

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

CRIMINAL WRIT PETITION NO. 718 OF 2015

Ketul Chem Pvt. Ltd.

..Petitioner

v/s.

Mr.Rishi Ramesh Pilani & Anr.

..Respondents

Mr. Ashutosh Khandeparkar for the Petitioner.

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

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : OCTOBER 07, 2015.

P.C.

1. The petitioner herein is challenging the order dated 14.8.2014 whereby the learned Addl. Sessions Judge, Dindoshi (Borivali Division), Goregaon, Mumbai, has allowed the revision application filed by the respondent no.1 and set aside the order dated 18.3.2013 passed by the Metropolitan Magistrate, 43rd Court, Borivali, Mumbai.
2. The petitioner filed complaint against accused no.1 company and its Directors for offence under Section 138 of N.I.Act. The learned Magistrate has held that there are no averments in the complaint that the petitioner was responsible for the accused no.1

company for the conduct of its business and that there is no material stated in the complaint in support thereof.

3. Relying upon the decision of the Apex Court in the case of *Malwa Cotton and Spinning Mills Ltd. Vs. Virsa Singh Sidhu in C.A.No. 1265 of 2008*, the learned counsel for the petitioner has submitted that the averments made in para 3 of the complaint are sufficient to prosecute the respondent no.1-accused under Section 138 of the Negotiable Instruments Act.

4. I have perused the complaint and considered the arguments advanced by the learned counsel for the petitioner. The petitioner herein had lodged a complaint under Section 138 of the Negotiable Instruments Act being C.C.No.2288/SS/2012 against M/s. Ganesh Benzoplast Ltd., & 4 ors. The respondent no.1 was arrayed as accused no.2 in the said complaint. The respondent no.1 was sought to be prosecuted under Section 138 with the aid of Section 141 of the Negotiable Instruments Act on the ground that he was one of the directors of the accused no.1 company M/s. Ganesh Benzoplast Ltd.

5. It is pertinent to note that the Constitution Bench of the Apex

Court in case of ***SMS Pharmaceuticals vs. Neeta Bhalla & Anr.*** (2005) 8 SCC 89 has held that it is necessary to specifically aver in the complaint under Section 141 that at the time when the offence was committed, the person accused was in charge of, or responsible for, the conduct of the business of the company. This averment is essential requirement of Section 141 and is to be made in the complaint. In the instant case, the only averment made in para 3 of the complaint is that *“I know the accused. The accused no.1 and accused nos.2 to 5 are the Directors and residing at the address mentioned in the title of the plaint. The accused nos.2 to 5 are looking after the day to day management of the accused no.1.”* There are no averments to indicate that the respondent no.1 was either the Managing Director, Joint Managing Director or signatory to the cheque. There are also no averments in the complaint to indicate that at the time of the offence, the respondent no.1 was incharge of and was responsible to the company for the conduct of the business of the company or its functioning. In the light of the above factual position, the judgment relied upon by the learned Counsel for the

applicant is not applicable to the facts of the present case.

6. The requirement of Section 141 are not met and hence the learned Sessions Judge was perfectly justified in quashing the process as against the respondent no.1. There is no reason to interfere with the order. The writ petition is dismissed.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct as per the original signed judgment/order.