IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4929 OF 2019

ADITI DUSHYANT METHA)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

Mr.Vivek Kantawala a/w. Mr.Amey Patil and Mr.Vivek Sharma i/b. Vivek Kantawala and Company, Advocate for the Petitioner.

Mr.S.V.Gavand, APP for the Respondent – State.

Mr.Sameer Reshamwala a/w. Pinak Varv i/b. Indian Law LLP, for Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 28th JANUARY 2020

<u>ORAL JUDGMENT</u> :

1 Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 This is a petition by original accused no.3 in a complaint for offences punishable under Section 138 and Section 141 of the Negotiable Instruments Act initiated by respondent no.2/original complainant. Heard the learned counsel appearing for the petitioner/accused no.3 at sufficient length of time. By taking me through the entire pleadings made in the complaint, the learned counsel for the petitioner/accused no.3 argued that cheques were signed by accused no.2 and not by the accused no.3 i.e. petitioner herein. He further argued that any person in control of day to day affairs of the Company can only be made as an accused in such prosecution. On behalf of the petitioner, reliance is placed on judgment of the Hon'ble Apex Court in the matter of **K.K.Ahuja vs. V.K.Vora and Another**[1] and **National Small Industries Corporation Limited vs. Harmeet Singh Paintal and Another**[2]. With the aid of these judgments, it is argued that the Director can be impleaded as an accused only when it is demonstrated that at the time of the offence, he was in-charge of and was responsible for conduct of business of the Company. With this, it is argued

1 (2009) 10 Supreme Court Cases 48
2 (2010) 3 Supreme Court Cases 330

that no such pleadings are there in the complaint, and therefore, the complaint qua the present petitioner/accused no.3 needs to be quashed and set aside.

3 As against this, by relying on judgment in the matter of **Standard Chartered Bank vs. State of Maharashtra and Others**[3], the learned counsel for the respondent no.2 contended that in order to get the process quashed, some sterling incontrovertible material ought to have been placed on record by the petitioner/accused no.3 and no such material is forthcoming. Therefore, in his submissions, the writ petition deserves to be dismissed.

4 I have considered the submissions so advanced and also perused the material placed on record.

5 In the complaint for offences punishable under Section 138 and 141 of the Negotiable Instruments Act, filed by the respondent no.2 herein, there is categorical averment in

3 Criminal Appeal Nos.271 – 273 of 2016 decided on 6th April 2016

paragraph 3 that accused no.3 (present petitioner) is the Director of accused no.1 Company. It is further pleaded therein that Director of accused no.1 Company are in-charge of and responsible for day to day work affairs of accused no.1 Company. It is further pleaded that Directors, including the present petitioner/accused no.3, so also other Directors, were dealing with the complainant Company at the relevant time. In paragraph 4 of the complaint, it is averred that accused nos.2 to 4 on behalf of accused no.1 Company had approached the complainant Company for availing credit facility for business expansion of accused no.1 Company. According to the complainant Company, accused nos.2 to 4 assured complainant Company with respect to the financial capacity of accused no.1 Company and thus, the complainant Company was induced by such representation and agreed to provide credit facility to accused no.1 Company. In paragraph 6 of the complaint it is specifically pleaded that accused nos.2 to 4 on behalf of accused no.1 Company, had issued four cheques in favour of the complainant Company. Further pleadings are regarding dishonour of cheques and issuing of statutory notice etc.

6 In the matter of **<u>A.K.Singhania vs. Gujarat State Fertiliser Co. Ltd</u>**.[4], it is held by the Hon'ble Apex Court that in case of offence by Company, to bring its Directors within the mischief of Section 138 of the Negotiable Instruments Act, it shall be necessary to allege that they were in-charge of and responsible to the conduct of business of the Company. No particular form is stated to be necessary. It is further held that it is not necessary to reproduce wordings of Section 141 of the Negotiable Instruments Act. In its judgment, the Hon'ble Apex Court further made it clear that it is not necessary to plead that such a Director had any specific role in respect of the transaction leading to issuance of the cheque.

7 Observations of the Hon'ble Apex Court in the matter of **<u>National Small Industries Corporation Limited (supra)</u>** found in paragraph 39 read thus :

> "39 From the above discussion, the following principles emerge :

4 AIR 2014 SC 71

(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.

8 In the matter of **K.K.Ahuja (supra)** the Hon'ble Apex Court has observed thus in paragraph 24 :

> "24 Therefore, the averment in a complaint that an accused is a director and that he is in charge of and is responsible to the company for the conduct of the business of the company, duly affirmed in the sworn statement, may be sufficient for the purpose of issuing summons to him. 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' (listed in para 14 above), 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."

9 In the light of these observations, if pleadings made in the complaint are perused, then, it becomes obvious that the complaint contains necessary averments pointing out sufficient ground to proceed against the accused no.3 i.e. the present petitioner, for offences punishable under Sections 138 and 141 of the Negotiable Instruments Act.

10 The petition, as such, is devoid of merit, and the same is, therefore, dismissed. Rule is discharged.

(A. M. BADAR, J.)

Arti V. Khatate

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