

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 526 of 2018**

1. Geeta Singh W/o Vishal Singh Aged About 40 Years
2. Neena Singh W/o Vijay Kumar Singh Aged About 71 Years

Both R/o Navbharat Fuse Co. Ltd. , Navbharat Udyog Bhawan Ring Road No. 1, Telibandha Raipur Chhattisgarh

---- Petitioners

Versus

- Jai Prakash S/o Kanhaiyya Lal Sahu Aged About 59 Years Proprietor Royal Energy Office -1, R/o New Chandela Colony Agyey Nagar Through Police Station Civil Line Bilaspur Chhattisgarh

---- Respondent

CRMP No. 527 of 2018

1. Geeta Singh W/o Vishal Singh Aged About 40 Years
2. Neena Singh W/o Vijay Kumar Singh Aged About 71 Years

Both R/o Navbharat Fuse Co. Ltd. , Navbharat Udyog Bhawan Ring Road No. 1, Telibandha Raipur Chhattisgarh

---- Petitioners

Versus

- Jai Prakash S/o Kanhaiyya Lal Sahu Aged About 59 Years Proprietor Royal Energy Office -1, R/o New Chandela Colony Agyey Nagar Through Police Station Civil Line Bilaspur Chhattisgarh

---- Respondent

CRMP No. 551 of 2018

1. Geeta Singh W/o Vishal Singh Aged About 40 Years
2. Neena Singh W/o Vijay Kumar Singh Aged About 71 Years

Both R/o Navbharat Fuse Co. Ltd. , Navbharat Udyog Bhawan Ring Road No. 1, Telibandha Raipur Chhattisgarh

---- Petitioners

Versus

- Jai Prakash S/o Kanhaiyya Lal Sahu Aged About 59 Years Proprietor, Royal Energy Office -1, R/o New Chandela Colony, Agyey Nagar Through Police

Station Civil Line, Bilaspur Chhattisgarh

---- Respondent

For Petitioners : Ms. Saumya Sharma, Advocate

For Respondent : Shri Y.C. Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18/03/2019

1. Heard.
2. All the petitions are being heard together and decided by this common order as common question of law is involved.
3. The present petitions have been preferred against the order of the revisional Court dated 18.01.2018 passed in Criminal Revision Nos. 513, 515 and 514 of 2017, whereby the order dated 27.09.2017, passed by the JMFC, Raipur, whereby the charges have been framed against the petitioners under Section 138 of the Negotiable of Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act) was affirmed.
4. These three petitions have been preferred to quash the proceedings against the petitioners under Section 138 of the N.I. Act on the ground that the respondent has preferred a complaint under Section 138 of the N.I. Act making the petitioners as a party on the ground that they were the Directors of the company named & styled as Navbharat Fuse Company, Limited. On the complaint having been filed, the notices were issued and after the appearance by the petitioners herein at the time of framing of the charges, they denied the charges and subsequently challenged the cognizance against them on the ground that

no averments have been made in the complaint to inculcate them as an accused. The trial Court, however, dismissed the contention of the petitioners and framed the charges and being aggrieved by it, the petitioners has preferred three separate revisions and the revisional Court too had affirmed the order of the trial Court whereby the offence under Section 138 of the N.I. Act was affirmed.

5. Learned counsel for the petitioners would submit that except the vague averments and the statement made, no particulars have been made to show that as to how the petitioners are responsible for issuance of cheque on behalf of the company Navbharat Fuse Company Limited. She further submits that unless & until the specific averments are made, the liability of the Directors cannot be fastened. She further submits that even before the issuance of the cheque, the document of Form-32 of the Companies Act would reveal that the petitioners have resigned from the company. She placed her reliance in the matter of ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & another {AIR 2005 SC 3512}*** and further in the case of ***Pooja Ravinder Devidasani Versus State of Maharashtra and Another {(2014) 16 SCC 1}*** and submits that unless & until specific averments exist the cognizance could not have been taken under Section 138 of the Negotiable Instruments Act, 1881.
6. Per contra, learned counsel for the respondent opposes the averments and submits that the contention of the petitioners can be very well adjudged during the course of trial. He further submits that the petitioners can very well approach to the Court below and put forth their contention, therefore, at this stage to adjudicate the same it would be premature. He further submits that the averments made in the complaint and the statement would show that how the

liability has been fastened it has clearly been disclosed. He further submits that the other Directors of the Company who are the party before the Court and the company has not been made a party, therefore, the petitions are not tenable.

7. Heard learned counsel for the parties and perused the complaint.
8. The Supreme Court in the case of ***Gunmala Sales Private Limited Versus Anu Mehta and others*** {(2015) 1SCC 103} has laid down that once in a complaint filed under Section 138 read with Section 141 of the NI Act the 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. It lays down that the High Court in the facts of a particular case can go into examine as to whether the averments which is sufficient to make out a case against the Director is made out or not?.
9. The Supreme Court further in the case of ***Pooja Ravinder Devidasani Versus State of Maharashtra and Another*** {(2014) 6 SCC 1} has laid down the ratio that the complainant is obliged to explain in what manner the accused was responsible for the conduct of the business of the company at the relevant time. Further the Supreme Court in ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & another***¹ has held as under in para 19 & 20:-

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

1 AIR 2005 SC 3512

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.

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

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

10. Further the aforesaid principle is reiterated in the case of **Aneeta Hada Vs.**

Godfather Travels and Tours Private Limited², wherein it is held in para 39:-

² (2012) 5 SCC 661

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

11. In view of the aforesaid principles laid down, the criminal complaint and the statements are perused. In the complaint made Geeta Singh and Dr. Neena Singh were before the Court have been shown as member of Board of Director and in the complaint the following averments at para 20 have been made which is reproduced hereunder:-

“2— यह कि अनावेदक क्रमांक 1 कंपनी अधिनियम के अंतर्गत पंजीकृत कंपनी है। अनावेदक क्रमांक 2 से 6 क्रमशः पदीय हैसियत से कार्यरत हैं। एवं कंपनी के सभी कार्यों के प्रति उत्तदायी है।”

12. In the statement of the complainant, in respect of the petitioners the following averments have been made at para 2, which is reproduced hereunder:-

“2. यह कि अभियुक्त क्रमांक—1 कम्पनी अधिनियम के अन्तर्गत पंजीकृत कम्पनी है, अभियुक्त क्रमांक 2 एवं 3 उक्त कम्पनी के मैनेजिंग डायरेक्टर है अभियुक्त क्रमांक — 4 से 6 डायरेक्टर है, इसलिए अभियुक्त क्रमांक — 1 की ओर से किए गये सभी कार्यों, व्यवसाय व प्रत्यवहारों के अभियुक्त क्रमांक — 2 से 6 पूर्ण रूप से अवगत व उत्तरदायी है।”

13. Admittedly, it has not been shown that the petitioners were the Managing Directors, who were managing the affairs of the company, the role only is attributed that they were in the Board of Directors. Therefore, except the averment that they are the in the Board of Directors and were responsible to the

company, nothing has been stated before the Court below. Therefore, when it is not averred in the complaint that the petitioners herein how they were responsible for the business of the company and issued the cheque on behalf of the company, the complaint against them cannot be sustained. The complaint is in order to attract the vicarious criminal liability the complaint is silent about the role played and the responsibility caste on the petitioners. Therefore, in case of dishonour of any cheque issued by the company the liability cannot be fastened under Section 138 of the Act, 1881 to the petitioners vicariously in facts of this complaint. In view of this finding, this Court is not inclined to go into the other issue as to whether on the date, the petitioners have resigned from the company or not. In a result, the petitions are allowed and the criminal proceedings against the petitioners under Section 138 of the Negotiable Instruments Act, 1881 are hereby quashed and the petitioners are acquitted of the charges leveled against them.

Sd/-

Goutam Bhaduri
Judge

Ashu