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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 29th October, 2015

+ **CRL.M.C. 3074/2011 & Crl.M.A.No.10878/2011**

SHASHI JINDAL & ORS

..... Petitioners

Represented by: Mr.Nishit Kush, Advocate.

Versus

GOVT. OF NCT & ORS

..... Respondents

Represented by: Mr.Sudershan Joon, APP for the
State/Respondent No.1.
Mr.Bharat Gupta, Mr.Varun Tyagi,
and Ms.Surbhi Mehta, Advocates
for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

CRL.M.C. 3074/2011

1. By way of the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioners seek quashing of the order dated 26.07.2011 passed by the learned Metropolitan Magistrate in Criminal Complaint No.2693/2011 under Sections 138 of Negotiable Instruments Act, 1881 ('NI Act'), whereby summons were issued against the petitioners. Also seek quashing of the complaint noted above.

2. As averred in the complaint, Mr. Sushil Jindal (accused No.2) is the Director, Authorized Signatory and In-charge of and responsible for the day to day affairs of M/s Jindal Dal Mills Pvt. Ltd. (accused No. 1),

Mr. Anil Jindal (accused No.3) is the Director and In-charge of and responsible for the day to day affairs of the Company, Ms. Shashi Jindal (petitioner No.1 herein) is the Managing Director and In-charge of and responsible for the day-to-day affairs of the Company, Mr. Vaibhav Jindal and Mr. Saurabh Jindal, petitioners No.2 and 3 respectively, are the Directors and In-charge of and responsible for the day to day affairs of the Company. Accordingly, all the petitioners were handling the transactions and thus, dealt with the Complainant on behalf of the said Company.

3. It is further averred that the said Company while acting through the petitioners and other accused No. 2 and 3, named above, placed orders for purchase of *Urad* on the Complainant, which deal was brokered by one Mr. Hitesh. Accordingly, *Urad* was agreed to be supplied to the Company by the Complainant on the terms *inter-alia* that carriage of the goods would be the liability and responsibility of the petitioners @ 1.75% commission on the total price, which the accused agreed to pay in addition to the total price of *Urad* and other terms were agreed to be as per the rules of the Delhi Grain Merchant Association (Regd.). Accordingly, Complainant issued various Invoices, details of which are as under:-

S. No.	Invoice No.	Date of Invoice	Amount (Rs.)
1.	66384	11.10.2010	22,04,982.53
2.	66385	11.10.2010	19,07,427.07
3.	66801	22.11.2010	12,42,040.07
		Total	53,54,449.67

4. Accordingly, for purchase of *Urad*, aforesaid invoices amounting to Rs.53,54,449.67 were issued by the complainant. As a part-payment of

the said invoices, the Company in question under the signature of Mr.Sushil Jindal and on directions and instructions of the petitioners and Mr. Anil Jindal issued a cheque bearing No.361540 dated 23.11.2010 for a sum of Rs.53,50,000/- drawn on State Bank of Bikaner and Jaipur, Khari Baoli Branch, Delhi. Rest of the principal amount and the interest as per the rules of the Delhi Grain Merchant Association (Regd.) was also agreed to be paid by the petitioners on behalf of the Company. As instructed, the Complainant presented the aforesaid cheque with its banker the State Bank of Mysore, Naya Bazar Branch for encashment, however, the same was returned dishonoured by the banker of the accused with the endorsement "Exceeds arrangement". Accordingly, the information regarding the same was received by the Complainant by way of cheque return memo dated 25.11.2010. On dishonour of the said cheque, the Complainant, while protesting asked the accused that even after having received and consumed the goods, they have dishonoured the cheque. Moreover, neither the balance principal amount nor the interest in terms of the rules of the Delhi Grain Merchant Association (Regd.) was paid by them. Whereupon, Mr.Sushil Jindal, Mr. Anil Jindal and the petitioners (accused No. 2 to 6) while acting for and on behalf of Company (accused No.1) stated that there was financial crunch in the Company, however, assured that the cheque would be honoured at any cost and the balance principal amount alongwith interest shall also be paid very soon by them. Though the Complainant believed the said assurances and representations of the accused but wanted the same to be in writing, therefore, the Company under the signature of accused No.3, Mr. Anil Jindal, gave the written undertaking/acknowledgment dated 29.11.2010, which is self evident of the fact that the said Mr. Anil Jindal for and on

behalf of the Company admitted the liability towards the Complainant and had undertaken to honour the cheque as also the balance principal amount alongwith interest.

5. Thereafter, again on instructions of the accused, the Complainant presented the said cheque to his Banker for encashment, however, the same was again returned dishonoured with the endorsement "Exceeds arrangement", information of the same was received by the Complainant by way of cheque return memo dated 19.05.2011. Accordingly, the Complainant again approached the accused and asked for the cheque amount of Rs.53,50,000/- as well as the remaining principal amount of Rs.4,449.67 as also the interest to which he is legally entitled to in accordance with the rules of the Delhi Grain Merchant Association (Regd.) as well as in terms of the acknowledgement/undertaking dated 29.11.2010 given by Mr. Anil Jindal for and on behalf of the Company. Upon which the accused became agitated without any rhyme or reason and warned him not to again come or approach them and stated that they will not make any payment to him. The Complainant was shocked to hear this, despite the receipt of goods by the accused; they had not paid a single penny to him which conduct on their part was uncalled for. When the Complainant reminded the accused of its right to approach the court of law, the accused again warned him of adverse consequences in case the Complainant even thought of taking any legal action against them.

6. It is averred in the complaint that the aforestated act reflects *mala fide* intention and ill motive on the part of all the accused and that they had dishonest intention right from the very beginning to cheat the Complainant. On receiving the information of dishonour of the cheque in

question, the respondent No.2 got served a legal notice dated 11.06.2011 upon the accused through Speed Post as well as Registered A.D. Cover, however, the said notice was received back. Registered A.D. Covers and Speed Posts sent to the accused at C-47, Lawrence Road Industrial Area, Delhi-110035 were received back on 15.06.2011 with the endorsement dated 13.06.2011 stating that “No such person/firm exists or resides at the given address. The Speed Posts sent to the accused at House No.164, Vaishali, Pitampura, Delhi-110034, were received back on 17.06.2011 with the endorsement dated 13.06.2011, 14.06.2011 and 15.06.2011 stating that “from regular visits it is known that the addressee has gone out of Delhi”. The Registered A.D. Covers sent to the accused at House No.164, Vaishali, Pitampura, Delhi-110034, were received back on 22.06.2011 with endorsement dated 14.06.2011, 15.06.2011 and 16.06.2011 stating “HC”, which supposedly means “House Closed”.

7. As alleged all the accused have got false endorsement made on the said envelopes as they are aware about the contents of the same as they had opened one of the envelopes as some part of the opening of the same was torn, staple pins were removed and the face of the envelope was open, which means the accused had read the notice. Further stated that the accused got false endorsements on the envelopes as they were fully prepared that they will be receiving notices not only from the Complainant but also from the other creditors to whom they owe money as many complaint cases pertaining to dishonor of cheques are pending against the accused and their concerns before various courts.

8. Hence, the notice of dishonour of cheque in question was duly served upon the accused, but they deliberately got a false endorsement

only to defeat the process of law and to avoid their criminal liability, thus, an adverse inference to be drawn against them. Despite service of notice, the accused had not made the payment of the dishonoured cheque amounting to Rs.53,50,000/- within the statutory period of 15 days from the receipt of notice. This act of the accused reflects that the accused *malafidely*, knowingly, deliberately and intentionally issued the said cheque with the intention not to honour the same.

9. It is further averred that the petitioners and other accused had used and consumed the goods purchased by them from the Complainant to their satisfaction and never raised any sort of complaint or dispute qua the said goods. All the accused are members of one family and are residing together. The accused No.1 Company is wholly and virtually owned, managed and controlled by accused No.2 to 6, who are and also were incharge of and responsible for the management, working and day-to-day affairs of the Company at the time of purchase of goods, issuance of cheque in question, dishonour of the said cheque, issuance and service of legal notice and continues to be so even as on date.

10. Thus, the accused including the petitioners have committed an offence punishable under Section 138 read with Section 141 NI Act by dishonouring the aforesaid cheque and not making the payment of the same within the statutory period of 15 days after receipt of the legal notice dated 11.06.2011.

11. Mr. Nishit Kush, learned counsel appearing on behalf of the petitioners submitted that the petitioners are the dormant/non active directors of the accused No.1/Company. The respondent No.2 is allegedly

a partnership firm and the above mentioned false and frivolous complaint has been filed by one of the alleged partner of the firm. The petitioners are not involved in the day-to-day functioning of the Company, they are also not signatories to the Cheque in question and that they have no involvement in daily affairs of the Company.

12. Learned counsel further submitted that some of the Cheques have been missing from the office of the Company and only on receiving of the summons of the present case it has come to the knowledge of the active directors of the Company that the said Cheques have been misused by the respondent herein in the case in question. Immediately, after noticing the same, a complaint dated 01.09.2011 with Police Station Maurya Enclave was lodged by mentioning the true facts.

13. Mr. Kush submitted that perusal of the subject Complaint discloses that no offence is made out against the petitioners as the same had been lodged with intent to unnecessarily persecute the petitioners as they have no involvement with the business of the Company, being serving only in titular capacities.

14. The petitioners are not signatories of the subject cheque. Moreover, the petitioners have nothing to do with the alleged undertaking dated 29.11.2010 and the alleged invoices annexed with the subject complaint. In addition, the petitioners have not been served with the mandatory notice under Section 138 NI Act before being proceeded against before a court of law.

15. Learned counsel submitted that criminal liability arises from being in charge of and responsible for conduct of business of the Company at

the relevant time when the offence was committed and not on the basis of merely holding the post of a director. No specific and particular role is assigned to any of the petitioners by the Complainant. The petitioner No. 1 is a house wife aged about 51 years of age, petitioner No. 2 is a young boy of 22 years of age and having various medical ailments and the petitioner No. 3 is having his own business and he is actively involved in his own business. Thus, the petitioners are not concerned in any manner with the conduct of the business of the Company and have been made directors just to fulfil the statutory requirements for registration of Company which is also clear from the Memorandum of Association and Articles of the Company.

16. To support his submissions, learned counsel for the petitioners has relied upon the case of ***N.K. Wahi Vs. Shekhar Singh & Ors., (2007) 9 SCC 481***, wherein the Supreme Court held as under:-

“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 incharge 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.”

17. On the other hand, Mr. Bharat Gupta, learned counsel appearing on behalf of the Complainant submitted that the petitioner No.1, being the Managing Director of the Company in question, cannot allege that she was not incharge and responsible for the day-to-day affairs of the said

Company. So far as the contention that the petitioners were not in charge of the day-to-day affairs of the Company at the relevant time is concerned, petitioners No. 1 to 3 are the only directors as on date in the Company in question. Petitioners No. 1 and 3 are wife and son of Mr.Sushil Jindal, accused No.2, who in turn is son of Mr.Anil Jindal, accused No.3. The dishonoured cheque is of substantial sum of Rs.53,50,000/- and the petitioners and other accused, being members of one family, are residing together and managing and controlling the Company in question.

18. Mr. Gupta further submitted that so far as the contention raised by the petitioners that accused No.2 being the only authorized signatory of the Company signed the cheque in question and the petitioners have no concern therewith is concerned, it needs to be established during trial.

19. To support his case, learned counsel has relied upon the case of ***Gunmala Sales Private Ltd. Vs. Anu Mehta, AIR 2015 SC 1072***, wherein the Supreme Court held as under:-

“33. We may summarize our conclusions as follows:

a) Once in a complaint filed Under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed Under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers Under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.”

20. Also relied upon the case bearing Nos. Crl.M.C. 3937/2012 and

Crl. MC 3935/2012, titled as ***Krishna Muraril Lal Vs, IFCI Factors Ltd.***, decided on 27.11.2012, wherein a Coordinate Bench of this Court held as under:-

“5. This Court upon a perusal of the complaint filed by the respondent/complainant finds that there are specific allegations against the present petitioners. The relevant portion of the complaint filed under Section 138 read with Section 141 of the Negotiable Instruments Act is reproduced hereinbelow:-

“2. The accused no.1 is a company incorporated under the Companies Act, 1956 with its registered office at West Bengal. Accused Nos. 2 and 6 are directors on the board of the accused no.1 concern, and are in charge of and responsible for the conduct of the day to day business and financial decision making of the accused No.1 Company.”

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“9.The accused nos. 2 to 6, being the directors on the board of the accused no.1, and responsible for the day to day functioning and financial decision making of the accused Company, formed the intention to issue the above mentioned cheques in favour of the complainant, knowing fully well that they were not possessed of adequate balance, and that the complainant would not therefore be able to recover the amounts payable against the cheques. They are thus also liable to be punished along with the accused No.1 for the offence contemplated under Section 138 read with Section 141 of the Negotiable Instruments Act.”

6. Further, the Supreme Court in *K.K. Ahuja (supra)* has held as under:-

“24. Therefore, the averment in a complaint that an accused is a Director and that he is in charge of and is responsible to the company for the conduct of the business of the company, duly affirmed in the sworn statement, may be sufficient for the purpose of issuing summons to him.....”

7. Keeping in view the aforesaid judgment, this Court is of the opinion that at this stage, the averments in the complaint are sufficient for the purpose of summoning the petitioners. It shall, however, be open to the petitioners to lead evidence before the trial court to show that they are neither whole-time Directors of the Company in question nor involved in its day-to-day management.”

21. Further relied upon the case of **Ranjit Tiwari Vs. Narender Nayyar, 191 (2012) DLT 318**, wherein this Court held as under:-

“14. The law has been settled in the case of Anil Hada (supra), way back in 1999 by the Supreme Court holding that though the company itself is not prosecuted, the persons mentioned in section 141 (1) and (2) become liable if a finding is given that such company has in fact committed the offence. But the only course open to the office bearers of the company is that they can adduce rebuttal evidence to establish that the company did not issue the cheque towards any antecedent liability. The offender in Section 138 of N.I. Act is the drawer of the cheque. He alone would have been the offender there under if the Act do not contain other provisions. It is because of Section 141 of the Act that penal liability under Section 138 is cast on other persons connected with the company.

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16. According to Section 141(1), vicarious liability is attributed to the persons mentioned therein for the offence committed by the company, on the very same analogy notice served on the company amounts to serving of notice on all the persons as found in Section 141 of N.I. Act. A person who was in charge of the company and was responsible to the company for the conduct of the business of the company alone can be prosecuted, while so, such a person cannot deny knowledge about the service of notice to the company. Only in that view of the matter vicarious liability is cast upon those persons and that is why no notice to them is contemplated.”

22. Also relied upon the cases of *Paresh P. Rajda Vs. State of Maharashtra & Anr.* 2008 (7) SCC 422, *Rebby Varghese Vs. Haier Appliances P. Ltd.* (2010) 175 DLT 424 and *Vipul Kumar Mittal Vs. M/s Varishtha Leasing (I) Ltd.* 124 (2005) DLT 206.

23. I have heard the learned counsel for the parties.

24. The moot question which now arises for consideration is whether a person simply being a Director of a Company is liable to be prosecuted by virtue of the provisions of Section 141 NI Act or the person who at the time of offence was in charge of and was responsible to the company for the conduct of the business of the Company would be prosecuted?

25. Before dealing with the same, it would be appropriate to first scrutinize the relevant provisions of Section 141 NI 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.

(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.”

26. This question is no longer *res integra* and has already been decided by the Full Bench of the Supreme Court in the case of ***S.M.S Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr. AIR 2005 SC 3512***, wherein following questions were referred for determination:-

“ (a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfils the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.

(b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and /or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against.”

27. In ***SMS Pharmaceuticals Ltd*** (*supra*) the above questions were answered by the Apex Court in the following terms:-

“16.

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a

complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under Sub-section (2) of Section 141.”

28. This view was reiterated in ***Harshendra Kumar D. Vs. Rebatilata Koley Etc. (2011) 3 SCC 351; National Small Industries Corpn., Ltd Vs. Harmeet Singh Paintal and Anr., (2010) 3 SCC 330; K.K.Ahuja Vs. V.K.Vora and Another, (2009) SLT 429 and N.K.Wahi Vs. Shekhar Singh and Ors., (2007) 9 SCC 481.***

29. In ***N. Rangachari Vs. Bharat Sanchar Nigam Ltd., (2007)5 SCC 108***, the Division Bench of the Supreme Court held that:-

13..... *"A person in the commercial world having a transaction with a Company is entitled to presume that the Directors of the Company are in charge of affairs of the Company. If any restrictions on their powers are placed by the memorandum or Articles of the Company, it is for the Directors to establish it at the trial. It is in that context that Section 141 of the Negotiable Instruments Act provides that when the offender is a Company, every person, who at the time when the offence was committed was in charge of and was responsible to the company for the conduct of the business of the Company, shall also be deemed to be guilty of the offence along with the Company. It appears to us that an allegation in the complaint that the named accused are Directors of the Company itself would usher in the element of their acting for and on behalf of the company and of their being in charge of the Company....."*

14. *A person normally having business or commercial dealings with a Company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its memorandum or articles of association. Other than that, he may not be aware of the arrangements within the Company in regard to its management, daily routine, etc. Therefore, when a cheque issued to him by the Company is dishonoured, he is expected only to be aware generally of who are in charge of affairs of the Company. It is not reasonable to expect him to know whether the person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the Company and those in charge of it. So, all that a payee of a cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in charge of its affairs. The Directors are prima facie in that position.*

....

19.....*In fact, an advertence to Sections 138 and 141 of the Negotiable Instruments Act shows that on the other elements*

of an offence under Section 138 being satisfied, the burden is on the Board of Directors or Officers in charge of affairs of the Company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not in charge of the affairs of the Company....."

30. From the aforesaid discussion, it is clear that a person alien to a company cannot be expected to know as to what is the responsibility and role of each director/manager/secretary/employee of the company towards the company and towards the third party. However, while dealing with the company, he comes in contact with persons who have the authority to take decisions on behalf of the company and deal with the third person on a particular subject matter, although it may be in different spheres of the same transaction. Such persons with authority to take decisions over the transaction and having knowledge of the transaction are deemed to be incharge of and responsible to the company for the day-to-day affairs and conduct of the company. Such persons may or may not be directors of the company. In other words, the persons who are incharge of and responsible for the day-to-day affairs of the company are targeted to be held vicariously liable and covered within the ambit of Section 141 NI Act. The proviso to Section 141 NI Act specifies that a person not having the knowledge about the offence or a person exercising all due diligence to prevent the commission of the offence is excluded from the scope of Section 141 NI Act. Section 141 NI Act creates a legal fiction against the defaulting company, so as to cover within its ambit all persons who have consented, connived or anyway attributed to the commission of the

offence. The offence is the result, whereas the transaction is the cause. The liability arises on account of conduct, act or omission on the part of the person and not merely on account of holding an office or position in a company. Therefore, in order to bring a case within Section 141 NI Act, the complaint must disclose the necessary "facts" which make the person liable.

31. At this stage, the Court is required to only examine the complaint as set out by the complainant, while exercising its discretion to quash a complaint. The allegations in the complaint are clear that the petitioners and the accused Nos. 1 and 2 were responsible for the day-to-day affairs of the Company and its decisions. That the complainant has not elaborated the exact role of the petitioners No.2 and 3 while stating that they are responsible for the day-to-day operations and decision making of the company, is not sufficient ground to throw out the complaint qua the petitioners, at this premature stage.

32. It is pertinent to mention here that in a case bearing CrI.M.C. No.1996/2010, entitled "**Rajesh Agarrwal Vs. State & Anr.**", decided on 28.07.2010, a Coordinate Bench of this Court has observed that quashing of summoning order cannot be sought on the ground that the complaint and the evidence before the learned Metropolitan Magistrate does not disclose commission of offence by the petitioner/accused. If the petitioner has other defences available to him, including the fact that he was not a Director of the company at the relevant time or that he was not responsible for the conduct of the affairs of the company or only a sleeping partner in a partnership firm etc., he is entitled to appear before the learned Metropolitan Magistrate and take such pleas. The proceedings

under Section 138 NI Act being summary proceedings, the petitioner can make his submissions before the court that he has a valid and specific defence available with him to show that he need not face trial and he is prepared and ready to lead evidence to the said effect for which necessary permission can be sought from the trial court, for filing an affidavit in his defence or further, by filing an application seeking recall of any of the witnesses of the complainant for cross-examining them on the defence taken by him.

33. In the case in hand, I find that the complainant has stated in so many words that the Company in question acting through the petitioners and other accused No. 2 and 3 placed orders for purchase of *Urad* for which invoices amounting to Rs.53,54,449.67 were issued by the Complainant and as a part-payment of the said invoices, under the signature of Mr.Sushil Jindal and on directions and instructions of the petitioners and Mr. Anil Jindal, a cheque bearing No.361540 dated 23.11.2010 for a sum of Rs.53,50,000/- drawn on State Bank of Bikaner and Jaipur, Khari Baoli Branch, Delhi, was issued which was dishonoured later. Whereupon, Mr.Sushil Jindal, Mr. Anil Jindal and the petitioners (accused No. 2 to 6) acting for and on behalf of Company (accused No.1) stated that there was financial crunch in the Company, however, assured that the cheque would be honoured at any cost and the balance principal amount alongwith interest shall also be paid very soon by them. Thus, specific allegations against the present petitioners, accused No. 4 to 6, have been made in the complaint. Therefore, in my opinion, the Metropolitan Magistrate was right in summoning the petitioners keeping in view the allegations made in the complaint. The petitioners can prove

their innocence by taking recourse to proviso to sub-Section (1) of Section 141 NI Act.

34. In the case of *S.V.Mazumdar and Ors. Vs. Gujarat State Fertilizers Co. Ltd. and Anr.* reported as *2005 V AD (S.C.) 494*, the Supreme Court has held that once the allegations sufficient to summon the accused has been made, the accused can be summoned and thereafter proving the truth or falsity of the allegation will be a matter of evidence to be led before the trial court.

35. In the case of *Rallis India Ltd. Vs, Poduru Vidya Bhusan & Ors.*, Criminal Appeal No. 924/2011 decided on 13.04.2011, the Division Bench of the Supreme Court observed that this Court ought not to interfere at the summoning stage in a case under Section 138 NI Act. However, this Court may interfere under its inherent powers under Section 482 Cr.P.C., if there is any apparent gross irregularity in the order of the learned Metropolitan Magistrate which has caused miscarriage of justice or has caused undue harassment to the person. This power is however to be used cautiously and sparingly.

36. In view of above discussion and legal position, I do not find any merit in this petition. This petition amounts to gross abuse and misuse of process of law. The petitioners have succeeded in delaying the complaint before the Metropolitan Magistrate for more than four years.

37. Consequently, the petition is dismissed with costs of Rs.1.00 Lac each to be paid by the petitioners to the Complainant within four weeks from today. The learned Metropolitan Magistrate shall endeavour to complete the trial within a period of six months from the next date of

hearing fixed before it.

Crl.M.A.No.10878/2011 (for stay)

With the dismissal of the petition noted above, the instant application has become *infructuous*. The same is dismissed accordingly.

**SURESH KAIT
(JUDGE)**

OCTOBER 29, 2015

sb