

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1248 OF 2016

Vijay Tata Ravipati

.. Applicant

V/s.

Mediascope Publicitas (India) Pvt.

Ltd. & Anr.

.. Respondents

.....

Mr.Ashwin Vaish i/b. Mr.Balvendra Singh, Advocate for the Applicant.

Mr.Mahendra V. Swar, Advocate for Respondent No.1.

Mrs.P.P. Shinde, APP for Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

JUDGMENT RESERVED ON : SEPTEMBER 1, 2017

JUDGMENT PRONOUNCED ON : OCTOBER 13, 2017

JUDGMENT :

The applicant has preferred this application under Section 482 of the Code of Criminal Procedure challenging the proceedings in the criminal complaint lodged by the respondent no.1 before the Court of Metropolitan Magistrate 33rd Court at Ballard Pier, Mumbai. The proceedings are numbered as CC No.1194/SS/2015.

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The brief facts alleged in the complaint are as follows:

- (a) The accused no.1 is a private limited company of whom accused no.2 is the authorized signatory and C.F.O. while accused no.3 is the signatory to the subject cheque. The accused nos.4 and 5 are the directors of accused no.1.
- (b) The accused nos. 2 to 5 are looking after day to day affairs of accused no.1. Accused nos.2, 4 and 5 have dealt with the complainant company in respect to subject transaction of the complaint in terms of consideration aspect. Accused nos.2 to 5 in connivance with each other have committed the offence by intentionally dishonouring the subject cheque.
- (c) The accused no.1 through accused nos.2, 4 and 5 had approached the complainant company for publication of an advertisement in the news paper for publication of accused no.1 in the news paper, "KHALEEJ TIMES", Dubai on 20th, 21st, 22nd and 23rd November, 2014.
- (d) On instructions from accused no.1 through accused nos.2, 4, and 5, the complainant company have fulfilled their obligations by publishing the advertisement on behalf of

accused no.1 in the news paper "KHALEEJ TIMES", Dubai. The complainant, thereafter, raised the invoices bearing no.215912 dated 24th November, 2014 for Rs.6,84,250/-, 215916 dated 24th November, 2014 for Rs.2,97,500/- and 215918 dated 24th November, 2014 for Rs.4,16,500/-.

- (e) Towards discharge of liability against the aforesaid invoices, the accused issued At Par Cheque bearing no.138703 dated 13th January, 2015 for Rs.13,70,286/- drawn on Axis Bank Limited in favour of complainant company.
- (f) The complainant presented the aforesaid cheques for encashment with their bankers, viz. BNP Paribas, Mumbai on 24th February, 2015. The said cheque was dishonoured and returned to the complainant along with bank memo with an endorsement "Funds Insufficient".
- (g) The complainant issued notice of demand under the Negotiable Instruments Act. The notice dated 25th March, 2015 was dispatched by Registered Post A.D. to the accused. All the accused have received the legal notice on 30th March, 2015.

- (h) In spite of the receipt of notice accused failed and neglected to pay dishonoured cheque amount. Hence, the complaint was filed before the aforesaid Court on 14th May, 2015.

3 On 9th July, 2015, the verification statement was recorded. The affidavit in compliance of Section 202 of Cr.P.C. was filed. On 10th July, 2015 the process was issued against the accused for an offence punishable under Section 138 read with 141 of the Negotiable Instruments Act. It was observed while issuing the process that verification statement of the complainant is recorded. The accused being resident of place beyond the territorial jurisdiction of the Court, inquiry under Section 202 of Cr.P.C. is held. The complaint filed in furtherance of allegations made in the complaint. Since the applicant was not attending the proceedings after service of summons, the complainant preferred an application for issuing proclamation on 18th March, 2016. The learned Magistrate vide order dated 18th March, 2016, issued proclamation against the applicant and accused no.3.

4 Learned counsel for the applicant made the following submissions:

- (i) The complaint has been filed on incorrect facts such as

showing the applicant as the CFO. The applicant is not connected with accused no.1 company in any manner. He is neither the signatory, nor CFO or director of the respondent no.1 company.

- (ii) The trial Court has mechanically issued process against the applicant. The process was issued on the basis of the statement of the company's authorized representative who has personally not witnessed a single fact and is unable to particularize the role of the accused.
- (iii) There are contrary versions with regard to the role of the applicant in the complaint, notice and the verification statement.
- (iv) The trial Court has not followed the provisions of Section 202 of the Cr.P.C. in proper perspective. The summoning order does not disclose any application of mind. There is non compliance of the provisions of Section 202 of the Cr.P.C. (as amended), which is mandatory since the applicant is residing out of the jurisdiction of the trial Court.

- (v) The applicant does not fall under any category as enumerated under section 138 read with Section 141 of the Negotiable Instruments Act. The applicant cannot be held vicariously liable for the liability of the accused no.1.
- (vi) In the complaint accused no.2 has been referred to Vijay Murthy and it is alleged that the accused no.2 is the authorized signatory and C.F.O. of accused no.1. In the notice issued by the complainant company it is stated that the addressee no.2 is the signatory to the cheque. In the verification statement, it was stated that accused no.2 is the signatory to the cheque. It is also stated that as per the instructions from accused no.1 through accused nos.3 and 4, complainant company have published the advertisement in the newspaper "KHALEEJ TIMES", Dubai, in favour of accused no.1 company. It is submitted that the complainant is not sure about the role of the applicant.
- (vii) It is submitted that the applicant is not the signatory to the cheque nor he is C.F.O. or Director of the accused no.1 company. It is submitted that the applicant has not acted in any manner in the entire transaction.

- (viii) It is further submitted that the complaint is filed by Shri Girish Joshi on behalf of the complainant company claiming to be authorised representative of the complainant company. He had no knowledge of the transactions and, therefore, the complaint is not maintainable in law. He is not witness to any transactions, and, therefore, was unable to specify the role of the accused.
- (ix) It is further submitted that to invoke the vicarious liability vide Section 141 of the Negotiable Instruments Act, there has to be an averments in the complaint that 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. The aforesaid provisions also contemplate that 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. It is submitted that there is no

requisite averement in the complaint to invoke vicarious liability against the applicant, holding him responsible for the liability of accused no.1 company.

- (x) It is submitted that the applicant is the resident of Bangalore. The complaint is filed at Mumbai. In the order issuing process that there is reference of inquiry being conducted under Section 202 of the Cr.P.C., the same is not conducted within the intent and object of said provisions. There is nothing to indicate that there was application of mind on the part of the trial court for compliance of Section 202 of Cr.P.C.
- (xi) There is no material on record to establish that the applicant has played any role in the entire transaction. The order issuing process has been passed in most mechanical manner without application of mind and without ascertaining that the applicant is not liable in any manner for commission of the said offence.
- (xii) The trial court has failed to appreciate the provisions of law enunciated in the various decisions of the Hon'ble Supreme Court as well as by this Court.

(xiii) In view of Consent Terms executed between the parties the proclamation ought not to have been issued against the applicant. The complainant cannot rely upon the E-mails in support of complaint. It is, therefore, submitted this Court in exercise of the inherent powers under Section 482 of Cr.P.C. may quash and set aside the proceedings.

5 Learned counsel for the applicant placed reliance upon the following decisions in support of his submissions:

- (1) National Bank of Oman Vs. Barakara Abdul Aziz¹;
- (2) Sunil Bharti Mittal Vs. CBI²;
- (3) Standard Chartered Bank Vs. State of UP³;
- (4) A.C. Narayanan Vs. State of Maharashtra & Anr.⁴;
- (5) Facebook India Online Services Vs. Vinay Rai⁵;
- (6) M/s.Pepsi Food Ltd. Vs. Special Judicial Magistrate⁶;
- (7) Net Core Solutions Pvt. Ltd. Vs. Pinnacle Teleservices Ltd.⁷

6 The learned counsel for the respondent no.1

1 (2013) 2 SCC 488

2 AIR 2015 SC 923

3 AIR 2016 SC 1750

4 (2014) 11 SCC 790

5 Cri.M.C.No.102 of 2012, dt. 11.01.2012

6 AIR 1998 SC 128

7 2012(3) Mh.L.J. 724

submitted that there is no substance in the submissions advanced by the advocate for the applicant. The applicant is absconding since long. The trial Court has issued proclamation against him. The applicant has been impleaded as an accused in several complaints filed by respondent no.1. He has not appeared before the trial Court and initially warrant was issued against the applicant which was followed by proclamation. It is submitted that the complaint makes out *prima facie* case for issuance of process and thereby the trial Court has issued process against him. It is submitted that in the notice issued to the applicant, role has been attributed to the applicant. In the notice it has been stated that the applicant - accused was looking after day to day affairs of the accused no.1 company and have dealt with the complainant in respect to subject transaction. It is also stated that he had acted in connivance with the other accused. It is submitted that in the complaint also similar averments are made against the applicant. On the basis of the averments, the verification statement and the affidavit tendered by the complainant, learned Magistrate has issued process against the applicant. It is submitted that the applicant has not been impleaded as an accused in the complaint as director of the accused no.1, but, as one of the person who was looking after the

day to day affairs of accused no.1. It is, therefore, submitted that sufficient averments to invoke Section 141 of the Negotiable Instruments Act was reflected in the complaint, notice and the verification statement on the basis of which the applicant was summoned by the trial Court. It is further submitted that there is evidence to establish the connivance of the applicant in the subject transaction which led to dishonour of cheque. The evidence includes E-mails exchanged between the parties which are being relied upon by the complainant. It is submitted that the complainant be given an opportunity to lead evidence and prosecute the accused in the said offence. At this stage, there cannot be any adjudication on the contents of the E-mails or its admissibility in evidence.

7 It is further submitted that the complaint is filed by Shri Girish Joshi who is the authorized representative of the complainant-company. In the complaint it has been categorically stated that he has personal knowledge in respect of the facts and this case as well as on the basis of record with the complainant company, he will be able to depose and lead evidence. The complainant has relied upon the resolution passed by the complainant company resolving that the company would initiate

legal proceedings under Section 138 of the Negotiable Instruments Act against such parties and for such matters may be deemed necessary and for the said purpose the company authorizes Shri Girish Joshi and others to sign all documents for and on behalf of the company including complaint, suits, verifications, affidavit etc. in connection with any proceedings under Section 138 of the Negotiable Instruments Act. It is submitted that the applicant was instrumental in drawing the consent terms to settle the matter between the parties. The said Consent Terms are annexed to the application. It is submitted that although the applicant is not signatory to the said consent terms, the applicant has participated in the talks of settlement. The applicant has played major role in the transactions and in respect to the issuance of the cheques which were dishonoured. The complainant is relying upon several E-mails which shows the involvement of the applicant. It is the case of the complainant that the applicant and other directors of accused no.1 company had approached the complainant for publication of advertisement in the news paper "KHALEEJ TIMES" and in pursuant to the instructions from the accused, the complainant had verified its obligation of publishing the advertisement. The accused no.1 had in all issued 27 cheques which were dishonoured for which 27

separate notices were issued and, thereafter, 27 complaints are filed against the accused including the applicant. The notice was issued to the applicant at the address of the accused no.1 company addressing him as Mr.Vijay Murthy which has been accepted which shows the connection of the applicant in the said company. It is submitted that the applicant have dealt with the complainant company along with others in respect to subject transactions of the present complaint. It is submitted that several E-mails were exchanged between the parties which shows the connivance of the applicant in the transactions which is the subject matter of the complaint. In the reply filed by respondent no.1, several such E-mails are placed on record. It is stated that the complainant company had forwarded an E-mail to the applicant informing that the cheques will be presented as per his instructions which E-mail is purportedly replied by the applicant stating that the said cheques can be deposited. Several other E-mails are annexed to the said reply which according to the complainant shows involvement of the applicant. Consent Terms are also annexed to the said reply which according to the complainant were approved and finalized by the applicant. The applicant has also annexed the consent terms to the present application as well as the E-mails which were allegedly sent by

the complainant to the applicant. Said E-mails have been addressed to the applicant with regard to the booking of the advertisement in the Khaleej Times. According to respondent no.1, the said documents which are placed on record by the applicant in this application also shows the active involvement of the applicant in the subject transaction. It is, therefore, submitted that the application is devoid of merits and the same may be dismissed.

9 I have perused the documents on record. The complaint was filed through the authorized representative of the respondent no.1 Shri Girish Joshi. His authorization is supported by the resolution passed by the complainant company. The complaint also specifically mentions that the representative has personal knowledge in respect of the facts of the case as well as on the basis of record with complainant company. The verification statement also mentions that Shri Joshi has been appointed by the complainant company by passing Board Resolution, authorizing him to file complaint and lead evidence against the accused as he knows the facts of the case. In view of the above, there is no infirmity in the filing of the complaint of Shri Girish Joshi as authorized representative of respondent no.1.

10 In the case of **A.C. Narayanan (Supra)** relied upon by the counsel for the applicant, the Apex Court has considered the issue relating to filing of complaint under Section 138 of the Negotiable Instruments Act to power of attorney holder or legal representatives. It was also under consideration whether a power of attorney holder can be verified on oath under 200 of the Code and/or whether specific averments as to the knowledge of the power of attorney holder in the transaction must be explicitly asserted in the complaint and whether the power of attorney holder can verify the complaint on oath if he fails to exert explicitly to the knowledge of the complaint on the basis of presumption of knowledge. In paragraph no.26 of the said decision it is observed that it is an exception to a well-settled position that criminal law can be put in motion by any one and under the statute one stranger to transaction in question, namely, legal heir etc. can also carry forward the pending criminal complaint or initiate the criminal action if the original complainant dies. Keeping in mind various situations like inability as a result of sickness, old age, death or staying abroad of the payee or holder in due course to appear and depose before the Court in order to prove the complaint, it is permissible for the power of attorney holder or for the legal representatives to file a

complaint and/or continue with the pending criminal complaint for and on behalf of the payee or holder in due course. However, it is expected that such power of attorney holder or legal representatives shall have knowledge about the transaction in question so as to be able to bring on record the truth of the grievance/offence, otherwise no criminal justice could be achieved in case payee or holder in due course is unable to sign, appear or depose as complainant in the aforesaid circumstances. It was observed that filing of complaint under Section 138 of the Negotiable Instruments Act through power of attorney holder is perfectly legal and competent. It is required by the complainant to make specific ascertain as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transaction cannot be examined as a witness in their case. The Apex Court in this decision was primarily considering the effect of complaint filed by the power of attorney and examination of the power of attorney holder in the said proceedings. In the impugned complaint, which has been specifically stated that Shri Girish Joshi is the authorized representative of the complainant company and he has personal knowledge in respect to the facts of this case as well as on the

basis of record with the complainant company, he will be able to depose and lead evidence. He was also authorized by the complainant company to file complaint by passing appropriate resolution. This fact was stated in the verification statement as well as the affidavit filed before the Court. In the circumstances, there is no substance in the submissions advanced by the applicant that the complaint through authorized representatives was not maintainable as he has no personal knowledge of the transaction.

11 The other submission advanced by the advocate for the applicant about the contradictions in the complaint, demand notice and verification statement *qua* the role of applicant in the subject transaction is a matter which can be considered during the trial and the proceedings cannot be quashed on that ground. Learned counsel further contended that the applicant is residing beyond the jurisdiction of the trial Court and, therefore, it was mandatory to conduct an inquiry in accordance with the amended provisions of Section 202 of the Code of Criminal Procedure. It was argued that although in the order issuing process there is a reference to invoking Section 202 of the Cr.P.C, no inquiry was conducted in proper perspective. In the case of **National Bank**

of Oman (Supra), the Supreme Court has considered the aspect of carrying out such an inquiry as per the said amended provisions of Cr.P.C. The said decision is related to the offences under the Indian Penal Code. In the Judgment of this Court in the case of **Netcore Solution Private Limited Vs. Vinay Rai⁸**, it was held that the trial Court ought to have postponed the issuance of process in view of the mandatory provisions for inquiry under Section 202 of the Cr.P.C., as the petitioner therein were residents of Mumbai and the proceedings were initiated in the Court at Nagpur. The said decision was however, was related to the offence under Section 138 of Negotiable Instruments Act. This Court in several decisions have consistently taken a view that in the proceedings under Section 138 of the Negotiable Instruments Act, it is not mandatory to hold an inquiry under Section 202 of the Cr.P.C. in the event the accused are residing beyond the jurisdiction of the Court. In any case, it has to be noted that in the present case the trial Court had invoked Section 202 of Cr.P.C. which is apparent from the order issuing process. The Court has recorded the verification statement of the complainant as well as considered the affidavit filed by the complainant and, thereafter, issued the process. In the order

8 2012(1)Bom.C.R.(Cri.)788

issuing process it is observed that the accused being resident of beyond the territorial jurisdiction of the Court, inquiries under Section 202 of Cr.P.C. were held. Complainant filed affidavit in support of allegations made in the complaint and also filed ROC record and after going through the record of the case, the complaint satisfies the requisite ingredients. It is argued that the trial Court has not conducted an inquiry within the purview of Section 202 of the Code of Criminal Procedure. It is pertinent to note that no specific mode of inquiry is provided under Section 202 of Cr.P.C. Apart from that this Court has observed that it is not mandatory to hold such an inquiry in relation to the proceedings under Section 138 of the Negotiable Instruments Act. In ***Bansilal Kabra Vs. Global Trade Finance Ltd.***⁹ this Court has held that if Section 202 of Cr.P.C. is made applicable to complaints under Section 138 of Negotiable Instruments Act, it would defeat the very purpose behind enactment of the said provision. The Magistrate can exercise his discretion and decide whether to issue process, dismiss the complaint after recording verification of the complainant and his witnesses, if any, or postpone the issuance of process and in a given case hold further inquiry depending on facts of each case. No compliance would

9 2010 ALL MR (Cri) 3168

not vitiate the process if there is material to indicate application of mind. Similar view was taken in another decision of this Court in ***Criminal Application No.716 of 2015, 717 of 2015 and 718 of 2015 (Dr.(Mrs.) Rajul Ketan Raj Vs. Reliance Capital Ltd. & Anr.*** In the said decision, this Court has also taken note of decision in ***Netcore Solutions Pvt. Ltd. (Supra)***, relied upon by the advocate for the applicant in this application. The Court also referred to decisions of the Apex Court in the case of ***Vijay Dhanuka Vs. Najma Mamitaj***¹⁰ and ***National Bank of Oman's (Supra)*** case while considering scope of Section 202 of Cr.P.C. qua Section 138 of Negotiable Instruments Act. I am in agreement with the view taken by this Court that the amended provisions of Section 202 of Cr.P.C. referred to above as per Section 138 of Negotiable Instruments Act is only directory.

12 The submissions of the counsel for the applicant is that there are no requisite averments to invoke Section 141 of the Negotiable Instruments Act against the applicant. In the complaint it is stated that accused nos.2 to 5 are looking after day to day affairs of the accused no.1 company and that the accused have dealt with complainant company in respect of subject

10 2014 ALL MR (Cri) 1924 (SC)

transaction of the complaint in terms of consideration aspect and they have acted in connivance with each other to dishonour the subject cheque. The accused nos.2, 4 and 5 had approached the complainant for publication of advertisement in the newspaper "KHALEEJ TIMES", Dubai, at the instance of accused no.1 and on instructions of the said accused, the complainant had fulfilled the obligations by publishing the advertisement. It is, therefore, apparent that the complaint attributes role to the applicant. It is the contention of the applicant that he is not concerned with the accused no.1 company in any manner. In the light of the aforesaid averments, case was made out for issuance of process against the applicant. It is not the case of the complainant that the applicant is one of the director of the company. However, the complainant have stated that the applicant is one of the person who was looking after day to day affairs of accused no.1 and participated the transaction as stated herein-above. It may be that in the notice and verification statements it was stated that the applicant is the signatory to the cheque, but, the complaint clearly attributes the role of signatory to the subject cheque to the accused no.3. The verification statement also states that the advertisement was published at the instance of accused nos.3 and 4. However, the verification statement categorically mentions that

applicant and other accused were looking after day to day affairs of accused no.1 and has dealt with complainant company in respect to the subject transaction of the present complaint. Merely on account of such contradictions the proceedings cannot be quashed. There is consistency in the allegations of the complainant that the applicant was participating in day to day affairs of the accused no.1 company. In these circumstances it would be pertinent to embark upon Section 141 of the Negotiable Instruments 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:

[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 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.

Explanation.— For the purposes of this section,

—
(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.]”

On perusal of the aforesaid provisions it is clear that 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. It is crystal clear that if the person who commits an offence under Section 138 of the Act is a company the company as well as other person in charge of or responsible to the company for the conduct of business of company at the time of commission of offence is deemed to be guilty of the offence. It creates constructive liability on the person responsible for the conduct of business of the company. It would be appropriate to refer to the observation by the Apex Court in the decision of Standard Chartered Bank. In paragraph nos.16 and 17 of the said decision the Supreme Court had analysed the earlier decision in ***SMS Pharmaceuticals Vs. Neeta Bhalla & Anr.***¹¹ as follows:

16 After so stating, the Court adverted to the complaint filed under Section 138 of the Act and opined that the complaint should make out a case for issue of process. As far as the officers responsible for conducting the affairs of the company are concerned, the Court referred to

¹¹ (2005) 3 BLJR 2108 (SC)

various provisions of the Companies Act, 1956 and analysed Section 141 of the Act to lay down as follows:-

"What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of

business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of "every person" the section would have said "every director, manager or secretary in a company is liable"..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action".

- 17 After so stating, the Court placed reliance on sub-Section 2 of Section 141 of the Act for getting support of the aforesaid reasoning as the said sub-Section envisages direct involvement of any Director, Manager, Secretary or other officer of a company in the commission of an offence. The Court proceeded to observe that the said provision operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of the offices in a company. It has

also been observed that provision has been made for directors, managers, secretaries and other officers of a company to cover them in cases of their proved involvement. It is because a person who is in charge of and responsible for conduct of business of a company would naturally know why a cheque in question was issued and why it got dishonoured and simultaneously it means no other person connected with a company is made liable under Section 141 of the Act. The liability arises, as the three-Judge Bench opined, on account of conduct, act or omission on the part of an officer and not merely on account of holding office or position in a company and, therefore, in order to bring a case within Section 141 of the Act, the complaint must disclose the necessary facts which makes a person liable. In the said case, the Court has referred to the decisions in Secunderabad Health Care Ltd. v. Secunderabad Hospitals (P) Ltd.[7], V. Sudheer Reddy v. State of A.P.[8], R. Kanan v. Kotak Mahindra Finance Ltd.[9], Lok Housing ad Constructions Ltd. v. Raghupati Leasing and Finance Ltd.[10], Sunil Kumar Chhaparia v. Dakka Eshwaraiah[11], State of Haryana v. Brij Lal Mittal[12], K.P.G. Nair v. Jindal Menthol India Ltd.[13], Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd.[14] and eventually

expressed thus:-

"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 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".

In the light of the aforesaid observations, it will have to be seen that the applicant is one of the person whose is concerned with the day to day affairs of the company. As stated in complaint the applicant is looking after day to day affairs of accused no.1. He has dealt with complainant company in respect of subject transaction. He has acted in connivance with other in dishonour of cheque. The complainant must be given an opportunity to prove the same by leading the evidence before the trial Court. The proceedings cannot be quashed at the threshold.

13 The other submission of the counsel for the applicant that the E-mails, electronic evidence relied upon by the complainant cannot be considered in view of Section 65B of the Indian Evidence Act, 1872. Reliance was placed on the decision of the Delhi High Court in the case of **Facebook India Online Services (Supra)**. In the said case, the trial was conducted and the issue was relating to how a documents in the electronic form has to be proved in the light of a certificate which is required to be issued by the person/authority in whose custody the device in which the document was stored in an electronic form that the printout generated has been through the device and reflects an information stored in electronic form in the ordinary course or

through the testimony of the person who generates the printout from the device in which the same is stored. The stage to appreciate the evidence is yet to come. The trial Court is required to apply its mind while issuing process and the said order cannot be passed mechanically as observed by the Apex Court in the case of ***M/s.Pepsi Foods Ltd. (Supra)*** which is relied upon by the advocate for the applicant. On perusal of the order, I do not find any reason to interfere in the order issuing process passed by the trial Court. I have perused the reply filed by the advocate for the complainant and the documents in the form of E-mail being relied upon by the complainant. According to the respondent no.1 the E-mails were exchanged between the parties which shows the complicity of the applicant in the subject transaction. The said E-mails and its veracity has to be tested in evidence during the course of trial. *Prima facie* case is made out showing involvement/participation of the applicant in the said transaction. It is pertinent to note that the applicant has annexed some of the E-mails and the copy of consent terms to the application. According to the complainant, applicant is responsible for dishonour of about 27 cheques and several complaints have been filed by the respondent no.1 in which the applicant is accused and he did not appear before the trial Court,

and, hence proclamation has been issued against him declaring him as absconding.

14 In the light of the aforesaid observations, I do not find that the applicant has made out any case for quashing the proceedings by invoking the inherent powers under Section 482 of the Code of Criminal Procedure, and, hence, the petition deserves to be dismissed.

15 Hence, I pass the following order:

:: ORDER ::

- (a) Criminal Application No.1248 of 2016 is rejected;
- (b) It is clarified that the observations made in this order is for considering the present application and the trial Court shall not be influenced by the observations during the trial.

(PRAKASH D. NAIK, J.)