

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1978 OF 2014**

Amit Prakash Jaste
Age 33 yrs, Occ: Service,
Indian Inhabitant, res. at B-404,
Chamunda Apt. Dahisar(E), Mumbai 68

.. Petitioner

VERSUS

1. The State of Maharashtra
2. Gateway Leasing Pvt. Ltd.
 having its office at 6W,
 Merchant Chambers, 6th flr,
 Marine Lines, Mumbai 20

..Respondent/s

Mr. Manish Bora for the Petitioner
Mr. Niranjan Mundargi i/b. Yogesh Israni for the Respondent No.2.
Mrs. R.V.Newton, APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 23rd NOVEMBER, 2015**

JUDGMENT :

1. Rule. Rule made returnable forthwith. With consent of parties matter is taken up for final hearing.
2. The petitioner herein has invoked the powers of this Court under Article 227 of the Constitution of India and Section 482 of Cr.P.C. challenging the legality and validity of the order dated 4.7.2013 passed by the Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai in C.C.No.704/SS/2013 and order dated 5.3.2014 passed by the Sessions

Court, Mumbai in Criminal Revision Application No.1043 of 2013.

3. The petitioner is the accused no.4 in C.C.No.704/SS/2013 filed by the respondent no.2-original complainant for the offence under Section 138 r/w. 141 of the Negotiable Instruments Act. It is the case of the respondent no.2 complainant that M/s. Glodyne Ventures & Holdings Pvt. Ltd. (A1) is a private limited company and that the petitioner herein is the Finance Manager of the said company. The respondent no.2-complainant has stated that the petitioner and the accused nos.2 and 3 are involved in core functioning and decision making of the accused no.1 company, and that they are actively involved in the day to day functioning and playing major role in conducting the business and functioning of the accused no.1 . The respondent no.2-complainant had averred that the accused no.1 company had approached them through its Directors- accused nos.2 and 3 and the petitioner herein who had introduced himself as Finance Manager of the accused no.1 company for renewal of the Inter Corporate Deposit of Rs. 2 Crores, for additional period of 179 days.

4. The respondent no.2 company has averred that the petitioner had played a active role in the negotiations of the accused no.1 company. The

respondent no.2 company renewed the Inter Corporate Deposit after execution of various documents and pledged 1,33,411 shares of Glodyne Technoserve Limited, a sister concern of the accused no.1 company. The tenure of the said ICD expired on 21.12.2012. The accused no.1 company through its authorized signatory-Accused no.2 issued several cheques towards repayment of the above ICD with interest and incidental charges. The respondent-complainant deposited one of the cheques bearing No.245233 dated 30.9.2012 for Rs.8,62,027/- with their bankers, but the same was dishonoured for “Insufficient Funds”. The respondent-complainant issued statutory notice to the accused no.1 company, its Directors and the petitioner herein as a Finance Manager and called upon them to pay the cheque amount. Despite receipt of the said notice the accused no.1 company, its Directors and the petitioner-Finance Manager did not repay the cheque amount. Hence the respondent no.2 company lodged a complaint under Section 138 of the Negotiable Instruments Act.

5. By order dated 19.10.2013 the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai issued process against accused no.1 company, its Directors and the petitioner herein for offence under Section 138 of the

Negotiable Instruments Act. The petitioner herein challenged the said order in Criminal Revision No.1043 of 2013 mainly on the ground that he was not connected in any manner with the accused no.1 company. By order dated 5.3.2014, the learned Sessions Judge, Gr. Bombay dismissed the said revision application. Aggrieved by the said order the petitioner has filed the present petition.

6. Mr. Manish Bohra, the learned Counsel for the petitioner has submitted that the petitioner is not a Director of the company, but was a Company Secretary of the sister concern of the accused no.1. The learned counsel further submits complaint is silent on the specific role played by the petitioner and that it does not specify in what manner the petitioner-accused no.4 was responsible for the day to day functioning of the company. In the absence of such averment, no vicarious liability can be fastened against the petitioner for the offence alleged to have been committed by the accused no.1 company. The learned Counsel for the petitioner has further submitted that the complainant has not produced on record any document to show that the accused no.4 is the Finance Manager. In support of his contentions he has relied upon the decision in the case of (i) ***Kamlesh Kumar vs. State of***

Bihar & Anr. 2013 SC 1083 and (ii) Aparna Shah vs. M/s. Sheth Developers P. Ltd. & Anr 2013 (3) BCR (Cri.) 317.

7. Shri Mundargi, the learned Counsel for the respondent no.2 complainant has submitted that the averments in the complaint are sufficient to take cognizance and to issue process against the petitioner for the offence committed by the company. He has further stated that the petitioner herein has corresponded with the complainant company with regard to the said transaction and has played an active role in completion of the said transaction and that there is no reason to believe that he was not responsible for the company. He has stated that the averments made in the complaint will have to be tested only at the stage of trial and that the process cannot be quashed at this stage.

8. The petitioner herein is prosecuted for the offence alleged to have been committed by the Accused No.1 company. Section 141 of the Negotiable Instruments Act, which deals with the offence by companies reads as under:-

“Sec.141. (1) If the person committing an offence under Section 138 is a company, every person who, at the time the

offence was committed, was incharge of, and was responsible to the company for the conduct of 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 the 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 the 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.”

9. A plain perusal of the said section reveals that a vicarious liability for the offence committed by the company can be fastened against the person who at the time of the offence was committed, was incharge of, and was responsible to the company for the conduct of business of the company, as well as the company.

10. The question as to who are the persons who are responsible to the company for the conduct of the business of the company and who would said to be in charge and was responsible to the company for the conduct of business of the company, came up for consideration before the Apex Court in *K.K.Ahuja vs. V.K.Vora & Anr. (2009) 10 SCC 48*. Considering the provisions of the Companies Act, the Apex Court has held that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company.

“(a) the managing director/s;

(b) the whole-time director/s;

(c) the manager;

(d) the secretary;

(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;

(f) any person charged by the Board with the responsibility of complying with that provision (and who has given his consent

in that behalf to the Board); and

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors. It follows that other employees of the company, cannot be said to be persons who are responsible to the company, for the conduct of the business of the company. “

The Apex Court has held that to be vicariously liable under sub-section (1) of Section 141 a person should fulfill the legal requirement of being a person in law (under the statute governing companies), responsible to the company, for the conduct of the business of the company and also fulfill the ‘factual requirement’ of being a person in charge of the business of the company. The Apex Court has held that only a Director, Manager, Secretary or other officers can be made liable under sub-section (2) of Section 141, But under sub-section (1) of Section 141 it is theoretically possible to make even a person who is not a Director or officer liable, as for example a person falling under category (e) and (f) of Section 5 of the companies Act. The Apex Court has summarized the position under Section 141 as under :-

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was

the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of [Section 141](#).

(iii) In the case of a Director, Secretary or Manager (as defined in Sec. 2(24) of the [Companies Act](#)) or a person referred to in clauses (e) and (f) of [section 5](#) of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under [section 141\(1\)](#). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under [section 141\(2\)](#) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other Officers of a company can not be made liable under sub-section (1) of [section 141](#). Other officers of a company can be made liable only under sub-section (2) of [Section 141](#), be averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

11. In the instant case the petitioner is not a Director of the accused no.1

company. The complainant has alleged that the petitioner herein is the Finance Manager of the accused no.1 company and is involved in the core functioning of the accused no.1 company. That the petitioner along with the other Directors is actively involved in the day to day functioning of the accused no.1 company. It is stated that the petitioner takes financial as well as other major decisions, and takes active part and participates in the functioning as well as business activities of the accused no.1 company and dominantly conduct the entire business and functioning of the accused no,1 company. It is further alleged that the petitioner had played an active role on all the negotiations on behalf of the accused no.1 company for renewal of inter corporate deposit of Rs.2 Crores, to which the complainant company had agreed after execution of various documents, including pledging shares of sister concern of accused no.1 company. The respondent no.2 complainant has also placed on record the ISD document and agreement for pledge of shares executed between the complainant and the accused no.1 company. The petitioner herein has signed both these documents as a witness.

12. It may be mentioned that though complaint does not reproduce the

basic requirements of Section 141 of N.I. Act verbatim, the averments made therein reveal that the petitioner herein as a Finance Manager of the company was in-charge of and was responsible to the company, for the conduct of the business of the company. The fact that the petitioner had signed the ICD document and agreement also prima facie reveals that he had played an active role in the negotiations for renewal of inter corporate deposit. As it has been held by the Apex Court in the case of ***Gunmala Sales Pvt. Ltd. vs. Anu Mehta All MR (Cri.) 4461***, these basic averments taken at their face value, in my considered view are prima facie sufficient to fasten vicarious liability against the petitioner for the offence alleged to have been committed by the accused no.1 company. Consequently, the impugned order of issuance of process cannot be interfered with.

13. Under these circumstances, and in view of the discussion supra, petition is rejected.

[ANUJA PRABHUDESSAI, J.]