

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**Appellate Side**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 958 of 2020**

**Namarta Vashisht**

**Vs.**

**M/S Transmission Line Products & Ors.**

**For the petitioner** : Mr. Jibantaraj Dan Roy,  
Mr. Nishant Choudhary.

**For the Opposite Parties** : None.

Heard on : 07.07.2023

Judgment on : 18.07.2023

**Shampa Dutt (Paul), J.:**

**1.** The present revision has been preferred praying for quashing of the complaint under Section 138/141 of the Negotiable Instrument Act, 1881 (as amended up to date) registered as Case No. C.S No. 93322 of 2018 pending before the court of the learned Chief Metropolitan Magistrate at Calcutta.

**2.** The petitioner's case is that the petitioner is neither the Director nor the signatory of the accused company and it is well settled law by the

Hon'ble Supreme Court that complaint under Section 138 read with Section 141 of the Negotiable Instrument Act can only be initiated against the Director of the Company and as such, there is no criminality involved on the part of the petitioner. If the complaint under Section 138/141 of N.I. Act before the learned Metropolitan Magistrate, Kolkata is allowed to proceed it will amount to gross abuse of the process of Court/law.

**3.** It is alleged that the post dated cheque drawn at State Bank of India, Mandi, Gobindgarh, District- Fatehgarh Sahib, Punjab bearing No.561491 dated 08.06.2018 for a sum of Rs.6,60,499/- was issued in favour of the opposite party no.1 herein and admittedly the said cheque was signed by the authorised signatory/Director of the opposite party no.2 herein and the said cheque was later dishonoured by the Banker of the opposite party no.2 with the remarks "Funds Insufficient" and the opposite party no.1 received the said dishonoured cheque along with "Cheque Return Memo" dated 11.09.2018 from its bank on 11.09.2018.

**4.** It is also submitted that it is well settled law by the Hon'ble Supreme Court that complaint under Section 138 read with Section 141 of the Negotiable Instrument Act can only be initiated against the Director of the company and as such, there exists no criminality on the part of the petitioner. The petitioner is not even a signatory of the said cheque.

**5. Mr. Jibantaraj Dan Roy, learned counsel for the petitioner** has submitted that the learned trial court erred in admitting the complaint against the petitioner as the petitioner is neither the Director nor the signatory of the opposite party no.2 and as such, the case does not require further continuance and should be quashed.

6. That the impugned proceeding is otherwise bad in law and is thus liable to be set aside.

7. There is no representation on behalf of the opposite parties, in spite of service upon the opposite parties.

8. **From the petition of complaint it appears that the petitioner has been made an accused as the Company Secretary of accused no.1 Company (opposite party no. 2 herein).**

9. The case in the petition of complaint is that the accused (company, accused no.1) issued the cheque.

10. There is no averment as to who issued the cheque on behalf of the accused no.1, company.

11. **Section 203 of the Companies Act, 2013** and Rules 8 and 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, provides for appointment of a Company Secretary as a key Managerial Personnel. The duties of a Company Secretary are as follows:-

**Duties of a Company Secretary**

- **Provide** the company Directors guidance as they may require concerning their powers, duties and responsibilities.
- **Facilitate** the convening of meetings, attend general, board and committee meetings, and maintain the minutes of these meetings.
- **Obtain** approvals from the general and board meetings, government, and other required authorities as provided under the provisions of the Act.

- **Represent** before several regulators and other authorities under the Act connected with the discharge of duties under the Act.
- **Assist the company board in the conduct of the company affairs.**
- **Advice** and assist the board in complying with the corporate governance requirements, ensuring good corporate governance and best practices.
- **Discharge** such other duties as specified under the Act or rules.

12. The Supreme Court in ***Sunita Palita vs. M/s. Panchami Stone Quarry, in Criminal Appeal No. .... of 2022 (arising out of SLP (Crl.) No. 10396 of 2019), on 1 August, 2022***, held:-

**“23. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89*, cited by Mr. Luthra, this Court held:**

*“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 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."*

**28. In *K.K. Ahuja v. V.K. Vora*, (2009) 10 SCC 48,** this 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 "Managing" to the word "Director" makes it clear that they were in 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.”

**29. In *Pooja Ravinder Devidasani v. State of Maharashtra and Anr.*, (2014) 16 SCC 1**, this Court held as under:-

“17. ... 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 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.”**

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18. In *Girdhari Lal Gupta v. D.H. Mehta* [Girdhari Lal Gupta v. D.H. Mehta, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162], this 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."**

**34.** Section 482 of the Cr.P.C. protects the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Cr.P.C or to prevent abuse of the process of any Court or otherwise secure the ends of justice.

**35.** While it is true that inherent jurisdiction under Section 482 should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specially laid down in the Section, the Court is duty bound to exercise its jurisdiction under Section 482 of the Cr.P.C. when the exercise of such power is justified by the tests laid down in the said Section. Jurisdiction under Section 482 of the Cr.P.C. must be exercised if the interest of justice so requires.

**43.** Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in *S.M.S. Pharmaceuticals Ltd. (supra)*. The materials on record clearly show that these Appellants were independent, non-executive Directors of the company. As held by this Court in ***Pooja Ravinder Devidasani v. State of Maharashtra and Anr.*** (supra) a non-Executive Director is not involved in the day-to-day affairs of the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the Accused Company. Moreover, when a complaint is filed against a Director of the company, **who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint,** that such Director was in charge of and responsible for conduct of the business of the Company or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs.

**46.** *As held by this Court in **National Small Industries Corporation Ltd. v. Harmeet Singh Paintal**, (2010) 3 SCC 330, quoted with approval in the subsequent decision of this Court in **Pooja Ravinder Devidasani v. State of Maharashtra and Anr.** (supra) the impleadment of all Directors of an Accused Company 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, does not fulfil the requirements of Section 141 of the NI Act.”*

**13.** Thus, the petitioner a company secretary not being the signatory to the cheque, was also not involved in running the day to day affairs of the Company. The petitioner was only the company Secretary. **The job was to assist the persons involved in running the day to day affairs of the Company.**

**14.** Thus, the petitioner is not liable in the present case, there also being no specific averments against her in the petition of complaint.

**15.** The revisional application being CRR 958 of 2020 is accordingly allowed.

**16.** The proceeding under Section 138/141 of the Negotiable Instrument Act, 1881 (as amended up to date) registered as Case No. C.S No. 93322 of 2018 pending before the court of the learned Chief Metropolitan Magistrate at Calcutta, is hereby quashed in respect of only the petitioner, Namarta Vashisht. The trial in respect of the other accused persons to proceed in accordance with law.

**17.** No order as to costs.

**18.** All connected applications, if any, stands disposed of.

**19.** Interim order, if any, stands vacated.

**20.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.

**21.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**