IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4500 OF 2021

Taj Davender Parakh And Anr . ...Petitioners
Versus
The State Of Maharashtra And Anr. ...Respondents

WITH
CRIMINAL WRIT PETITION NO. 4504 OF 2021

Taj Davender Parakh And Anr. ...Petitioners
Versus
The State Of Maharashtra And Anr. ...Respondents

WITH
CRIMINAL WRIT PETITION NO. 4503 OF 2021

Taj Davender Parakh And Anr. ...Petitioners
Versus
The State Of Maharashtra And Anr. ...Respondents

WITH
CRIMINAL WRIT PETITION NO. 4502 OF 2021

Taj Davender Parakh And Anr. ...Petitioners
Versus
The State Of Maharashtra And Anr. ...Respondents

WITH
CRIMINAL WRIT PETITION NO. 4501 OF 2021

Taj Davender Parakh And Anr. ...Petitioners
Versus
The State Of Maharashtra And Anr. ...Respondents

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Ms. Shilpa Kapil a/w Mr. Chidanand Kapil, Advocate for the Petitioners in all matters.

Mr. Akshay Bankapur, Advocate for Respondent No.2 in all matters.

Mr. Arfan Sait, APP for the Respondent – State in WP 4500 of 2021 and 4502 of 2021.

Mr. S. R. Agarkar, APP for the Respondent – State in WP No.4501 of 2021 and 4504 of 2021.

Mr. A. R. Patil, APP for the Respondent – State in WP No.4503 of 2021.

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CORAM : PRAKASH D. NAIK, J.
DATE : 20th AUGUST, 2022.

PC:

1. The Petitioners in all these petitions are prosecuted for offence punishable under Sections 138 of the Negotiable Instruments Act. The complaint is filed by Respondent No.2.

2. Criminal Writ Petition No.4500 of 2021 pertains to C.C. No.2499 of 2020 filed before the learned Additional Chief Judicial Magistrate, Nashik. The petitioners in the said petition were impleaded as accused Nos. 2 to 4. The complainant has alleged that the complainant is trader and supplier of TMT Bars and Steel products. The accused No.1 is the registered company and accused No.2 to 4 are the Directors of the accused No.1 Company and are looking after the day to day affairs and management of the said company. The complainant supplied the TMT bars and steel products to the accused. Bills/invoices were issued. The complaint relates to cheque issued by accused No.1 bearing No.355689 for an

amount of Rs. 15,00,000/-. The cheque was dishonoured with reason 'Funds Insufficient" on 13th February 2020. Demand notice dated 6th March 2020 was issued to the accused. Accused replied the notice. Complaint was filed. Process was issued against accused vide order dated 25th August 2020.

3. Criminal Writ Petition No. 4501 of 2021 relates to SCC No.2497 of 2020 pending before the learned Additional Chief Judicial Magistrate, Nashik. The complainant has alleged that accused is customer of the complainant. TMT bars and steel products were supplied to accused. The accused Nos. 2 to 4 are directors of accused No.1/Company and are looking after the day to day affairs and management of the said company. The cheque issued by accused bearing No.355692 for amount of Rs.8,99,915/- was dishonoured on 13th February 2020 on account of 'Funds Insufficient". Demand notice dated 6th March 2020 was issued to accused. It was replied. Complaint was filed. Process was issued vide order dated 25th August 2020.

4. Criminal Writ Petition No.4502 of 2021 pertains to SCC No. 2495 of 2020 pending before the Court of learned Additional Chief Judicial Magistrate, Nashik. It is alleged that the accused is customer of complainant. TMT bars and steel products were

supplied to accused. The accused Nos.2 to 4 are directors of accused No.1 company. They are looking after the day to day affairs and management of said company. Cheque bearing No.355688 for amount of Rs. 10,000/- was returned with remark “funds insufficient” on 13th February 2020. Demand notice dated 6th March 2020 was issued and complaint was filed. Process was issued vide order dated 25th August 2020.

5. Criminal Writ Petition No.4503 of 2021 relates to SCC No. 2496 of 2020 pending before the learned Additional Chief Judicial Magistrate, Nashik. The complainant has alleged that, the accused is customer of complainant. TMT bars and steel products were supplied to accused. The accused Nos. 2 to 4 are directors of accused No.1/Company and are looking after the day to day affairs and management of the said company. The complaint is relates to cheque bearing No.355690. It was dishonoured on 13th February 2020 with remark “Fund Insufficient”. Demand notice dated 6th March 2020 was issued. It was replied. Complainant was filed. Vide order dated 25th August 2020. Process was issued against the accused.

6. Criminal Writ Petition No.4504 of 2021 pertains to SCC No. 2498 of 2020. Complaint is filed before the Court of learned

Additional Chief Judicial Magistrate. It is alleged that accused is a customer of complainant. TMT bars and steel products were supplied by complainant to the accused. The accused No.2 to 4 are directors of accused No.1 company. They are looking after the day to day affairs and management company. The complaint relates to dishonour of cheque bearing No.355691 for amount of Rs.15 lakhs. The cheque was returned on 13th February 2020 with remark "Funds Insufficient". Demand notice dated 6th March 2020 was issued. It was replied. Complaint was filed. Process was issued vide order dated 25th August 2020.

7. Petitioners in all these petitions are accused Nos. 2 to 4 in respective complaints. The common ground urged in all these petitions is that, the summoning order dated 25th August 2020 passed by learned 3rd Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nashik summoning the petitioners for alleged offences of section 138 read with 142 of N.I. Act has been passed without due application of judicious mind and without there being any detailed analysis or discussion of the materials on record. The impugned summoning order dated 25th August 2020 is a cryptic determination comprising only of conclusions and not any reasoned finding. The impugned order

suffers from grave illegality in the absence of any reasoned finding about the nature of offence and role attributable to the each and every petitioner, which is the basic requirement under the criminal law for summoning any person as an accused and contrary to the said basic requirement the Respondent No.2 has simply made a bald averment in the complaint that accused Nos. 2 to 4 are responsible for the day to day affairs of the company. The learned Magistrate must have postponed the issuance of process and summons before conducting any inquiry himself or ordering investigation by any police officer under section 202 of Cr.P.C. as all the petitioners are residing beyond the jurisdiction of learned Magistrate as they are permanent residents of Hyderabad. The learned Judge did not find it necessary to ascertain as to whether and how all the directors are responsible for the day to day affairs of the company, liable for the offences alleged by Respondent No.2 in their complaint. It is a settled law that in a case where a company is an accused and allegations have been made against the directors, it is mandatory to ascribe their specific involvement in commission of such criminal offence before proceedings against them. In the impugned order no such exercise has been made by the learned Judge, who has proceeded to pass the order summoning the petitioners in mechanical and hasty manner.

8. Learned Advocate for Petitioners has relied upon the following decisions:-

(i) Pooja Ravinder Devidasani Vs. State of Maharashtra and Anr.[1]

(ii) Mr. Satvider Jeet Singh Sodhi and Anr. Vs. State of Maharashtra and Anr. decided on 1st July 2022 in Criminal Application No. 74 of 2021.

(iii) K. T. Joseph Vs. State of Kerala[2]

(iv) National Bank of Oman Vs. Barakara Abdul Aziz and Anr.[3]

(v) Parth Bhadrresh Mehta and Ors. Vs. The State of Maharashtra and Anr.[4]

(vi) Expeditious Trial of Cases under Section 138 of N.I. Act in Sou Moto Writ Petition (Cri) No. 2 of 2021 decided on 16th April 2021 by Hon'ble Supreme Court, 2021 SCC OnLine SC 325.

(vii) K. K. Foundery Pvt. Ltd. Vs. State of Maharashtra and Anr. in Criminal Application (APL) No.27 of 2020 decided on 10th March 2022 passed by this Court, Nagpur Bench.

(viii) Sunil Bharti Mittal Vs. Central Bureau of Investigation[5].

9. Learned Advocate for Respondent No.2 submitted that the averments made in the complaint are sufficient to invoke section 141 of N.I. Act. The petitioner No.1 is the signatory to the cheque.

1 (2014) 16 SCC 1.
2 (2009) 15 SCC 199.
3 2019 (5) Mh.L.J. 771
4 2021 SCC OnLine SC 325
5 (2015) 4 SCC 609

He cannot escape the liability in respect of dishonoured cheque. In the complaint it is specifically mentioned that the accused Nos. 2 to 4 are directors of accused No.1/company and are looking after day to day affairs and management of the said company. The order passed by learned CJSD and learned Additional Chief Judicial Magistrate is correct and does not require any interference. The bare perusal of the said order shows that the learned Magistrate perused all the necessary documents including the complaint and the affidavit in support. It is on the basis of these documents that the learned Magistrate has come to the conclusion that there is a prima facie case established against the Petitioners. The contention of the Petitioners that no specific allegations have been made against them hold no merit on the basis of the fact that the petitioners themselves, in the present petition have admitted the fact that they are the directors of the accused/company. Further the petitioners have failed to demonstrate by way of any documentary evidence that the Directors were not responsible for the day to day affair of the accused/company. Vide letter dated 18th October 2018, the accused had admitted the liability which is evident from contents of said letter wherein cheques were handed over towards full and final settlement.

10. Learned Advocate for Respondent No.2 has relied upon the following decisions:-

(i) N. Rangachari Vs. Bharat Sanchar Nigam Ltd.[6]

(ii) Rajkumar Harwani Vs. Sagar s/o Mohandas Tolwani and Anr.[7]

11. In several decisions of the Apex Court it is held that the directors can be impleaded as accused on the basis of vicarious liability. The role played by the said directors is required to be specified in the complaint. For making a director liable, there must be specific averments against the director showing as to how and in what manner he/she was responsible for conduct of business of the company. Liable only 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 offence was committed with consent or connivance of, or was attributable to any negligence on part of the Director concerned. Simply because a person is a director of a company, does not make him/her liable under N.I. Act. Mere verbatim reproducing words of section without a clear statement of fact supported by proper evidence, not enough to make accused vicariously liable.

12. In the present case the petitioner No.1 is the signatory to the

6 (2007) 5 SCC 108

7 2012 Cri.LJ. 3450

cheque. However there is no sufficient averment in the complaint to invoke vicarious liability against the petitioner Nos. 2 and 3.

13. Section 141 of the Negotiable Instruments Act reads as follows:-

> *"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.]"*

14. In National Small Industries Corporation Ltd Vs. Harmeet Singh Paintal[8], the Supreme Court in paragraph 13 and 14 observed:-

> *"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 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."*

15. In Sabitha Ramamurthy Vs. R.B.S. Channabasavaradhya[9] the Supreme Court in paragraph 7 has observed as follow:-

> *"7. it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statement,s which are required to be averred in the complaint petition, are made so as*

8 (2010) 3 SCC 330
9 (2006) 10 SCC 581

> *to make the accused therein vicariously liable for the offence committed by the company."*
>
> *(emphasis supplied)*

16. In Gunmala Sales (P) Ltd.Vs. Anu Mehta[10] in paragraph 34.3 has observed as follow:-

> "34.3. In the facts of a given case, on an overall reading of the complaint, the High Court may , despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactic, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out."

17. In Pooja Ravinder Devidasani Vs. State of Maharashtra (supra) it is held that, to fasten vicarious liability under section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company and is particularly responsible for the conduct of its business. Simply because a

10 (2015) 1 SCC 103

person is a Director of a company, does not make him liable under the N.I. Act. 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 N.I. Act. It is settled law that to attract a case under Section 141 of the N.I. Act a specific role must have been played by a Director of the company for fastening vicarious liability.

18. In Rangachari Vs. Bharat Sanchar Nigam (supra) it is held that, where complaint clearly alleged that the named Directors were in-charge of an responsible to the company for the conduct of its business, High Court rightly refused to quash it under Section 482 of Cr.P.C. Question whether the accused at the relevant time were not in-cahrge of the affairs of the company or any restriction on their power or existence of any special circumstance made them not liable to be convicted could be considered during trial. However, subsequent decisions referred hereinabove lays down that role of such persons has to be specified.

19. The complainant has stated that accused Nos. 2 to 4 are director of accused No.1 company and are looking after day to day affairs and management of the said company. As far as accused No.2 is concerned, he is the signatory to the cheque and as well as signatory to the letter dated 18th October 2019 referred to hereinabove. No case is made out qua accused No.2 (Petitioner No.1) to quash the proceedings against him.

20. The other grievance of the petitioners is that the inquiry under Section 202 of Cr.P.C. was not conducted by learned Magistrate before taking cognizance of complaint although the accused were residing out of the jurisdiction of the Court. In the case of National Bank of Oman Vs. Barakara Abdul Aziz and Anr. (supra) the Supreme Court has held that in a case where the accused is residing beyond the area in which he exercises jurisdiction. It is incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 of Cr.P.C. before the issuing process. The Apex Court dealing with the complaint relating to the offences under Section 418 and 420 of Indian Penal Code, 1860. In the case of K. T. Joseph Vs. State of Kerala (supra) it was observed that inquiry before the issue of process in accordance with Section 202 of Cr.P.C. is mandatory. The

order does not make it clear for which the offences the complaint was filed and cognizance was taken by learned Magistrate. In the case of Parth Bhadresh Mehta And Ors. Vs. The State of Maharashtra and Anr. (supra) this Court was dealing with the complaint under Section 138 of the N.I. Act and it was held that the inquiry under Section 202 of Cr.P.C. was required to be conducted. In another decision of this Court in the case of Dr. Rajul Vs. Reliance Capital Ltd.[11] this Court has referred to several decisions and took a view that it is not mandatory to hold such inquiry under Section 202 of Cr.P.C. in respect to the complaint under Section 138 of the N.I. Act. In am in agreement with a view adopted in the said decision. Subsequently in the case of Re-expeditious trial of Cases under Section 138 of N.I. Act (supra) the Hon'ble Supreme Court issued certain directions which includes conduct of inquiry under Section 202 of Cr.P.C. The said decision was delivered on 16th April 2021. The directions are prospective in nature. The process was issued in the present proceeding on 25th August 2020.

21. Considering these aspects, the submission for not conducting inquiry under Section 202 of Cr.P.C. the order taking cognizance is vitiated is devoid of merits.

22. In the aforesaid circumstances, process issued against the

11 2016 (5) Mh.L.J. 58

Petitioner Nos. 2 and 3 is required to be quashed and set aside whereas the prayer for quashment the proceedings qua petitioner No.1 in all petitions stands rejected.

<u>ORDER</u>

i) Writ Petition No.4500 of 2021 is partly allowed;

ii) Prayer for quashing the impugned proceedings as against petitioner No.1 in all the petitions is rejected;

iii) Impugned order issuing process for offence under Section 138 of Negotiable Instruments Act and impugned proceedings in Summary Criminal Case No.2499 of 2020, SCC No.2494 of 2020, SCC No.2495 of 2020, SCC No.2496 of 2020 and SCC No.2498 of 2020, which are subject matter of all the petitions are quashed as against the petitioner Nos.2 & 3;

iv) All Writ Petitions are disposed off.

(PRAKASH D. NAIK, J.)