500,	-do-	60,00,000.00
		381122,	-do-	50,00,000.00
		3704797	-do-	40,00,000.00
Crl M.C No. 3371/2007	Complaint Case No. 1751/01	381113,	-do-	45,00,000.00
		381118,	-do-	40,00,000.00
		381103	-do-	35,00,000.00
Crl M.C No. 3372/2007	Complaint Case No. 1747/01	370487,	-do-	7,47,27,016.00
		370486,	-do-	50,83,93,273.00
		381126	-do-	55,00,000.00
Crl M.C No. 3373/2007	Complaint Case No. 1746/01	381125,	-do-	1,26,221.00
		370499	-do-	1,37,695.00

4. These cheques on presentation by the complainant to its bankers were dishonoured and returned back

with the remarks ***“Payment stopped by Drawer”*** vide return memo dated 18.06.2007 and informed the complainant company vide bank memo dated 19.06.2007. Resultantly, complainant issued legal notice dated 19.06.2007 in accordance with the provisions contained under Section 138 of the N.I. Act wherein demand for payment of the impugned cheques within the prescribed period of 15 days was raised. This notice was duly received by the petitioners and was replied vide reply dated 6.7.2007. Since petitioners failed to make the payment of the dishonoured cheques, aforesaid complaints were filed by the complainant against the petitioners with further allegations that payment of the impugned cheques was stopped by the petitioner with a malafide intention not to make the payment of the due amount to the complainant.

5. Learned Metropolitan Magistrate after considering the averments in the complaints and the evidence placed on record by the complainant by way of documents and affidavits, took cognizance of the offence under Section 138 read with Section 141 of

the N.I. Act and he accordingly summoned the petitioners vide his order dated 16th July, 2007.

6. Aggrieved by the said orders of the trial court, the present petitions have been filed by the petitioners challenging the maintainability of the complaints as well as the impugned summoning order of the learned M.M.
7. Mr. Siddharth Luthra, learned senior counsel for the petitioners has argued that the complaint cases filed against the petitioners and the summoning orders passed therein are bad in law because the complainant has suppressed material facts from the court. The complainant has not disclosed the fact that the petitioners had filed a Civil Suit bearing CS (OS) No.570/2007 titled '*Vasu Tech. Limited v/s M/s. Ratna Commercial Enterprises Limited & Ors.*' seeking prohibitory and mandatory injunction against the complainant and its Directors in this court on 26.3.2007 as the due amount was to be converted into equity shares of '*VasuCorp Inc.*' in the name of the complainant and was not to be

returned in cash. The impugned cheques were issued as a collateral security till the transfer of equity shares in the name of the complainant and were not to be considered for repayment towards the loan advanced.

8. It is further argued by learned senior counsel for the petitioners that in the said civil suit this court granted an ex-parte injunction vide order dated 28.03.2007 thereby restraining the complainant from presenting the impugned cheques for encashment. This order was, however, vacated by the Division Bench on 15.06.2007, against this order petitioners filed SLP in the Supreme Court wherein the petitioners were successful in getting an interim order on 2.7.2008 whereby the operation of the order of the Division Bench of this court dated 15.6.2007 was stayed.
9. Second limb of argument advanced by the learned counsel for the petitioners is that petitioner No.2 and 3 are the Directors of petitioner company and the allegations against them in the complaint are

general in nature. As Directors they cannot be held liable for the day to day business of the company as well as to the company in the absence of any specific allegations against them. He further argued that from reading of paragraphs 7, 13 and 16 of the complaint prima facie it is clear that petitioner nos.2 and 3 have been impleaded as accused persons in the complaint simply because they are the Directors of petitioner company with no specific allegations of their being responsible to the company for the conduct of the business of the company as well as to the company and, therefore, they cannot be deemed guilty of the offence and no vicarious liability can be fastened against them. He submitted that under the circumstances trial court went wrong when it mechanically summoned petitioner nos. 2 and 3 without any application of mind.

10. The third limb of argument is that the words appearing in the proviso to Section 141 of the N.I. Act "*such offence*" means if an offence punishable under the Act is committed, no person shall be

rendered liable to punishment if he proves that such offence was committed without his knowledge or that he has exercised all due diligence for prevention of such offence. There are no allegations in the complaints indicating that the act of the company was within the knowledge of petitioner nos.2 and 3 and that at the time of commission of offence they were the person incharge of the affairs of the company and responsible to it for the conduct of its business. However, he has conceded that petitioner No.4 is the signatory of the impugned cheques and, therefore, prima facie is responsible for the day to day business of the company and to the company and, therefore, prima facie vicarious liability can be fastened against petitioner no. 4. However, he has emphasized that complaint as well as summoning order as against petitioner no.2 and 3 are bad in law and are liable to be quashed.

11. Learned counsel for the petitioners has relied upon:-

- (i) 'Jayshree Khemka & Anr. Vs. Prema Kanodia', MANU/DE/1303/2008;**
- (ii) 'P.S. Shrinivasan & Ors. vs. M/s. VLS Finance Ltd.', Crl. M.C. No.7423-25 of 2006;**
- (iii) 'Maikaal Fibres Ltd. & Ors. vs. Rajrani Exports Pvt. Ltd.' 146 (2008) DLT 269;**
- (iv) 'Paresh P. Rajda vs. State of Maharashtra & Anr.', MANU/SC/2987/2008;**
- (v) 'Smt. Nagawwa vs. Veeranna Shivalingappa Konjaligi & Ors.', (1976) 3 SCC 736.**
- (vi) 'Municipal Corporation of Delhi vs. Ram KishanRohtagi & Ors.', AIR 1983 SC 67;**
- (vii) 'Nirmala Gupta & Ors. vs. Sharma Associates Thr. Navratan', Crl. M.C. No.1820-22/2006 dated 26.2.2008'.**

12. Mr. Arun Bhardwaj, learned senior counsel for the respondent has emphasized that specific averments have been made in paragraphs 2, 3, 4, 7, 13 and 16 of the complaint that the petitioners were the Directors of petitioner company and were incharge and responsible to the company for the conduct of its affairs. Petitioner No.2 is the Managing Director of petitioner company whereas petitioner no.4 is the signatory of the impugned cheques which were returned dishonoured. It is argued that

the Special Leave Petition filed by the petitioners in the Supreme Court has been dismissed and pursuant thereto the civil suit filed by the petitioners has also been withdrawn.

13. It is further argued by learned senior counsel for the respondent that petitioner no.3 was the signatory of the Loan Agreement dated 15.4.2005 executed between the parties which is the foundation of liability of the petitioners in the complaints filed against them. Petitioner No.3 is a confirming party to the agreement. Petitioner No.3 is also the guarantor for the loan besides being Director and principal officer of the company, and therefore, was incharge of and responsible to the company for the conduct of its affairs.
14. It is highlighted that there are specific averments in the complaint regarding the liability of petitioner nos.2 to 4 as Directors of petitioner company. At this stage, the court has only to see whether there are specific averments in the complaint regarding the liability of the petitioners and the contention

that some of the petitioners were not incharge of and responsible to the company for the conduct of its affairs can only be tested at the stage of trial and, therefore, quashing the proceedings are not warranted at this stage by invoking the jurisdiction of this court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C').

15. It is also pointed out that the documents subsequently filed by the petitioners which were not a part of the complaint, cannot be looked into by this court at this stage while considering the present petitions.

16. Learned counsel for the respondent has placed reliance on:-

(i) 'H.R. Kapur & Ors. vs. SEBI', 2008 III AD (Delhi) 682;

(ii) 'Ramaswamy Athappan & Anr. vs. Bharti Infotel Ltd.' (101) DRJ 426;

(iii) 'Rajesh Kumar Gulati vs. N.A.C.M.F.I. Ltd', 147 (2008) DLT 219;

(iv) 'Paresh P. Rajda vs. State of Maharashtra & Anr.', (2008) 7 SCC 442;

(v) 'Modi Cements Ltd. Vs. Kuchil Kumar Nandi', (1998) 92 CC 88;

(vi) 'SMS Pharmaceuticals Ltd. vs. Neeta Bhalla & Ors.' AIR 2005 SC 3512;

(vii) 'N. Rangachari vs. Bharat Sanchar Nigam Ltd.', (2007) 5 SCC 108.

17. Learned senior counsel for the petitioner, during the course of arguments, has confined his arguments to the issue of vicarious liability of petitioners no.2 and 3 only. Learned counsel has also conceded that he was not pressing the petitions on behalf of petitioner No.4 as she was the signatory of the impugned cheques. Therefore, I shall confine myself to the issue if petitioner nos. 2 and 3 can be fastened with vicarious liability under Section 141 of the N.I. Act when cheques issued by the petitioner company were dishonoured on presentation.

18. Admittedly, petitioner no.2 is the Managing Director of petitioner company and, therefore, is incharge of and responsible for the conduct of the business of the company. Managing Director gets cover under Section 141 and is responsible for the

incriminating act of the company within the meaning of Section 141 of the N.I. Act. Besides, as a Director of the company petitioner No.2 has been actively involved in the day to day functioning of the company. He has been dealing with the complainant for and on behalf of the company for all purposes including raising of loan, issuance of cheques, execution of agreement, etc. Therefore, at this stage, he cannot escape his vicarious liability for and on behalf of the company for an offence under Section 138 of the N.I. Act.

19. In '***SMS Pharmaceuticals Ltd. (supra)***', it was laid down that the Managing Director or Joint Managing Director would be admittedly incharge of the company and responsible to the company for conduct of its business. Therefore, holder of such position in a company becomes liable under Section 141 of the N.I. Act by virtue of 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. So far as the signatory of a cheque, which is dishonoured is

concerned, he is clearly responsible for the incriminating act and is covered under sub-Section (2) of Section 141 of the N.I.Act.

20. Petitioner company had filed a civil suit being CS (OS) No.570/2007 against the complainant and its Director seeking prohibitory and mandatory injunction. In para (1) of the suit petitioner company has disclosed the status of petitioner no.2; Dhruv Varma as that of a Managing Director of the company and competent to file, sign and verify the suit on behalf of the company. Affidavit enclosed to the plaint was also sworn by Petitioner No.2 in which he described his status in the company as Managing Director.

21. In reply to the notice of demand dated 19th June, 2007, petitioner No.2 was stated to be looking after the business of petitioner company being in control of the same. He was signatory of some of the cheques issued in favour of the complainant company on 1.4.2007, though said cheques are not the subject matter of the impugned complaints.

The agreement dated 15.4.2005 was also signed by petitioner No.2 for and on behalf of the company as well as for himself and for petitioner No.3 R.L.Varma.

22. Thus, it is clear that petitioner No.2 being Managing Director of the company as well as guarantor. At the relevant time when the offence was committed he was incharge of and responsible for the conduct and business of the company and, therefore, cannot escape his vicarious liability by virtue of Section 141 of the N.I. Act as conditions laid therein are satisfied.

23. Learned senior counsel for the petitioner has argued that there are no specific averments or statements made in the complaint against petitioner No.3 as to how he was incharge of and responsible for the conduct of business of the company so as to put vicarious liability upon him under Section 141 of the N.I. Act. For that purpose relevant paragraphs of the complaint which contain averments against petitioner No.3 beside other

petitioners are reproduced as under:-

“2. That M/s. Vasu Tech Ltd. (hereinafter referred to as “Accused No.1”) Company is inter alia engaged in the business of manufacturing industrial control equipment. That the Accused No.1 through Accused No.2 to 4 approached the Complainant from time to time for advancing loan(s) for funding its capital requirements for the purpose of development of a chip called VSU. The Complainant advanced various amounts to the Accused from time to time totaling to a sum of Rs.54,08,893,273/-. A substantial portion of these amounts were advanced to Accused No.1 as short term loans repayable after one year and in certain cases repayable with the close of the financial year. The receipt of all these amounts was duly acknowledged by the Accused No.1.

3. That an Agreement dated 15.4.2005 was entered into between the Complainant and the Accused No.1 whereby all the Accused unequivocally acknowledged that a sum of Rs.19.20 Crores already stood advanced to Accused No.1. The Agreement further stipulated that to meet the funding requirement of the Accused No.1 the Complainant shall advance a further sum of Rs.20.00 Crores to Accused No.1 in terms of the Agreement. The said Agreement inter-alia stipulated that the amounts advanced to the Accused No.1 shall carry interest at the rate of 12% per annum and the interest accrued till each interest period was to be paid by

Accused No.1 to the Complainant on the interest payment date. In terms of the said Agreement Accused No.1 was liable to repay the entire outstanding dues to the Complainant in four equal quarterly installments commencing from the date immediately succeeding the date on which the moratorium period as defined in the Agreement expired but in any event not later than the final maturity as defined in the Agreement. The moratorium period was defined as a period of eighteen months from the date of the execution of the Agreement, which has since expired on 31.10.2006.

4. Simultaneous with the execution of the above referred Loan Agreement, the directors/promoters of the Accused No.1 Company namely Sh. Dhruv Varma, Sh. R.L. Varma and M/s. R.L. Varma & Sons (HUF) executed a deed of guarantee in favour of the Complainant whereby the above named persons as guarantors irrevocably and unconditionally guaranteed the due payment of loan to Complainant on its first demand all amounts outstanding under the above referred Loan Agreement and all indebtedness due and payable by the Accused No.1 to the Complainant including all interest accumulations, costs, charges, expenses and other monies whatsoever due and payable by the Accused to the Complainant in the event of failure of Accused No.1 to repay the same to the Complainant.

7. It is submitted that in discharge of its liability the accused persons

issued 16 cheques totaling to a sum of Rs.61,63,66,140/- which are still outstanding and payable by the Accused to the Complainant. That the present complaint is only in respect of two dishonored cheques. That Addressee No. 2 & 3, beside being guarantors for the said loans advanced to Addressee No.1 are also directors and principal officers of the Addressee No.1 company and are in charge of and responsible to Addressee No.1 for the conduct of its day to day affairs. It is further submitted that Accused No.4, is the signatory of the cheques in question and being one of the Directors and principal officers of Accused No.1 is also in charge of and responsible to M/s. Vasu Tech Ltd. for the conduct of its affairs.

13. That as on date the total outstanding of the accused No.1 company towards the complainant is to the tune of Rs.54,08,93,273/- exclusive of interest. That Accused No.2 & 3 besides being guarantors to the aforesaid agreement are also the directors of accused No.1 company and are responsible for the day-to-day management and affairs of the company. That Accused No.4 is also one of the directors of the Accused No.1 company and has also signed the cheques, in respect of which the present complaint is being filed.

16. That Accused No.2, 3 & 4 are the directors of Accused No.1 company and are in-charge of and responsible to the Accused No.1 company for the conduct of its day-to-day affairs whereas Accused No.4 is

also the signatory to the dishonoured cheques. As such all the Accused liable to be prosecuted and punished, in accordance with law, for the offence committed by them.”

24. Learned counsel for the complainant has submitted that petitioner no.3 stood as a guarantor for repayment of loan of petitioner company. Besides he was also a signatory to the Loan Agreement dated 15.4.2005 which is the foundation of liability of the petitioners. Petitioner no.3 is stated to have signed the agreement as confirming party. MOU dated 31.8.2006 was also executed inter se the parties which was also signed for and on behalf of petitioner No.3 by petitioner no.2.
25. In para 2 of the complaint it is specifically pleaded that accused No.1 company through accused No.2 to 4 approached the complainant from time to time for advancing loan for funding its capital requirement.
26. Para 3 of the complaint speaks of agreement dated 15.04.2005 which was entered into between the parties and in this paragraph it is specifically

averred that all the accused had unequivocally acknowledged that a sum of Rs.19/20 Crores already stood advanced to petitioner company.

27. Para 4 of the complaint in clear terms named petitioner no.3 R.L. Varma having executed Deed of Guarantee in favour of the complainant whereby he guaranteed the due payment of loan to the complainant on its first demand of the outstanding amount. This guarantee was irrevocable and unconditional.

28. In Para 7 of the complaint it is spelt out that besides being guarantors petitioner no.2 and 3 were also Directors and principal officers of the petitioner company and were in charge of and responsible to the petitioner company for the conduct of its day to day affairs.

29. Similar are the averments in para 13 and 16 of the complaint. Therefore, there are specific averments/allegations against petitioner No.3 being the principal officer as active director of the company is responsible for the offence committed

by the company under Section 138 of the N.I.Act.

30. Petitioner no.3 has been shown as a promoter of petitioner company in the agreement dated 15.4.2005 and the Loan Agreement was executed between the complainant and petitioner no.2 and 3. The agreement was signed by petitioner no.2 for and on behalf of petitioner no.3. Petitioner has placed on record certain copies of the entries of the meeting of the Board of Directors of petitioner company held on 12.3.2007. This document is also signed by petitioner No.3 as Chairman. Thus, from the document placed on record by the petitioners themselves, prima facie it is clear that petitioner No.3 is also one of the active Directors of the company who has been participating in the day to day affairs of the company and in that capacity being Chairman is liable for the acts of the company as well as to the company.

31. In '***SMS Pharmaceuticals Ltd. (supra)***', it was summed up as follows:-

"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 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 the respondent falls within the 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."

32. Learned counsel for the petitioners has referred to

'Jayshree Khemka & Anr. (supra). The principle

of law as laid down in the above said case was followed by me in ***Jayshree Khemka's case (supra)***. The petitioners in the said case had already resigned and were not the Directors of the company and responsible for day to day working and for conduct of the business of the company on the date of issuance of the cheque. Under the said circumstances, their petition for quashing of the criminal complaint against them was allowed.

33. In the present case petitioner no.3 was the Director, Chairman and still is the Director of the petitioner company since before issuance of the cheques, on the date when the cheques were issued and even on the date when the cheques on presentation were dishonoured. He being an active Director of the company was as is responsible for day to day functioning of the company and to the company as well. *Jayshree Khemka's case*, therefore, is of no help to the petitioners in this case.

34. In '***P.S. Shrinivasan & Ors. vs. M/s. VLS Finance Ltd.***' (*supra*), this court found that there were no averments much less a bare minimum averment that at the time of the commission of the offence the petitioners were persons in charge of the affairs of the company and responsible for the conduct of its day to day business. Therefore, it allowed the petition and discharged the petitioners in respect the complaints, filed against them by M/s. VLS Finance Ltd..

35. As pointed out above, there are specific averments contained in the complaint against petitioner No.3 to the fact that he not only being the guarantor of the company is also Director and signatory of the Loan Agreement and a confirming party and was in charge of day to day affairs of the company and to the company. Therefore, this case does not support the cause of petitioner No.3.

36. Similarly, '***Maikaal Fibres Ltd. & Ors. vs. Rajrani Exports Pvt. Ltd.***' (*supra*), wherein a complaint was filed under Section 138 read with

Section 141 of the N.I. Act against the company and other accused persons and notices were served upon the accused who failed to make payment and complainant agreed to provide finance to accused No.1 on guarantee of accused No.2 for repayment of loan and only averment against accused No.4 was that he was controlling affairs of the company without disclosing the manner in which he was controlling the affairs of the company, this court was pleased to discharge him holding that he could not be made criminally liable. The facts and circumstances of the said case were different from the facts and circumstances which are before this court in the present petitions. In the present case, petitioner No.3 is also the guarantor besides active Director. In '**Maikaal Fibres Ltd. & Ors. (supra)**', the court did not discharge the guarantor from his criminal liability under Section 138 of the N.I. Act for offence committed by the company.

37. '**Paresh P. Rajda vs. State of Maharashtra & Anr.**', (**supra**)'s case has been relied upon by both the parties. In the said case proposition of

law as laid down in '*SMS Pharmaceuticals Ltd. vs. Neeta Bhalla & Ors.*' and '*N. Rangachari vs. Bharat Sanchar Nigam Ltd.*', (supra) were discussed. Petitioner *Paresh P. Rajda* happened to be the Chairperson and it was averred in the complaint that he was the Chairman of the company and was responsible for the day to day affairs of the company and was, therefore, liable to repay the amount of dishonoured cheques. In these circumstances, it was held that the complaint contained clear allegations against the petitioner that he was the Chairman of the company and responsible for the affairs of the company. The Supreme Court was pleased to dismiss the appeals of the petitioners who had sought quashing of the summoning order of the trial court. This judgment rather tilts in favour of the complainant and is of no favourable consequences to the petitioners.

38. Another case relied upon by the petitioners is '*Smt. Nagawwa vs. Veeranna Shivalingappa*

Konjaligi & Ors., (*supra*). In para 4 and 5 of the judgment it was observed:-

“4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Sections 202 of the Code of Criminal Procedure is extremely limited--limited only to the ascertainment of the truth or falsehood, of the allegations made in the complaint--i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have. In fact it is well settled that in proceedings under Sections 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

5. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside :

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.”

39. Applying these principles to the facts and circumstances of the present case, I find no reason to interfere in the order of the learned M.M. whereby he took cognizance of the offence under Section 138/141 of the N.I. Act and summoned the petitioners. Allegations made in the complaint as reproduced and discussed above prima facie make out a case against the petitioners as it does disclose

essential ingredients of offence punishable under Section 138 of the N.I.Act which is alleged to have been committed by the petitioners.

40. Learned counsel for the petitioner has relied upon ***‘Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & Ors.’ (supra)*** to emphasize that the words “*such offence*” does not attribute any criminal liability to petitioner No. 2 and 3 because complaint does not attribute any criminal responsibility except that they were in charge of and responsible for the conduct of business of the company. It was observed:-

“10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code.”

41. In the said case there was not even a whisper nor a

shred of evidence nor anything to show, apart from the presumption drawn by the complainant that there was an act committed by the Directors from which a reasonable inference could be drawn that they could also be made vicariously liable. It was under those circumstances when the complainant had failed to make prima face case against the Directors in the complaint that the Directors were discharged and proceedings against them were quashed.

42. In the present case there are specific allegations against petitioner No.3 to make out prima facie case against him and, therefore, at this stage, it cannot be said that no offence is constituted, from the facts narrated in the complaint and the documents placed on record by the complainant against petitioner No.3.
43. Learned senior counsel for the petitioner has also referred to '***Nirmala Gupta & Ors. vs. Sharma Associates Thr. Navratan'***, (*supra*), it was a case represented by him on behalf of the petitioners.

The said petition was allowed on the surmise that the petitioners ceased to be the Director and the partner of the firm on the date when the cheques were issued in favour of the complainant and, therefore, petitioners could not be made liable for offence under Section 138 of the N.I. Act read with Section 141 of the N.I. Act in respect of said cheques issued by the firm. This is not the case of the petitioners in this petition before me. There is no dispute that petitioner No.3 was Director of the company at the time when the cheques were issued and was also a confirming party to the agreement dated 15.4.2005 in view of which 16 cheques dated 1st April, 2007 were issued by petitioner company in favour of the complainant.

44. Under Section 139 of the N.I. Act a presumption is drawn in favour of the holder that he received the cheque for the discharge, in whole or in part, or any debt or other liability. This presumption is, however, rebuttable. In other words, the drawer of the cheque gets an opportunity to rebut the presumption at the trial. Proviso to Section 141 of

the N.I. Act also makes this presumption rebuttable. As per this proviso, if a person who is rendered liable to punishment for an offence under Section 138 of the N.I. Act, is entitled to prove in defence that the offence was committed by the company without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. It is only when he fails to produce any such defence, he renders himself liable to punishment for an offence committed by the company for himself and on behalf of the Company.

45. In ***'Modi Cements Ltd. Vs. Kuchil Kumar Nandi', (supra)*** as referred to by the learned counsel for the respondent it was observed:-

"It is needless to emphasize that the court taking cognizance of the complaint under Section 138 of the Act is required to be satisfied as to whether a prima facie case is made out under the said provision. The drawer of the cheque undoubtedly gets an opportunity under Section 139 of the Act to rebut the presumption at the trial. It is for this reason we are for the considered opinion that the complaints of the

appellant could not have been dismissed by the High Court at the threshold.”

46. Similarly in '**Ramaswamy Athappan & Anr. vs. Bharti Infotel Ltd.**' (*supra*) it was observed that any defence that the petitioner may have to show that they were in fact not in charge of the affairs of the company or responsible to it for the conduct of its business, and in any event not on the date of the commission of the offence, can be proved at the trial by adducing evidence. In that case petitioner no.2 was described as Vice Chairman of the company whereas petitioner no.3 was shown as Managing Director and petitioner no.4 was shown as one of the signatories of the cheques in question. It was held that petitioner no.2 being Vice Chairman was always involved and responsible for the conduct of the business of the company and was always responsible and instrumental in the negotiation and transaction with the complainant.

47. Similarly, in '**H.R. Kapur & Ors. vs. SEBI**',

(supra) this court observed that it was possible in individual cases that a person might be able to, in his or her defence, prove that such person had ceased to be a Director at the time of the commission of offence or that he or she was not associated with the company at all but that would essentially be a matter for evidence.

48. From the discussion as above, the only irresistible conclusion under the facts and circumstances of this case which could be arrived at is that, the complaint contains specific averments involving petitioner nos. 2 to 4 for their vicarious liability for the act of petitioner company, for and on behalf of the company for having committed offence under Section 138 of the N.I. Act. The fact that petitioners had stopped the payments of the impugned cheques prima facie indicate the dishonesty on the part of the drawer of the cheques not to discharge the company's liability for the loan taken by the company for the development of a chip called 'VSU'. The petitioners shall have an

opportunity under Section 139 of the N.I. Act to rebut the presumption at the trial.

49. Hence, the trial court was right in taking cognizance of the offence under Section 138 of the N.I. Act and summoning the petitioners vide its order dated 16th July, 2007 passed in Complaint Case Nos.1745/1 of 2007, 1748/1 of 2007, 1751/1 of 2007, 1747/1 of 2007 and 1746/1 of 2007. Therefore, I find no infirmity or illegality in the orders of the trial court to interfere with the same.

50. The petitions, therefore, being without any merits are hereby dismissed.

51. All pending applications also stands disposed of.

Attested copy of the order be sent to the trial court immediately through special messenger.

**ARUNA SURESH
(JUDGE)**

FEBRUARY 13, 2009
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