

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

CRIMINAL WRIT PETITION NO.2176 OF 2014

Mr. Arun Mehta

...Petitioner

Versus

The State of Maharashtra & Anr.

...Respondents.

.....

Ms Deepti Chand with Mr. Leon Samuel for the Petitioner.

None for Respondent No.2.

Mr. J.H. Ramugade, APP for Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 29th OCTOBER, 2015.

P. C. :

Heard the learned counsel for the Petitioner. The Respondent No.2 remained absent though duly served.

2. The Petitioner herein is the accused No.2 in C.C. No.501/SS/2013 of the offence punishable under section 138 of the Negotiable Instruments Act on the file of the learned Metropolitan Magistrate, 33rd Court at Ballard Estate, Mumbai. The Respondent No.2-complainant had lodged the said complaint against M/s. Varun Shipping Co. Ltd. as accused No.1 and the other accused as Chairman , Managing Director and Finance Officer of the accused No.1-Company.

The Petitioner No.2 is prosecuted as a Managing Director of the accused No.1-Company. The Petitioner herein and the others were arraigned as accused for the offence punishable under section 138 of the Negotiable Instruments Act with the aid of section 141 of the Negotiable Instruments Act, which reads as under :

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,—

3. A plain perusal of the section reveals that vicarious liability under section 141 (1) of the Negotiable Instruments Act can be fastened **only against a 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.**

4. The learned counsel for the Petitioner submits that as on the date of the offence, the Petitioner was not the Managing Director of the Company and that he was not responsible for day-to-day affairs as well as the conduct of the Company. She has invited my attention to the resignation letter dated 25th June, 2012 extract of the minutes of the meeting dated 9th October, 2012 and Form No.32. Perusal of which reveals that the Petitioner had tendered his resignation on 25th June, 2012. Same was accepted by the Board of Directors w.e.f. 1st October, 2012 and was intimated to the Registrar of Companies. Form No.32 also it indicates that the Petitioner was not associated with the accused No.1-Company w.e.f. 1st October, 2012. Subject cheque was issued on 27th December, 2012, which was much after the resignation of the

Petitioner as the Managing Director of the Company. Hence the Petitioner cannot be prosecuted for the offence allegedly committed by the Company.

5. In the light of the above, the petition is allowed. The Proceedings arising out of C.C. No.501/CC/2013 is quashed and set aside qua the Petitioner.

(ANUJA PRABHUDESSAI, J.)