

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

+ CRL.M.C.No.4077/2011 & Crl.M.A.Nos.19016/2011 & 3720/2012

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Judgment reserved on :26th March, 2012

Judgment delivered on: 2nd July,2012

RANJIT TIWARI

..... Petitioner

Through: Mr. Himansu Upadhyay, Mr. J.P.
Sahrawat and Mr. Shivam Tripathi, Advs.

versus

NARENDER NAYYAR

..... Respondent

Through: Mr. Ankur Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The instant petition is being filed while challenging the order dated 21.09.2011 passed by learned Metropolitan Magistrate which reads as under:-

"21.09.2011

CC No.987/1/10

Present: Complainant along with ld. Counsel.

AR of accused along with ld. Counsel.

Counsel for complainant has filed an application for summoning of Sh. Ranjit Tiwari as co-accused in the present complaint on the ground that earlier he is not aware about the name of the Managing Director and hence, company was arrayed as accused. However, now he has come to know that Mr. Ranjit Tiwari is the Managing Director of the

Company and requested for the summoning. Further today Vinod Yadav office assistant/AR of company is present today and court has verified from him about the name of the Managing Director that Sh. Ranjit Tiwari is the Managing Director of the company.

Section 141 NI Act is reproduced hereunder:-

“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”

So it is clear from section 141 NI Act that any person who was Incharge and responsible of company for conduct the business is deemed to be guilty of the offence u/s 138 NI Act. Summons have already been served upon the company. Hence, it is settled law that no separate notice is required to be served upon the Director.

I have perused the complaint. Prima facie case for commission of offence u/s 138 NI Act is made out against Managing Director Sh. Ranjit Tiwari.

Application dated 05.09.2008 is disposed off. Let he be served on filing of PF and RC.

Be listed for 01.12.2011.”

2. Ld. Counsel for the petitioner has submitted as alleged in the complaint that by virtue of partial discharge of legal and enforceable liability, the accused had issued and delivered cheques bearing No.522451 and 522428, both drawn on State Bank of Patiala, Parliament Street, New Delhi, in the name of the

respondent/complainant. The said cheques, when presented by the complainant, were returned vide memo dated 12.11.2007. The information qua the same was communicated to the accused person on 13.12.2007 through a legal notice.

3. He further submitted that thereafter, the respondent filed a complaint before the Metropolitan Magistrate, Tis Hazari, Delhi, who without looking into the contents of the complaint, issued summons to M/s Mirik Health Food Pvt. Ltd.

4. Ld. Counsel has further submitted that the alleged M/s Mirik Health Food Pvt. Ltd. cannot be alleged to be the accused. Thereafter, the respondent/complainant moved an application to include the name of the Managing Director of the company wherein both the petitioners have been made party in the complaint due to their designation M/s Liverpool Retail India Pvt. Ltd.

5. He argued that the respondent, at the later stage, without even mentioning the provisions of law, filed an application to summon the Managing Director of the company, i.e., the petitioner despite making any specific allegation in the entire complaint in respect of their respective roles in the affairs of the company, as is required under section 141 of the Negotiable Instruments Act(hereinafter referred to as “the said Act”) which is reproduced as under:-

“Section 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 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 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.”

6. It is further submitted that in the complaint under Section 138 read with Section 141 of the Act, there should be some specific averment that the accused has committed the offence when he was in-

charge of and responsible for the conduct of the business of the company. Since this is an essential requirement of Section 141 of the said Act which should be made in the complaint and without this averment, the requirement of Section 141 cannot be said to be satisfied. Merely being an employee of the company, i.e., petitioner herein, has been made a party in the complaint, therefore, he is not liable under Section 141 of the said Act.

7. Ld. counsel further submits that the petitioner, who is admittedly the Managing Director of M/s Mirik Health Food Pvt. Ltd., cannot be made accused until and unless there are specific allegations in the complaint. Therefore the impugned order dated 21.09.2011 passed by the learned MM is contrary to the provisions of Section 138 and 141 of the said Act.

8. On the other hand, ld. counsel for the respondent has submitted that the aforesaid cheques were issued by the accused in favour of the complainant/respondent to clear the outstanding liability towards the respondent. The said cheques were drawn on an account maintained by the accused persons with the aforesaid bankers. The said cheques were returned bounced because the accused persons failed to make requisite arrangement for funds with their bankers.

9. On receipt of the information about the dishonour of the aforesaid cheques, a legal notice dated 01.12.2007 was sent on 03.12.2007 for the offence punishable under Section 138 of the said Act. The said legal notice was duly served upon the accused. Despite

that they failed to pay the liquidated amount of the aforesaid cheque to the respondent/complainant.

10. It is further submitted in the complaint the Memo of parties is mentioned as under:-

“Sh. Narender Nayyar
Proprietor
M/s Enn Enn Advertising & Marketing
11, Rani Jhansi Road,
New Delhi-110055.

Versus

M/s Mirik Health Foods Pvt. Ltd.
16-A, 16th Floor, Atma Ram House,
1, Tolstoy Marg,
Connaught Place,
New Delhi-110001.”

11. It is further submitted that inadvertently the respondent/complainant could not name any person, therefore, he moved an application for impleadment of the petitioner as he was the Managing Director of the company.

12. To strengthen his argument, Id. counsel has relied upon the judgment delivered by High Court of Madras in the case of ***M/s. Sarvaraya Textiles Limited vs. M/s Integrated Finance Limited, [2001] 107 Comp Cas 256 (Mad)*** wherein the Madras High Court has held as under:-

“12. With regard to the third accused, who is the director of the company, admittedly no separate notice has been served on him. Will it entitle him to

be absolved of the offence alleged against him.? Section [141](#) creates the basis for liability upon the persons who were incharge of and were responsible to the company for the conduct of the business of the company. It is in the nature of vicarious liability. Section [141](#) is a deeming provision to enable the complainant to prosecute the persons who were incharge of the company and were responsible for the conduct of the business of the company along with the company. Nowhere Section [141](#) stipulates in such case, notice shall be issued to all such persons. But there is a proviso to Section [141](#) enabling those persons to prove that the offence was committed without that person's knowledge or that the said person exercised all due diligence to prevent the commission of such offence. This safeguard is available only to the persons who are prosecuted by virtue of section [141\(1\)](#) and this safeguard is not available to the drawer of the cheque. Moreover, unless the company is made liable, the question of punishing the persons who are in charge of and are responsible for the conduct of the business of the company does not arise. The Supreme Court in the case of Anil Hada v. [Indian Acrylic Ltd., MANU/SC/0736/1999](#) has held that though the company itself is not prosecuted, the persons mentioned in section [141\(1\)](#) and (2) become liable if a finding is given that such company has in fact committed the offence. But the only course open to the office bearers of the company is that they can adduce rebuttal evidence to establish that the company did not issue the cheque towards any antecedent liability. The Apex court in the very same ruling has held as follows:

"The offender in Section [138](#) of N.L Act is the drawer of the cheque. He alone would have been the offender thereunder if the Act do not contain other provisions. It is because of Section [141](#) of the

Act that penal liability under Section [138](#) is cast on other persons connected with the company."

Further, the Apex Court has also held that normally an offence can be committed by human beings who are natural persons and such offence can be tried according to the procedure established by law; but there are offences when can be attributed to juristic persons also and if the drawer of the cheque happens to be a juristic person like a body corporate, it can be prosecuted for the offence under Section [138](#) of the Act. The principal offender in each cases is only the body corporate and it is a juristic person and when the company is the drawer of the cheque, such company is the principal offender and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per Section [141](#). Therefore, actual offence should have been committed by the company and then alone the other two categories of persons as found in sub- Sections [1](#) and [2](#) of Section [141](#) can also become liable for the offence. Since according to Section [141\(1\)](#), vicarious liability is attributed to the persons mentioned therein for the offence committed by the company, on the very same analogy notice served on the company amounts to serving of notice on all the persons as found in Section [141](#) of N.I. Act. Merely because, these persons also are punishable for the act of the company, no separate notice is essential. After all according to the very scheme of the Section, anybody who is not concerned with the conduct of the business cannot be prosecuted. But only a person who was in charge of the company and was responsible to the company for the conduct of the business of the company alone can be prosecuted, while so, such a person cannot deny knowledge about the service of notice to the company. Only in that view of the matter vicarious liability is cast

upon those persons and that is why no notice to them is contemplated. Though the ruling cited by the learned counsel appearing for the accused/petitioners rendered in Crl.O.P.No.12094 of 1999 discusses about the individual liability of the persons coming under section [141\(1\)](#) of the Act and the consequential penalty that could be imposed on them by way of imprisonment as well as fine affecting their personal liberty and as such individual notice to them is essential, by virtue of their position in relationship to the company to whom these persons are responsible for the conduct of the business of the said company, no separate notice is necessary. Notice is said to be necessary in the above said ruling only because of the consequential penal suffering. When once it is held that they are responsible to the company for the conduct of the business of the company and they were incharge of the company, naturally they ought to have knowledge about the service of notice on the company. Otherwise, if the intention of the legislature is such that anybody working in the company can be prosecuted under section [138](#) of the Negotiable Instruments Act for the default of payment on the part of the company, then so much of emphasis need have been made on the persons, who were in-charge of the company and who were responsible to the company for the conduct of its business for being made liable under this provision. Therefore, I hold that notice to the company, who is the principal offender and who is the drawer of the cheque, is notice to all the persons coming under the purview of section [141\(1\)](#) as well as Section [141\(2\)](#) and in that view of the matter merely because individual notice has not been served on the third accused director, the complainant cannot be said to be out of court. Thus, with great respect, I am unable to agree with the ruling cited by the learned counsel appearing for the petitioners as rendered in

Crl. O.P.No.12904 of 1999. The rulings cited by the learned counsel appearing for the respondent/complainant as reported in K. Pannir Selvam v. M.M.T.C. Ltd. and another, 2000 (2) Crime 354 and Jain Associates and others, v. Deepak Chaudkary and Co., 2000 (2) Crimes 374 and also supported by the rulings reported in [MANU/AP/0182/1997](#) by various High Courts namely, the High Court of Delhi, the High Court of Andhra Pradesh, the High Court of Karnataka and the High Court of Punjab and Haryana appear to be correct and appropriate in view of the wordings found in Section [141](#) of N.I. Act. Therefore, the plea of the petitioners 1 and 2 that no notice was separately served on them and hence the proceedings have to be quashed is rejected. It cannot be taken that notice need not be served on the directors of the company. It is purely a matter of knowledge on the part of the so called directors and others regarding service of notice to the company. This is purely a question of evidence and on the premise of want of notice to the individual directors, complaint cannot be quashed.”

13. Ld. counsel has further relied upon the judgment of the Delhi High Court in the case of ***Jain Associates and Ors. Vs. Deepak Chawdhary & Co., 80(1999) DLT 654***, wherein this Court has observed as under:-

“16. Insofar as proceedings with the matter against the two partners Prahlad Kr. Jain and Deepak Chaudhry is concerned the assertions in complaint in para 2 and 3 are as under:

“(2) That the accused No. 1 is a partnership firm and accused No. 2 and 3 are its partners. Both are responsible for the conduct of the business of the

accused No. 1 firm. The accused No. 2 Prahlad Rai Jain is also an authorised signatory who has issued the cheque in question.

(3) That the accused No.1 firm is carrying on business in the purchase and sale of shares, debentures, bonds and other securities. The accused No. 2 is also a member of the Delhi Stock Exchange Association Ltd."

These assertions indicate that prima facie both the accused have been partners of the partnership firm and are responsible for the conduct of the business of the accused firm. Prahlad Rai Jain, petitioner No. 2 is a authorised signatory as well. So far as the petitioner No. 3 is concerned it also appears that petitioner No.1 and 2 are members of Delhi Stock Exchange Association Ltd. and both are acting partners in the business run in the name of firm petitioner No. 1. Consequently the provisions of Section [141](#) of Act are attracted.

17. On the material before the learned Trial Court and the allegations made in the complaint, it cannot be said that the complaint did not disclose the essential ingredients of the offence and if the assertions made are prima facie accepted, it cannot be said that no case was made out."

14. The law has been settled in the case of **Anil Hada (supra)**, way back in 1999 by the Supreme Court holding that though the company itself is not prosecuted, the persons mentioned in section 141(1) and (2) become liable if a finding is given that such company has in fact committed the offence. But the only course open to the office bearers of the company is that they can adduce rebuttal evidence to establish that the company did not issue the cheque towards any antecedent

liability. The offender in Section [138](#) of N.I. Act is the drawer of the cheque. He alone would have been the offender there under if the Act do not contain other provisions. It is because of Section [141](#) of the Act that penal liability under Section [138](#) is cast on other persons connected with the company.

15. Normally an offence can be committed by human beings who are natural persons and such offence can be tried according to the procedure established by law; but there are offences when can be attributed to juristic persons also and if the drawer of the cheque happens to be a juristic person like a body corporate, it can be prosecuted for the offence punishable under Section [138](#) of the Act. The principal offender in each cases is only the body corporate and it is a juristic person and when the company is the drawer of the cheque, such company is the principal offender and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per Section 141.

16. According to Section 141(1), vicarious liability is attributed to the persons mentioned therein for the offence committed by the company, on the very same analogy notice served on the company amounts to serving of notice on all the persons as found in Section 141 of N.I. Act. A person who was in charge of the company and was responsible to the company for the conduct of the business of the company alone can be prosecuted, while so, such a person cannot deny knowledge about the service of notice to the company. Only in that

view of the matter vicarious liability is cast upon those persons and that is why no notice to them is contemplated.

17. The same view has been taken by this Court in the case of ***Jain Associates (supra)***. Therefore, in view of the legal position discussed above, the petitioner being the Managing Director of the company is responsible for the act, commission and omission of the company. Therefore, I find no discrepancy in the order passed by the learned trial court. I concur with the same.

18. Accordingly, the instant petition is dismissed.

19. No order as to costs.

Crl. M.A. 19016/2011(stay)

Dismissed as infructuous.

Crl. M.A. No. 3720/2012

Vide the instant application, the applicant/petitioner is seeking permanent exemption from appearance in the trial Court.

Dismissed with liberty to move the same before the trial Court.

SURESH KAIT, J

JULY 02, 2012

RS