



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.04.2022
DELIVERED ON : 08.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.NOS.34248 AND 34923 OF 2019
AND
CRL.M.P.NOS.18962, 18963 AND 19279 OF 2019

Cr1.O.P.No.34248 of 2019

Sanjay Babulal Bhutada,
(Erstwhile) Director,
M/s.MIEL e-Security Private Limited,
MIDC Road, No.9, Plot No.16,
Ground Floor,
Behind Samruddhi Venture Park,
Andheri (E), Mumbai - 400 093.

...Petitioner / 6th Accused

Vs.

Redington (India) Limited,
Rep. By Mr.M.Sundararajan,
Senior Legal Executive,
SPL Guindy House,
95, Mount Road, Guindy,
Chennai - 600 32.

...Respondent / Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to call for the entire records in C.C.No.3872 of 2014 pending on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai and quash the same as against the Petitioner/6th Accused.

For Petitioner : Mr.R.Palaniandavan
for M/s.R.Anitha

For Respondent : Mr.S.S.Rajesh

Cr1.O.P.No.34923 of 2019

Rajesh Viren Shah

...Petitioner / 4th Accused

Vs.



Redington (India) Limited,
Rep. By Mr.M.Sundararajan,
Senior Legal Executive,
SPL Guindy House,
95, Mount Road, Guindy,
Chennai - 600 32.

...Respondent / Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.3872 of 2014 pending on the file of the learned FTC-III, Metropolitan Magistrate, Saidapet, Chennai and quash the same as against the Petitioner/4th Accused.

For Petitioner : Mr.O.Solaiappan
for M/s.Thriyambak J. Kannan

For Respondent : Mr.S.S.Rajesh

COMMON ORDER

Cr1.O.P.No.34248 of 2019 is filed by the Accused No.6 seeking to quash the proceedings in C.C.No.3872 of 2014 pending on the file of the learned Fast Track Court/III Metropolitan Magistrate, Saidapet, Chennai which is a private complaint filed under Section 138 of the Negotiable Instruments Act.

2.Cr1.O.P.No.34923 of 2019 is filed by the Accused No.4 seeking to quash the same complaint.

3.Learned Counsel for the Petitioner/Accused No.6 submitted his arguments. As per the submissions, the Petitioner/Accused No.6 was not the Director of the Company on the date of issuance of cheque and on the date of filing of the Criminal Complaint. The learned Counsel for the Petitioner/A6 invited the attention of this Court to Page No.1 of the typed set of papers which is the downloaded printed copy of Form-32 where the name of the Petitioner/A6 is found and the date of resignation is mentioned as 20.03.2014. Further, the learned Counsel for the Petitioner/A6 submitted that as per Section 168(2) of the Companies Act as amended in 2013, the resignation if accepted by the Company is to be forwarded to the Registrar of Companies under Form-32. Further, he invited the attention of this Court to Page No.7 of the typed set of papers which is the resignation letter dated 12.03.2014 sent by the Petitioner/A6 wherein it is found that there was an endorsement made on 20.03.2014 by M.N.K.Nair as "Resignation accepted with lots of regrets". Page No.9 of the typed set of papers is the complaint. Learned Counsel for the Petitioner/A6 invited the attention of this Court to the averments in the complaint stating that all the



accused received the goods under the invoices and signed and issued the Three cheques and the first cheque dated 22.03.2014 bearing No.002535 for Rs.7,10,085/- and another Cheque dated 22.03.2014 bearing No.002777 for Rs.1,85,09,054/- and another Cheque dated 22.03.2014 bearing No.002791 for Rs.10,00,000/- in all totalling to amount of Rs.2,02,19,139/- (Rupees Two Crores Two Lakhs Nineteen thousand One Hundred and Thirty Nine only) all the cheques were drawn on Lakshmi Vilas Bank, Fort Mumbai Branch, Bharath House, Ground Floor, Marg, Fort Mumbai - 400 001. The cheque was issued on 20.03.2014 and on the date of issuance of the cheque, the Petitioner/A6 was not the Director of the Company as the resignation takes effect immediately. The admitted case of the Petitioner is that the cheque was issued on 20.03.2014 and the date of resignation is 12.03.2014 and it had come into effect immediately as per Section 168(2) of the Companies Act as amended on 2013. Prior to the amendment in 2013, there was no specific provisions regarding resignations. In those circumstances, the reliance placed upon by the learned Counsel for the Petitioner/A6 in 2012 (3) MWN (Cr.) (DCC) 124 (Mad.) in the case of Renuka Ramanath -vs- Yes Bank Limited wherein it is held as under:

"Negotiable Instruments Act, 1881 (26 of 1881), Sections 141 and 138 - Companies Act, 1956 (1 of 1956), Sections 283 & 284 - Resignation of Director of Company from Board of Directors of Company - Provisions governing - Companies Act silent about resignation of Director - In absence of provisions under Companies Act, resignation is governed by common law principles - Resignation takes effect from moment Resignation Letter is sent and same acknowledged by Company.

Negotiable Instruments Act, 1881 (26 of 1881), Sections 141 & 138 - Companies Act, 1956 (1 of 1956), Sections 283 & 284 - Nominee Director - Withdrawal of nomination - In absence of provision for resignation of Director of Company in Companies Act, there is no provision for withdrawal of nomination also - A Nominee Director primarily responsible to Company which nominated him - Continuance of his nomination subject to pleasure of Company which nominated him - Moment withdrawal is made by Company, which nominated him, he ceases to be a Nominee Director of that Company - Nomination of Petitioner as Nominee Director of 1st Accused-Company withdrawn on 8.1.2009 and same also intimated to Registrar of Companies - Would prove that Petitioner was not a Nominee Director of 1st Accused-Company on or after 8.1.2009 - Cheque in question having been issued on 20.1.2009, Petitioner



held, not liable under Section 138 for offences allegedly committed by 1st Accused-Company."

4. Learned Counsel for the Petitioner/A6 relied upon following portions of the above said rulings:

"18. Now coming to the judgments upon which reliance has made by the learned Counsel on either side, let me now first refer to S.S.Lakshmana Pillai vs. Registrar of Companies and another reported in (1977) 47 Comp.Cas652(Mad). In that case, the foremost question which came up for consideration before this Court was as to whether the resignation of a Director of a Company governed by the Companies Act requires any acceptance and whether it would take effect from the date of resignation or from the date of acceptance. Hon'ble Justice Ratnavel Pandian (as he then was) had to elaborately go into various provisions, more particularly, Sections 283 and 284 of the Companies Act as well as the scheme of the Act. At last, His Lordship has found that the Companies Act is very silent about the resignation of any Director. His Lordship has held that because there is no provision governing the resignation of a Director from the Board of Directors of the Company, the resignation is governed by common law principles. In paragraph 28 of the said judgment, His Lordship has held as follows:

"28. This letter was acknowledged by the first respondent on June 28, 1973, whereby the first respondent wanted further information as to whether the resignation has been accepted by the Company. Admittedly, there is no provision in the memorandum of articles prescribing any condition that the resignation tendered by a director of a Company will take effect after its acceptance by the Company or the board of directors. For the above stated reasons and in the absence of any provision either in the Act or in the memorandum or articles, I am of the view that the director who had submitted his resignation would be deemed to have resigned from his office from the date of the submission of his resignation, when his intention is unequivocally expressed either orally or by a letter. A fortiori, in the instant case, the petitioner by his letter dated December 4, 1972, has tendered his letter of resignation, resigning his directorship from the evening of December 4, 1972, and the said letter has been acknowledged by the first respondent, the Registrar of Companies and, therefore, I hold that the resignation had taken effect from December, 4, 1972, and consequently the petitioner has



WEB COPY

ceased to hold the office from the evening of December 4, 1972."

Thus, it is crystal clear that the resignation will take effect from the moment, the resignation letter is sent and the same is later on acknowledged by the Company. Similar view has been taken by the Karnataka High Court as well in Mother Care (India) Limited vs. Prof. Ramaswamy P. Aiyar (MANU/KA/0760/2003). In paragraph 12 of the said judgment, while considering a similar question, the learned Single Judge has held as follows:

"...As the appointment of a Director is not a bilateral character, the question of acceptance of the request to relinquish the office would not arise. Filing of Form No.32 in terms of Section 303(2) of the Act is only a consequential act to be performed by the Company in obedience to the statutory provision. If such a form is filed with the Registrar of Companies, it is a proof of a Director ceasing to be a director. But, it is not an act to be complied with in order to make a resignation valid. Therefore, as the resignation by a director, relinquishing his office as such director is of an unilateral character, it comes into effect when the act of such resignation to relinquish the office is communicated to the Board. In law, the Board to whom the act of relinquishment is communicated is not required to take any action by way of accepting resignation and therefore, the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. In order to make the said resignation effective, it is not necessary that the Board should accept it. Whether the Board accepts the resignation or not if the resignation is intended to operate in praesenti the resignation comes into effect when such intention to relinquish the office is communicated to the Board. In that view of the matter, once a resignation letter is submitted to the Board, the date of which the intention to relinquish is communicated to the Board, that is the date from which the Director ceases to be a Director of the Company."



5. In the reported ruling, the criminal liability of the Director of the Company, who was accused of offence under Section 138 of Negotiable Instruments Act by the complainant, in that case was not accepted by this Court on the ground that the Director in the reported case had resigned on 08.01.2009 and the cheque in question was issued on 20.01.2009. Therefore, the Petitioner in that case was held not liable for the offences under Section 138 of the Negotiable Instruments Act. The same principle squarely applies to this case. Further, learned Counsel for the Petitioner/A6 relied upon the following rulings regarding liability of the Director of a Company under Section 138 of Negotiable Instruments Act in the circumstances that he resigned prior to the date of issuance of the cheque.

6. In the case of Saroj Kumar Poddar vs. State (NCT of Delhi) reported in (2007) 3 SCC 693 the Hon'ble Supreme Court has held as under:

"14. Apart from the Company and the appellant, as noticed hereinbefore, the Managing Director and all other Directors were also made accused. The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in para 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act.

15. Our attention, however, has been drawn to the averments made in paras 7 and 10 of the complaint petition, but on a perusal thereof, it would appear that therein merely allegations have been made that the cheques in question were presented before the bank and they have been dishonoured. Allegations to satisfy the requirements of Section 138 of the Act might have been made in the complaint petition but the same principally relate to the purported offence made by the Company. With a view to make a Director of a Company vicariously liable for the acts of the Company, it was obligatory on the part of the complainant to make specific allegations as are required in law.



WEB COPY

16. The question came up for consideration before a three-Judge Bench of this Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] wherein upon consideration of a large number of decisions this Court opined : (SCC pp. 98-99, paras 10-11)

"10. While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a Company. The key words which occur in the section are 'every person'. These are general words and take every person connected with a Company within their sweep. Therefore, these words have been rightly qualified by use of the words:

'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, etc.'

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. The liability arises from being in charge of and responsible for the conduct of 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. Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of 'every



WEB COPY

person' the section would have said 'every director, manager or secretary in a Company is liable'..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action."

7.The Hon'ble Supreme Court in the case of S.M.S.Pharmaceuticals Ltd., vs. Neeta Bhalla and another reported in (2007) 4 SCC 70 held as follows:

"9. Requirements of law for proceeding against the Directors of the Company for their purported constructive liability came up for consideration in this case before a Division Bench of this Court, wherein the following questions were posed:

"(a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfils the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the Company.

(b) Whether a Director of a Company would be deemed to be in charge of, and responsible to, the Company for conduct of the business of the Company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and/or the Managing Directors or Joint Managing Director who admittedly would be in charge of the Company and responsible to the Company for conduct of its business could be proceeded against."

10.Having regard to the importance of the questions, the matter was referred to a three-Judge Bench of this Court. Upon noticing the rival contentions of the parties as also the precedents operating in the field, the questions were answered by the larger Bench in the following terms:

"19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was



WEB COPY

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

(b) The answer to the question posed in sub-para (b) has to be in the 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 the 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.

17. By reason of the said provision, a legal fiction has been created. The larger Bench in this case (S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975]) categorically held : (SCC p. 99, paras 11-12)

"11. A reference to sub-section (2) of Section 141 fortifies the above reasoning because sub-section (2) envisages direct involvement of any Director, Manager, Secretary or other officer of a Company in the commission of an offence. This section operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of these offices in a Company. In such a case, such persons are to be held liable. Provision has been made for Directors, Managers, Secretaries and other officers of a Company to cover them in cases of their proved involvement.

12. The conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a Company.

8. In the decision of the Hon'ble Supreme Court in the case of Harshendra Kumar D. -vs- Rebatilata Koley and others reported in (2011) 3 SCC 351 it has been observed as under:

"13. In K.K. Ahuja v. V.K. Vora (2009) 10 SCC 48 : (2010) 2 SCC (Cri) 1181] a two-Judge Bench of this Court had an occasion to consider the earlier decisions of this Court including the decision in



WEB COPY

S.M.S. Pharmaceuticals Ltd. [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] It was held that mere fact that at some point of time an officer of a Company had played some role in the financial affairs of the Company, that will not be sufficient to attract the constructive liability under Section 141 of the NI Act.

14. In K.K. Ahuja [(2009) 10 SCC 48 : (2010) 2 SCC (Cri) 1181] this Court observed (at SCC p. 62, para 28) that if a mere reproduction of the wording of Section 141(1) in the complaint was sufficient to make a person liable to face prosecution, virtually every officer/employee of a Company without exception could be impleaded as accused by merely making an averment that at the time when the offence was committed they were in charge of and were responsible to the Company for the conduct and business of the Company.

17. In this view of the matter, in our opinion, it must be held that a Director, whose resignation has been accepted by the Company and that has been duly notified to the Registrar of Companies, cannot be made accountable and fastened with liability for anything done by the Company after the acceptance of his resignation. The words "every person who, at the time the offence was committed", occurring in Section 141 (1) of the NI Act are not without significance and these words indicate that criminal liability of a Director must be determined on the date the offence is alleged to have been committed."

9. In the reported decision of the Hon'ble Supreme Court in the case of Anita Malhotra -vs- Apparel Export Promotion Council and another reported in (2012) 1 SCC 520 it has been held as follows:

"20. As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code.



WEB COPY

21. Inasmuch as the certified copy of the annual return dated 30-9-1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with Section 74(2) of the Evidence Act, 1872, we hold that the appellant had validly resigned from the Directorship of the Company even in the year 1998 and she cannot be held responsible for the dishonour of the cheques issued in the year 2004.

22. This Court has repeatedly held that in case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused Company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the Company for conduct of its business is not sufficient. (Vide National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal [(2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] .) In the case on hand, particularly, in Para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day-to-day affairs of the Company. We have verified the averments as regards to the same and we agree with the contention of Mr Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day-to-day affairs of the Company. On this ground also, the appellant is entitled to succeed.

23. In the light of the above discussion and of the fact that the appellant has established that she had resigned from the Company as a Director in 1998, well before the relevant date, namely, in the year 2004, when the cheques were issued, the High Court, in the light of the acceptable materials such as the certified copy of the annual return dated 30-9-1999 and Form 32 ought to have exercised its jurisdiction under Section 482 and quashed the criminal proceedings. We are unable to accept the reasoning of the High Court and we are satisfied that the appellant has made out a case for quashing the criminal proceedings. Consequently, Criminal Complaint No. 993/1 of 2005 on the file of ACMM, New Delhi, insofar as the appellant herein (A-3) is concerned, is quashed and the appeal is allowed."



10. Learned Counsel for the Petitioner/6th Accused relied on the following portions in decision of the Hon'ble Supreme Court in the case of Pooja Ravinder Devidasani -vs- State of Maharashtra and another reported in (2014) 16 SCC 1. The relevant portions are extracted as under:

"17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company-M/s Elite International (P) Ltd. on 1-7-2004 and had also executed a letter of guarantee on 19-1-2005. The cheques in question were issued during April 2008 to September 2008. So far as the dishonour of cheques is concerned, admittedly the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the Company but is not involved in the day-to-day affairs of the running of its business and only monitors the executive activity. 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, 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



WEB COPY

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."

(emphasis in original)

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.

21. In *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* [*Sabitha Ramamurthy v. R.B.S. Channabasavaradhya*, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621], it was held by this Court that: (SCC pp. 584-85, para 7)

"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 statements, which are required to



be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the Company."

(emphasis supplied)

WEB COPY

By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act.

25.A bare reading of the averment of Respondent 2 before the High Court, suggests that his case appears to be that the appellant has not proved her resignation in unequivocal terms and it is a disputed question of fact. It is noteworthy that Respondent 2 except making a bald statement and throwing the burden on the appellant to prove authenticity of documents, has not pleaded anywhere that the public documents Form 32 and annual return are forged and fabricated documents. Curiously, Respondent 2 on the one hand raises a doubt about the genuineness of Form 32, a public document, through which the default Company had communicated the change of Directors to the Registrar of the Companies with the effect of resignation of the appellant and induction of two Directors-Operations and on the other hand, he has arrayed the two newly appointed Directors-Operations as the accused whose names were communicated to the Registrar of Companies by the very same Form 32. The respondent complainant cannot be permitted to blow hot and cold at the same time. When he denies the genuineness of the document, he cannot act upon it and array the newly appointed Directors as accused.

30.Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Sections 138/141 of the NI Act, making a person vicariously liable has to ensure strict compliance with the statutory requirements. The superior courts should maintain purity in the administration of justice and should not allow abuse of the process of the court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law.



WEB COPY

31. For all the foregoing reasons, we are of the view that this is a fit case for quashing the complaint, and accordingly allow these appeals by setting aside the impugned judgment [Pooja Ravinder Devidasani v. State of Maharashtra, WP (Cri) No. 614 of 2010, decided on 6-10-2010 (Bom)] passed by the High Court and quash the criminal proceedings pending against the appellant before the trial court."

11. Learned Counsel for the Petitioner/6th Accused relied upon a decision of this Court in the case of Vijaya Arun -vs- New Link Overseas Finance Limited reported in 2020 SCC OnLine Mad 14559. Relevant portions of the said judgment are extracted as under:

"8. Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened at the time only on those commission of offence, they are in charge and were responsible for the conduct of the business of the Company. The person sought to be made liable should be in charge and responsible for the conduct of the business of the Company at the relevant time. It has to be averred as a fact as there is no deemed liability of the Director in such case. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of National Small Industries Corporation Limited v. Harmit Singh Panital reported in (2010) 3 SCC 330, wherein it is held as follows:

Section 141 of the Act has been interpreted by this Court in various decisions. As to the scope of Section 141 of the Act, a three-Judge Bench of this Court considered the following questions which had been referred to it by a two-Judge Bench of this Court in SMS Pharmaceuticals v. Neeta Bhalla (2005) 8 SCC 89:

"(a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the Company.

(b) Whether a director of a Company would be deemed to be in charge of, and responsible to, the Company for conduct of the business of the Company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.



WEB COPY

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the Company and responsible to the Company for conduct of its business could be proceeded against." While considering the above questions, this Court held as under:

12. In the above judgments, the Hon'ble Supreme Court of India repeatedly held that the complaint has to specifically say as to how and in what manner Director was responsible for the conduct of the business of the Company. Unfortunately in the impugned complaint, the allegations did not satisfy the requirements of Section 141 of NI Act. That apart, the petitioner is being implicated as third accused who is inducted as Non Executive Director of the first accused Company, therefore the petitioner is not being made responsible for the day to day affairs of the Company and she cannot be held liable vicariously for the offence committed by the Company. Therefore, in order to secure ends of justice and to prevent the abuse of process of court, this Court has to necessarily interfere with the proceedings in exercise of its jurisdiction under Section 482 of Cr.P.C."

12. Learned Counsel for the Accused No.4/Petitioner in Cr1.O.P.No.34923 of 2019 submitted that the Petitioner/A4 resigned on 09.12.2013 and Form 32 was uploaded by the Registrar of Companies on 16.12.2013. The cheque was issued on 22.03.2014 that is three months prior to the presentation of the cheque, the petitioner/A4 had resigned. Therefore, no averments against the Petitioner/A4 on the date of issuance of the cheque. Further, learned Counsel for the Petitioner/A4 invited the attention of this Court to the complaint before the Court of the learned Fast Track Court, III Metropolitan Magistrate, Saidapet, Chennai, in which it is stated as follows:

"9. The second, third, Fourth, Fifth, Sixth and Seventh accused knew that the cheques would not be honoured due to lack of funds in their account and have proceeded to issue the cheques and participated in the business affairs. The second, third, Fourth, Fifth, Sixth and Seventh accused have after receiving the goods from the complainant without demur proceeded to issue the cheques and caused it to be returned dishonoured with an intention to cheat the complainant.

10. The complainant respectfully stated that the second and Third accused who are the Director of the first accused Company has signed the cheque on behalf



WEB COPY

of the first accused and on instructions and direction from the Fourth, Fifth, Sixth and Seventh accused have intentionally and deliberately colluded and conspired to issue the cheque after receiving the goods from the complainant in spite of knowing that they did not have sufficient availability of funds in the account and are thus liable to be proceeded against."

Therefore, they are not liable.

13. Further, learned Counsel for the Petitioner in both the Criminal Original Petitions submitted that even assuming but not conceding that the Petitioners are signatory to the cheque, they are not liable for the offences as they had resigned on the date of issuance of cheque. Further, they invited the attention of this Court to Section 141 of the Negotiable Instruments Act which explains the offence attracting 138 of Negotiable Instruments Act. Section 141 reads as under:

"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. Learned Counsel for the Respondent/Complainant submitted that the complainant had clearly stated the connivance/collusion among the Directors of the Company having placed orders for the goods. Accordingly, the complainant had sent the goods to the First Accused Company. He invited the attention of this Court to the specific averments in the complaint in paragraph Nos.1,3,7,8,9 which specifically state that individually each of the Director was aware of the amount available in the Bank account of the Company. Therefore, after the delivery of the goods instead of payment being made they had issued cheque and issued instructions to the Bank to withhold the amount. Under those circumstances, each of the Directors are liable for the offences under Section 138 of Negotiable Instruments Act. Further, the learned Counsel for the Respondent/Complainant submitted that as per the provisions of Section 138 of the Negotiable Instruments Act, he had sent statutory notice within the specified time from the date of return of cheque by the Bank with the memo that "amount withheld". On enquiry by the complainant, the Complainant came to understand that the Company had withheld the cheques knowing fully well that they did not have sufficient funds. As per the contract between the complainant and the Accused Company, the complainant had to deliver the computer spares. He had sent invoices to the same which had been given in detail in paragraph No.3. Therefore, each of the Directors are aware that on the date of delivery of the goods to the Company, there was no funds available to meet the invoices of the complainant, knowing fully well, they had issued cheques. As per the provisions of Section 141 of the Negotiable Instruments Act dealing specifically with the liability of each of the Directors which is attracted in this case, even conceding that the Petitioner/A4 resigned on 12.03.2013 he is also a Director on the date of placement of the orders and on the date of delivery of the goods. Therefore, knowing fully well that they cannot meet the invoices/bills for the goods delivered by the complainant they had cleverly exploited the reported rulings of the Hon'ble Supreme Court and High Court dealing with criminal liability of the Directors of the Company individually. The subject matter raised in these Petitions by the learned Counsel for the Petitioners/A4 and A6 have to be proved during the trial by each of the Accused which cannot be decided by this Court exercising its discretion under Section 482 of the Code of Criminal Procedure which amounts to



WEB COPY

miscarriage of justice and denial of justice to the Respondent/Complainant who had been denied his dues with the connivance/collusion between the Directors of the Company, as though each of the Director is not liable. It is to be considered by the learned trial Judge in appreciation of evidence. In support of the contention of each of the Directors, who are the accused before the learned trial Judge, learned Counsel for the Respondent/Complainant relies on the very same ruling relied by the learned Counsel for the Petitioner/A4 and A6 will not apply to the facts of this case. Further, learned Counsel for the Respondent/Complainant submitted that in a Company, the Company invites people who had held positions in public life like Judges of the High Court, retired Director General of Police, retired Chief Secretary as nominated Directors and even though those Directors are paid their dues by the Company as per the provisions of the Companies Act though such Directors are not in the management of the day-to-day affairs of the Company. In the reported ruling, the Petitioner before this Hon'ble High Court was nominated Director and that nominated Director had resigned on 09.01.2009 whereas cheque was issued on 20.01.2009 and that Director was a nominated Director and he is in no way in-charge of the day-to-day affairs of the management of the Accused Company in that case. Therefore, the Hon'ble High Court had held that he was not liable for the offences under Section 138 of Negotiable Instruments Act committed by Accused in that case. The ratio laid down in that case is not applicable to the facts of this case and the learned Counsel for the Respondent/Complainant read out the complaint extensively particularly Paragraphs 1 to 4 and 6 to 10. Further, the learned Counsel for the Respondent/Complainant submitted that in spite of the fact that he had issued statutory notice to each of the Directors and they have received the notice, but did not respond. They did not send reply based on the ruling of this Court as well as the Hon'ble Supreme Court with an ulterior motive they had resigned knowing fully well that the complainant who had to be paid the amount, that there is no sufficient funds and they are criminally liable for the offence under Section 138 of Negotiable Instruments Act, they had wantonly exploited the reported ruling and sent in their resignation. It is a matter to be agitated before the learned trial Judge during trial. If these Petitions are allowed on the basis of the rulings relied upon by the learned Counsel for the Petitioners/A4 and A6, it may amount to denial of justice and miscarriage of justice to the Respondent/Complainant, then in every case filed against the Company each and every Director will misuse the same reported ruling to escape from their individual liability as Director of the Company. Therefore, the learned Counsel for the Respondent/Complainant submits that this is nothing but abuse of process of Court. The inherent power under Section 482 of Code



of Criminal Procedure is specifically meant and exercised by High Court only to protect the innocent citizens from being harassed through criminal case by abuse of process of the Court not in cases of this nature where the Company placed orders. Believing the Company's order, the complainant had parted with the goods and delivered the goods with proper invoices. Instead of payment being made by the Company and its Directors having gained with the goods delivered to them knowing fully well that there are no sufficient amount to meet the amount demanded by the Complainant, they had issued cheques. The learned Counsel for the Petitioner relied on the rulings cited by the learned Counsel for the Petitioners/A4 and A6 that they had cleverly sent their resignation to defeat the complaint under Section 138 of Negotiable Instruments Act. Therefore, the learned Counsel for the Respondent/Complainant relies on the very same rulings relied on by the learned Counsel for the Petitioners/A6 and A4 in support of his contention that they had not replied to the statutory notice with the intention that they can quash the proceedings placing reliance upon the rulings which amounts to abuse of process of Court. It is a matter to be agitated by the respective parties before the learned trial Judge and to let in evidence in support of the respective contentions. On the basis of evidence, appropriate action/decision shall be taken by the trial Court and not by this Court in exercise of its discretion under Section 482 of Code of Criminal Procedure. Under those circumstances, these Petitions are abuse of process of Court and nothing less to defeat a genuine complaint where the complainant had specifically made averments in the complaint regarding the intention of each of the Directors. Under those circumstances, the learned Counsel for the Respondent/Complainant sought to dismiss these Petitions filed under Section 482 of Code of Criminal Procedure by the Petitioners/A4 and A6.

15. Considering the rival submission of the learned Counsel for the Petitioners/A4 and A6 and the Respondent/Complainant and on perusal of the wordings in the complaint, the submissions made by the learned Counsel for the Respondent/Complainant is found acceptable. When the complainant had issued statutory notice to each of the Directors immediately after return of cheque and the Directors had also received the statutory notice, they had not chosen to reply as though they are not liable, which gives a strong presumption under Section 114 of the Indian Evidence Act. The Directors remaining silent knowing fully well the averments made against them in the statutory notice. The conduct of the Directors of the Company individually not responding to the statutory notice issued by the Respondent/Complainant before lodging a complaint under Section 138 of Negotiable Instruments Act attracts the provisions of Section 114 of the Indian Evidence Act. The Court can draw adverse inference against the Director of the Company under



Section 114 of the Indian Evidence Act from the normal course of conduct of an ordinary prudent man. In the light of the adverse inference, the arguments of the learned Counsel for the Respondent/Complainant is found justified. The conduct of the Directors of the Company in placing orders from the Respondent/Complainant, the Respondent/Complainant believing the Directors of the Company delivering the goods in the premises of the Company attracts the principle of estoppel under Section 115 of the Indian Evidence Act which this Court can gather from the materials available to the Court in the facts and circumstances as gathered from the records. Only based on the reported ruling of the Hon'ble Supreme Court and the High Court, they had acted collusively and placed orders with the Respondent/Complainant for computers and spares. As per paragraph No.3 of the complaint, the Respondent/Complainant had given the full details regarding the goods delivered in the premises of the First Accused Company. Under those circumstances, merely by placing reliance upon the rulings of the Hon'ble Supreme Court and High Court, the submission of the learned Counsel for the Petitioners/A4 and A6 that the Directors of the Company are not liable, cannot at all be accepted. On the date of delivery of goods, they were Directors of the Company and each of the Directors are liable and each of them were aware that they had to pay the dues to the Respondent/Complainant. The actions of the Petitioners/A4 and A6 to escape from their criminal liability amounts to abuse of process of Court and in spite of preventing abuse of process of Court, they had exploited the rulings of the Hon'ble Supreme Court and the High Court which cannot be appreciated by this Court exercising its inherent power under Section 482 of Code of Criminal Procedure. As rightly pointed out by the learned Counsel for the Respondent/Complainant, it is a matter of evidence before the trial Court/ learned Fast Track Court/III Metropolitan Magistrate, Saidapet, Chennai.

16. In the light of the above discussion, both the Criminal Original Petitions lack merits and the same are dismissed. The learned Fast Track Judge/III Metropolitan Magistrate, Saidapet, Chennai is directed to proceed with the trial and dispose of the cases as expeditiously as possible preferably within a period of three months from the date of uploading of this order or from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

SRM



To

The III Metropolitan Magistrate,
Fast Track Court, Saidapet,
Chennai.

WEB COPY

+1cc to M/s.R.Anitha, Advocate Sr.No.24354

+2ccs to M/s.S.S.Rajesh, Advocate Sr.No.24363

+1cc to M/s.Thriyambak J. Kannan Sr.No.24880

Crl.O.P.Nos.34248 and 34923 of 2019

SKM(CO)

RVM(04/05/2022)