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

**CRL.P.Nos.1371, 1372, 1373 and 1416 of 2011**

**COMMON ORDER:**

Since the parties are common and also the point involved in these petitions is one and the same, they are being disposed of by this common order.

Petitioners-A4, A5, A6 and A7 in Crl.P.Nos.1372 and 1416 of 2011 seek quashing of the proceedings initiated against them in C.C.No.1378 of 2010 on the file of the XIV Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad.

Petitioner-A5 in Crl.P.Nos.1371 and 1373 of 2011 seek quashing of the proceedings initiated against him in C.C.No.921 and 1084 of 2010 on the file of the XIV Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad.

Heard the learned Counsel appearing on either side.

It is alleged in the complaint that the respondent-complainant has invested 6,00,000/- shares in Accused No.1/company in the form of preference shares and that Accused No.1/company issued four post dated cheques amounting to Rs.96 Lakhs towards repayment of principal and dividend on the preference shares held by him. It is further alleged that out of the four cheques, two cheques for Rs.24 Lakhs and Rs.38 Lakhs were presented in the bank for realization and the same were bounced back with an endorsement “account closed”. Thereafter, after following the procedure provided for under Sections 138 and 142 of the Negotiable Instruments Act, the complainant filed complaints against the petitioners-A4, A5, A6, A7 and others for the offence punishable under Section 138 of the Negotiable Instruments Act before the XIV Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad, and the same were taken on file as C.C.Nos.1378, 921 and 1084 of 2010 respectively.

It is alleged in the complaint that Accused No.1 is the company of which Accused No.2 is the Chairman, Accused No.3 is the Managing Director and petitioners-A4, A5, A6, A7 are the Directors of the company.

For brevity and better understanding of the matter, it is apt to extract the relevant averment in para-5 of the complaint, which reads as under:

> “Accused No.2 is the Chairman, Accused No.3 is the Managing Director and Accused Nos.4 to 7 are the Directors of the company, who are in charge of day-to-day affairs of the accused company, and the cheque is given with the consent of all the accused 2 to 7.”

It is submitted by the learned Counsel for the petitioners that the complainant has not made any specific allegations against the petitioners and that the complaint does not contain any averment as to how and in what manner the petitioners were responsible for the conduct of the business of Accused No.1 company or otherwise responsible to it in regard to its functioning. It is further submitted that the complaint also does not have any averment with respect to the role of the petitioners with respect to dishonoured cheques. It is further submitted that the petitioners are independent/non-executant Directors of the company and they are not responsible for the conduct of business of the company. It is further submitted that the case of the petitioners is squarely covered by the decision of the Supreme Court in *K.K.Ahuja Vs. V.K.Vora*[1], wherein it is held in para-27 as under:

"The position under Section 141 of the Act can be summarized thus:

> (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.
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> (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 Section (2) of Section 141.

(iii) In the case of a Director, Secretary or Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of Section 5 of the 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) of the Act. 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 cannot 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, by 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.

In the aforesaid decision, the Supreme Court further held as under:

"If a mere reproduction of the wording of Section 141 (1) in the complaint is sufficient to make a person liable to face prosecution, virtually every officer/employee of a company without exception could be impleaded as accused by merely making an averment that at the time when the offence was committed they were in charge of and were responsible to the company for the conduct and business of the company.

> As the trauma, harassment and hardship of criminal proceedings in such cases, may be more serious than the ultimate punishment, it is not proper to subject all and sundry to be impleaded as accused in a complaint against a company, even when the requirements of Section 138 read with Section 141 of the Act are not fulfilled."

In the instant case, a plain reading of the complaint does not disclose the role played by the petitioners in regard to the issue and dishonour of the cheques. The complaint does not contain any averment as to how and in what manner the petitioners were responsible for the conduct of the business of accused No.1/company. Except making a bald allegation that the petitioners are the Directors of the company and they are in charge of the day-to-day affairs of the company, the complainant does not in any way specify the role of the petitioners in the affairs of the company.

For the aforementioned reasons and also in view of the aforesaid decision of the Apex Court, I am of the considered view that continuance of proceedings initiated against the petitioners-accused are nothing but an abuse of process of law and are liable to be quashed.

Accordingly, all these Criminal Petitions are allowed and the proceedings in so far as they relate to the petitioners-A4, A5, A6 and A7 in C.C.No.1378 of 2010 and the petitioner-A5 in C.C.Nos.921 and 1084 of 2010 on the file of the XIV Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad are hereby quashed.

Miscellaneous petitions, if any, pending shall stand closed.

**M.S.K.JAISWAL, J**

17-07-2015
*Gsn*

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[1] (2009) 10 Supreme Court Cases 48