22.08.2022
Sl. No. 1
Ct. No. 40

<u>CRR 3267 of 2011</u>
Shailendra Prakash Sinha
Vs
The State of West Bengal & Anr.

Mr. Sandipan Ganguly (Sr. Advocate),
Mr. Surendra Kumar,
Mr. Anandi Krishna Sinha.
... for the Petitioner

Mr. Anwar Hossain,
Ms. Manisha Sharma.
... for the State

The instant application is filed under section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the proceeding of Case No. C-7447 of 2003, pending before the 9th Metropolitan Magistrate, Kolkata, under section 138 read with section 141 of the Negotiable Instrument Act, 1881.

The Petitioner was non-executive Director of M/S Jenson & Nicholson (India) Ltd., a company registered under Companies' Act 1956 having registered office at 7B, Middleton Street, 3rd Floor, Kolkata – 700071. The allegation is that M/S Jenson & Nicholson (India) Ltd., the Accused No. 1 in the case issued several cheques amounting to Rs. 16,78,000/- in favor of the Complainant in discharge of liability. All the cheques were dishonored on the ground of insufficiency of funds. Legal notice was issued but payment was not made. Therefore, the Opposite Party No. 2, through its authorized representative filed a complaint before the Chief Metropolitan Magistrate, Kolkata alleging commission of an offence under section 138 read with section 141 of the Negotiable Instrument Act, 1881. The case was registered as C-7447 of 2003. Cognizance was taken in terms of the Order dated 26/12/2003 by the Chief Metropolitan Magistrate and the case was transferred to the Metropolitan Magistrate, 9th Court, Kolkata for disposal. The present Petitioner is the Accused No. 2 in the complaint case. It is alleged in the complaint that the Accused Person No. 2 – 5 were responsible for day to day affairs of the Accused No. 1 company namely M/S Jenson & Nicholson (India) Ltd.

Contention of the present Petitioner is that the Petitioner resigned from the Board of Directors of Accused No.1 with effect from 7th February, 2004. The Petitioner was neither in control of the affairs of the Accused No. 1 nor was the authorized signatory. The Petitioner had no knowledge on issuance of the cheques in question. Therefore, the proceeding should be quashed against the Petitioner.

Mr. Ganguly appearing for the Petitioner submitted that the present Petitioner was never in charge of the affairs of the Accused No.1. He was also not responsible to the Accused No. 1 for the conduct of the business. According to Mr. Ganguly, the Petitioner, therefore, cannot be held responsible for the alleged offence under section 138 read with section 141 of the Negotiable Instrument Act, 1881. Mr. Ganguly relied upon several decisions of the Supreme Court of India namely **K. K. Ahuja vs. V. K. Vora & Anr. [(2009) 10 SCC 48], National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal & Anr. [(2010)1 C Cr LR (SC) 781], Shaleen Khemani vs. The State of West**

Bengal [(2018)1 C Cr LR (Cal) 515] and one unreported decision of this Court in C.R.R 4079 of 2006.

In spite of service of notice none appeared on behalf of the Opposite Party No.2. Affidavit of service was filed on behalf of the Petitioner.

Before delving into deep, it is necessary to look into the provision of section 141 of the Negotiable Instrument Act, 1881 which is applicable for a company.

> **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,—
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> (a) "company" means anybody corporate and includes a firm or other association of individuals; and
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> (b) "director", in relation to a firm, means a partner in the firm.

Section 141 fastens person or persons with vicarious penal liability. The provision makes it clear that in order to be made vicariously liable for offence committed by a company under the section the person or persons should be at the time of commission of the offence, be in charge of and was responsible to the company for conduct of the business of the company. The section does not postulate that each and every person shall be liable for offence committed under section 138 of the Negotiable Instrument Act, 1881. Only those persons, who was or were in charge of and responsible for the conduct of the business of the company at the time of commission of the offence would be liable for the offence under section 138 of the Negotiable Instrument Act, 1881. Explaining the scope of the section, the Supreme Court of India observed in **National Small Industries Corp. Ltd.'s** case (supra), relied upon by Mr. Ganguly, that if a Director of a company who was not in-charge of and was not responsible for the conduct of the business of the company at the relevant time, he will not be liable for criminal offence under the provision. It was further observed in this case that it is not sufficient to make a bald and cursory statement in the complaint that a particular Director was in-charge of and responsible to the company for the conduct of the business of the company without anything more on the role of that particular Director. But the complaint should spell out as to how and in what manner that particular Director was in-charge of or was responsible to the company for conduct of the business. Explaining the principle of law in this regard, earlier, three Judges Bench of the Supreme Court of India observed in **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, [(2005) 8 SCC 89]**:

> "What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company 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 under the provision."

Ratio of **S.M.S. Pharmaceuticals Ltd.** case was relied upon in in **National Small Industries Corp. Ltd.** case as well as in **K. K. Ahuja's** case (supra).

Coming to the case in hand, the complaint made a cursory and bare averment *".. the Accused Person No. 2 to 5 are responsible for the day-to-day affairs of the Accused Person No. 1 and the Accused Persons No. 4 and 5 are also authorised signatories of the company."* (italics provided). Even the complaint failed to spell out whether the present Petitioner, arrayed as Accused Person No. 1, was in-charge of the business of the company, the Accused Person No. 1. The complaint also failed to make out a case how the present Petitioner was connected with the day-to-day business of the Accused Person No.1 and what role was assigned to him in running and conducting the affairs and business of the accused Person No. 1, at the material point of time of issuance of the cheques in question. There is absence of pleading to connect the present Petitioner with the affairs of the Accused No. 1 company. Therefore, the present Petitioner, for reasons stated above, cannot be fastened with vicarious criminal liability under section 138 read with section 141 of the Negotiable Instrument Act, 1881.

Accordingly, the proceeding of the Complaint Case No. 7447 of 2003, pending in the Court of the Metropolitan Magistrate, 9th Court, Calcutta stands quashed against the present Petitioner.

The instant application filed under section 482 of the Code of Criminal Procedure, 1973 stands disposed of with pending applications, if any. A copy of this order be sent to the Court of the Metropolitan Magistrate, 9th Court, Calcutta forthwith.

(Sugato Majumdar, J.)