IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1182 of 2017

Parth Bhadresh Mehta and Anr .. Applicants
Versus
The State of Maharashtra & Anr .. Respondents

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Mr.Himanshu V. Pradhan i/b M/s.Crawford Bayley & Co. for the applicants.
Mr. H.J. Dedhia, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 24th SEPTEMBER, 2019

P.C:-

1 Being aggrieved by issuance of process by the Metropolitan Magistrate, 33rd Court, Mumbai on 30th March 2017, on a complaint filed by Allahabad Bank having its registered Finance branch situated at Mumbai, the applicant has approached this Court. Learned counsel for the applicant would invite my attention to the order passed below Exhibit-1 where the Metropolitan Magistrate has recorded that on perusal of the complaint and verification statement of the complainant on oath, it reveals that the cheques in question were presented for encashment within validity period and the same came to be dishonored. The complainant placed on record the record of

the Registrar of Companies (ROC). Being satisfied that the *prima facie* case has been made out against accused nos.1 to 3 to proceed under Section 138 of the Negotiable Instruments Act, the learned Magistrate was pleased to issue process against Accused Nos.1 to 3 whereas the complaint was dismissed against accused no.4.

2 With the assistance of learned counsel for the applicants, on perusal of the complaint which is lodged, it is relevant to take note of the role attributed to the present applicant and in the said application, the present applicant (Accused No.3) is described as the Director whereas Accused No.4 is described as Addl. Director of the Company. In para-5 of the complaint, an averment is made to the following effect :

> *"the complainant states that Accused no.2 has signed the cheques in question. The Accused No.2 was in-charge of and managing the day-to-day business affairs of the Accused No.1 company. Accused No.3 is the Director and Accused No.4 is the Addl. Director of the Company and responsible for the affairs and management of the Company."*

3 On perusal of Section 141 of the Negotiable Instruments Act, 1981 which set out the provisions in relation to offences by the Companies, sub-section (1) of the said section contemplates that where if the person committing the offence under section 138 is a Company, every person who, at the time of 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.

4 In the wake of the specific and unambiguous provision, it is clear that the vicarious liability of a person of being prosecuted for commission of an offence by a Company arises only if at the time when the offence is alleged to have been committed, he was in-charge of and was responsible to the Company for the conduct of its business. The sequitur of this being that it is imperative on part of the complainant to make an averment in the complaint that a particular person was in-charge and was also responsible to the Company for the conduct of its business or that the offence was committed by the Company by his consent or connivance or he attributes any neglect on his part being in charge of the affairs.

5 In absence of any such averment contained in the application, the initiation of proceedings against such an applicant who has not been specifically attributed to have a role in-charge of the affairs of the company cannot be sustained. The applicant has categorically made an averment and has pointed out that he has resigned from the post of Director on 21st March 2016 and thereafter Form No.32 clearly reflect that he was working as a non-executive Director. As far as the role

of the non-executive Director and specifically in absence of any averment that he was responsible for handling day-to-day affairs of the company, the judgment of the Apex Court in case of ***Pooja Ravinder Devidasani vs. State of Maharashtra,***[1] para-17 needs a reproduction :

> "17 Non-executive Director is no doubt a custodian of the governance of the company but is not involved 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 is 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 NI 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 NI Act. In National Small Industries Corpn.(National Small Industries Corpn Ltd. vs. Harmeet Singh Paintal, (2010) 3 SCC 330: this Court observed :
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> > 13 Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore not

1(2014) 16 SCC 1,

> sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) in in charge of an 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 with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.
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> 14 A company 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 an responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under section 141.

6 In view of the fact that since Section 141 is a penal provision creating vicarious liability, it will have to be strictly construed and in absence of specific averments in the complaint necessarily pointing out that the said person was responsible to the Company for the conduct of its business, he cannot be proceeded against and liable for any punishment under the provisions of the Negotiable Instruments Act.

7 In absence of consideration of the relevant material and the provision contained in section 141 of the Negotiable Instruments Act, the issuance of process order of the Magistrate dated 30th March 2017 cannot be sustained and accordingly, the same is quashed and set aside.

8 Criminal Application is allowed in terms of prayer clause (a).

No order as to costs.

SMT. BHARATI DANGRE, J