

Sl No. 3

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1908 of 2013

***Jawaid Alam
Vs.
State of West Bengal and Anr.***

For the Petitioner : Mr. Ayan Bhattacharjee
Mr. Indrajit Adhikari
Mr. Amitabrata Hait
Mr. Suman Majumder

For the O.P. No. 2 : Mr. K. C. Gara
Ms. Sunita Agarwal

For the State : Mr. Narayan Prasad Agarwal
Mr. Pratick Bose

Heard on : **24.11.2022**

Judgment on : **16.12.2022**

Ananya Bandyopadhyay, J. :-

The instant revisional application is filed under Section 482 of the Criminal Procedure Code to quash the proceedings of case no. C-21183/2011 under Sections 138/141 of the Negotiable Instruments Act, 1881 pending before the Ld. Metropolitan Magistrate, 4th Court, Calcutta directed against order dated 20.08.2011 and 08.09.2011. The petitioner inter alia contends that the opposite party no. 2 filed a complaint in the Court of Ld. Chief Metropolitan Magistrate at Calcutta being case no. C-21183/2011 under Section 138/141 of

the Negotiable Instruments Act, 1881 on or about 20.08.2011 against one M/s Prime Impex Ltd., a company along with 4 other persons including the present petitioner as accused number 4 praying for issuance of process against them based on that aforesaid complaint. The Ld. Metropolitan Magistrate vide order dated 20.08.2011 took cognizance of the case and transferred the same to the Court of Ld. Metropolitan Magistrate on 08.09.2011 process was issued on the basis of presummoning evidence of the Opposite Party no. 2 herein. The petitioner herein entered appearance and his prayer under Section 205 of the Cr.P.C. was granted. The petitioner along with the other co accused persons filed an application to drop the proceedings based on the grounds thereof on the date fixed for examination of the accused persons under Section 251 of the Cr.P.C. and the said application was not entertained vide order dated 13.03.2013. Against the order of 13.03.2013 an application under Section 397/399 of the Criminal Procedure Code was filed before the Court of Ld. Chief Judge, City Sessions Court at Calcutta being Criminal Revision No. 62 of 2013 which was dismissed on hearing by order dated 23.05.2013. The Trial Court subsequently fixed the next date for proceedings on 12.06.2013. It was further contended that the petitioner by virtue of being a mere director of the company not in charge of and responsible for the affairs and the conduct of the company cannot be held vicariously liable for the acts and/or offence committed on behalf of the company. The complaint did not mention any specific allegation against the petitioner and accordingly he does not fall under the purview of Section 141 of the Negotiable Instruments Act, 1881 to be indicted.

The Ld. Advocate for the petitioner submitted that the petitioner was never in charge of and responsible for the conduct of the business of the company and, therefore, he cannot be held liable for any act or omission or commission of offence by or on behalf of the company. He further emphasized that in the complaint specific averments regarding the status of the petitioner and specific acts committed by him to his prejudice as a person in-charge of and responsible for the conduct of the business of the company have not been categorically or particularly enunciated. He stated that a director must be in absolute control of the affairs of the company as a Managing Director or a Joint Director to be responsible for the conduct of the business of the company. A person merely designated to be a Director of the company not controlling or involved in-charge of and responsible for the conduct of the business of the company cannot be inculpated and be vicariously liable to constitute an offence under Section 141 of the Negotiable Instruments Act, 1881.

The Ld. Advocate for the petitioner further argued that the Ld. Trial Court without considering the materials on record facts, and circumstances of the case, status of the person involved, erred in taking cognizance of the case and also to issue process thereafter. The Ld. Advocate in support of his contention relied upon the decisions cited in (2007) 4 SCC 70, (2022) SCC Online SC 1958, (2018) 1C Cr LR (Cal) 515.

The Ld. Advocate for opposite party no. 2 submitted that by virtue of being a Director of the company, the petitioner was aware of the day to day

affairs of the company and was looking after the personal management of the same and was liable to be prosecuted under Section 141 of the Negotiable Instruments Act, 1881. Ld. Advocate for the Opposite party no. 2 relied upon the decision cited in 2008 Cr LJ 3049.

At the inception it is imperative to assess the complaint in question. An application under Section 200 of the Criminal Procedure Code for issuing process under Section 138 and 141 of the Negotiable Instruments Act, 1881 was filed by the complainant company namely Shantinath Commercial Services Pvt. Ltd. against the following:

1. Prime Impex Ltd. a company incorporated under the Companies Act, 1956 having its registered office at No. 7, Camac Street, Ajimganj House, 1st Floor, Kolkata-700017.
2. Ranjit Singh Kothari Working for gain at No. 7, Camac Street, Azimganj House, 1st Floor, Kolkata-700017
3. Anand Kothari working for gain at No. 7, Camac Street, Azimganj House, 1st Floor, Kolkata-700017.
4. Jawaid Alam wording for gain at No. 7, Camac Street, Azimganj House, 1st Floor, Kolkata, 700017 and residing at No. 23, Bright Street, Circus Avenue, Kolkata-700017

5. Jai Prakash Mishra working for gain at No. 7, Camac Street, Azimganj House, 1st Floor, Kolkata, 700017 and residing at No. 11/24, Rishi Bankim, Road, P.S. Serampore, Hooghly -712248.

The paragraph no. 2 of the aforesaid complaint depicted the accused no. 1 to be a company incorporated under the Companies Act, 1956 having its registered office at No. 7, Camac Street, Azimganj House, 1st Floor, Kolkata-700017 and the accused numbers 2, 3, 4 and 5 were the “Directors and/or principal officers of the accused no. 1 and looking after day to day affairs and/or business management of the accused no. 1 and responsible person for any act and at the time when the offence took place they were the Directors and /or the Principal Officers of the accused no. 1.”

An amount of Rs. 50,00,000/- was issued by the accused company to the complainant company through two cheques bearing No. 576091 dated 1st June, 2011 for Rs. 25,00,000/- and cheque No. 576092 dated 1st June, 2011 for Rs. 25,00,000/- both drawn on Indian Overseas Bank as a measure to refund the loan towards the complainant company. The aforesaid cheques were deposited on 20th June, 2011 for encashment, however, the same was dishonoured for non-payment with an endorsement of bankers remark being “funds insufficient” received by the complainant company on 21st June, 2011. Consequently, a demand notice dated 4th July, 2011 was issued for the payment of Rs. 50,00,000/- as aforesaid within 15 days from the receipt of the notice. The accused received notice on 6th July, 2011, however, failed to pay

the said amount within the statutory period. The complainant company, therefore, lodged the instant complaint. Cognizance was taken by the Chief Metropolitan Magistrate, Calcutta on 20.08.2011 and the case was transferred to the Court of Ld. 4th Metropolitan Magistrate and vide order dated 01.09.2011. The next date was fixed for enquiry under Section 200 Cr.P.C. on 08.09.2011 whereupon hearing the Ld. Metropolitan Magistrate, 4th Court being convinced that the complainant was able to make out a case under 138/141 of the Negotiable Instrument Act against the accused persons issued summons under Section 204 of the Cr.P.C.

Section 141 of the N.I. Act states as follows:

(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: ²² [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.]

In the case of **Pawan Kumar Goel v. State of U.P.** ¹the Hon’ble Supreme Court observed that,

“36. After analyzing the aforesaid and various other pronouncements, the three-

Judge Bench in paragraph 18 of the reports, observed as under:—

“18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons 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 respondent falls within 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.”

37. The Bench answered the questions posed in the reference as under:—

“19. (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without

¹ 2022 SCC Online SC 1598

this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that 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. (c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under subsection (2) of Section 141.”

In **K.K. Ahuja v. V.K. Vora**² the Hon’ble Supreme Court discussed the principles of the vicarious liability of the officers of a company in respect of dishonour of a cheque and held: -

“27. The position under Section 141 of the Act can be summarised thus:

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 2 (2009) 10 SCC 48 “Managing” to the word “Director” makes it clear that they were in

² (2009)10 SCC 48

charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of [Section 141](#).

(iii) In the case of a Director, secretary or manager [as defined in [Section 2\(24\)](#) of the Companies Act] or a person referred to in clauses (e) and (f) of [Section 5](#) of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under [Section 141\(1\)](#) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under [Section 141\(2\)](#) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of [Section 141](#). Other officers of a company can be made liable only under sub-section (2) of [Section 141](#), by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

In Pooja Ravinder Devidasani v. State of Maharashtra and Anr.³ the Hon'ble Supreme Court held as under:-

“To fasten vicarious liability under [Section 141](#) of the Act on a person, at the material 3 (2014) 16 SCC 1 time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the [NI Act](#). Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under [Section 141](#) of the NI Act. In [National Small Industries Corpn. \[National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal\]](#), (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14) “13. [Section 141](#) is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they

³ (2014)16 SCC 1

are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141.”

In **Girdhari Lal Gupta v. D.H. Mehta**⁴, the Hon’ble Supreme Court observed that,

“a person “in charge of a business” means that the person should be in overall control of the day-to-day business of the Company.

19. A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see [State of Karnataka v. Pratap Chand](#) [[State of Karnataka v. Pratap Chand](#), (1981) 2 SCC 335 : 1981 SCC (Cri) 453]).

20. In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under [Section 141](#) of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.”

The nomenclature to describe the designation of the present petitioner in the company has been stated as Director and/or Principal Officer. The term ‘and/or’ is used “to join terms when either one or the other or both is indicated.”

Definition of Director: As per Section 2 (34) of the [Companies Act, 2013](#) – a “Director” is one who has been appointed to the Board of Directors. He is the

⁴ (1971)3 SCC 189

individual who is assigned to carry out the responsibilities and functions of a company's director in accordance with the Companies Act of 2013.

Definition of Principal Officer: Section 2(35) in The Income- Tax Act, 1995

" principal officer", used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means-

(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the ² Assessing] Officer has served a notice of his intention of treating him as the principal officer thereof;

The complaint did not specifically identify and detail the role of the present petitioner in the company as to whether he had been the director or the Principal Officer or acted in both the capacities as aforesaid. It is, therefore, ambiguous as well as obscure to ideally determine the extent of work profile of the present petitioner in the Company.

Specific averments in the complaint concerning his involvement in the alleged offence are absent.

The complainant did not clarify that the present petitioner had been a signatory to the cheque or had been involved in any overt act to make him vicariously liable.

“Looking after day to day affairs and/or business management of the accused No.1 and responsible person for any act and at the time when the

offence took place they were the Directors and/or the Principal Officers of the accused no. 1” in unspecific terms do not constitute a person nor confer him to be in charge of and being responsible to the company for the conduct of the business of the company. The Director of the company must be in active charge of the company and be responsible to the company for conduct of its business in order to be impleaded vicariously. The role of the Director must be explicit in unambiguous terms that he functions in such specific manner which binds him as well as the Company for acts repugnant to law.

In the case of **Sunita Palita and others v. Panchami Stone Quarry**⁵ the Hon’ble Supreme Court observed that,

“41. There can be no doubt that in deciding a Criminal Revisional Application under [Section 482](#) of the Cr.P.C. for quashing a proceeding under [Section 138/ 141](#) of the NI Act, the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of the said Sections has to be borne in mind. The provisions of [Section 138/ 141](#) of the NI Act create a statutory presumption of dishonesty on the part of the signatory of the cheque, and when the cheque is issued on behalf of a company, also those persons in charge of or responsible for the company or the business of the company. Every person connected with the company does not fall within the ambit of [Section 141](#) of the NI Act.

42. A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable under those provisions. As held by this Court in, inter alia, S.M.S. Pharmaceuticals Ltd. (supra), the liability under [Section 138/ 141](#) of the NI Act arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, and not on the basis of merely holding a designation or office in a company. It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or

⁵ (2022)10 SCC 152

dishonour thereof, such as Director (Personnel), Director (Human Resources Development) etc. into criminal proceedings under the [NI Act](#), only because of their designation.”

In view of the aforesaid discussions and observations of the Hon’ble Apex Court the present petitioner not being a Director in charge of and responsible for the conduct of the affairs and business of the company shall not be proceeded against.

In the case of **Aneeta Hada vs. Godfather Travels and Tours Private Ltd.**,⁶ the Hon’ble Supreme Court observed that,

“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..”

In the instant case the company has been impleaded being Prime Impex Ltd. a company incorporated under the Companies Act, 1956 having its

⁶ (2012)5 SCC 661

registered office at No. 7, Camac Street, Ajimganj House, 1st Floor, Kolkata-700017.

Invoking the provisions under Section 319 of the Cr.P.C. the Managing Director or Joint Managing Director/Additional Managing Director and/or the signatory of the cheque in question, the person who are in actual charge and responsible for the conduct of business of the company should be proceeded against.

The criminal revisional application being CRR 1908 of 2013 is allowed.

The proceedings pending against the present petitioner Jawaid Alam in case no-C-21183/2011 under Section 138/141 of Negotiable Instrument Act, 1881 is accordingly quashed.

There is no order as to cost.

Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)