HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.1052 of 2011

ORDER:-

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in C.C.No.120 of 2009 on the file of the XVII-Additional Chief Metropolitan Magistrate, Hyderabad, filed under Section 200 Cr.P.C., alleging offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act'). The petitioner herein is the 4th respondent/accused in the said C.C. The 1st respondent herein is the complainant. The complaint is filed against seven respondents/accused.

2. The case of the complainant is that the non-petitioner/A.1 is the Company represented by its Managing Director i.e., the non-petitioner/A.2 and they are running the business under the name and style of M/s.B.V.V.Paper Industries Limited. The complainant used to supply waste paper to the Company. A.2 being the Managing Director and A.3 to A.5 being the Chairman and Directors of A.1-Company, A.6 and A.7 being the authorized persons for the branch office at Hyderabad, are all responsible for the day-to-day affairs of A.1-Company. It is alleged that **after much persuasion of the complainant, towards part discharge of their liability, the non-petitioner/A.2, as a Managing Director of A.1-Company, and after due consultation of other accused have issued three cheques on 15-04-2004 drawn on Indian Bank, Narayanaguda, Hyderabad.** It is further alleged that the cheques were dishonoured on presentation and even after statutory notice, no payments were made. Hence, the complaint.

3. The case was taken cognizance by the learned Magistrate and summons were issued to the respondents including the petitioner/A.4.

4. The present case is filed by A.4 contending that the petitioner is only a Director of the Company but has never actively involved in the business and as such she do not have any role in the day-to-day affairs of the Company namely A.1. A perusal of the entire complaint shows that the only person who is actively associated in the matter of day-to-day

affairs of A.1-Company is A.2 but not the petitioner and hence the proceedings insofar as the petitioner/A.4 is concerned are liable to be quashed.

5. Learned Counsel appearing for the 1st respondent/complainant submits that the petitioner along with others are all the Chairman, Managing Director and Directors of the Company and they are liable to the consequences of the dishonour of the cheques. It is further submitted that there are no grounds to quash the proceedings and the petition is liable to be dismissed.

6. The fact is that the non-petitioner/A.1 along with six others including the petitioner/A.4 are the Chairman, Managing Director and Directors of M/s.B.V.V. Paper Industries Limited. The question as to whether the petitioner/A.4 being one of the Directors of the Company, is liable to be prosecuted or not only falls for consideration.

7. Before going to the factual matrix, it would be trite to refer to the authoritative pronouncements of the Supreme Court in the decisions reported in **SAROJA KUMAR PODDAR v. STATE (NCT OF DELHI) AND ANOTHER**[1] and **GUNMALA SALES (P) LTD., v. ANU MEHTA**[2]. In the decision 2nd cited, the decision 1st cited has been discussed elaborately. Therefore, the law on this aspect is what is contained in the decision 2nd cited supra. The observations which are directly applicable to the facts of the case in hand are contained in paras 15, 16, 17 and 28. They read as under:-

> 15. In Saroja Kumar Poddar v. State (NCT)of Delhi (1007) 3 SCC 693), the appellant therein was the Director of a public limited company which had issued three cheques in favour of respondent 2, who was manufacturer and supplier of chemical compounds. The cheques having been dishonoured, the complaint came to be filed. Application for quashing of the complaint was filed by the appellant in the High Court. The High Court dismissed the said application. While setting aside the High Court's order and after referring to SMS Pharma (2005) 8 SCC 89), a two-Judge Bench of this Court observed as under (Saroj Kumar Poddar Case – para 14) :

> “14. … … … The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in para 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act.”

This Court further observed that: (Saroj Kumar Poddar Case – para 15)

> “15. … With a view to make a Director of a company vicariously liable for the acts of the company, it was obligatory on the part of the complainant to make specific allegations as are required in law.”

16. The reference having been answered in SMS Pharma-(1) individual cases were directed to be listed before an appropriate Bench for disposal according to law. Pursuant to this order the appeal was placed before a two-Judge Bench of this Court. The two-Judge Bench of this Court in SMS Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89) noted that the High Court had quashed the complaint against respondent 1 holding that the allegations contained in the complaint as against respondent are vague and indefinite. The two-Judge Bench observed that on a plain reading of the averments made in the complaint it was satisfied that the statutory requirements as contemplated under Section 141 of the NI Act were not satisfied, and, therefore, the High Court judgment cannot be faulted. It must be noted that when the attention of this Court was drawn to observations made in Saroj Kumar Poddar (2007) 3 SCC 693) that the complaint must not only contain averments justifying the requirements of Section 141 of the NI Act but must also show as to how and in what manner the appellant therein was responsible for the conduct of the business of the company or otherwise responsible to it in regard to its functioning, this Court observed that a plain reading of the said judgment would show that no such general law was laid down therein and the observations were made in the context of the said case as it was dealing with the contention that although no direct averment was made as against the appellant therein fulfilling the requirements of Section 141 of the

NI Act, but, there were other averments which would show that the appellant therein was liable therefor.

17. In N.K. Wahi (2007) 9 SCC 481 it was pleaded by the appellants therein in the complaint that M/s. Western India Industries Limited is a limited company and the respondents therein and some others were the Directors/persons responsible for carrying on the business of the company and their liability shall be joint and several. The respondents therein filed an application invoking Section 482 of the Code. The High Court quashed the order issuing summons on the ground that the evidence does not establish that the respondents were either in charge of or were responsible to the company for the conduct of business. In the appeal, following SMS Pharma, Sabitha Ramamurthy v. R.B.S. Channabaasavaradhya (2006) 10 SCC 581) and Saroj Kumar Poddar (2007) 3 SCC 693), a two-Judge Bench of this Court reiterated what is stated in the said judgments that Section 141 raises a legal fiction by reason of which a person, although is not personally liable for commission of such an offence, would be vicariously liable therefor. Such vicarious liability can be inferred against the company only if the requisite statement is made in the complaint. It was further observed that before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted. It is clear that this is a case where the basic averments in terms of Section 141 were absent and the two-Judge Bench followed SMS Pharma-(1) and confirmed the quashing of the complaint. The relevant paragraph of this judgment needs to be quoted (N.K.Wahi case – (2007) 9 SCC 481 – para 8)

> "8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable."

28. We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the

> conclusions drawn in the above- mentioned cases that it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company. This is a basic requirement. There is no deemed liability of such Directors. This averment assumes importance because it is the basic and essential averment which persuades the Magistrate to issue process against the Director. That is why this Court in SMS Pharma observed that the question of requirement of averments in a complaint has to be considered on the basis of provisions contained in Sections 138 and 141 of the NI Act read in the light of the powers of a Magistrate referred to in Sections 200 to 204 of the Code which recognize the Magistrate's discretion to reject the complaint at the threshold if he finds that there is no sufficient ground for proceeding. Thus, if this basic averment is missing the Magistrate is legally justified in not issuing process. But here we are concerned with the question as to what should be the approach of a High Court when it is dealing with a petition filed under Section 482 of the Code for quashing such a complaint against a Director. If this averment is there, must the High Court dismiss the petition as a rule observing that the trial must go on? Is the High Court precluded from looking into other circumstances if any? Inherent power under Section 482 of the Code is to be invoked to prevent abuse of the process of any court or otherwise to secure ends of justice. Can such fetters be put on the High Court's inherent powers? We do not think so."

8. It is manifest from the above authority that in order to prosecute the Director of the Company, it is obligatory on the part of the complainant to make specific allegations as are required in law and also must show as to how and in what manner the Director being prosecuted was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning.

9. A plain reading of the entire complaint shows that the only averment insofar as the petitioner/A.4 herein is concerned is contained in para 1 and it is to the following effect:-

> "… … That after much persuasion of the complainant, towards part discharge of their liability, A.2 herein, as a Managing Director of the Company of A.1, and after due consultation of

other accused have issued certain cheques…"

10. On the basis of such vague and omnibus contentions, the petitioner/A.4 cannot be prosecuted. Since the complainant failed to make any specific allegations against the petitioner/A.4, the complaint against her is liable to be quashed.

11. Learned Counsel appearing for the petitioner/A.4 also submits that on same set of facts, against the same Company of which the petitioner herein is a Director, another complaint was filed by one R.Balasundaram in a Court at Chennai and by order, dated 21-12-2009, in Crl.O.P.No.20009 of 2003, the High Court of Judicature at Madras has quashed the proceedings against the petitioner herein who was also A.4 in that complaint. In that case before the Madras High Court, the respondents No.1 to 4 in the complaint in hand were the respondents whereas the complaint was filed by one R.Balasundaram. The High Court of Judicature at Madras has quashed the proceedings insofar as the petitioner/A.4 herein who was also the petitioner/A.4 in that case quashed while continuing the proceedings against the Company represented by its Chairman and Managing Director.

12. In view of the above discussion, I have no hesitation in holding that continuation of further proceedings against petitioner/A.4 amount to abuse of process of Court and therefore the same is liable to be quashed.

13. In the result, Criminal Petition is allowed quashing the proceedings in C.C.No.120 of 2009 on the file of the XVII-Additional Chief Metropolitan Magistrate, Hyderabad, insofar as the petitioner/A.4 is concerned.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K.Jaiswal, J

26th June, 2015

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[1] (2007) 3 SCC 693

[2] (2015) 1 SCC 103