

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

CRIMINAL APPLICATION [APL] NO.434 OF 2022

Applicants : 1. **Shri Mukund s/o Ajaykumar Choudhary**,
Aged : 50 Yrs., Occu : Nil,
R/o 7, Padmini Enclave, Hauz Khas,
New Delhi - 110016.

2. **Shri Kapil S/o Ajaykumar Choudhary**,
Aged : 48 Yrs., Occu : Nil,
R/o 6, Fern Hill, DLF Chattarpur Farms,
Chattarpur, New Delhi - 110074.

3. **Mr. G.L. Choudhary**,
Aged : 63 Yrs., Occu : Nil,
R/o Harihar Nagar, Besa Road, Manish Nagar,
Nagpur.

– Versus –

Non-Applicant : **M/s Pooja Vaishnavi School Bus Services**,
Acting through its Proprietor,
Mr. Shailesh R. Pande,
R/o Mohini Plaza Appt., Opp. Shahu Kirana,
Pension Nagar, Nagpur.

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Mr. P.S. Khubalkar, Advocate for the Applicants.

Mr. S.B. Tiwari, A.P.P. for the Non-Applicant.

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CORAM : **VINAY JOSHI, J.**

DATE : **15th JULY, 2022.**

ORAL JUDGMENT :-

Admit. Heard finally by consent of both sides.

02] The non-applicant M/s. Pooja Vaishnavi School Bus Services has

filed a criminal complaint bearing S.C.C. No.31386/2019 against the applicants for the offence punishable under Section 138 of the Negotiable Instruments Act. The applicants are the Directors of the Company. The prosecution is launched against the Company, its Managing Director, Deputy Managing Director and General Manager. The learned Magistrate has issued process against all except General Manager. The applicants have challenged the maintainability of the complaint itself on two counts. Firstly, the non-applicant/complainant has not issued statutory notice individually to the Directors and, therefore, the complaint is not maintainable. Secondly, it is canvassed that the complaint nowhere discloses specific contention that the applicants are in-charge and responsible for the conduct of the business of the Company. In support of said contention, the applicants have relied on some reported decisions.

03] *Per contra*, the non-applicant has resisted the application by stating that it is not essential to issue individual notice to the Directors, but the purpose would suffice if the statutory demand notice has been served on the Company. Secondly, it is canvassed that the applicants being Managing Director and Deputy Managing Director, are responsible to the conduct of the business, likewise the complaint bears specific contention about their role and responsibility in the transaction.

04] By placing reliance on the decision in the cases of (i) Kamlesh Kumar vs. State of Bihar and another – (2014) 2 SCC 424, (ii) Alka Khandu Avhad vs. Amar Syamprasad Mishra and another – (2021) 4 SCC 675 and (iii) Himanshu vs. B. Shivamurthy and another – (2019) 3 SCC 797, it is canvassed that in absence of issuance of individual notices to the Directors of the Company, the complaint is not maintainable. These decisions are distinguishable on facts as in none of the case, there is a dictum that statutory notice shall be individually served on each of the Directors of the Company. On the other hand, the learned Counsel appearing for the non-applicant has relied on the decision of the Supreme Court in the case of Kirshna Texport and Capital Markets Ltd. vs. Ila A. Agrawal and Ors. - 2016(1)Mh.L.J.582(SC), in which the said issue has been dealt with. In the said case, it is specifically ruled that Section 141 of the Negotiable Instruments Act does not lay down any requirement that the Directors must be individually served with notice under Section 138 of the Act. In view of the said clear dictum, the first objection no longer survives.

05] While canvassing absence of specific pleadings that the applicants were in charge of or were responsible for the conduct of business, reliance is placed on the decision of Supreme Court in the case of Ashoke Mal Bafna vs. Upper India Steel Manufacturing and Engineering Company Limited – (2018) 14 SCC 202. In the said case, it is observed that the penal provision creating

vicarious liability must be strictly construed. It is not sufficient to make a bald cursory statement in a complaint that the Director is in charge of or a responsible to the Company for the conduct of business of the Company without anything more as to the role of the Director.

06] Paragraph 2 of the complaint bears a pleading that the accused Nos. 2, 3 and 4 (including applicants) are responsible for day-to-day affairs of the Company and directly involved in the transaction of the Company. In paragraph 3, it is pleaded that while entering into an agreement dated 01/10/2017, the applicants took part in the negotiations resulting into agreement. Moreover, there is a specific pleading that applicant No.1 has issued a cheque in pursuance of second agreement. Thus, it can not be said that the allegations are of general nature bereft any details. Besides that, the non-applicant's learned Counsel has relied on the decision of the Supreme Court rendered by three Hon'ble Judges in the case of S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Ors – 2005(4) Mh.L.J.731, wherein it is observed that the Managing Director or the Joint Managing Direction would be in charge of the Company and responsible to the Company for conduct of its business. The relevant observations in paragraph 16 reads as below:

- “(a).....
(b).....
(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 Sub-section (2) of Section 141.”

07] Applicant No.1 is the Managing Director, whilst applicant No.2 is the Deputy Managing Director of the Company. The said submission is not countered by other side. In view of above referred decision, by virtue of post, they are responsible for the conduct of the business of the Company. Moreover, on facts, the complaint *prima facie* spells out their role in the transaction. In the circumstances, the challenge raised in this application does not stand to reason. Precisely, the applicants have failed to make out a case of interference at this initial stage. In view of that, the application stands rejected.