

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO.193 OF 2018
WITH
CRIMINAL REVISION APPLICATION NO.194 OF 2018

1) **CRIMINAL REVISION APPLICATION NO.193 OF 2018 :**

Rashtriya Chemical and Fertilizers
Ltd., A Government of India
Undertaking Head Office at
Priyadarshani Eastern Express
Highway, Sion, Trombay Road,
Mumbai-400022, Through Sales-
cum-Service Center, Veer
Wamanrao Joshi Chowk, Yavatmal,
Through it's Deputy Marketing
Manager at Yavatmal-Incharge of
Sales-cum-Service Center, Tah.
and District Yavatmal.

..... **APPELLANT**

// VERSUS //

1. Sudhakar Rajeshwar Belorkar,
Aged about adult, Occ. Agriculturist,
r/o. Yavatmal, Tah. and District
Yavatmal.

2. Dipak Balirampant Belorkar,
Aged about Adult, Occ. Agriculturist,
r/o. Ghatanji, Tah. Ghatanji, District
Yavatmal.

RESPONDENTS

Mr. D. N. Kukday, Advocate for the Appellant.
Ms Ira P. Kshiti, Advocate for the respondent no. 1.
Mr. S. P. Kshirsagar, Advocate for respondent no. 2.

2) **CRIMINAL REVISION APPLICATION NO. 194 OF 2018 :**

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RESPONDENTS

Mr.D.N.Kukday, Advocate for the Appellant.
Ms Ira P. Kshiti, Advocate for the respondent no.1.
Mr.S.P.Kshirsagar, Advocate for respondent no.2.

Date of reserving the Judgment : 30.0.2019.
Date of pronouncement of the Judgment : 4.10.2019.

CORAM : N. W. SAMBRE, J.

Per Contra :

1. Both these revisions are against the Judgment delivered by the Sessions Court, Yavatmal thereby reversing the order of Judicial Magistrate, First Class, Yavatmal, which had allowed an application moved in proceedings under Section 138 r/w. 142 of the Negotiable Instruments Act,1882 (hereinafter referred to as "**the N.I. Act**") for addition of Directors as accused persons. Since

the issue involved in both these revisions is common, they are decided by consent by this common Judgment.

2. The applicants initiated proceedings under Section 138 r/w. 142 of the N. I. Act against the Company by name Ganga Fertilizers Pvt. Ltd. through its Managing Director Vijay Belorkar and said Vijay Belorkar in his independent capacity was also added as an accused.

3. The proceedings were initiated in 2006. However, said Vijay Belorkar since died, the present applicants moved an application thereby impleading the surviving Directors as Managing Directors. The said application came to be allowed by the Magistrate by detailed order thereby observing that criminal liability on account of dishonour of cheque is the responsibility of drawer, who is a Company in this case. Such responsibility extends to the Officer of the Company. Learned Magistrate has observed that the proposed accused were incharge of and were responsible for the conduct of business of

accused/Company and as such, permitted them to be added.

4. Said accused persons, who were added as Directors of accused Company being responsible for the offence under Section 138 r/w. 14 of the N.I. Act, preferred revision which came to be allowed vide impugned Judgment dt.27.6.2018 passed in Criminal Revision Nos.55 of 2015 and 56 of 2015. As such, these second revisions by the Original Complainant.

5. Mr.D.N.Kukday, learned Counsel for the appellant would urge that primarily the offence was directed against a Company and the Managing Director of the Company was impleaded as accused in both official and private capacity. According to him, aforesaid proceedings under N.I. Act does not contemplate the issue of mandatory notice under said provisions to each of the Directors of the Company spelling out active role played by each of them, in the working of the Company. That being so, the Complaint after death of existing Managing Director, an accused, is

very much maintainable against successor Managing Director and other Directors, who are found equally responsible at the relevant time when cheque was dishonoured for conducting of business of accused Company. Mr.Kukday, in support of the aforesaid contention would rely on the Judgment of the Apex Court in the matter of **Kirshna Texport and Capital Markets Ltd. Vs. Ila A. Agrawal and Others** reported in AIR 2015 SC 2091, particularly paragraph nos.13 to 15. In addition to above, submissions are, though no specific role in the Original Complaint was alleged against the non-applicant/Directors, but, in view of their succession to accused who was managing the affairs of the Company at the relevant time when the prosecution under the N.I. Act was launched, the application for their addition came to be moved. According to him, since there is presumption under the N.I. Act of commission of offence against accused persons, it is for the non-applicant to discharge said burden. The issue of whether the present respondents are liable or not can be looked into after the evidence is appreciated. Reliance is placed in the matter of **S.V.Mujumdar vs.**

Gujrat State Fertilizers, 2005 (3) Mh.L.J. 754. That being so, the present revision is liable to be allowed.

6. While countering the submission, Mr.S.P.Kshirsagar and Ms Ira P. Kshiti, learned Counsel for the non-applicants/Directors would urge that, on the date of transaction, the respondents were rightly held to be not responsible for the business of accused Company. According to them, since non-applicants/accused were not part of initial complaint, in absence of any pleading, they cannot be added as accused, particularly in absence of any specific role played by the non-applicants in commission of crime in question. As such, dismissal is sought.

7. Considered the submissions. Complaint came to be initiated by the applicants on the file of Judicial Magistrate, First Class, Yavatmal against Ganga Fertilizers Pvt. Ltd. through its Managing Director Vijay Belorkar, who died on February 28, 2013. The applicant/Complainant, relying on certified true copy of balance sheet of 2002-03, has noticed the names of non-applicants/Directors along

with said deceased Vijay Belorkar. Having noticed that the cheque was dishonoured, the non-applicants who were Directors and responsible for the affairs of the accused Company, their impleadment was sought for.

8. As far as aforesaid impleadment is concerned, even if Mr.Kukday has relied on the Judgment of Apex Court in the matter of Kirshna Texport and Capital Markets Ltd. (cited supra) so as to substantiate his contention that the individual notices are not required to be served to the Directors of the Company once notice under Section 138 of the N.I. Act is served on the Company. However, fact remains that there has to be a specific case against accused persons spelt out from the pleadings.

9. When the Complaint was filed, there were no pleadings against present non-applicants/Directors and it is by way of the application, their impleadment is sought for the offence punishable under Sections 138 and 141 of the N.I. Act. Apart from the fact that such amendment cannot be granted, particularly having regard to the fact that there

were no pleadings against the accused persons of their active role in the management of affairs of the Company and in commission of alleged offence under the N.I. Act, by way of this afterthought application, the lacunas or admissions (indirect) were given by the applicants cannot be permitted to be cover up. A support can be drawn from the Judgment of Kerala High Court in the matter of **Linda John Abraham .vs. Business India Group Co.** reported in 2011 (4) Ker L. J. 714.

10. Apart from above, in case of Magistrate issuing process, it is required to be satisfied by the Magistrate that allegation in the complaint constitute offence against accused person. Sections 200 to 204 of the Code of Criminal Procedure can be referred to for this very purpose. Just because non-applicants are Directors of the Company, they cannot be automatically be held vicariously liable unless it is demonstrated that such Directors were responsible for conduct of business of the Company at the time when offence was committed. There needs to be a clear, unambiguous and specific allegation against the

person like the non-applicants, who are sought to be prosecuted by demonstrating that they were in-charge of and responsible to the Company in conducting its business at the material time when offence was committed. Just because a person is Director, that by itself will not make him liable or responsible for the criminal liability for an offence under the N.I. Act. Appropriate support can be drawn from the Judgment of Apex Court in the matter of **Pepsico India Holdings Private Limited .vs. Food Inspector and another** reported in (2011) 1 SCC 176, particularly paragraph 50 thereof which reads thus :

“As mentioned hereinbefore, the High Court erred in giving its own interpretation to the decision of this Court in S.M.S. Pharmaceuticals Ltd. Case [(2005) 8 SCC 89], which was reiterated subsequently in several judgments, some of which have been indicated hereinabove, and relying instead on the decision of Rangachari case [(2007) 5 SCC 108], the facts of which were entirely different from the facts of this case. It is now well established that in a complaint against a company and its Directors, the complainant has to indicate in the complaint itself as to whether the Directors concerned were either in charge of or responsible to the Company for its day-to-day management, or whether they were responsible to the Company for the conduct of its business. A mere bald statement that a person was a Director of the Company against which certain allegations had been made is not sufficient to make such

Director liable in the absence of any specific allegations regarding his role in the management of the Company. “

11. In the aforesaid background, no error of jurisdiction could be noticed warranting interference in the revisional jurisdiction at the behest of the applicants/Original Claimants. The revision, as such, fails. The same is dismissed.

JUDGE

[jaiswal]

