

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 348 OF 2014

WITH

[WP/349/2014, WP/350/2014, WP/351/2014, WP/352/2014,
WP/353/2014, WP/4099/2013, WP/4100/2013, WP/4101/2013,
WP/4102/2013, WP/4103/2013, WP/4147/2013, WP/4148/2013,
WP/4149/2013, WP/4150/2013, WP/4151/2013, WP/4152/2013,
WP/4153/2013, WP/4154/2013. WP/4155/2013]

Shantanu Narayan Rooj

..Petitioner

v/s.

The State of Maharashtra & Anr..

..Respondents

Ms.Sonal i/b. Manish Bohra a/w. Prasad Das for A.S.Khan &
Associates for the Petitioner.

Mr.Prasad B. Borkar for the Respondent.

Mrs. R.V.Newton, APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : OCTOBER 12, 2015.**

P.C.

1. Heard. Rule. Rule made returnable forthwith. With consent
of the parties, the petitions are taken up for hearing.

2. The respondent no.2 had lodged a complaint against Goldyne
Thermoserve Ltd. and 3 others for offence under Section 138 of the

Negotiable Instruments Act. The present petitioner was accused no.4 in the said complaints. The learned Metropolitan Magistrate, 7th Court, Dadar, had issued process against the accused company and all other Directors, including the present petitioner for offence under Section 138 of the N.I.Act. Being aggrieved by the said order, the present petitioner has filed these petitions.

3. Learned Counsel for the petitioner has submitted that the petitioner had already resigned before the issuance of the cheques. She has drawn my attention to Form No.32 , the resolutions and the Director's Report for the year 2012-13. She has also submitted that the petitioner had already replied to the statutory notice and brought to the notice of the complainant that he had tendered the resignation even before the issuance of the cheque. Learned counsel for the petitioner submits that the petitioner was no longer incharge of the company and/or was responsible for the day to day affairs of the company as on the date of cause of action. He is not liable to be prosecuted for the offence under Section 138 with the aid of 141 of the N.I.Act.

4. Learned Counsel for the respondent has submitted that the plea of the respondent has already been recorded through his Advocate. He further submitted that Form No.32 was uploaded subsequently and it was not within the knowledge of the complainant. I have perused the records and considered the submissions advanced by the respective parties. Section 141 of the N.I.Act reads 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 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: [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 attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. — For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.]

5. In the case of ***Pooja Devidasani vs. State of Maharashtra, Criminal Appeal No.2604-2610 of 2014***, the Apex Court held that :

“17. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person

shall have been at the helm of affairs of the Company, one who actively looks after the day-to-day activities of the Company and particularly responsible for the conduct of its business. Simply because a person is a Director of a Company, does not make him liable under the N.I.Act. Every person connected with the company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action. A Director who was not responsible for the conduct of the business of the company at the relevant time will not be liable for an offence under Section 141 of the N.I.Act.”

6. In order to prosecute any person with the aid of 141 of N.I.Act, there has to be material on record to show that such person at the time of offence was committed, was incharge of and is responsible for the conduct of the business of the company .

7. In the instant case, the petitioner has placed on record certified copy of Form No.32. A perusal of the same clearly reveals that the

petitioner had resigned on 24.8.2012. The Board of Director's Report further indicates that the resignation was w.e.f. 24.8.2012. The cheques were admittedly issued prior to the date of resignation and in the light of these facts, the petitioner was no longer incharge of the company for its day to day affairs to was responsible for the conduct of the company. This being the case, the petitioner is not liable to be prosecuted for the offence under Section 141 of the N.I.Act. Consequently, the mere fact that the plea of the accused has been recorded is of no significance.

8. Under the circumstances, and in view of the discussion supra the petitions are allowed. The process issued against the petitioner in C.C.Nos. 768/SS/2013, 892/SS/2013, 3719/SS/2012, 3720/SS/2013, 3920/SS/2013, 3921/SS/2013, 1612/SS/2013, 1613/SS/2013, 2780/SS/2012, 2781/SS/2012, 2782/SS/2012, 30/SS/2013, 193/SS/2013, 31/SS/2013, 32/SS/2013, 194/SS/2013, 195/SS/2013, 3019/SS/2013, 3020/SS/2012, 3021/SS/2012 is quashed qua the petitioner.

(ANUJA PRABHUDESSAI, J.)