

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 11.12.2018	Delivered on 17.12.2018
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
Crl.O.P.Nos.3389 & 3390 of 2018
and
Crl.M.P.Nos.9468, 9469, 1480 to 1483 of 2018

- 1.Mr.Anil Pathak,
Male 42 years,
Director of Hallmark Living Space Pvt.Ltd.,
Having office at No.43, Old No.62/2,
United Plaza, Usman Road,
T.Nagar, Chennai-600 017, TN.
- 2.Mr.Pulliattu Chandrasekharannair Sasikumar,
Male 48 yrs,
Director of Hallmark Living Space Pvt.Ltd.,
Having office at No.43, Old No.62/2,
United Plaza, Usman Road,
T.Nagar, Chennai-600 017, TN.Petitioners
in both Crl OPs
- ...Vs...

M/s.Larsen and Toubro Limited,
Represented by its Authorized
Representative Mr.V.K.Natarajan,
Mount Poonamallee Road,
Manapakkam, Chennai-600 089.Respondent
in both Crl OPs

PRAYER in Both Crl.OPs: Criminal Original Petition filed
under Section 482 of the Code of Criminal Procedure, to
call for the records and quash the impugned complaint in
C.C.Nos.6573 & 6574 of 2017, now pending on the file of
the Hon'ble XIII Metropolitan Magistrate Court, Egmore.

For Petitioners: Mr.P.Ranganatha Reddy, Sr.Counsel
(both Crl.OPs) for M/s. King and Partridge

For Respondent : Mr.Nithyaesh and Vaibhav
(both Crl.OPs)

COMMON ORDER

These petitions have been filed seeking to quash the
criminal complaints filed by the respondent under Section
138 of the Negotiable Instruments Act.

2. In both the complaints, the petitioners have been arrayed as A-2 and A-6. Since common grounds have been raised in both the petitions and the parties are also the same, a common order is passed in both the Criminal Original Petitions.

3. Mr. P. Ranganatha Reddy, Senior counsel for M/s. King and Partridge, appearing on behalf of the petitioners would submit that the criminal complaints are liable to be quashed as against the petitioners on two grounds which are as follows:

a] The petitioners are only Investor Directors//Non-Executive Directors and even as per the Articles of Association of the 1st accused Company, such Investor Directors are not incharge of or responsible for the day-to-day management of the Company and they will not be liable for any default or failure of the Company; and

b] The complaint does not contain sufficient allegations against these petitioners and it does not satisfy the requirements under Section 141 of the Negotiable Instruments Act, 1881.

4. In order to substantiate the above said submissions, the learned counsel for the petitioners relied upon the following judgments:

I] National Small Industries Corporation Limited .Vs. Harmit Singh Paintal and Another reported in [2010 3 SCC P 330] .

II] Pooja Ravinder Devidasani .Vs. State of Maharashtra and Another reported in [2014 16 SCC 1] .

III] Ashok Mal Bafna .Vs. M/s. Upper India Steel Mfg. & Engg. Co.Ltd. reported in [2017 SCC OnLine SC 705] .

5. Per contra, Mr. Nithyaesh, learned counsel for the respondent would submit that the document sought to be relied upon by the petitioners is disputed, and there are certain other documents which will show that these petitioners have signed the financial statements of the 1st accused Company and have also been shown as Nominee Directors. Therefore, the learned counsel would submit that there is a dispute regarding the fact as to whether these petitioners were incharge and responsible for the day-to-day affairs of the Company, and the same cannot be gone into by this Court in exercise of its jurisdiction under 482 of Cr.P.C. The learned counsel would submit that what is permitted to be looked into by this Court while exercising its jurisdiction under Section 482 of Cr.P.C is only incontrovertible or unimpeachable evidence which is beyond suspicion or doubt. In order to substantiate this submission, the learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme

Court in Gunmala Sales Private Limited .Vs. Anu Mehta and Others reported in [2015 1 SCC 103].

6.The learned counsel for the respondent, in reply to the 2nd submission made by the learned counsel for the petitioners, would submit that necessary allegation has been made in the complaint against these petitioners and it satisfies the requirements of Section 141 of the Negotiable Instruments Act, and therefore it is for the petitioners to establish before the Court below, in the course of the proceedings, that they were not incharge or responsible for the running of the day-to-day affairs of the 1st accused Company. In order to substantiate this submission also, the learned counsel for the respondent relied upon the very same judgment referred supra. That apart, the learned counsel for the respondent also relied upon the the following judgments.

1. SMS Pharmaceuticals Limited .Vs. Neeta Bhalla reported in [2005 8 SCC 89].

2.K.K.Ahuja's Case reported in [2009 10 SCC 48].

3.Paresh P.Rajda .Vs. State of Maharashtra reported in [2008 7 SCC 442].

4.Rallis India Limited .Vs. Poduru Vidya Bhushan reported in [2011 13 SCC 88].

5.TamilNadu Newsprint and Papers Ltd. reported in [2016 6 SCC 78].

6.Standard Chartered Case reported in [2016 6 SCC 62].

7.KishinBhagwan Sharma .Vs. State of Maharashtra case reported in [2014 3 MWN CrI DCC 20] (Bombay).

8.Kishin Bhagwan Sharma .Vs. State of Maharashtra (CrI.M.P.No.21962 of 2015) dated 17.11.2014.

9.Anu Mehta .Vs. Gunmala Sales reported in [2016 1 Calcutta Law Journal 603].

10.Anu Mehta .Vs. Gunmala Sales (Review Petition (CrI.No.54 of 2015).

11. B.Devi .Vs. State of UP reported in [2015 SCC Online Allahabad 7104].

7.This Court has carefully considered the submissions made on either side. This Court will first take up the issue as to whether necessary allegations have been made in the complaint against the petitioners by satisfying the requirements under Section 141 of the Negotiable Instruments Act. For this purpose, it is necessary to extract the relevant averment made in the complaint.

"1. The second accused is Mr.Anil Pathak, Director of Hallmark Living Space Pvt.Ltd, having office at No.43, Old No.62/2, United Plaza, Usman Road, T.Nagar, Chennai-600017 TN.

<https://hcservices.ecourts.gov.in/hcservices/>The Sixth

accused is Mr. Pulliattu Chandrasekharannair Sasikumar, Director of Hallmark Living Space Pvt.Ltd, having office at No.43, Old No.62/2, United Plaza, Usman Road, T.Nagar, Chennai-600017 TN.

..... 6. On verifying the records of first accused company, it is amply clear that the second to sixth of the accused are wholly responsible for the management of the affairs of the first accused company and also are the one's managing day to day affairs of the above said company. It is submitted that the accused 2 to 6 control, manage and administer the first accused company. Further, the sole beneficiaries of the transaction with the complainant are the people accused herein and hence they ought to be proceeded against in the present case".

8.The question is whether the above allegations satisfies the requirements of Section 141 of the Negotiable Instruments Act. For this purpose, it will be relevant to rely upon the judgments cited by the learned counsel for the petitioners.

9.The first judgment that has been relied upon by the learned counsel for the petitioners is [2010 3 SCC P 330]. The relevant portions are extracted hereunder:

20. Section 141 of the Act has been interpreted by this Court in various decisions. As to the scope of Section 141 of the Act, a three-Judge Bench of this Court considered the following questions which had been referred to it by a two-Judge Bench of this Court in SMS Pharmaceuticals vs. Neeta Bhalla : (SCC pp.93-94 para1)

"(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 fulfil 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 in charge of the company and responsible to the company for conduct of its business could be proceeded against."

21. While considering the above questions, this Court held as under: (S.M.S. Pharmaceuticals Ltd. (1), SCC pp.102-03, paras 18-19)

"18. 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 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.

19. 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 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 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 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 responsible 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."

22. Therefore, this Court has distinguished the case of persons who are in-charge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in-charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the concerned Directors should be specific. The description should be clear and there should be some unambiguous allegations as to how the concerned Directors were alleged to be in-charge of and was responsible for the conduct and affairs of the company.

26. In a subsequent decision in N.K. Wahi vs. Shekhar Singh & Ors., (2007) 9 SCC 481 while following the precedents of SMS Pharmaceuticals's case (supra), Sabhita Ramamurthy's case (supra) and Saroj Kumar Poddar's case (supra), this Court reiterated that for launching a prosecution against the alleged Directors, there must be a specific allegation in the complaint as to the part played by them in the transaction. The relevant portion of the judgment is as under:

"7. This provision clearly shows that so far as the companies are concerned if any offence is committed by it then every person who is a Director or employee of the company is not liable. Only such person would be held liable if at the time when offence is committed he was in charge and was responsible to the company for the conduct of the business of the company as well as the company. Merely being a Director of the company in the absence of above factors will not make him liable.

8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to

how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable."

27. The said issue again came up for consideration before a three-Judge Bench of this Court recently in Ramraj Singh vs. State of M.P. & Anr. (2009) 6 SCC 729. In this case, the earlier decisions were also considered in detail. Following the decisions of SMS Pharmaceuticals' case (supra), Sabhita Ramamurthy's case (supra), Saroj Kumar Poddar's case (supra) and N.K. Wahi's case (supra) this Court held that it is necessary to specifically aver in a complaint under Section 141 that at the time when the offence was committed, the person accused was in-charge of, and responsible for the conduct of the business of the company. Furthermore, it held that vicarious liability can be attributed only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused/Director therein vicariously liable for the offence committed by the company. It was further held that before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted. Thus, the issue in the present case is no more res integra and has been squarely covered by the decisions of this Court referred above. It is submitted that the aforesaid decisions of this Court have become binding precedents.

37.A combined reading of Sections 5 and 291 of Companies Act, 1956 with the definitions in clauses 24, 26, 30, 31 and 45 of Section 2 of that Act would show that the following persons are considered to be the persons who are

responsible to the company for the conduct of the business of the company:

- (a) the Managing Director/s;
- (b) the whole-time Director/s;
- (c) the Manager;
- (d) the Secretary;
- (e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;
- (f) any person charged by the Board of Directors with the responsibility of complying with that provision;

Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

38. But if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in-charge of the business of the company" or by stating that "he was in-charge of the day-to-day management of the company" or by stating that "he was in-charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what

manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act.

39. From the above discussion, the following principles emerge :

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 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 company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred. (v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) 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.

10. The 2nd judgment that has been relied upon by the learned counsel for the petitioners is [2014 16 SCC 1]. The relevant portions of the judgment is extracted hereunder:

"15. We have given our thoughtful consideration to the arguments advanced by the counsel on either side at length. The questions that arise for determination are (i) whether the appellant is liable for prosecution under Section 138 read with Section 141 of the N.I. Act for the alleged offence of dishonor of cheques committed by the default Company?; (ii) whether the High Court was right in dismissing the writ petitions filed by the appellant seeking quashing of the criminal proceedings initiated against her by the Respondent No. 2?

17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company-M/S Elite International Pvt. Ltd. on 1st July, 2004 and had also executed a Letter of Guarantee on 19th January, 2005. The cheques in question were issued during April, 2008 to September, 2008. So far as the dishonor of Cheques is concerned, admittedly the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the Company but does not involve in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the Company, one who actively looks after the day-to-day activities of the Company and particularly responsible for the

conduct of its business. Simply because a person is a Director of a Company, does not make him liable under the N.I. Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, 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 for an offence under Section 141 of the N.I. Act. In National Small Industries Corporation (supra) this Court observed:

"Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141.

30. Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted

to put the criminal law into motion and Courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Section 138/141 of the N.I. Act, making a person vicariously liable has to ensure strict compliance of the statutory requirements. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of the Court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law.

11. The 3rd judgment that has been relied upon by the learned counsel for the petitioners is [2017 SCC OnLine SC 705]. The relevant portions of the judgment is extracted hereunder:

"9. Interpreting the provisions of Section 141 this Court in National Small Industries Corporation v. Harmeet Singh Paintal (2010) 3 SCC 330 observed that Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the Company for the conduct of business of the Company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner the accused was in charge of or was responsible to the Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes especially where such statutes create vicarious liability.

10. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the

person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action [see : Pooja Ravinder Devidasani v. State of Maharashtra (2014) 16 SCC 1 : AIR 2015 SC 675].

11. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

12. From the above said judgments, it is very clear that it is not enough if the words used under Section 141 of the Negotiable Instruments Act, is merely extracted. In order to make a Director of a Company liable for the offence committed by the Company under Section 141 of the Negotiable Instruments Act, there must be a specific averment against the Director to show as to how and in what manner the Director was responsible for the conduct of the business of the Company. This composition has been reiterated by the Hon'ble Supreme Court consistently.

13. The learned counsel for the respondent by relying upon the judgment of the Hon'ble Supreme Court in Gunmala Sales Private Limited .Vs. Anu Mehta and Others reported in [2015 1 SCC 103], would submit that it is enough if the basic requirement under Section 141 of the Negotiable Instruments Act, is alleged in the Complaint and nothing more is required. For this purpose, the learned counsel specifically relied upon the following relevant portions of the judgment which is extracted hereunder:

"28. We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the conclusions drawn in the above-mentioned cases that it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company. This is a basic

requirement. There is no deemed liability of such Directors. This averment assumes importance because it is the basic and essential averment which persuades the Magistrate to issue process against the Director. That is why this Court in SMS Pharma-(1) observed that the question of requirement of averments in a complaint has to be considered on the basis of provisions contained in Sections 138 and 141 of the NI Act read in the light of the powers of a Magistrate referred to in Sections 200 to 204 of the Code which recognize the Magistrate's discretion to reject the complaint at the threshold if he finds that there is no sufficient ground for proceeding. Thus, if this basic averment is missing the Magistrate is legally justified in not issuing process. But here we are concerned with the question as to what should be the approach of a High Court when it is dealing with a petition filed under Section 482 of the Code for quashing such a complaint against a Director. If this averment is there, must the High Court dismiss the petition as a rule observing that the trial must go on? Is the High Court precluded from looking into other circumstances if any? Inherent power under Section 482 of the Code is to be invoked to prevent abuse of the process of any court or otherwise to secure ends of justice. Can such fetters be put on the High Court's inherent powers? We do not think so.

29. SMS Pharma-(1), undoubtedly, says that it is necessary to specifically aver in the complaint that the Director was in charge of and responsible for the conduct of the company's business at the relevant time when the offence was committed. It says that this is a basic requirement. And as we have already noted, this averment is for the purpose of persuading the Magistrate to issue process. If we revisit SMS Pharma-(1), we find that after referring to the various provisions of the Companies Act it is observed that those provisions show that

what a Board of Directors is empowered to do in relation to a particular company depends upon the roles and functions assigned to Directors as per the memorandum and articles of association of the company. There is nothing which suggests that simply by being a Director in a company, one is supposed to discharge particular functions on behalf of a company. As a Director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two Directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. This Court further observed that what emerges from this is that the role of a Director in a company is a question of fact depending on the peculiar facts in each case and that there is no universal rule that a Director of a company is in charge of its everyday affairs. What follows from this is that it cannot be concluded from SMS Pharma-(1) that the basic requirement stated therein is sufficient in all cases and whenever such an averment is there, the High Court must dismiss the petition filed praying for quashing the process. It must be remembered that the core of a criminal case are its facts and in factual matters there are no fixed formulae required to be followed by a court unless it is dealing with an entirely procedural matter. We do not want to discuss 'the doctrine of Indoor Management' on which submissions have been advanced. Suffice it to say, that just as the complainant is entitled to presume in view of provisions of the Companies Act that the Director was concerned with the issuance of the cheque, the Director is entitled to contend that he was not concerned with the issuance of cheque for a variety of reasons. It is for the High Court to consider these submissions. The High Court may in a given case on an overall reading of a complaint and having come

across some unimpeachable evidence or glaring circumstances come to a conclusion that the petition deserves to be allowed despite the presence of the basic averment. That is the reason why in some cases, after referring to SMS Pharma-(1), but considering overall circumstances of the case, this Court has found that the basic averment was insufficient, that something more was needed and has quashed the complaint.

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 abuse of the process of court as no offence is made out against him.

34. We may summarize our conclusions as follows:

34.1. Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

34.2. If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading

of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

34.3. In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances

of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

14. The other judgments which have been cited by the learned counsel for the respondent, also more or less borders, around the same conclusion arrived at by the Hon'ble Supreme Court in *Gunmala Sales Private Limited . Vs. Anu Mehta and Others* referred supra.

15. This Court is not in agreement with the submission made by the learned counsel for the respondent. If it is enough to mechanically repeat the requirement under Section 141 [1] of the Negotiable Instruments Act, any number of Directors can be made as an accused in a complaint filed under Section 138 of the Negotiable Instruments Act. This will lead to a situation where the Directors who have nothing to do with the day-to-day affairs of the Company, Nominee Directors etc., being made to face a criminal complaint just because there is a repetition of the words found under Section 141 [1] of the Negotiable Instruments Act. This may lead to an abuse of process of Court and any person who is shown as a Director will be made to undergo the ordeal of trial. That is the reason why the Hon'ble Supreme Court has repeatedly held in the judgments referred supra that the complaint has to specifically say as to how and in what manner the Director was responsible for the conduct of the business of the Company.

16. The judgments cited by the learned counsel for the respondent, does not take a contrary view and it merely reiterates that the allegations made in the complaint should satisfy the requirements of Section 141 of the Negotiable Instruments Act.

17. In the considered view of this Court, the allegations made in the complaint does not satisfy the requirements of Section 141 of the Negotiable Instruments Act, and the requirements reiterated by the Hon'ble Supreme Court, insofar as these petitioners are concerned, and therefore this Court has to necessarily interfere with the proceedings in exercise of its jurisdiction under Section 482 of Cr.P.C.

18. In view of the above finding, there is no need to deal with the 2nd issue raised by the learned counsel for the petitioner with regard to the Investor Directors not

being made responsible for the day-to-day management of the Company as per the Articles of Association of the 1st accused Company.

19. In the result, the proceedings in C.C.Nos.6573 and 6574 of 2017, pending on the file of the XIII Metropolitan Magistrate Court, Egmore, is hereby quashed, insofar as the petitioners are concerned. Accordingly, both the Criminal Original Petitions are allowed, and there shall be a direction to the Court below to complete the proceedings in C.C.Nos.6573 and 6574 of 2017, within a period of three months from the date of receipt of a copy of this order, insofar as the other accused persons are concerned. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KP
To

1. XIII Metropolitan Magistrate Court,
Egmore.
2. The Chief Metropolitan Magistrate ,
Egmore.

+4ccs to M/s. King and Partridge, Advocate SR.No.
87230, 87229

+1cc to Mr. Nithyaesh , Advocate SR.No. 88216

Cr1.O.P.Nos.3389 & 3390 of 2018

ASK(03/01/2019)

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