

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1090 OF 2016**

1. Harbinder Singh,
Aged 49 years, Partner of
M/s. Sunrise Agencies,
Having Office at Old Hospital Road,
KC Market, Purani Mandi,
Jammu – 180 001.

2. Amarjeet Singh,
Aged 46 years, Partner of
M/s. Sunrise Agencies,
Having Office at Old Hospital Road,
KC Market, Purani Mandi,
Jammu – 180 001

...Petitioners

Versus

1. M/s. Pepe Jeans India Private Limited,
Having its Office at Unit No. 3, Trade View,
3rd Floor, Pandurang Budhkar Marg,
Worli, Mumbai – 400 013.

2. The State of Maharashtra

...Respondents

Mr. Yashpal Thakur for the Petitioners

Mr. Vivek Sambhaji Babar h/f Mr. M. S. Mohite for the Respondent No. 1

Mr. V. V. Gangurde, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 27th SEPTEMBER, 2016

P.C. :

1. Heard learned Counsel for the parties.
2. By this petition, the petitioners have impugned the order issuing process dated 15th November, 2013 passed by the learned Metropolitan Magistrate, 7th Court at Dadar, Mumbai, in criminal complaint No. 3468/SS/13, as against the petitioners and other co-accused, as well as, the order dated 3rd February, 2016 passed by the learned Sessions Judge, Mumbai, in Criminal Revision Application No. 1477 of 2015, dismissing the said revision application.
3. The principal ground urged by the learned Counsel for the petitioners is, that the averments in the complaint, are not sufficient to attract the provisions of Section 138 r/w 141 of the Negotiable Instruments Act ('the NI Act'). He submitted that on the basis of the averments, the petitioners could not be prosecuted vicariously by virtue of Section 141 of the NI Act. He submitted that the averments in the complaint are vague and that no specific role has been attributed to either of the petitioners in the

said complaint, as to how and in what manner, the petitioners were responsible for the affairs of the accused No. 1-partnership firm. He relied on the judgments of the Apex Court in the cases of ***Gunmala Sales Private Ltd. vs. Anu Mehta***¹, ***Pooja Ravinder Devidasami vs. State of Maharashtra***² and ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr.***³. Learned Counsel for the petitioners further submitted that neither of the petitioners are signatories to the said cheque, which is the subject matter of the complaint.

4. *Per contra*, learned Counsel for the respondent No. 1 opposed the grant of any relief. He submitted that a perusal of the complaint would show the complicity of the petitioners and the role of the petitioners in the transaction. Learned Counsel for the respondent No.1 further submitted that a perusal of the complaint as a whole shows the complicity of the petitioners and as such the mandate of Section 138 r/w Section 141 is squarely attracted. He submitted that the partnership deed shows that the present petitioners and accused No. 2 are the working partners of the accused No. 1-partnership firm and that they draw a salary/remuneration.

1 (2015) 1 SCC 103

2 AIR 2015 SC 675

3 (2005) 8 SCC 89

He submitted that the said document-partnership deed was produced by the respondent No. 1 when his statement was recorded under Section 202 of Cr. P.C. He relied on certain clauses of the said partnership deed to show that the petitioners were working partners. According to him, it is not the case of the petitioners that they were not the working partners or they had resigned or that they were sleeping partners of the said partnership firm. He submitted that a perusal of the complaint and the verification statement clearly shows the complicity of the petitioners alongwith the other co-accused. He relied on the judgments of the Apex Court in the cases of ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited***⁴ and ***Standard Chartered Bank v. State of Maharashtra & Ors.***⁵ in support of his submission. He relied in particular, on para 19 of the judgment rendered in the case of ***Standard Chartered Bank (supra)***.

5. Perused the papers and the judgments relied on by the learned Counsel for the parties. The law with regard to Section 138 r/w Section 141 of the NI Act is no longer *res integra*. The Apex Court in the case of ***Standard Chartered Bank (supra)*** has, after considering all the cases

4 Criminal Appeal No. 867 of 2016 decided on 19th September, 2016

5 Criminal Appeal Nos. 271-273 of 2016 decided on 6th April, 2016

including the *S.M.S. Pharmaceuticals Ltd. (supra)*, *Gunmala Sales Private Ltd. (supra)*, the *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal*⁶; *A. K. Singhania v. Gujarat State Fertilizer Company Ltd.*⁷, has in Para 27 observed as under :

“27. In *Gunmala Sales Pvt. Ltd. (supra)* the Court was concerned with Directors who issued the cheques. This authority, as we notice, has to be appositely understood. The two-Judge Bench referred to *SMS Pharma I* and other earlier decisions, and came to hold that:-

“30. When a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, the High Court may find that the basic averment is sufficient, that it makes out a case against the Director; that there is nothing to suggest that the substratum of the allegation against the Director is destroyed rendering the basic averment insufficient and that since offence is made out against him, his further role can be brought out in the trial. In another case, the High Court may quash the complaint despite the basic averment. It may come across some unimpeachable evidence or acceptable circumstances which may in its opinion lead to a conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time and therefore making him stand the trial would be an abuse of process of court as no offence is made out against him.

31. When in view of the basic averment process is issued the complaint must proceed against the Directors. But, if any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the

6 (2010) 3 SCC 330

7 (2013) 16 SCC 630

complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint it must be shown that no offence is made out at all against the Director.”

[Emphasis supplied]

6. The question that arises for consideration in the present petition is, whether the requirements of Section 141 have been made out or not and whether the averments in the complaint meet the requisite test, keeping in mind the judgments of the Apex Court. In this context, it would therefore be apposite to reproduce the relevant paragraphs of the complaint to consider whether the basic averments made in the complaint are sufficient to attract the provisions of Section 138 r/w 141 of the NI Act, so as to make the petitioners vicariously liable. The relevant paragraphs of the complaint are reproduced hereinunder :

“4. I know the Accused persons as the Accused No. 2 and 3 had approached Complainant Company and had introduced themselves as partners of M/s. SUNRISE AGENCIES i.e. Accused No. 1 and that along with them, Accused No. 4 also is the active partner of Accused No. 1. Accused had represented that Accused No. 1 is duly registered partnership firm which is already dealing in garments. Accused represented that they are having sufficient infrastructure to be a Distributor for Pepe Products and requested Complainant Company to appoint them as their distributor.”

“6. I say that Accused No. 2 and 3 has been deliberating with the Complainant Company during deliberations for appointing them as Distributors of Complainant Company and they represented that Accused No. 4 is looking after day to day business activities of Accused No. 1 along with an in absence of Accused No. 2 and 3. I say that after execution of the Distribution Agreement and Supplementary Agreement of dated 29-02-2012, all the accused have been interacting with Complainant Company personally as well as telephonically and correspondence and thus the Accused No. 2, 3 and 4 has been looking after the day to day business activities of Accused No. 1 and are responsible fro the business affairs of Accused No. 1. All the Accused connived, aided and abetted commission of offence under section 138 read with 141 of Negotiable Instruments Act, 1881 and are liable jointly and or severally for the same as per law.”

“8. the Accused had issued following post dated cheques in favour of Complainant Company, which were drawn by Accused in favour of Complainant Company on the bank account of Accused No. 1 maintained by the accused with”

7. The verification statement of the respondent No. 1 is almost similar to what is reproduced hereinabove. The affidavit filed under Section 202 is also similar and on the lines of what is stated hereinabove.

8. It is well settled that a liability under Section 141 of the NI Act is sought to be fastened vicariously on a person connected with the company, when the principal accused is the company itself. The said liability is a departure from the rule in criminal law against vicarious liability. Section 141 of the NI Act contains the requirements for making a person liable under the said provision and therefore, it is necessary that the parameters of Section 141 have to be spelled out in the complaint. It is well settled that merely because a person is a Director in a company, is not sufficient to satisfy the requirement of Section 141, as even a non-director can be liable under Section 141 of the NI Act. It is, therefore, necessary that there must be averments in the complaint to enable the persons sought to be made liable to know the case alleged against them. It is, therefore, necessary to make such persons vicariously liable, that there must be an averment to that effect. In the present case, the averments in the complaint meet the requisite test as is contemplated under Section 141 of the NI Act.

It is not the case of the petitioners that they are not the working partners of the partnership firm or that they are sleeping partners or that they are not partners at all. The partnership deed clearly shows that the petitioners were working partners of the accused No. 1 partnership firm and were drawing remuneration from the business of the said partnership firm. It also appears that the petitioner No. 1 has signed one of the cheques, which is impugned in the complaint. Needless to state, that the complaint will have to be read as a whole.

9. A perusal of the complaint as a whole, clearly shows that the requisite averments, as required to attract the provisions of Section 138 r/w 141 are clearly disclosed. Considering the assertions made in the complaint and keeping in mind the averments, in the complaint against the petitioners, no interference is warranted in the impugned orders issuing process and the order dated 3rd February, 2016 passed by the learned Sessions Judge, Mumbai, dismissing the Criminal Revision Application No. 1477 of 2015.

10. Petition being *sans* merits, is dismissed.

11. Learned Counsel for the petitioners, at this stage, states that the petitioners will file an appropriate application before the trial Court seeking exemption. If such an application is filed, the trial Court to decide the same in accordance with law, uninfluenced by the observations made in this order. All contentions of the parties are kept open.

12. It is made clear that the observations made in the aforesaid order are prima facie, bearing in mind the prayers sought for in the petition. The trial Court shall conduct the case on its own merits uninfluenced by the observations made hereunder.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.