

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.6414 OF 2021
WITH
WRIT PETITION NO.6397 OF 2021**

Kadambari Sanjay Khilari ... Petitioner
V/s.
The State of Maharashtra and Anr ... Respondents

Mr. Ashok Kumar Dubey with Mr. Anil Pandey, Arti Kushwaha, Swati Kamble i/b SAVJ Law Solutions for the petitioners.

Mr. Ashishkumar Verma for respondent No.2.

Mr. Rakesh Singh with Ms. Heena Shaikh i/b M.V. Kini and Co. for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : APRIL 6, 2023

P.C.:

1. The petitions are directed against the order of Revisional Court dismissing revision against the order of issuance of process in a proceeding under Section 138 of the Negotiable Instruments Act, 1881. The petitions are challenged mainly on the ground that the petitioner has been prosecuted describing her as Chief Financial Officer, according to the petitioner, accused No.1 is a Private Limited Company having one Director only. The Chief Finance Officer therefore cannot be prosecuted based on designation of the petitioner.

2. On perusal of the complaint it appears that apart from the

making pleading that the petitioner is handling day-to-day affairs of the accused No.1 and responsible and liable for the acts and omissions of the Company, complainant in paragraph 3, 6, 7, 10, 11 and 14 has assigned specific role to indicate that accused No.4 is incharge and responsible for day to day affairs of the Company.

3. The law on the point of necessary averments to attract liability under Section 141 of the Negotiable Instruments Act, 1881 has been put to rest by three judge bench decision in the case of **SMS Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr**, reported in AIR 2005 SC 3512, the Apex Court has held that the liability for prosecution under Section 141 of the Negotiable Instruments Act, 1881 arises from incharge and responsible for the conduct of business of the Company at the time when the offences was committed and not on the basis of merely holding designation as Finance Officer in the company. If the complainant satisfies main requirement of being in-charge and responsible for the affairs of the company at the relevant time by making sufficient averments in the complaint, the prosecution against such person can proceed under Section 141 of the Negotiable Instruments Act, 1881.

4. As observed already the complainant has made a specific averments in the complaint describing specific role played by the petitioner. Therefore, submission of the petitioner that she has been arraigned as accused based on designation as Chief Finance Officer is misplaced.

5. Learned advocate for the petitioner relied on the Judgment in the case of **Central Bank of India Vs. Asian Global Limited and**

Ors, reported in 2010 (2) NCC 511 wherein the Apex Court has emphasized on the necessity of making specific averment to enable the complainant to proceed against the persons in responsible for day-to-day affairs of the Company. The proposition of law laid down by the Apex Court is not applicable in the facts of the case in view of specific averments made in paragraph referred to above.

6. The next Judgment is in the case of **K. Srikanth Singh Vs. M/s. North East Securities Ltd and Anr**, reported in 2007 (8) Supreme 138, in the facts of the said case, there was not allegation made complaint stating that the accused was responsible to the company for conduct of business. Only allegations made in the complaint was that all accused Directors participated in negotiations for obtaining financial help and therefore it was held that such averment would raise inference that the appellant was not responsible for day-to-day affairs of the Company. In the absence of the pleading on vicarious liability it was held that prosecution against such person cannot be proceeded against him. As observed earlier in the facts of the case the complainant has assigned specific role to the petitioner which *prima facie* indicates that she participated in day-to-day affairs of the Company. For the aforesaid reasons in my opinion there is no merit in the writ petitions.

7. The writ petitions are stand dismissed. No costs.

(AMIT BORKAR, J.)