

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

Date of Reserve: August 19, 2010
Date of Order: 23rd September, 2010

+ Crl.M.C.No. 2652/2010 & Crl.Misc. A. No. 13888-89/2010
+ Crl.M.C.No. 2653/2010 & Crl.Misc. A. No. 13890-91/2010
+ Crl.M.C.No. 2654/2010 & Crl.Misc. A. No. 13892-93/2010
+ Crl.M.C.No. 2655/2010 & Crl.Misc. A. No. 13894-95/2010
+ Crl.M.C.No. 2656/2010 & Crl.Misc. A. No. 13896-97/2010
+ Crl.M.C.No. 2657/2010 & Crl.Misc. A. No. 13898-99/2010
+ Crl.M.C.No. 2658/2010 & Crl.Misc. A. No. 13900-01/2010
+ Crl.M.C.No. 2659/2010 & Crl.Misc. A. No. 13902-03/2010
+ Crl.M.C.No. 2661/2010 & Crl.Misc. A. No. 13906-07/2010
+ Crl.M.C.No. 2662/2010 & Crl.Misc. A. No. 13908-09/2010
+ Crl.M.C.No. 2663/2010 & Crl.Misc. A. No. 13910-11/2010
+ Crl.M.C.No. 2665/2010 & Crl.Misc. A. No. 13914-15/2010
+ Crl.M.C.No. 2670/2010 & Crl.Misc. A. No. 13920-21/2010
+ Crl.M.C.No. 2678/2010 & Crl.Misc. A. No. 13932-33/2010
+ Crl.M.C.No. 2692/2010 & Crl.Misc. A. No. 13960-61/2010

%

23.09.2010

Shree Raj Travels & Tours Ltd. & Ors.

... Petitioners

Through: Mr. Siddharth Luthra, Sr. Advocate with
Mr. Jatin Zaveri & Mr. Arshdeep, Advocates

Versus

**Destination of the World (Subcontinent)
Private Limited**

... Respondents

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

This bunch of petitions has been filed by the petitioners who have been summoned by the learned Metropolitan Magistrate on a complaint by respondent under Section 138 of the Negotiable Instruments Act (in short NI Act) because of dishonour of cheque issued by the company. This Court in its judgment titled as Rajesh Agarwal v. State and Anr. Crl.MC No. 1996/2010 decided on 28th July, 2010 [MANU/DE/1838/2010] had considered prevailing scenario of cases under Section 138 and after considering the provisions of NI Act, Cr.P.C. and the fact that

the trial of cheque-dishonour cases had to proceed in a summary trial manner observed as under:

11. *The trial under section 138 of NI Act cannot be carried like any other summons trial under IPC offences. The documents placed on record of the Court about the dishonour of cheque are the documents from banks and unless the accused says that these documents are forged, or he had not issued the cheque at all, he did not have any account in the bank, the cheque was not signed by him, the cheque book was forged by the complainant or other similar claim, the evidence of the complainant about dishonour of cheque cannot be questioned, nor the complainant can be asked to depose before the court again. If the case u/s 138 N.I. Act, which is document based, is not tried in summary manner, the sole purpose of making this offence summary trial stands defeated. Thus in all cases under section 138 of N.I. Act, once evidence is given by way of affidavit, at the stage of pre-summoning, the same evidence is to be read by the court at post summoning stage and the witness need not be recalled at post summoning stage unless court of MM, for reasons, considers it necessary.*

2. This Court also specified the steps in a complaint under Section 138 to be taken as under:

17. *The summary trial procedure to be followed for offences u/s 138 N.I. Act would thus be as under:*

Step I : *On the day complaint is presented, if the complaint is accompanied by affidavit of complainant, the concerned MM shall scrutinize the complaint & documents and if commission of offence is made out, take cognizance & direct issuance of summons of accused, against whom case is made out.*

Step II : *If the accused appears, the MM shall ask him to furnish bail bond to ensure his appearance during trial and ask him to take notice u/s 251 Cr. P.C. and enter his plea of defence and fix the case for defence evidence, unless an application is made by an accused under section 145(2) of N.I. Act for recalling a witness for cross examination on plea of defence.*

Step III : *If there is an application u/s 145(2) of N.I. Act for recalling a witness of complainant, the court shall decide the same, otherwise, it shall proceed to take defence evidence on record and allow cross examination of defence witnesses by complainant.*

Step IV : *To hear arguments of both sides.*

Step V : *To pass order/judgment.*

18. *In all above Criminal Miscellaneous Petitions the petitioners have come to this Court raising one or the other defence. I consider that since summoning order in all these cases*

have been issued, it is now the obligation of these petitioners to take notice under section 251 of Cr. P.C., if not already taken, and enter their plea of defence before the concerned MM court and make an application, if they want to recall any witness. If they intend to prove their defence without recalling any complainant witness or any other witness, they should do so before the Court of MM. These petitions are, therefore, hereby dismissed.

3. The learned Counsel for the petitioners in petitions at hand however, submitted that petitioners were Directors of M/s Raj Travels & Tours Ltd. and no specific averments were made by the complainant in the complaint regarding how the Directors were responsible for dishonour of the cheque and the only averment made by the complainant in the complaint was that the petitioners being Directors of the company were responsible for the day-to-day conduct of business and it is submitted that this was not sufficient to summon the Directors. Reliance was placed on various judgments.

4. As noted by this Court that the effort of the Directors of companies is to prolong the trials under Section 138 NI Act. While when the cheque issued by a Company is dishonoured and notice of demand is issued, the propriety calls that the company should pay the amount against dishonoured cheque on receiving notice from the person to whom cheque was issued, however instead of paying the cheque amount and settle the issue, the effort is to deprive the complainant of the cheque amount.

5. Supreme Court had considered the purpose of provisions of the Negotiable Instruments Act and the changes made therein in Damodar S. Prabhu v. Syed Babalal H. AIR 2010 SC 1907 and had observed that the intent of legislature was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. It was further observed that the dishonour of cheque can best be described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments.

6. However, whatever be the law, it is apparent that the incidence of dishonour of cheques had not reduced because the law has not been implemented with same seriousness with which it was enacted, nor the Courts are ensuring that the trial of these cases take place in a summary manner as desired by the legislature without putting complainant and accused on equal footing. Today, complainant gets more harassed than the accused in pursuing a complaint under Section 138 NI Act, because of the fact that every summoning order is assailed on one or the other ground and the complainant is forced to contest the legality of orders of the MM in

cases under Section 138 at the very initial stage putting complainant to a greater disadvantage. In all cases, complainants are not the companies rather in most of the cases complainants are individuals and they have to fight an unequal legal battle against companies, who have enough funds to spend on litigation and charge it to the company account. No effort is made by these companies to compromise the matter in terms of the judgment of Supreme Court in Damodar S. Prabhu v. Syed Babalal H.(supra).

7. It is a matter of common knowledge that when companies are floated and public issues are brought, big advertisements are issued giving big names as Directors and promoters of the company. These names are the names of successful CEOs, or Directors who have achieved success in other fields. Due to these names at the very inception and formation of company, when there is no wealth or property of the company, the share of the company is sold at a premium promising big business and success. Once money is mopped up from the public, in all those cases where the companies were created only for the purpose of mopping up hard earned money of public or to befool them, it is found that those big names disappear and in almost every litigation those Directors who formed part of the core of the company and gave promises that the Company would do roaring business quietly disappear from the scene or take plea that they were not responsible for business of the company. That is how the problem arises. While the public stands cheated and the persons who had mopped up wealth and pocketed the public wealth are not prepared to take responsibility.

8. Let us examine the role of Board of Directors (BoD) in terms of Companies Act and other legal provisions. Company is a legal personality and Board of Directors acts as its body and mind. Under Section 291 of the Companies Act, BoD is authorized to do what the company is authorized to do, unless barred by restrictions on their power by the provisions of the Companies Act. It is well settled that Directors, while exercising their powers, do not act as agents for the majority or even all the members and so the members cannot by a resolution passed by a majority of even unanimously, supersede the Directors' power and instruct them how they shall exercise their power. The powers of management are vested in Directors and they and they alone can exercise these powers. The only way in which the General Body of a company can overrule the BoD is altering the Articles and refusing to re-elect the Directors, whose actions they disapprove. The shareholders cannot themselves usurp the powers, which by Articles are vested in the Directors. Thus the

relationship of BoD with the shareholders is more of a federation than that one of subordinate and superior.

9. Under the Companies Act, BoD has powers to make calls on shareholders in respect of money unpaid on their share, power to authorize the buy-back, power to issue debentures, power to borrow moneys otherwise than on debentures, power to invest the funds of the company and power to take and make loans. There is no doubt that BoD may, by a resolution passed at a meeting, delegate to any committee of Directors, the Managing Director, the Manager or any other principal officer of the company, the above powers. However the principal power still vests in BoD and the Manager or Managing Director acts only as an agent of the BoD. Apart from this, BoD has power to form opinion about the solvency of the company in respect of buy back shares (Section 77A), power to fill up casual vacancies in the office of Directors (Section 262), power to constitute Audit Committee and specify terms of reference thereof (Section 292A), power to make donation to political parties [Section 293A(2)], power to accord sanction for specified contracts in which one or more Directors are interested [Section 297(4)], power to receive notice of disclosure of Director's interest [Section 299(3)(c)], power to appoint or employ a person as Managing Director or Manager [Section 316(2)], power to invest in shares or debentures of any other body corporate (Section 372A), power to appoint or employ a person as its Manager [Section 386(2)], power to make a declaration of solvency, where it is proposed to wind up the company voluntarily [Section 488(1)], power to approve the text of advertising for inviting public deposits [Section 58A r/w Rule 4(4)]. Some of the powers can only be exercised by resolution passed at the meeting with consent of the Directors present at the meeting.

10. Normally, the banks or other financial institutions give huge loans to the companies and in order to protect their interests, they nominate their Directors on the Board of Companies. These Directors are called nominee Directors and the function of these Directors is to safeguard the financial interest of the institution who nominated them and to ensure that no decision is taken by BoD which goes against the financial institution. Such Directors are not considered responsible for the business of the company. The Legislature under Section 141 of NI Act therefore made specific provision for such Directors. Section 141 of NI Act reads as under:

141. Offences by companies.

¹[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 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.

²["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.]

(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 attribute to, any neglect on the part of, any Director, Manager, secretary, or other office 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. Explanation: For the purpose of this section. -

(a) "Company" means anybody corporate and includes a firm or other association of individuals; and

(b) "Director", in relating to a firm, means a partner in the firm.

OBJECTS AND REASONS OF AMENDING ACT OF 2002

The existing provisions in the Negotiable Instruments Act, 1881, namely, sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act-

Keeping in view the recommendations of the Standing Committee on Finance and other representations, it has been decided to bring out, inter alia, the following amendments in the Negotiable Instruments, Act, 1881, namely:-

(viii) to exempt those Directors from prosecution under section 141 of the Act who are nominated as Directors of a company by virtue of their 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;

11. A perusal of Section 141 would show that apart from nominee Directors every other Director who is responsible for the conduct of the business of the company is deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. It is submitted that the language of Section 141 makes it clear that the Director to whom vicarious liability for offence under Section 138 is sought to be foisted must be one who was responsible for the conduct of the business of the company. A perusal of different provisions of Companies Act and the culture of corporate functioning as envisaged by law, makes it clear that the companies function only through BoD. It is the BoD that has to be held responsible for the company's acts because it is the BoD which runs the company, which acts as body and mind of the company. It is possible that in a BoD there are some Directors who do not attend the meetings of the Board and are not active in the functioning of the company and they have lent their names only to make the company a reputed company or to befool the people so that people may invest in the company. The law permits one person to hold Directorship of as many as 20 companies. Taking benefit of this, some successful persons lend their names, of course for value, to such companies who had no intention to do business and had only intention to cheat. Should the Court presume that the big persons who lend their names to the company as Directors cannot be held responsible for the actions of the company without there being any material placed before the Court that a particular Director had only lent the name and was actually not interested in functioning of the company? Who would know as to which Director performs what function in the company when as per law the whole body of BoD work as soul and mind of the company.

12. The Directors have collective responsibility towards the company. It is quite possible and is usual practice that different Directors among themselves divide responsibilities within the company, but this is an internal arrangement made by the BoD amongst themselves as to who shall look after what. It is also quite true that they appoint Managing Director, Managers, Secretary, paid Directors, paid whole-time Directors but this division of work or responsibility is not brought to the knowledge of public by advertisements nor the internal arrangement of the company

is revealed to the company's creditors. The common creditor or the person dealing with the company, being an outsider, would not know different facets of internal management of the company, he would know only the Board of Directors. Even this information he has to gather from Registrar of Companies or from prospectus of company or from Memorandum of Association. So a person dealing with the company has only the knowledge of those affairs which are made public by the company otherwise he has no means to know the internal management of the company.

13. It is not necessary that cheques are issued by Directors. The cheques on behalf of the company may be issued by an Accountant only, appointed by the company and authorized by the company to sign the cheques. Does that mean that a complainant, whose cheque is dishonoured, cannot sue any of the Directors of the company and he can only sue the company and then no one appears on behalf of the company and the Court can take no steps against anybody for dishonour of the cheque? The answer is "NO". The Legislature was very well aware of this situation and that is why under Section 106 of the Indian Evidence Act, the law specified as under:

106. Burden of proving fact specially within knowledge -
When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

14. It is within the special knowledge of the Directors on Board of company as to how they have distributed work among themselves, who was the sleeping Director, who was the Director who had only lent name, what were the powers given to Manager, what were the powers were delegated to MD, what were the powers kept back by the company and who was looking after what affairs of the company. This internal management of company, within the special knowledge of the Directors, has to be brought to the notice of the Court by the BoD or Directors and then is to be proved before the Court. An outsider would only know as to who are the Directors, who is the Managing Director and he knows that the management of the company is run by BoD and MD. Some companies are too big that it is not possible for one MD to humanly look after all affairs of the company and different Managing Directors, paid Directors are assigned different powers by the BoD. Again

this fact is within the special knowledge of BoD and when summons are issued to these Directors under Section 138 of NI Act, they can place before the Court of MM, after taking notice under Section 251 Cr.P.C., the relevant material showing that the BoD by some resolution had delegated the powers for managing company to "XYZ". It can never be in the knowledge of an outsider as to what different resolutions were passed by the BoD of a company delegating powers, who were the persons to whom powers were delegated, what powers were delegated and who has to manage what. I, therefore consider that benefit of Section 141 of not facing the prosecution because of having no responsibility of managing the business of the company can be availed only after disclosing to the Court and proving before the Court that the particular Director was not the one who was involved for conducting the business of the company. As there is a presumption under law that a cheque is issued in discharge of a debt or liability and this presumption has to be rebutted by the person issuing a cheque, in the same manner when law enjoins responsibility of running a company on all the Directors collectively, if a Director takes the stand that he had no responsibility, the onus to rebut legal presumption is on him. It cannot be expected of a complainant whose cheque has been dishonoured to first engage a spy or detective agency to get inside information of the company as to which of the Directors was responsible for conduct of the business nor it is the legal duty of a complainant to do this. When law has made BoD responsible for the conduct of the business as a body of the company, each and every Director has to be considered in-charge of responsibility for conduct of the business and can be summoned by the Court. The Director can seek his discharge/name struck off from the array of accused persons once he proves before the Court that he was not the Director at the relevant time or he was not responsible for the business of the company because of certain resolution passed by the BoD making someone else responsible.

15. It is settled law that statutory provisions shall have precedents over the judicial pronouncements and a judgment cannot be read as a statute. If Statute requires that a person having special knowledge of the fact has the onus to prove the fact, this provision of the Indian Evidence Act (Section 106) cannot be put to nullity and the onus cannot be shifted to the complainant to aver or prove that only a particular Director of the company was responsible for the conduct of the business and other Director(s) was not responsible for conduct of the business. It is just like if a person is caught after rail journey without ticket, the onus is on him to show that he had purchased the ticket and the onus is not on the Ticket Collector to prove whether he had purchased the ticket or not. The fact that whether he purchased the ticket and he was doing journey after purchasing the ticket is within the knowledge of the

person caught without ticket. Similarly, when a cheque is dishonoured, it is for the Director to prove that he was not liable for dishonour of the cheque as he was not looking after the business of the company and some other Director was looking after the business of the company as the person whose cheque is dishonoured is in no position to prove whether the Director was responsible for conduct of business or not. The Director by virtue of his being a Director is responsible for conduct of business under law and if he says that he was not responsible he is supposed to prove the same. A person who is caught without ticket by virtue of his being caught without ticket is supposed to have committed a crime. If he says that he did purchase a ticket but lost it, it is 'he' who has to prove that he purchased the ticket. The onus cannot be reversed and thrust upon the complainant. This Court had made this position clear in *Bharat Poonam Chand Shah v. M/s Dominos Printech India Pvt. Ltd.* Crl.M.C.No. 3206/2007 decided on 10.10.2007 [MANU/DE/9347/2007] being proposition of law and observed as under:

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. 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.

4. The Supreme Court in *N. Rangachari vs. B.S. N.L* 2007 Crl.L.J 2448 observed as under:

"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 an 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 authorized 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 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. vs. The Delhi Administration[(1983) 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 an 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 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 or flaw, 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 contest 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 the 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 that cheque that is dishonoured can be expected to allege is that the persons names in the complaint are in charge of its affairs. The Directors are prima facie in that position.

15. In fact, in an earlier decision in Monaben Ketanbhai Shah & Anr. Vs. State of Gujarat & Ors., [(2004) 7 SCC 15], two learned judges of this Court noticed that :

"The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind."

16. in the light of the ratio in S.M.S. Pharmaceuticals Ltd. (supra) what is to be looked into is whether in the complaint, in addition to asserting that the appellant and another are the Directors of the company, it is further alleged that they are incharge of and responsible to the company for the conduct of the business of the company. We find that such an allegation is clearly made in the complaint which we have quoted above. Learned Senior Counsel for the appellant

argued that in Soroj Kumar Poddar case (supra), this Court had found the complaint unsustainable only for the reason that there was no specific averment that at the time of issuance of the cheque that was dis-honoured, the persons named in the complaint were incharge of the affairs of the company. With great respect, we see no warrant for assuming such a position in the context of the binding ratio in S.M.S. Pharmaceuticals Ltd. (supra) and in view of the position of the Directors in a company as explained above.”

5. 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 incharge of management. The resignation of the petitioner from the company, is a defence 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 NI 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.

16. In view of my above discussion, I find no force in the petitions. The petitions are hereby dismissed.

September 23, 2010
vn

SHIV NARAYAN DHINGRA, J.