IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 847 OF 2014

Dilip Chabria .. Applicant
v/s.
Sanjiv Indar Shah & Anr. ..Respondent

WITH
CRIMINAL APPLICATION NO. 848 OF 2014

Dilip Chabria .. Applicant
v/s.
M/s. Inspros Engineers Pvt. Ltd. & Anr. ..Respondents

WITH
CRIMINAL APPLICATION NO. 849 OF 2014

Dilip Chabria .. Applicant
v/s.
Kamlesh Hakumatrai Thakur & Anr. ..Respondents

Mr. Pranesh J. Gada i/b M/s. Dhanuka & Partners for the applicant
Mr. M.H. Ramsinghani for the respondent no.1
Mr. J.H. Ramugade, APP for the respondent State

CORAM : SMT. ANUJA PRABHUDESSAI, J.

RESERVED ON : 27th AUGUST, 2015
PRONOUNCED ON : 30th NOVEMBER, 2015

JUDGMENT :

1. Rule. Rule made returnable forthwith. With consent of the parties

the matter is taken up for final hearing.

2. The applicant herein has invoked the powers of this Court under Section 482 of Cr.P.C. to quash the proceedings in Criminal Complaint Nos. 3955/SS/2013, 3956/SS/2013 and 3957/SS/2013, pending on the file of the learned Metropolitan Magistrate, 23rd Court, Ballard Pier, Mumbai.

3. The applicant is the accused no.9 in the above referred criminal cases filed by the respondent no.1 - original complainant for the offence under Section 138 r/w. 141 of the Negotiable Instruments Act. It is the case of the respondent no.1 complainant that he had invested an amount of Rs.6,21,000/- in the equity of Euro Solar Power Ltd. of which the accused no.1 i.e. CPEC Ltd. were the lead promoters for developing the project of setting up a 5 MW power plant. Subsequently, at the request of the accused no.1, the said investment of Rs.6,21,000/- and certain additional amount was converted into a loan to the accused no.1 on interest. The accused company had agreed to pay interest at the rate of 30% per annum, payable at the

end of every quarter. The accused no.1 company through its authorized signatory, issued two cheques bearing Cheque Nos. 538986 and 538987 both dated 31.07.2012 for Rs.12,50,000/- and Rs.2,06,376/- respectively towards repayment of the loan amount with interest. The said cheques were dishoured on 01.11.2012 and in lieu thereof the accused no.1 company under the signatures of accused nos. 2 and 3 issued two cheques bearing Cheque Nos. 946771 and 946774 both dated 30.06.2013 for Rs.12,50,000/- and 5,84,012/- respectively towards the repayment of loan and interest. These cheques were also dishonoured for insufficient funds. The respondent no.1 complainant issued statutory notice demanding the payment of the cheque amount. The accused no.1 company did not pay the cheque amount and hence, the respondent no.1 complainant filed the complaint being C.C. No.3956/SS/2013 against the accused no.1 company, its Managing Director, Directors, C.E.O. and Managers.

4. The complainant has also stated that the accused no.1 company had issued two cheques bearing No.946770 and 946773 both dated

30.06.2013 for Rs.12,50,000/- and 5,84,012/- towards repayment of the loan and interest. The said cheques were dishonoured and despite statutory notice, the accused no.1 company did not pay the cheque amount. The criminal complaint No. 37571/SS/2013 relates to the said cheques.

5. The complainant has stated that the accused no.1 company through its authorized signatory issued two cheques bearing Cheque Nos. 538984 and 538985 both dated 31.07.2012 for Rs.12,50,000/- and Rs.86,863/- respectively towards repayment of the loan amount with interest. The cheque no.538985 for Rs.86,863/- was encashed while the cheque bearing No.538984 for Rs.12,50,000/- was dishoured. Subsequently, the accused repaid to him Rs. 9,00,000/- by cheque no.772114 and issued two cheques bearing no.946772 and 946775 both dated 30.06.2013 for Rs.3,50,000/- and 1,40,962/- towards the balance payment of loan and interest. The said cheques were dishonoured and are the subject matter of C.C. No.3955/SS/2013.

6. The complainant has stated that the applicant herein was the Manager Finance and Business Development of the accused no.1 company and

that he along with the other accused was looking after day to day affairs and managing the activities of the accused no.1 company and was, therefore, vicariously liable for the offence alleged to have been committed by the accused no.1 company.

7. By order dated 13.02.2014, the learned Magistrate issued process against the applicant and the other accused for offence u/s 138 and 141 of the N.I. Act. The applicant herein has sought to quash the said complaints on the ground that he was not an employee of the accused no.1 company and is not associated with the accused no. 1 company in any manner and is therefore not liable for the offence alleged to have been committed by the accused no.1 company.

8. Mr. Gada, the learned Counsel for the applicant has submitted that the applicant is not a Director or the authorized signatory of the accused no.1 company. He has further submitted that the accused no.1 is not associated with the accused no.1 company in any manner and that his name does not appear in Annual Reports and Audit Reports of the last three financial years. He has further submitted that the applicant has not signed any documents in respect of the

alleged loan transaction and that the complainant has not attributed any specific role to the applicant in the alleged transaction. The learned Counsel for the applicant has further submitted that the complainant has not produced on record any document to show that the accused no.4 is the Finance Manager of the accused no. 1 Company. He, therefore, submits that the applicant cannot be held vicariously liable for the offence allegedly have been committed by the accused no.1 company. In support of his contentions, he has relied upon the decision in the case of ***SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla AIR 2005, SC 3512 (1).***

9. Mr. Ramsinghani, the learned Counsel for the respondent no.1 complainant has submitted that the averments in the complaint are sufficient to take cognizance and to issue process against the applicant for the offence committed by the accused no.1 company. He has further stated that the applicant herein was the Finance Manager and has interacted and discussed the transaction of loan with the complainant at all relevant times. 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.

10. I have considered the submissions advanced by the learned counsels for the respective parties and considered the material on record. The applicant herein is being 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 company 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."*

11. A plain reading of sub section (1) of section 141 reveals that the vicarious liability for the offence committed by the company can be fastened only against the person, who at the time of the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company. 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. "*

12. 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 theoritically 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.*

13. In the instant case the applicant is not a Director or the authorized signatory of the accused no.1 company. The complainant has alleged that the applicant herein is the Finance Manager of the accused no.1 company and is looking after and incharge of day to day affairs of the accused no.1 company and is managing the activities of the accused no.1 company. The complainant has also averred that the accused no.9 along with the other Directors had interacted and discussed the transaction of loan with the complainant at all relevant times. It is also pertinent to note that these averments are also reflected in the demand notice. In reply thereto, the applicant had denied that he was in any manner associated with the accused no.1 company. The complainant company had in reply / rejoinder dated 26.11.2013 refuted the said contention and stated that various websites describe the applicant accused no.9 as the Manager, Finance and Business Development India of the accused no.1 company.

14. It is thus evident that the applicant has not disputed that his name has

been shown on website as the Manager, Finance and Business Development India of the accused no.1 company. The applicant has stated that he was approached by the accused no.1 company for the post of Advisor to advise on its marketing and technical activities and that during the pendency of negotiations for appointment, the accused no.1 company without his consent and knowledge has displayed his name on its website assuming that he would be a part of the team of the accused no.1 company. The applicant has stated that he has not received any remuneration of whatsoever nature from the accused no.1 company.

15. It may be mentioned here that the aforesaid contentions cannot be considered at this stage and will have to be adjudicated on merits in the course of the trial. Suffice it to say, the averments in the complaint reveal that the applicant is the Finance Manager of the accused no.1 company and this fact is also reflected on the website of the accused no.1 company.

16. The averments in the complaint read as a whole reveal that the applicant herein is the Finance Manager of the accused no.1 company and was in-charge of and was responsible to the company, for the conduct of the

business of the company. 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 applicant for the offence alleged to have been committed by the accused no.1 company. Consequently, the aforestated complaints cannot be quashed qua the applicant.

17. Under these circumstances, and in view of the discussion supra, the applications are dismissed.

[ANUJA PRABHUDESSAI, J.]