IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4523 OF 2002

Uday Madhu Rawal & Ors. ..Applicants

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Husayn Kopty i/b. Sobodh Desai for the Applicant
Mrs. G. P. Mulekar, APP for the Respondent-State.
None for the Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : JANUARY 06, 2016.

P.C.

1. This is an application filed under Section 482 of Cr.P.C. seeking to quash the complaint being C.C.No.220/SS/2002 under Section 138 of the Negotiable Instruments Act, pending on the file of the Metroplitan Magistrate's 34th Court, Vikhroli, Mumbai.

2. Brief facts necessary to decide this application are as under:

The respondent no.2 had filed a complaint under Section 138 of the Negotiable Instruments Act against M/s. Pharmacom (India) Ltd., and 6 others being Directors of the said company. The applicants herein were arrayed as accused nos.2, 5 and 7 in the said complaint. The respondent no.2 complainant had alleged that the company M/s. Pharmacom (India) Ltd. (A1) had availed a loan of Rs.5 lakhs for the purpose of business and they had issued a cheque dated 11.4.2001 for Rs.5 lakhs towards repayment of the said loan amount. The said cheque was deposited in the bank, but was dishonoured with an endorsement 'refer to drawer'. By notice dated 10.9.2001, the said company and the other accused were called upon to pay the said amount. The said notice was returned unserved with an endorsement 'unclaimed'. Since the accused no.1 company and the other directors failed to make the payment the respondent no.1 complainant filed a complaint under Section 138 of the Negotiable Instruments Act. By order dated 4.1.2002, the learned Magistrate issued process against all the accused for offence under section 138 of the Negotiable Instruments Act. Aggrieved by the said order, the applicant has preferred this application under Section 482 of Cr.P.C.

3. Mr.Kopty, the learned Counsel for the applicant submits that

there are absolutely no averments in the complaint that the applicants were incharge and responsible to the accused no.1 company for the conduct of businss of the company as well as the company. The learned Counsel claims that in absence of such averments, the applicants cannot be held vicarously liable for the offence alleged to have been commited by the company.

4. The learned Counsel has relied upon the decision of the Apex Court in ***SMS Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr. (2002) 8 SCC 89 and Gunmala Sales Pvt. Ltd. vs. Anu Mehta & Anr. 2015(1) SCC 103***.

5. I have perused the records and considered the submissions advanced by the learned counsel for the applicant and the learned APP for the State.

6. It is pertinent to note that the applicants herein are prosecuted for the offence allegedly committed by the accused no.1 company.

Section 141 of the Negotiable Instruments Act which deals with the offence commited by the companies and firms 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 incharge 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 deligence to prevent the commission of such 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 this Chapter]
>
> (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act 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 shall also be deemed to be guilty of tht offence and shall be liable to be proceeded agaisnt any punished accordingly.
>
> *Explanation* _ For the purpose of this section-
>
> (a) "Company" means any body corporate and includes a firm or other assoacition of individuals; and
>
> (b) "director" in relation to a firm, means a partner in the

firm"

7. A plain reading of this section indicates that a person can be held vicariously liable for the offence committed by the company or firm only if at the time the offence was committed, such a person was incharge or and was responsible to the company or the firm for conduct of the business of the company, as well as the company.

8. In ***SMS Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr. (2005) 8 SCC 89*** the following questions were referred to the Three Judges Bench of the Apex Court :

> *"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 incharge of the company and responsible to the company for conduct of its business would be proceeded against .”

9. The Bench of the Supreme Court consisting of Three Honourable Judges has answered the said three questions as under:

“*10. ….*

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 [4] and has to be made in a complaint. Without this averment being made in a complaint, the requirments of Section 141 cannot be said to be satisfied.

b) The answer to the question posed in sub-para (b) has to be in the 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 incharge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge 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 the 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 the 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 responsinble for the conduct of business of the company. Therefore, they get covered under Section 141 . So far as the 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."

10. These principles have been reiterted in ***Pooja Devidasani v. State of Maharashtra & Anr. Cri. Appeal 2604-2610 of 2014 and Gunmala Sales Pvt. Ltd. vs. Anu Mehta and Anr. 2015 (1) SCC***

103. In the instant case, the complaint does not contain the basic averments that the applicants herein were the Directors of the accused no.1 company or that they were incharge of and were responsible to the company or for the conduct of business of the company. In the absence of such basic averments, the applicants cannot be prosecuted for the offence under Section 138 and 141 of the Negotiable Instruments Act.

11. Under the circumstances and in view of the discussion supra, the application is allowed.

12. The proceeding in C.C.No.220/SS/2002 pending before the learned Metropolitan Magistrate's 34th Court, Vikhroli, Mumbai is quashed and set aside qua the petitioners.

(ANUJA PRABHUDESSAI, J.)