

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

CRIMINAL WRIT PETITION NO. 423 OF 2013

- 1) M/s. Vinar Ispat Limited,
having its office at 201, Regd. Office
201, Steel Chambers, Bhandara Road,
Nagpur.
- 2) Vishnu Kumar Oza,
Aged about 55 years,
Occupation – Business,
(Managing Director, M/s. Vinar
Ispat Limited)
- 3) Smt. Chanchaladevi Vishnukar Oza,
Aged about 50 years,
Occupation – Business,
- 4) Chetankumar Vishnukumar Oza,
Aged about 32 years,
Occupation – Business,

Nos. 2 to 4 are R/o Ronpal Park,
Bungalow No.1, Behind Akbar Ali,
Chembur, Mumbai.

- 5) Girishkumar Menon,
Aged about 45 years,
Occupation – Service in M/s. Shilpa
Reroller Pvt. Ltd., Shreeji Apartment,
Nandanwan Layout, Near Bank of
Maharashtra, Nagpur.

.... **PETITIONERS**

VERSUS

M/s. Jejani Udyog,
having its office at New Cotton Market,
Nagpur, through its Proprietor

Mrs. Nita w/o Nirmal Kumar Jejani,
Aged about 48 years,
Occupation – Business,
R/o Tikekar Road, Dhantoli, Nagpur.

.... **RESPONDENT**

Ms. Anisha Sharma, Counsel h/f. Mr. S.P. Bhandarkar, Counsel for the
petitioners,
None for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 4th JANUARY, 2021

ORAL JUDGMENT :

The petitioners are assailing the order of issuance of process dated 30-10-2004 rendered by the Judicial Magistrate First Class, Court No.3, Nagpur in Summary Criminal Complaint Case 366/2003 and the judgment dated 16-5-2013 rendered by the 4th Additional Sessions Judge, Nagpur in Criminal Revision Application 316/2012 whereby the challenge to the order of issuance of process, is rejected.

2. I have heard Ms. Anisha Sharma, learned Counsel for the petitioners.

3. None appears on behalf of the respondent. None appeared on behalf of the respondent on 07-12-2020 when the matter was substantially heard.

4. While the learned Sessions Judge has observed that accused 5-petitioner 5 herein Girishkumar Menon is a signatory to the cheque which is dishonoured, the said observation runs counter to the averment in the complaint which is that the dishonoured cheque is signed by Vishnukumar Oza and Chetankumar Oza.

5. Since it is the case of the complainant that Mr. Girishkumar Menon is not a signatory and that the signatories are Vishnukumar and Chetankumar, it is more than obvious that evidence inconsistent with or contrary to the complaint averment would not be permissible and it would be safe to proceed on the premise, while testing the order of issuance of process, that according to the complainant, the signatories are Vishnukumar and Chetankumar.

6. The thrust of the submission of Ms. Anisha Sharma is that even if the entire complaint is holistically read, the necessary averments as would attract the deeming fiction carved out under Section 141 of the Negotiable Instruments Act is not attracted. The averments fall short of *prima facie* showing that the petitioners were in charge of and were responsible to the company for conduct of business.

7. Petitioner 1 is the company and, therefore, the principle of

vicarious liability is not attracted. Petitioner 2-Vishnukumar Oza is the Managing Director and unlike an ordinary Director, is deemed to be in charge of the affairs of the company and there is, therefore, no infirmity in the order of issuance of process as against Vishnukumar Oza. Petitioner 4-Chetankumar Oza has unfortunately passed away and the complaint to that extent abates. The issue which survives is the liability of petitioner 3-Smt. Chanchaladevi Oza and petitioner 5-Girishkumar Menon to face the prosecution.

8. It is well settled that there is no presumption in law that every Director, unless he is the Managing Director or an officer who is statutorily deemed to be in charge of the affairs of the company, is responsible to the company for its affairs. The very *sine qua non* to clothe the Magistrate with the jurisdiction to issue the process is that the complaint must contain the necessary averment that the accused was in charge of the affairs of the company and was responsible to the company for its business.

9. Mere reproduction of the language of Section 141 of the Negotiable Instruments Act may not suffice. While it is not expected of the complainant to make a reference to the evidence or for that matter to describe very minutely the role played by the Director, the averments

must go beyond the bald averment that the Director was in charge of the affairs of the company. From perusal of the averments in the complaint, I am satisfied that the averment in paragraph 10 that all the accused were in charge of the affairs of the company is only a ritualistic lip service to the statutory language, in so far as petitioner 3-Smt. Chanchaladevi Oza and petitioner 5-Girishkumar Menon are concerned. As a fact, petitioner 5 is not even a Director and was admittedly an employee holding the post of General Manager (Commercial). There is absolutely no averment in the complaint to suggest that General Manager (Commercial) was in charge of the affairs of the company or was responsible to the company for the conduct of business. I have already noted that the observation of the learned Sessions Judge who decided the revision that the General Manager (Commercial) is a signatory goes beyond the averments in the complaint.

10. In so far as petitioner 3-Smt. Chanchaladevi Oza and petitioner 5-Girishkumar Menon, the continuation of the prosecution shall be an abuse of the process of the Court. The order of issuance of process dated 30-10-2004 is quashed and the complaint is dismissed qua petitioner 3-Smt. Chanchaladevi Oza and petitioner 5-Girishkumar Menon.

11. The complaint shall proceed against petitioner 1-Company and petitioner 2-Vishnukumar Oza.

12. Rule is made absolute in the afore-stated terms.

JUDGE

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