

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

Decided on: September 21, 2011

+ **CRIMINAL M.C. 2955/2011 & CrI.M.A.10441/2011 (stay)**

MEERA GUPTA & ORS.

....PETITIONERS

Through: Mr.R.Rajappan, Advocate with Ms. Rajsree,
Advocate

Versus

MADAN LAL BATRA

.....RESPONDENT

Through: Mr. Sumit Rajput, Advocate with Mr. Varun
Mehlawat, Advocate

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. Meera Gupta, Neha Gupta, Shailendra Gupta and Pratibha Gupta, the petitioners herein, vide this petition under Section 482 CrPC are seeking quashing of summoning order dated 01st March, 2011 passed against them by the learned Metropolitan Magistrate, New Delhi in complaint case under Sections 138/141 N.I.Act bearing No. 434/1 titled 'Sh. Madan Lal Batra Vs. M/s. Niti Shree Infrastructure Ltd. & Ors.'

2. Briefly stated, facts relevant for the disposal of this petition are that Madan Lal Batra, respondent, filed above noted criminal complaint under Section 138 read with Section 141 N.I. Act against M/s Niti Shree

Infrastructure Ltd. and nine others including the petitioners. In the title of the complaint, the petitioners are described as subscribers of M/s Niti Shree Infrastructure Ltd., whereas the other five accused persons, namely, Anil Kumar Jain, Reena Jain, Ankur Jain, Bir Singh and Shashi Ranjan Kumar are described as Managing Director/Director/Manager/Secretary of the company respectively. Basic allegations in the complaint are that the complainant/respondent, pursuant to the advertisement and representation made by M/s Niti Shree Infrastructure Ltd. and the other accused persons, invested ₹ 2,85,000/- in the development project undertaken by the aforesaid company as advance payment towards the consideration for purchase of 175 sq yd plot in the proposed project. The project did not come through, as such the accused company gave three cheques for ₹87,500/-, ₹26,250/- and ₹2,85,000/- all dated 28.08.2010 drawn on Punjab & Sind Bank, Connaught Place, New Delhi to the respondent against the refund of his advance payment, interest thereon and the premium. Those cheques, when presented for encashment, were dishonoured. The respondent thus served the aforesaid company and the others including the petitioners with notice under Section 138 N.I. Act, but the petitioners and others failed to pay the amount of cheques within the requisite period. This led to filing of the complaint.

3. On consideration of the allegations in the complaint and the affidavit evidence of the complainant reiterating the allegations,

learned Metropolitan Magistrate passed the impugned summoning order dated 01.03.2011.

4. Learned counsel for the petitioners submitted that as per the allegations in the complaint, the offence under Section 138 N.I. Act is claimed to have been primarily committed by the company i.e. M/s Niti Shree Infrastructure Ltd. and the petitioners are roped in on the allegations that they were the directors/principal officers/subscribers of the equity capital of the company at the time of commission of offence. Learned counsel contended that under Section 141 N.I. Act, a person can be held vicariously liable for the offence under Section 138 N.I. Act committed by the company only if at the time of commission of offence, he/she was in-charge of and was responsible to the company for the conduct of the day to day affairs and the business of the company. Every person connected with the company shall not fall within the ambit of Section 141 N.I. Act. Learned counsel argued that in the instant case, but for a vague allegation that the petitioners were directors/subscribers/principal officers of the accused company, there is no specific allegation which could, prima facie, show as to how and in what manner the petitioners were in-charge of and responsible for the day to day affairs of the company and what were the acts and functions being discharged by them so as to bring them within the ambit of Section 141 N.I. Act. Learned counsel further submitted that there is no averment in this regard even in the evidence led by the respondent during the course of inquiry by learned Metropolitan

Magistrate. Thus, it is strongly urged that in absence of any specific allegations to bring in the petitioners within the ambit of Section 141 N.I. Act, the summoning order is not sustainable under law.

5. Learned counsel for the respondent, on the contrary, has submitted that the complainant has made specific allegations that the petitioners were in-charge of day to day affairs and conduct of business of the company, which fact is also supported by the evidence adduced during inquiry. Learned counsel for the respondent contended that the initial onus to bring the petitioners within the purview of Section 141 NI Act has been discharged by the respondent and now the onus is on the petitioners to adduce evidence in the trial to show that they were not in-charge of and responsible for the conduct of business of the company.

6. I have considered the rival contentions and perused the record.

7. The law relating to vicarious liability of a director under Section 141 of N.I. Act for the offence under Section 138 N.I. Act committed by a company is well settled. The question came up for consideration before a three Judge Bench of Supreme Court in **SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla, (2005) 8 SCC 89** wherein upon consideration of a number of decisions of the Apex Court, Supreme Court opined thus:

“10. 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 the 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 the 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 the 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.”

8. In the matter of **N.K. Wahi Vs. Shekhar Singh, AIR 2007 SC 1454**, Hon’ble Supreme Court while dealing with the vicarious liability under Section 141 N.I. Act observed thus:

“8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There

should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”

9. From the above judgments, it is apparent that in order to rope in a director of a company for the offence under Section 138 N.I. Act with the aid of Section 141 of N.I. Act, the complainant is not only required to make a clear allegation that the person concerned was the director/subscriber of the company, but he is also required to make specific allegations indicating as to how and in what manner the said director was in-charge of and responsible for the conduct of the business of the company.

10. Perusal of the complaint filed by the respondent would show that in the title of the complaint, the petitioners are described as subscribers to the shares of M/s Niti Shree Infrastructure Ltd. i.e. the principal offender. Admittedly, neither of them is alleged to be the signatory of the cheques in question. In order to rope in the above four petitioners to be vicariously liable for the offence under Section 138 N.I. Act committed by the company, in the name of the allegations, respondent has simply reproduced the language of Section 141 N.I. Act in the complaint, particularly in the paras 3, 4, 5, 6 and 10, which allegations are reproduced thus:

“3. That the accused no.1 through its Directors/ principal officers/ subscribers/ accused no.2 to 10 as mentioned herein above

representing the accused no.1 launched Real Estate Project in the locality of Meerut Road, Ghaziabad, Near Mohan Nagar.

4. That on the basis of advertisement and representations made by the accused no.1 through accused no.2 to 10, the complainant agreed to buy a plot admesruing 175 sq. yds approx. In the abovementioned project at Meerut Road, Ghaziabad, near Mohan Nagar, UP and paid to the accused no.1 an advance of ₹2,85,000/- at the rate of ₹6505/- (Advance Pre-launch rate) at the time of registration of the said plot through cheque no.228364 dated 21.11.2005 drawn on State Bank of India, Krishna Nagar, Delhi-110051.

5. That after obtaining the said amount from the complainant, the accused no.1 failed to keep its promise and failed to allot/give/hand over the said plot in the ongoing project to the complainant and the said booking / registration was cancelled and in order to further deceive and cheat to the complainant, the accused no.1 through its Directors/principal officers/ subscribers/ accused No.2 to 10 issued three cheques, all signed by accused no.2 on behalf of the accused no.1, in discharge of their liability towards the complainant for refund of registration fee, interest and premium amount as per the detailed given below:

Cheque no.	Date	Amount
016595	28.8.2010	₹87,500/-
016596	28.8.2010	₹26,250/-
016594	28.8.2010	₹2,85,000/-

All drawn on Punjab & Sind Bank, H-Block, Connaught Circus, New Delhi-110001.

6. That believing upon the representation made by the accused no.1 through its Directors/ principal officers/ subscribers, the complainant presented the said cheques for encashment and the said cheques were returned with the remarks "payment stopped by the drawer". The intimation thereof was received by the complainant vide memos dated 1.9.2010.

10. That all the above mentioned accused no.2 to 10 are looking after/ incharge and responsible for day to day affairs of the accused no.1 and parties to the decision for issuing the above said cheques to the complainant."

11. On reading of the above noted allegations, it is clear that the allegations against the petitioners are vague. There is no specific averment in the complaint to show as to how and in what manner the petitioners were in-charge of and responsible for the management of

day to day affairs and business of the company. Even the preliminary evidence adduced by the respondent does not clarify as to how and in what manner the petitioners were in-charge of and responsible to the company for the management of its day to day affairs and conduct of business. Thus in my view, respondent has failed to make out a case for roping in the petitioners Meera Gupta, Neha Gupta, Shailendra Gupta and Pratibha Gupta vicariously for the offence under section 138 NI Act allegedly committed by the company with aid of Section 141 NI Act. It may be noted that as per the title of the complaint, the petitioners are described as the subscriber to the share of M/s Niti Shree Infrastructure Ltd.

12. In view of the discussion above, the impugned summoning order dated 01.03.2011 passed by the learned Metropolitan Magistrate qua the petitioners Meera Gupta, Neha Gupta, Shailendra Gupta and Pratibha Gupta is set aside and they are discharged.

13. Petition stands disposed of.

14. Order Dasti under the signatures of Court Master.

(AJIT BHARIHOKE)
JUDGE

SEPTEMBER 21, 2011
pst