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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 09th July, 2018

Pronounced on: 23rd July, 2018

+ CRL.M.C. 3257/2016 & Crl. M.A. 13910/2016

JWALA DEVI ENTERPRISES P. LTD. Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

FADI EL JAOUNI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3262/2016

JWALA DEVI ENETPREISES P.LTD. Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

KHALED ABDELRAHMAN RADI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3266/2016

JWALA DEVI ENTERPRISES P.LTD Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

NASSER MOHAMMED M.F. AL HAJRI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3648/2016

JWALA DEVI ENTERPRISES P. LTD. Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

NASSER MOHAMMED M.F. AL HAJRI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3652/2016

JWALA DEVI ENTERPRISES P. LTD. Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

KHALED ABDELRAHMAN RADI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3672/2016

JAWALA DEVI ENTERPRISES P. LTD. Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

FADI EL JAOUNI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3267/2016 & CrI. M.A. 13928/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

NASSER MOHD M F ALI HAJRI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3269/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

FADI EI JAOUNI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3270/2016 & CrI. M.A. 13935/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

KHALED ABDELRAHMAN RADI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3639/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.
versus

NASSER MOHAMMED M.F. AL HAJARI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3642/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.
versus

KHALED ABDELRAHMAN RADI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3643/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.
versus

KHALED ABDELRAHMAN RADI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3645/2016

ANAND PARKASH BANSAL Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

FADI EL JAOUNI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3646/2016

ANAND PARKASH BANSAL Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

FADI EL JAOUNI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3649/2016

ANAND PARKASH BANSAL Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

KHALED ABDELRAHMAN RADI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3650/2016

ANAND PARKASH BANSAL Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

NASSER MOHAMMED M.F. AL HAJRI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3651/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

NASSER MOHAMMED M.F. AL HAJRI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3653/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

NASSER MOHAMMED M.F. AL HAJRI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3654/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

KHALED ABDELRAHMAN RADI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3655/2016

ANAND PARKASH BANSAL Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

FADI EL JAOUNI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3658/2016

ANAND PARKASH BANSAL Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

NASSER MOHD M F AL HAJRI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3659/2016

ANAND PARKASH BANSAL Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

NASSER MOHAMMED M.F. AL HAJRI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3661/2016

ANAND PARKASH BANSAL Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

NASSER MOHAMMED M.F. AL HAJRI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3663/2016

ANAND PARKASH BANSAL Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

FADI EL JAOUNI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3664/2016

ANAND PARKASH BANSAL Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

NASSER MOHAMMED M.F. AL HAJRI Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3665/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.
Versus

KHALED ABDELRAHMAN RADI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3666/2016

ANAND PRAKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.
versus

FADI EL JAOUNI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3673/2016

ANAND PARKASH BANSAL Petitioner
Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.
versus

KHALED ABDELRAHMAN RADI Respondent
Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

+ CRL.M.C. 3674/2016

ANAND PARKASH BANSAL

..... Petitioner

Through: Mr. Tanmay Mehta, Advocate
with Mr. Rajeev Aggarwal, &
Mr. M. Mittal, Advocates.

versus

FADI EL JAOUNI

..... Respondent

Through: Mr. Sandeep D. Das, Advocate
with Ms. Varuna Bhanrale &
Ms. Vatsala Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. On 19.03.2014, eleven criminal complaints were filed in the court of the Metropolitan Magistrate, each seeking prosecution of the parties shown in the array of respondents for offences punishable under Section 138 of the Negotiable Instruments Act, 1881, two of such complaints i.e. the complaint nos.800/1/14 and 802/1/14 having been presented by Jwala Devi Enterprises Pvt. Ltd. through its authorized representative Sat Parkash Bansal and the rest – complaint nos.799/1/14, 812/1/14, 813/1/14, 814/1/14, 815/1/14, 839/1/14, 840/1/14, 841/1/14 and 842/1/14 – having been presented by Anand Prakash Bansal, Proprietor of M/s. Pooja Enterprises. Each of the said criminal complaints were directed against several persons including a company described as M/s. Bush Foods Overseas Pvt. Ltd. It may be mentioned that Mr. Virkaran Awasty was reflected in the array of the accused as the Managing Director of the said company accused. The respondents in these petitions were amongst the other persons shown

as accused in the said complaints, each of them having been described as “Director” of the said company accused.

2. On the basis of the preliminary inquiry in each case, the Metropolitan Magistrate issued process including against the respondents herein. The respondents, feeling aggrieved, approached the court of Sessions invoking its revisional jurisdiction by separate petitions (CR nos.34-62/2015), their prime contention being that there was no case made out for them to be summoned as accused on the basis of allegations that they were directors of the company accused, denying that they had any concern with the responsibility for the conduct of the day-to-day business of the company.

3. Placing reliance primarily on decision of a bench of three Hon’ble Judges of the Supreme Court in *SMS Pharmaceuticals Pvt. Ltd. Vs. Neeta Bhalla*, (2005) 8 SCC 89, the court of Sessions found substance and merit in the aforesaid contentions and allowed all the above-said revision petitions by a common order dated 18.04.2015 holding that the summoning order had been passed by the Magistrate mechanically without going through the material(s) on record, there being no averment to the effect that the said persons were in charge of, or responsible for the conduct of the business of, the company accused and consequently dropping the criminal proceedings against each of them.

4. The petitions at hand have been filed by the complainants invoking the inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) and Article 227 of the Constitution of India, 1950 to pray for the aforesaid orders of the

Sessions court in each of the said eleven complaint cases to be set aside and the proceedings against the respondents herein to be revived on the file of the Metropolitan Magistrate. Reliance is placed in this context by the petitioners on the decisions of benches of two Hon'ble Judges of the Supreme Court reported as *Gunmala Sales (P) Ltd. Vs. Anu Mehta and Ors*, (2015) 1 SCC 103 and *Standard Chartered Bank Vs. State of Maharashtra and Ors.*, (2016) 6 SCC 62. There can be no quarrel with the proposition, as advanced by the counsel for the respondents, that the ruling of the bench of three Hon'ble Judges in *SMS Pharmaceuticals* (supra), continues to hold the field, the decisions in *Gunmala Sales (P) Ltd.* (supra) and *Standard Chartered Bank* (supra) having accepted this position and the said subsequent rulings being in a slightly different context.

5. These matters pertain to the penal clause contained in Section 138 of the Negotiable Instruments Act, 1881, which reads thus :-

138. Dishonour of cheque for insufficiency, etc., of funds in the account — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 8 [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

6. It is clear from the plain reading of the above quoted provision and is now also well settled that the offence under Section 138 of the Negotiable Instruments Act does not stand constituted merely upon dishonor of a cheque. The dishonor of a cheque which had been issued by the person (who is sought to be prosecuted) in favour of the complainant must be followed by a notice of demand within the stipulated period. It is the non-payment of the amount of the cheque within the statutory period after service of the notice of demand which constitutes the offence that is punishable under the aforementioned provision of law.

7. For dealing with cases involving companies and the persons connected thereto as the accused, the provision of Section 141 Negotiable Instruments Act, 1881 is relevant. For guidance and convenience, it may be quoted hereunder :-

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.

8. It is the above quoted provision, which is at the bottom of the controversy in the present matters and in this context the rulings of the Supreme Court referred to above provide the necessary guidance.

9. Certain observations in *SMS Pharmaceuticals* (supra) which have been quoted in the subsequent decisions, need to be borne in mind and, therefore, may be extracted as under :-

“10. ... 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.

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“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.

(emphasis supplied)

10. In *Gunmala Sales (P) Ltd.* (supra), the issue brought before the Supreme Court by the complainant primarily was that the High Court in exercise of its jurisdiction under Section 482 Cr. PC had wrongly quashed the proceedings against the respondents on the ground that there was a bald assertion in the complaint that they were directors in the company at the time when the offence was committed. While acknowledging (in para 27) that the decision in *SMS Pharmaceuticals* (supra) still holds the field, in *Gunmala Sales (P) Ltd.* (supra), it was further clarified thus :

“27. It is clear from a perusal of the above decisions that SMS Pharma (1) [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , which is a three-Judge Bench decision, still holds the field. In all subsequent decisions, two-Judge Benches of this Court have followed SMS Pharma....

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 abovementioned 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.”

(emphasis supplied)

11. For cases where the allegations in the complaint in writing are not deficient but the persons are described as directors (who seek quashing of the summoning order), it was ruled in *Gunmala Sales (P) Ltd.* (supra) as under :-

“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 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)

12. The conclusions in *Gunmala Sales (P) Ltd.* (supra) were summarized thus :-

“35. ... Pertinently, in the application filed by the respondents, no clear case was made out that at the material time, the Directors were not in charge of and were not responsible for the conduct of the business of the Company by referring to or producing any incontrovertible or unimpeachable evidence which is beyond suspicion or doubt or any totally acceptable circumstances. It is merely stated that Sidharth Mehta had resigned from the directorship of the Company on 30-9-2010 but no incontrovertible or unimpeachable evidence was produced before the High Court as was done in Anita Malhotra [Anita Malhotra v. Apparel Export Promotion Council, (2012) 1 SCC 520 : (2012) 1 SCC (Civ) 329 : (2012) 1 SCC (Cri) 496] to show that he had, in fact, resigned long before the cheques in question were issued. Similar is the case with Kanhaiya Lal Mehta and Anu Mehta. Nothing was produced to substantiate the contention that they were not in charge of and not responsible for the conduct of the business of the Company at the relevant time. In the circumstances, we are of the opinion that the matter deserves to be remitted to the High Court for fresh hearing. However, we are inclined to confirm the order [Anu Mehta, In re, 2012 SCC OnLine Cal 13134] passed by the High Court quashing the process as against Shobha Mehta. Shobha Mehta is stated to be an old lady who is over 70 years of age. Considering this fact and on an overall reading of the complaint in the peculiar facts and circumstances of the case, we feel that making her stand the trial would be an abuse of process of court. It is however,

necessary for the High Court to consider the cases of other Directors in light of the decisions considered by us and the conclusions drawn by us in this judgment.”

(emphasis supplied)

13. The above view in *Gunmala Sales (P) Ltd.* (supra) was endorsed and reiterated in *Standard Chartered Bank* (supra).

14. The guiding principles with reference to Section 141 of the Negotiable Instruments Act, 1881, which are now well settled by judicial pronouncements, some of which have been noted above, may be summarised thus :-

(i) It is only those persons who are in charge of or responsible for the conduct of the business of the company at the time of commission of the offence under Section 138 of the Negotiable Instruments Act, 1881 who can be subjected to criminal action with reference to Section 141;

(ii). If the person committing an offence under Section 138 of the Negotiable Instruments Act, 1881 is a company, the person who was signatory to the cheque which is dishonoured is clearly responsible for the incriminating act and would be liable to be proceeded against under Section 141 (2);

(iii). By virtue of the office they hold, the persons working in the capacity of the Managing Director or Joint Managing Director are deemed to be in charge of, and responsible for

the conduct of the business of, the company and, therefore, can be proceeded against in terms of Section 141;

(iv). Merely because a person is a director of the company is not sufficient to make him liable under Section 141, there being no deeming that by holding such position he is in charge of, or responsible for the conduct of the business of, the company within the meaning of Section 141;

(v). It is necessary for the complainant to specifically aver in the complaint that at the time the offence was committed, the person sought to be prosecuted was in charge of, or responsible for the conduct of the business of, the company in terms of Section 141, there being no need for further particulars to be given in the complaint about his role, this being subject to proof at the trial;

(vi). The person who has been summoned as an accused for offence under Section 138 of the Negotiable Instruments Act, 1881 on the basis of averment that he was director of the company accused, he being in charge of or responsible for the conduct of its business cannot get the complaint quashed by the High Court by filing a petition under Section 482 of the Code of Criminal Procedure, 1973 merely on the ground that no particulars as to his role have been set out in the complaint; and

(vii). The person who has been summoned as an accused for offence under Section 138 of the Negotiable Instruments Act, 1881 by invoking the provision contained in Section 141 may persuade the High Court to quash the process in exercise of its inherent power under Section 482 of the Code of Criminal Procedure, 1973 by furnishing “*some sterling incontrovertible material or acceptable circumstances*” substantiating his contention that he was not in charge of nor responsible for the conduct of the business of the company “*at the time the offence was committed*” and thereby showing a case that making him stand the trial would be an abuse of the process of court, but not otherwise.

15. A perusal of the eleven complaints from which the present proceedings arise reveals that they are founded on identical averments (some of the accused who are not before this court being not common), the exception being with regard to the particulars of the cheques or the background facts against which they had been issued or the dates on which they were presented or dishonored leading to demand notices in their respect being issued, there being no payment made pursuant to such demand notices. The averments crucial to pass the muster of Section 141 of the Negotiable Instruments Act, 1881, however, are identically worded in the said eleven cases. For illustration, the crucial averments appearing in one of such complaints (Crl. Complaint no.799/1/14), it being the first in chronology, may be extracted as under :-

“3. That the accused No.3 Mr. Vinod Sirohi, Accused No.4 Fadi El Jaouni, Accused No.5 Khaled Abdelrahman Radi and the Accused No.6 Mr. Naseer Mohd. MF Al Hajri are the Directors and Accused No.7 Mr. Rahul Shivam is the Authorised Signatory of the Accused No.1 Company, namely M/s. Bush Foods Pvt. Ltd. and are actively engaged and responsible for and in-charge of day-to-day management, business activities and affairs of the Accused No.1 firm.

x x x

10. That despite the receipt of the above said Legal Notice dated 05.02.2014, the Accused Persons have failed / refused / neglected to make the payment of the above said Cheques amount to the Complainant and have therefore made themselves liable to be prosecuted under the provisions of Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881. It is further submitted that at the time of issuance of the said cheques, the accused persons have assured, promised and represented to the Complainant that the said cheques would be honored on presentation. However, the said Cheques, which are the subject matter of the present complaint, were dishonored on presentment. The accused persons have no intention to make the said payment to the Complainant. It is submitted that the Accused Persons have been responsible for all the business dealings for and on behalf of their said Accused no.1 firm and also responsible for the circumstances that have lead to the dishonor of the aid cheques issued to the complainant.”

(emphasis supplied)

16. It is clear from the bare perusal of the above quoted averments that they are deficient to the effect that there is not even a whisper of allegation that the respondents are persons who were in charge of or responsible to the company accused for the conduct of its business “*at the time the offence was committed*”.

17. The respondents are not stated to be signatories to the cheques in question. They cannot be roped in merely because they have been directors of the company accused. The general averments that they were responsible for all the business dealings and for the circumstances leading to the dishonour of the cheques or that they had given any assurance as to the cheques do not suffice.

18. The view taken by the revisional court, therefore, must be upheld. The petitions and the applications filed therewith are dismissed.

(R.K. GAUBA)
JUDGE

JULY 23, 2018

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