

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 82 OF 2014

Edelweiss Financial Services Limited & Anr. .. Petitioners
V/s
MIC Electronics Limited & Ors. .. Respondents

Mr. Jaideep Lele i/b Sabiha Ansari for the Petitioners.
Mr. Gaurav Parkar for Respondent Nos.1 and 3.
Mrs. S.V. Gajre, A.P.P. for Respondent No.10 – State.

CORAM: DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th JANUARY 2016

P.C.:

The present writ petition is preferred by the original complainant challenging the judgment and order dated 4th October 2013 in Criminal Revision Application No. 852 of 2012 passed by the Additional Sessions Judge, Greater Bombay, thereby allowing the said Revision and quashing the order of issuance of process qua original Accused Nos.4, 6, 7, 8 and 9.

2. The ground on which the order of issuance of process was quashed against original Accused Nos.4, 6, 7, 8 and 9 was absence of sufficient averments in the complaint elaborating how they are liable or responsible for day to day affairs of the company. While arriving at this conclusion, the learned Additional Sessions Judge has relied upon the two decisions of the Apex Court in *N.K.*

Wahi vs. Shekhar Singh & Ors., (2007) 9 SCC 481 and National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal & Anr., 2010 ALL MR (Cri) 921 (SC).

In the case of ***National Small Industries Corporation Ltd.***(supra), it was held that vicarious liability can be inferred against a company only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by the company. On the basis thereof, the learned Additional Sessions Judge held that merely because Accused Nos.4, 6, 7, 8 and 9 are Directors, the said fact is not sufficient to prosecute them by holding them vicariously liable. In the absence of such pleading or averment in the complaint, the learned Additional Sessions Judge held that the process against them needs to be quashed and set aside.

3. While assailing the order of the learned Additional Sessions Judge, learned counsel for the Petitioners has submitted that now in view of the law laid down by the Apex Court in its latest judgment in ***Gunmala Sales Private Ltd. vs. Anu Mehta & Ors., 2014 AIR SCW 6238***, the particulars about the role played by each of the Directors are not necessary to be averred in the complaint except the averment in the complaint that the Respondent-Director were in charge of and responsible to company at the relevant time. It need not be stated as to what part was played by them and how

they were responsible regarding finances of company and issuance of cheques.

4. Learned counsel for the Petitioners further submitted that there were sufficient averments in para 2 of the complaint that Accused Nos.6 to 9 are Directors of the company and are responsible for day to day management of the company. There is also averment in the complaint that apart from being responsible for the day to day management of the company, the Accused are also responsible for the present transaction and have, at some stage or the other, participated in the present offence. Hence, according to learned counsel for the Petitioners, in view of change in legal position, the impugned order passed by the learned Additional Sessions Judge quashing the order of process against Accused Nos.4, 6 and 7 is required to be set aside.

5. As regards Accused Nos.8 and 9, learned counsel for the Petitioners has fairly conceded that as they have resigned on 27th December 2011 and 2nd January 2012 respectively, whereas the dishonoured cheque was issued on 10th February 2012, he does not press the issuance of process against them. He restricts his arguments to the issuance of process against Accused Nos.4, 6 and 7.

6. I find much substance in the submission advanced by learned counsel for the Petitioners because as per the law laid down

by the Apex Court in *Gunmala Sales Private Ltd. vs. Anu Mehta & Ors.* (supra), after taking a review of the earlier authority on the subject in *National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal & Anr.* (supra), relied upon by the learned Additional Sessions Judge, the Apex Court has categorically held that except for averment in the complaint that Respondent-Directors were in charge of and responsible to company at the relevant time, nothing more is required to be stated as to what part was played by them and how they were responsible regarding finances of company and issuance of cheques. On this point, there are sufficient averments in para 2 of the complaint that Accused Nos.4, 6 and 7 were responsible for the day to day management of the company and also for the present transaction having participated in the same.

7. In view of the above, the impugned order of the learned Additional Sessions Judge quashing and setting aside the order of issuance of process against Accused Nos.4, 6 and 7 is required to be set aside. Hence, the writ petition is allowed. The impugned order of the learned Additional Sessions Judge quashing the order of issuance of process against Accused Nos.4, 6 and 7 is set aside.

(DR. SHALINI PHANSALKAR-JOSHI, J.)