

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 2335 of 2022

**Vikash Kumar Agarwala
Vs.
Harsh Securities Pvt. Ltd.**

**For the petitioner : Mr. U.S. Chattopadhyay, Adv.,
Mr. Santanu Maji, Adv.,
Ms. Trisha Rakshit, Adv.**

**For the opposite
Party no. 2 : Mr. Satadru Lahiri, Adv.,
Mr. Safdar Azam, Adv.,
Mr. Pradip Chakraborty, Adv.**

Judgement on : 03.08.2022.

Bibek Chaudhuri, J.

The instant revision has been filed by accused no. 2/petitioner in a case under Section 138 read with Section 141 of the Negotiable Instruments Act praying for quashing of further proceedings in connection with the above-mentioned criminal case instituted against him on the following grounds:-

- (i) He is not the Managing Director of the Company;
- (ii) He is not the signatory of the cheque in question;
- (iii) He is only a non-performing Director of the Company.

Therefore, in view of the ratio laid down in ***S.M.S. Pharmaceuticals Ltd. –Vs.- Neeta Bhalla & Anr.*** reported in ***(2005) 8 SCC 89*** and ***Ashutosh Ashok Parasrampuriya & Anr. –Vs.- Gharrkul Industries Pvt. Ltd. & Ors.*** reported in ***2021 SCC OnLine SC 915***, the complaint instituted against the present petitioner is not maintainable.

In paragraph 18 of ***S.M.S. Pharmaceuticals Ltd.*** (supra) the Hon'ble Supreme Court laid down the ratio on this subject in the following words:-

"18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a Director in a company is not sufficient to satisfy the

requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.”

The ratio in ***S.M.S. Pharmaceuticals Ltd.*** (supra) is followed in the subsequent decision in ***Ashutosh Ashok Parasrampuriya & Anr.***(supra).

In both the decisions, cited and relied on on behalf of the petitioner the Hon’ble Supreme Court held:-

- (a) A clear case should be spelt out in the complaint against the person sought to be made liable;
- (b) The petition of complaint must contain a specific case that the accused falls within the parameters of Section 141;
- (c) The Learned Magistrate is under obligation to examine the case of the complainant on the basis of the averments contained therein and then only he issued the process;
- (d) A mere averment that the accused is the Director of a Company is not sufficient to satisfy the requirement of Section 141.

The Hon’ble Court went on further to hold that taking recourse to Section 141 of the Negotiable Instruments Act even a Non-Director can be prosecuted if a specific case is made out

by the *de facto* complainant that such person is responsible for the day to day business to the Company.

Learned Advocate for the opposite party obviously has not submitted anything controverting the well-settled principles laid down by the Hon'ble Supreme Court on the above issue. It is only submitted by him under instruction that before the Trial Court evidence of the complainant is concluded, accused persons were examined under Section 313 of the Code of Criminal Procedure and the case is fixed for defence witness. A copy of the petition of complaint is annexed with the instant revision at page 31. Paragraph 2 of the petition of complaint states as follows: -

"The accused no. 1 is a Company within the meaning of the Indian Companies Act, 1956 having its office at 32, Chowringhee Road, Om Tower, 11th Floor, Kolkata – 700 071, Police Station – Shakespeare Sarani and the accused nos. 2 and 3 are the Directors of the said accused no. 1 Company and they are in charge of and responsible for the conduct of the day to day business of the said accused no. 1 Company at the time of committing offence punishable under the Negotiable Instruments Act (as amended upto date) and the accused no. 2 signed the dishonoured cheque in question."

Thus, it was clearly averred by the *de facto* complainant in the petition of complaint that the petitioner/accused no. 3 was also responsible for the conduct of the day to day business of the said accused no. 1/Company.

The petitioner did not come forward at the time of taking cognizance of the offence against him under Section 200 of the

Code of Criminal Procedure. He appeared before the Court to face trial. Trial was conducted against him. Evidence was recorded. Therefore, the case is fixed for defence witness.

In view of specific case being made out against the petitioner no. 3 in paragraph 2 of the petition of complaint and considering the fact that the petitioner submitted to the jurisdiction of the Learned Magistrate and faced trial which is on the verge of conclusion, this Court is not inclined to entertain the instant revision.

The application is, thus, **dismissed** on contest.

It is made clear that the observation made hereinabove is limited for the purpose of disposal of the instant revision and it is open for the Learned Magistrate to take his independent decision on the basis of the evidence on record on the issue of vicarious liability allegedly attributed to the present petitioner.

(Bibek Chaudhuri, J.)