

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 154 of 2015**

- Smt. Chanda Shukla W/o Late Vinod Kumar Shukla Aged About 65 Years
R/o Ring Road, Namnakala, Ambikapur, P.S. Ambikapur, Civil & Revenue
District Sarguja C.G.

---- Petitioner

Versus

- Sudhir Pandey S/o Baldau Prasad Pandey, Beaurio Chief Dainik Nav Bharat
Office, Behind Shisu Mandir, Sattipara, Ambikapur, P.S. Ambikapur, Civil &
Reveue District Sarguja C.G.

---- Respondent

For Petitioner : Shri Punit Ruparel, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****16/11/2017**

1. Heard.
2. The instant petition is against the revisional order dated 23.12.2014, passed by the Additional Sessions Judge (F.T.C.), Sarguja (Ambikapur) in Criminal Revision No.26/2014, wherein the order to take cognizance under Section 138 of the Negotiable Instrument Act, 1881 (for short 'the Act, 1881') by the Chief Judicial Magistrate, Sarguja (Ambikapur) dated 17.09.2013 was set aside.
3. Learned counsel for the petitioner submits that a cheque was given by the company namely N.B. Plantation Limited in lieu of the maturity of amount of

bond. However, when the cheque was lodged with the Bank, the same was dishonored with an endorsement that the account was closed and no averment was there in the account. Consequently, a complaint was filed under Section 138 of the Act, 1881 and the Court of JMFC on such complaint had taken cognizance against all the accused named therein. Thereafter, one of the respondent against whom the cognizance was taken had filed a revision on the grounds that no averments were made against the applicant as to what was the role played by that accused for issuance of summons. On such revision, the revisional Court had quashed the complaint against that accused on the ground that no pleading was made against the respondent as to how he was responsible to issue the cheque. The said order of revisional Court is under challenge. It is contended by the petitioner that the order of the Court of JMFC was well merited about taking of the cognizance and revisional Court has committed an error to quash the same at the threshold. It is stated that the order of revisional Court suffers with illegality since complaint was at the primary stage, therefore, the fact that who was responsible for issuing such cheque could not be decided by the revisional Court without any trial.

4. Perused the documents filed along with the petition. Perusal of the complaint filed under Section 138 shows that the 3 persons were arrayed as respondents/accused namely; (1) Sandeep Maheshwari, (2) Manager, N.B. Plantations Limited and (3) Sudhir Pandey and against all of them cognizance was taken. The copy of the cheque shows that it was issued by the company named Enbee Plantation Limited. The complaint filed under Section 138 of the N.I. Act shows that the company is arrayed through the

Manager of the Company. Out of the accused as arrayed one accused namely Sudhir Pandey, had preferred the revision, on the grounds that nothing has been stated against him in the complaint as to how he was responsible for issuance of cheque yet the cognizance has been taken. The averments made in the petition under Section 138 of the Act, would show that the omnibus allegations have been made against Sudhir Pandey. The complainant has not made any specific statement in the complaint under Section 138 of the N.I. Act that respondent Sudhir Pandey was in any way responsible at the relevant time for the affairs of company and was at the helm of affairs of the company to issue the cheques on behalf of the company to the complainant. It is only the company has been made a party along with two others. The averments also do not show that Ms. Sudhir Pandey has issued the cheque for & on behalf of the company.

5. The Supreme Court in ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & another***¹ has held as under in para 19 & 20:-

“19. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he

¹ AIR 2005 SC 3512

would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

20. In view of the above discussion, our answers to the questions posed in the reference are as under:

- (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 the 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 the 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."

6. Further the aforesaid principle is reiterated in the case of **Aneeta Hada Vs. Godfather Travels and Tours Private Limited**², wherein it is held in para 39:-

"39. The word 'deemed' used in Section 141 of the Act applies to the company and the persons responsible for the acts of the company. It crystallizes the corporate criminal liability and vicarious liability of a person who is in charge of the company. What averments should be required to make a person vicariously liable has been dealt with in SMS Pharmaceuticals Ltd. V. Neeta Bhalla³. In the said case, it has been opined that the criminal liability on account of dishonour of cheque primarily falls on the drawee company and is extended to the officers of the company and as there is a specific provision extending the liability to the officers, the conditions incorporated in [Section 141](#) are to be satisfied."

7. The perusal of the complaint in this case under Section 138 of the Act, 1881 would show that three persons i.e. (1) Sandeep Maheshwari, (2) Manager, N.B. Plantations Limited & (3) Shri Sudhir Pandey, have been made accused. All the allegations of complainant under Section 138 of the N.I. Act would show that averments were made that the purchase of the bond was made through the Sudhir Pandey and in lieu thereof N.B. Plantations has given a post dated cheque of Rs.18000/- of date 01.09.2012. The averments of the complaint do not disclose about any specific allegation about the role played by the respondent to project that he was also instrumental for issuance of cheque. Predominately the allegations have been attributed against the company itself alone to isolation to others.

² (2012) 5 SCC 661

³ 2005 (8) SCC 89

Therefore, prima facie reading of the complaint do not specify the fact that the pleadings have been made to bring the case within Section 141 of the Act, 1881 which justify the issuance of process by the JMFC to one of the accused named in company. It is not stated that who was in hold of the reins of the company to issue the cheque and whether the respondent was responsible to issue said cheque on behalf of the company or not. On the contrary, the allegations of issuance of cheque is attributed to the company alone.

8. In view of the discussion herein above when it is not averred in complaint that the respondent was responsible for the business of the company and has issued the cheque for and on behalf of the company the complaint against him cannot be sustained. The complaint only purports that the money was invested in the company at the instance of the respondent for return of inflated healthy sum. The complaint is silent about the role of respondent and responsibility for issuance of cheque on behalf of the company. Therefore, in case of dishonour of any cheque issued by the company the liability cannot be fastened under Section 138 of the Act, 1881 to the respondent vicariously. Consequently, the order passed by the revisional Court do not appears to be illegal or suffers with any illegality so as to exercise the powers vested under Section 482 of the Cr.P.C. In view of this, the petition sans merit, deserves to be and is hereby dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu