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

CRIMINAL APPLICATION (APL) 502 OF 2016

1. Dinesh s/o. Baburao Madavi,
aged 45 yrs, Occ. Business,

2. Kanchan w/o.Dinesh Madavi,
aged 40 yrs, Occ. Business,

both r/o. Tilak Nagar, Amravati Road,
Nagpur. ...... **APPLICANTS**

...V E R S U S...

Namdeo s/o.Narayan Jambhulkar,
aged 65 yrs, Occ. Retired,
r/o.Garada – Kasalwada,
Tah. Lakhni, Dist. Bhandara ... **RESPONDENT**

Mr. R.R. Dawda, counsel for applicants.
Mr. G.I. Dipwani, counsel for respondent.

CORAM: ROHIT B. DEO, J.
DATE : 18.01.2021

ORAL JUDGMENT:

Heard Mr. R.R. Dawda, the learned counsel for the applicants and Mr. G.I. Dipwani, the learned counsel for respondent.

2. The applicants – who are arraigned as accused in Summary Criminal Case 26/2016, instituted by the respondent herein under section 138 of the Negotiable Instruments Act ("Act"

for short), are aggrieved by the cognizance taken by the learned Judicial Magistrate First Class, Lakhni, of the complaint.

3. The short submission of Mr. R.R. Dhawda, the learned counsel for the applicants is that the cheque in question is issued by Baburao Madavi Multipurpose Education Society, Nagpur, which is a society registered under the provisions of Societies Registration Act, 1860, and since the society is not arraigned as accused, assuming that the applicants herein are the signatories, no cognizance could have been taken of the complaint.

4. Reliance is placed on the decision of the Apex Court In ***Anita Hada vs. Godfather Travels and Tours Private Limited, [(2012) 5 SCC 661]***.

5. It is not in dispute that the society is not arraigned as accused. The cheque is irrefutably issued by the society and the applicants allegedly are the signatories in the capacity of president and secretary of the society.

6. The learned counsel for the respondent – complainant vehemently submits that the transaction of loan was in essence

between the complainant and the applicants in their personal capacity, and therefore, the fact that the society is not arraigned as accused is not fatal to the complaint. It is difficult to accept the submission. Assuming that the initial transaction was between the complainant and the applicants, even according to the complainant, it is the society which issued cheque which is allegedly dishonoured. In this view of the matter, the offence, if at all, is primarily committed by the society.

7. Section 141 of the Act reads thus:

> ***141. Offences by companies.***—*(1) If the person committing an offence under section 138 is a company, every person who, at the time 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:*
>
> *Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:*
>
> *[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]*
>
> *(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved*

> *that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*
>
> *Explanation.—For the purposes of this section,—*
>
> *(a) "company" means any body corporate and includes a firm or other association of individuals; and*
>
> *(b) "director", in relation to a firm, means a partner in the firm.*

8. Explanation (a) defines company means any body corporate and includes a firm or other association of individuals. It is, therefore, irrefutable, that the society is deemed to be company in view of the statutory fiction.

9. Section 141 provides that if the offence is committed by company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, is well as the company, shall be deemed to be guilty of the offence.

10. The issue involved is not res-integra and is conclusively settled in view of the observations in ***Anita Hada vs.***

Godfather Travels and Tours Private Limited. Suffies it to reproduce the following observations in the said judgment:

> *"50. However, it is noticeable that the Bench thereafter referred to the dictum in Sheoratan Agarwal and eventually held as follows: (Anil Hada case 18 SCC p 10, para 21)*
>
> *"21. We, therefore, hold that even if the prosecution proceedings against the Company were not taken or could not be continued, it is no bar for proceeding against the other persons falling within the purview of sub-sections (1) and (2) of Section 141 of the Act."*
>
> *53. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.*
>
> *54. In this context, we may usefully refer to Section 263 of Francis Bennion's Statutory Interpretation where it is stated as follows: -*
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> *"A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention.*
>
> *55. It will be seemly to quote a passage from Maxwell's The Interpretation of Statutes (12th Edition) : -*
>
> *"The strict construction of penal statutes seems to*

manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

56. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context.

57. In RBI v. Peerless General Finance and Investment Co. Ltd. it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in Deewan Singh and others v. Rajendra Prasad Ardevi and *Sarabjit Rick Singh v. Union of India*

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company *can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.*

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in paragraph 51. The decision in Modi Distilleries has to be treated to be restricted to its own facts as has been explained by us hereinabove.

11. In view of the settled legal position, the application is allowed. Summary Criminal Complaint 26/2016 is quashed.

Judge

Belkhede RS