

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

**CRR 196 of 2016
With
CRAN 8 of 2018 (Old No: CRAN 607 of 2018)
CRAN 13 of 2000 (Old No: CRAN 1155 of 2020)**

**Hans Raj Jain @ Hansraj Jain
Vs.
The State of West Bengal & Anr.**

WITH

**CRR 197 of 2016
with
CRAN 8 of 2018 (Old No: CRAN 608 of 2018)
CRAN 13 of 2020 (Old No: CRAN 1156 of 2020)**

**Sanjay Jain & Ors.
Vs.
The State of West Bengal & Anr.**

WITH

**CRR 278 of 2016
With
CRAN 1 of 2016 (Old No: CRAN 1721 of 2016)
CRAN 14 of 2020 (Old No: CRAN 1154 of 2020)**

**M/s. AKJ Mineral Ltd.
Vs.
The State of West Bengal & Anr.**

For the petitioners

: Mr. Ayan Bhattacharjee,
: Mr. Indrajit Adhikari,
: Mr. Aditya Ratan Tiwary,
: Mr. Amitabrata Hait,
: Mr. Suman Majumder.

For the opposite party : Mr. Pawan Kr. Gupta,
: Mr. Manish Shukla,
: Ms. Sofia Naser,
: Mr. Santunu Sett.

For the State : Mr. Imran Ali,
: Ms. Debjani Sahu.

Heard on: 15/12/2023

Judgment on: 30/01/2024

Rai Chattopadhyay, J.

1. Three revision cases under Section 482 of the Cr.P.C, all of which arise in connection with the same complaint case, being No. CS No. 0015934 of 2015 dated July 4, 2015, preferred by the same complainant and now pending before the Court of the Metropolitan Magistrate, 14th Court at Calcutta, are heard together and are now taken up together for adjudication by dint of this common judgment.
2. The following are the accused persons, in the said complaint case:-
 - (i) M/s. AKJ Mineral Limited, a company,
 - (ii) Sanjay Jain,
 - (iii) Navin Kumar Jain,
 - (iv) Ajay Kumar Jain,
 - (v) Vimal Kumar Jain,
 - (vi) Ankit Jain,
 - (vii) Hansraj Jain.

3. Amongst the said accused persons, accused persons no. 7, 5 and 6 respectively, namely (i) Hansraj Jain, (ii) Vimal Kumar Jain, (iii) Ankit Jain, have filed CRR 196 of 2016.
4. Similarly, accused persons no. 2, 3 and 4 respectively, namely, (i) Sanjay Jain, (ii) Navin Kumar Jain, (iii) Ajay Kumar Jain, have filed CRR 197 of 2016.
5. Also likewise, accused no. 1 in the said complaint case, that is, the company and a juridical person, namely, M/s. AKJ Mineral Limited is the petitioner in CRR No. 278 of 2016.
6. Basically, the petitioners respectively, in the said three criminal revision cases have challenged the maintainability of the complaint case and legality and propriety of the said complaint, as also the process undertaken by the trial Court subsequent to filing of the complaint, particularly in case of the accused company (petitioner in CRR 278 of 2016).
7. Let the complaint be looked into, at the outset.
8. M/s. G.S. Fertilizers Pvt. Ltd, represented by Sri Tapan Kumar Mukherjee, is the complainant (opposite party in all the three revisions). In a ten page long petition of complaint, the complainant has *inter alia* stated as follows:-
9. The complainant/O.P was desirous to purchase properties and flats at Asansole and Dover Lane, Kolkata respectively. For this he has been introduced to the petitioners/accused persons by one person, namely Sri Ramesh Saraogi. The properties were represented in very lucrative and attractive ways by the petitioners/accused persons and in this way, they have allegedly allured the complainant/O.P to part with a huge amount of money, as consideration for purchase of the same, pursuant to an

agreement for sell, executed between them. It is stated that the total consideration amount was fixed to the tune of Rs. 6 Crores whereas a sum of Rs. 4,05,00,000/- was paid by the complainant, out of the said total consideration amount, on the two dates, that is, January 3, 2011 and January 4, 2011 respectively. Petitioners/accused persons duly acknowledged the receipt of the said money by issuing money receipts. Certain documents pertaining to the two properties intended to be purchased, were handed over by the petitioners/accused persons, to the complaint/O.P. The petitioners also agreed that a duly registered agreement for sale would be executed, in due course of time.

- 10.** After receiving the money as above, in January 2011, the petitioners/accused persons, have in the month of September 2011, informed the complainant/O.P that due to certain problems, they are unable to execute the sale deed in respect of the said properties, without however elaborating the nature of that problem. They also intended to return back the said amount of money, paid in advance to them.
- 11.** The situation took a different turn, when in April 2014, the complainant/O.P on his own found out that, in spite of accepting and acknowledging advance amount of money for sale of the concerned properties, the petitioners/accused persons had tried to divest the said assets to some other persons than the complainant. As an endeavor on their part to return back the amount of money already bestowed to them pursuant to the agreement for sale, the accused persons had issued two cheques to the complainant being nos. 117588 and 117590 respectively, dated April 8, 2014, of the amounts of Rs. 2,50,00,000/- and Rs. 1,55,00,000/- respectively.

- 12.** The complainant/O.P has further stated in the complaint that, the said two cheques were deposited in bank and were dishonoured and not encashed due to insufficiency of fund.
- 13.** Matter was again outstretched as the petitioner/accused persons, even after dishonour of their cheques, promised to pay back the said amount of money, within 2/3 months more, but in vein.
- 14.** Their alleged mischief was again fortified, as they issued a letter on December 29, 2014, undertaking therein, that by the date January 29, 2015, i.e, by the next one month from the date of the said letter, the entire advanced amount of money, as mentioned above, would be repaid by them. Subsequently, on January 29, 2015, a cheque was issued of an amount of Rs. 2,02,71,000/- to the complainant/O.P by the petitioners/accused persons. Additionally, they have issued two post dated cheques dated January 29, 2015, bearing Nos. 117614 and 117615 respectively. However, the complainant/O.P says that the petitioners/accused persons themselves requested that those cheques should not be submitted in bank for encashment before the date February 28, 2015. According to the complainant, the petitioners have also agreed to pay a sum of Rs. 13 lacks, to the complaint, as interest for delayed repayment of the advance amount of money. A further cheque of Rs. 13 lacks was issued being no. 117628 dated February 2, 2015.
- 15.** The complainant has contended that three account payee cheques of the following description, were issued by the petitioners, in favour of the complainant/O.P :-

 - (i) Cheque No. 117614 dated 29.01.2015 for Rs. 4,05,00,000/- only,
 - (ii) Cheque No.117615 dated 29.01.2015 for Rs. 2,02,71,000/- only,
 - (iii) Cheque No. 117628 dated 28.02.2015 for Rs. 13,00,000/- only.

16. The complainant says that the said cheques were deposited in banks and ultimately were dishonoured and returned to the complainant with memo dated May 2, 2015, with the remarks 'Funds insufficient'.
17. The complainant says further that the statutory demand notice dated May 20, 2015, was sent on May 27, 2015, which was received by the petitioners/accused persons on May 28, 2015, but has not been responded to, by them. That, the amount of money, in the dishonoured cheques, was also not paid back to the complainant, by them. Thus, the complainant/O.P has said that, the petitioners/accused persons are punishable for an offence under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, as amended.
18. Petitioners in CRR 196 of 2016 are the accused persons no. 7, 5 and 6 respectively in the said complaint case, being '*authorized persons*' of the accused company.

Petitioners in CRR 197 of 2016 are the accused persons no. 2, 3 and 4 respectively in the complaint case mentioned above, who are the '*directors*' of the accused company.

The accused company (accused no.1 in the said complainant), a juridical person itself, is the petitioner in the CRR 278 of 2016.

19. After registration of the complaint case as mentioned above, the Chief Metropolitan Magistrate has first directed in order dated July 4, 2015, in a manner, as follows:-

"Complaint filed along with an affidavit and documents by the complainant seeking prosecution of accused u/s 138/141 of the Negotiable Instrument Act.

Considered

Cognizance is taken.

Let the record be transferred to the file of Ld. Metropolitan magistrate 14th Court for enquiry and disposal according to law”.

- 20.** The subsequent proceedings, before the transferee Court may be mentioned in the following manner :-

Date of Order	Order
15.07.2015	“Received the case record by way of transfer from the Court Ld. C.M.M. Cal. Complainant is present and files an affidavit along with documents U/S. 145 of Negotiable Instruments Act. Perused the original documents, affidavit and petition of complainant. It appear from the case record that a prima facie case has been made out for the offence punishable U/S. 138 of Negotiable Instruments Act against the accused person viz. Accordingly issue summons, against the accused person.”
24.08.2015	“Complainant is absent by petition and prays for time No SR is received. To 11.12.2015 for SR.”

11.12.2015	“Complainant is present Ld. Advocate for the Complainant files a petition along with postal track report and praying for issuance of W/A & O/A against accused persons. Perused the petition. And postal track/A/D Card/report. Hd. Considered, prayer is allowed. On perusal of postal Track report its found that there is of and Endorsement such as, refused. That amounts to good service. No step is taken on behalf of accused. Hence, Issue B/40,000/-,W/A & O/A against accused persons.”
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All these orders have also been challenged by the petitioners, in these revision cases.

- 21.** The accused persons have come before this Court, in three groups, by filling three separate cases, in the manner as enumerated in paragraph 18 above. Mr. Bhattacharjee, is representing all the petitioners, in those three cases.
- 22.** So far as the petitioners in CRR 196 2016 and CRR 197 of 2016 are concerned, Mr. Bhattacharya would argue that, though the said petitioners have been implicated in the case as accused persons by virtue of the legal fiction as provided under Section 141 of the Negotiable Instruments Act, 1881, but the requisite averments to invoke the penal provision under Section 141 of the Negotiable Instruments Act, 1881, are absent in the impugned complaint. Hence, the threshold test of law, to invoke the provision under Section 141 of the Negotiable Instruments Act,

1881, is not satisfied in this case. Mr. Bhattacharya has relied on the judgments noted bellow:

- (i) ***M/s. Ashok Leyland Finance Ltd. vs. R.S. Agarwal & Ors.***, reported in **2003 (10) SCALE 1000**;
- (ii) ***SMS Pharmaceuticals Ltd. vs Neeta Bhalla & Anr.*** reported in **(2005) 8 SCC 89 [in short “SMS Pharmaceuticals Ltd.(I)”]**;
- (iii) ***SMS Pharmaceuticals Ltd. vs Neeta Bhalla & Anr.*** reported in **(2007) 4 SCC 70 [in short “SMS Pharmaceuticals Ltd.(II)”]**;
- (iv) ***K. Srikanth Singh vs. North East Securities Ltd. & Anr.*** **(2007) 12 SCC 788**;
- (v) ***Shaleen Khemani & Ors. vs. The State of West Bengal & Anr.***, reported in **2018 (1) C Cr. LR (Cal) 515**;
- (vi) ***Pawan Kumar Goel vs. State of U.P & Anr.*** **2022 (16) SCALE 747**.

The point he has emphasized by referring to all the judgments as mentioned above is that according to the settled law, a director of a company responsible for the conduct of business of the same and in the management of day-to-day affairs thereof – can only be prosecuted by invoking provisions of the Negotiable Instruments Act. It has also been pointed out that law requires specific averments to be made in the complaint that he was in charge of the company and was responsible for the conduct of the business thereof as well. According to him, in this case those specific requirements of law are not fulfilled against the “director” and “non-director” petitioners/accused persons. Hence, the prosecution against those persons cannot be sustained, he says.

- 23.** So far as the petitioner company, in CRR No. 278 of 2016 is concerned, Mr. Bhattacharya has curlicued argument concerning and testing the applicability of the provisions of the statute regarding issuance of an order of attachment, against a juridical person, like it. He argues in favour of the proposition that an order of attachment against a company

suffers from palpable illegality being beyond the four corners of law. He has emphasized on section 305(4) of the Cr.P.C. which according to him shows that in case of absence of company representative, the law restricts itself from applying the provisions, meant to be applied to a representative, to the company itself. He refers to a judgment of this Court reported in **2003 CCrLR (Cal) 634 [O.N.Goenka vs State of West Bengal & Anr]** , and also of Punjab & Haryana High Court reported in **2014 (3) RCR (Cri) 761 [Jay Switches India Private Limited vs State of Haryana]** , on this point. He has further referred to section 82 and 83 of the Cr.P.C. to submit that a warrant of arrest cannot be issued against the company. Hence, therefore issuance of order of attachment is only an illusory phenomenon in case of a company, being not braced by any law. Hence, he says that the impugned order suffers from gross illegality on this score. By referring to a Supreme Court judgment reported in **(2010) 10 SCC 438 [State vs Dawood Ibrahim Kaskar & Ors]** he says that in the same the Court has interpreted the legal provision that proclamation can be issued under section 82 of the Cr.P.C. in respect of a person against whom a warrant has been issued and not otherwise. Petitioner's further argument is that the company, though an accused, cannot be an 'absconder' in the eye of law and has not been treated like that in the statute, under any circumstances. Also that the representative of the company being the agent thereof, though having notice and knowledge of prosecution started against his principal, since has been acting on behalf thereof, cannot be personally committed for detention, by dint of an warrant of arrest against him. All these, according to the petitioner company, would show sheer vacuity of the inane impugned order, so far as its legality and propriety is concerned. A meaningful interpretation of the statutory provisions has been mentioned to be fundamental and the principle force for its effective application. Various judgments have been

referred to wherein the Hon'ble Court discusses and applies the purposeful and telling interpretation of the statutory provisions.

- 24.** For the complainant/opposite party Mr. Gupta appears. He endeavours to place an argument of gross mischievous and devious conduct by the accused persons, at the outset. He says that acceptance by the accused persons of Rs. 4.05 Crores from the complainant, is an undisputed fact in this case. He further indicates that cheques having been issued by the accused persons and those having been dishonoured when presented - are also facts, never denied. This is a case filed by the complainant against the accused persons/petitioners, in addition to the police case being Park Street P.S. Case No. 83 of 2015 dated 18/03/2015, also filed by him against the said accused persons under sections 420,406 and 120B of the IPC. In a previous proceeding before this Court, the accused persons / petitioners undertook to pay the entire amount and thus by misleading the Court could manage to secure an order of stay of the proceedings. According to Mr. Gupta, the same was misleading for the reason that the accused persons have never thereafter been prompted to pay the money back to the complainant. Also that such an order of stay was obtained from this court in absence of the complainant. It has been further pointed out that even in the Supreme Court, the accused persons have benefited themselves with lenient orders under the misrepresentation of fact that they are willing and agreeable to amicably settle the matter with the complainant. For this, Mr. Gupta has relied on various orders of this court passed in CRR No. 1397 of 2015 (with CRR No. 1475 of 2015 and CRR No. 1476 of 2015) and also of the Supreme Court. It has been submitted that the petitioner's intention has never been of repayment the amount of money deceitfully taken from the complainant. So far as the challenge made by the petitioners as to the maintainability of the complaint case, as mentioned above lodged by his

client, before the Magistrate is concerned, Mr. Gupta has submitted that the complainant in his written complaint has specifically and categorically made averments regarding the offence committed, the mode and manner thereof and also the manner in which the petitioners have been involved in commission of the same being in charge of the accused company and involved in its day to day performance of work. According to the complainant, the present petitioners have been directly involved into the affairs of the company, its policies and day to day functioning and also that they are the sole responsible persons for the offence under the Negotiable Instruments Act 1881, as alleged in this case. It is said on behalf of the complainant that the complaint is not required under the law to be an exhaustive compendium of the entire facts and due narration of the attending facts to disclose with minute detail as to how an offence as alleged has happened. It would be sufficient to mention the involvement of the accused persons, so as to make out a case and prima facie bring on record the necessary ingredients of offence, to initiate prosecution against them. As regards these essentials to maintain a criminal proceeding against the accused persons, the written complaint in this case suffers no imperfection or flaw, he says. By referring to the averments made in the written complaint in this case, Mr. Gupta has suggested that the specific averments have been made therein to implicate the petitioners vicariously, which satisfy the tests under the law, for such implication of the accused persons in this case. According to the complainant, the Magistrate has not issued any order of attachment but order of 'warrant of arrest', due to non-appearance of the accused persons in spite of due service of summons. Accordingly the whole argument made on behalf of the petitioners should stand as baseless and out of context. And since, on the contrary, the fact of issuance of cheques which have been subsequently dishonoured, is an admitted fact in this

case, on behalf of the complainant it has been urged that the trial may commence in the case immediately.

25. Navigating the complex financial landscape requires an understanding of certain key legislations, one of the most significant among them being the Negotiable Instruments Act, 1881. The Negotiable Instruments Act, 1881 is an essential piece of legislation that governs and regulates the operation and transactions of negotiable instruments in India. This Act is not just a mere statute; it plays a crucial role in facilitating trade and commerce, ensuring financial certainty and credibility. The Negotiable Instruments Act, 1881, stands on certain unique features:

- Transferability: It emphasizes the free transferability of the instrument from one party to another.
- Rights of the Holder: The Act provides rights and protections to the holder of the instrument.
- Legal Redress: It provides a legal mechanism to seek redressal in case of dishonour of the instrument.
- Presumptions: The Act assumes certain presumptions regarding negotiable instruments.

A Negotiable Instrument, in simple terms, refers to a document that guarantees payment of a specific amount from one party to another. The primary characteristics of these instruments are:

- Transferability: The instrument can be transferred from one person to another.
- Right to Payment: The person holding the instrument has the right to claim the payment.
- Unconditional Payment: The payment guaranteed is to be made without any conditions.

The law does not exactly define what a Negotiable Instrument is, but it specifically mentions a few types, like promissory notes, cheques, and bills of exchange. These documents are written promises to pay

money, and they can be either given to a specific person or to anyone who holds them. Pursuant to the rise in dealing with cheques also raises the practice of giving cheques without any intention of honouring them. Before 1988, there has been no effective legal provision to restrain people from issuing cheque without having sufficient funds in their account or any stringent provision to punish them in the event of such cheques being dishonoured by their bankers and returned unpaid. Of course there has been civil liability for dishonouring of cheques. To ensure promptitude and remedy against defaulters and to ensure credibility of the holders of the negotiable instrument a criminal remedy of penalty was inserted in Negotiable Instruments Act, 1881 in form of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act 1988.

26. The object and the purpose of the Negotiable Instruments Act 1881, as envisaged by this Court in the case of ***Akhoy Kumar Pal vs Haridas Bysak*** reported in **18 CWN 494**, is to legalise system under which claims upon certain mercantile instruments are treated like ordinary goods passing from hand to hand. The object of the Act is to secure a free circulation of the instrument from hand to hand without confusion and obscurity but with precision and certainty and also to provide for punishment, when such free circulation is tainted with fraud, deception or any other considerations. This is a self-contained codification, exhaustive, conclusive and contextually inclusive too, so much so, to justify application of the maxim ***“expressio unius est exclusio alterius”***. A “drawer” of a cheque, under section 7 of the said Act, is the “maker” of the cheque. The “drawer” of a cheque, under section 7 of the said Act can be a natural person or an incorporated person or a body of persons, whether incorporated not. The word “person” as defined in section 11 of the IPC includes a natural person, an incorporated person or even an

unincorporated association or body of persons like a partnership. A verdict of the Supreme Court may also be mentioned, that is reported in **AIR 1996 SC 2339 (Electronics T. and T. D. Corpn. Ltd., M/s. v. Indian T. and E. Pvt. Ltd.)** where in the Court has held that in case of dishonour of a cheque by the bank, even upon instructions for non-payment by the drawer, would amount to be 'dishonour' within the meaning of section 138 of the said Act. Thus mere issuing of a cheque would constitute an offence, if it bounces.

- 27.** Here, one may have regard to the provision under Section 141 of the said Act, as extracted below:-

"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."*

The three categories of persons covered by Section 141 of the Act, are as follows:-

- (1) The company who committed the offence;

(2) Everyone who was in-charge of and responsible for the business of the company at the time of commission of the offence; and

(3) Any other person who is a director or a manager or a secretary or officer of the company with whose connivance or due to whose neglect the company has committed the offence.

- 28.** Now, coming back to the facts of the present cases, it can be seen that in CRR 196 of 2016 and CRR 197 of 2016, the accused persons who are the ‘directors’ and ‘non-directors’ of the company, have challenged the very maintainability of the prosecution against them, particularly on the ground of the said complaint against them being not in conformity with the settled legal principles, i.e, specifying in the complaint the mode and manner of involvement of the said petitioners as regards the company’s day to day business, they allegedly being in-charge of the company, at the time of commission of the alleged offence.
- 29.** A person being vicariously liable for an offence is an unknown phenomenon within the realm of criminal law, unless it is specifically provided by the statute, like it is in the Negotiable Instrument Act, 1881. According to the scheme of the Act, the offender in Section 138, is the “drawer”, that is the “maker” of the cheque. He alone would have been the offender, if the Act did not contain other provisions, like that in Section 141 of the same. Three categories of persons as mentioned above can be discerned from the said provision who are brought within the purview of the penal liability through the legal fiction envisaged in that Section. The status of the petitioners in CRR 196 of 2016 and CRR 197 of 2016 as the ‘non directors’ and ‘directors’ of the accused company respectively, is not denied in this case. They have made out a case that to impeach their liability or even involvement in the alleged offence, absence of any specific averment in the complaint, as required under the

law for such an implication of them, would be sufficient and that should prompt any prosecution against them, to be halted immediately. As mentioned earlier, several verdicts have been relied on to invigorate this argument of the said petitioners. As to what would be the requisite averment to implicate a director of a company along with the company under Section 141 of the Negotiable Instruments Act, 1881, has been settled by the Supreme Court in the case of **SMS Pharmaceuticals Ltd. vs Neeta Bhalla & Anr.** reported in **(2005) 8 SCC 89**. The Supreme Court has exonerated directors of a company from any deemed liability and says that it is necessary to specifically aver in the complaint that at the time of the offence, the said person was in charge of and responsible for the conduct of the business of the company. Relevant portion may be quoted, as herein below:-

“18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

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 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.

(c) The answer to Question (c) has to be in the 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 the 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 the 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.”

- 30.** This view has further been fortified with coming into the daylight of the subsequent judgments of the said Court of the **SMS Pharmaceuticals Ltd. (2007) 4 SCC 70 (supra)**, **K. Srikanth Singh (supra)** and **Pawan Kumar Goel (supra)**, as relied on by the petitioners. In **Shaleen Khemani (supra)**, this Court has dwelled upon the proposition that merely because the petitioners were directors/additional directors of the company, it must not be inferred that they were in-charge of the affairs of the company.

Therefore the law settled is that, by not merely in accordance with their designation in the company, but specific mention in the complaint of their roll and involvement in the affairs of the company, to implicate that they were in charge thereof at the time of commission of the alleged offence,

would make the 'directors' and/or 'non directors' of the accused company be liable in a case of cheque bounce.

It is required that at this juncture, the petition of complaint may once again be looked into.

- 31.** From the same, one would find that apart from mentioning the petitioners in CRR 196 of 2016 as 'non-directors' and in CRR 197 of 2016 as 'directors', the complainant has also described as to how the said accused persons by their oral representation depicted the property to be so lucrative that it led to the misunderstanding of the complainant about the potency of the property as well as the bone fide of the accused persons. This has ultimately culminated into the complainant paying a sum of money of Rs. 405,00,000/- to the accused company through R.T.G.S on January 3, 2011 and January 10, 2011 respectively. The said petitioners have been personally representing the accused company throughout the transaction.
- 32.** The narration of the complainant in the said complaint as regards the role of the petitioners in the affairs of the company being in-charge thereof and also in the particular transaction in issue in the present case has been vividly described, as mentioned above, in the said complaint to clearly establish the same within the legal parameters as require. In view of the same and in view of the fact that the dishonor of the cheque on a subsequent date has not been denied or disputed by the petitioners, this Court is of the opinion that the argument advanced on behalf of the petitioners in CRR 196 of 2016 and CRR 197 of 2016 cannot be accepted. Instead, a case has been made out sufficiently regarding their alleged involvement. Policy decisions being made by the petitioners for the accused company, their active involvement in executing those and accruing benefits therefrom, are apparent. Likewise, it is also apparent

that at the relevant point of time, excepting the present petitioners, there were no other 'directors' or 'nondirectors', in the said company and also that the concerned cheques were issued by them. Considering the attending facts and circumstances as discussed above and the object and purpose of the statute itself as delineated above, this Court hardly finds any impropriety in the orders passed by the Metropolitan Magistrate regarding taking cognizance of offence under section 138 and 141 of the Negotiable Instruments Act. Hence, in view of availability of strong prima facie material against the present petitioners in CRR 196 of 2016 and CRR 197 of 2016, so far as the offence under Section 138/141 of the Negotiable Instruments Act, 1881 is concerned, this Court finds no cogent ground to set aside the complaint or quash the proceedings being Complaint Case No. 0023103 of 2015, in any manner what so ever.

- 33.** On behalf, of the petitioner company in CRR 278 of 2016, further argument has been made that the statutory provision of issuance of warrant of arrest, would not be applicable in case of this petitioner and on this score the impugned order is liable to be set aside being illegal.

As discussed earlier, the Magistrate's order dated December 11, 2015, contains his directions that the summons issued by the Court having been 'refused' and amounting to good service thereby and inspite of the same, no steps having been taken by the accused, bailable warrant of arrest and order of attachment would be issued against the accused.

The general provisions of service of summons have been provided in Section 63 of the Cr.P.C, in the following manner:-

"63. Service of summons on corporate bodies and societies.—
Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the

corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.”

Also pertinent here is to note provisions under Section 65 of the Cr.P.C, in this regard, which is quoted below:-

“65. Procedure when service cannot be effected as before provided.—*If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.”*

A careful reading of these provisions, let one to understand that service of summon upon a company would be considered as completed, when effected to certain specified persons or reaches by registered post to the chief officer of the company. But, even after exercise of due diligence, if such service cannot be affected, the law provides that serving officer shall affix copy of summons to a conspicuous part of the premises (in case of a company). This may be considered by the Court, as the due service of summons. This may be one way of ensuring attendance of or on behalf of the addressee.

- 34.** The other way Court can compel appearance, is by issuance of warrant of arrest, provisions regarding which is detailed in Sections 70 to 81 of the Cr.P.C.

The definite follow up of issuance of a warrant of arrest by a Court, would be arrest and captivity of the concerned person, against whom warrant has been issued.

The provision under Section 73 (1) is significant and noted, as below:-

“73. Warrant may be directed to any person.—

(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.”

The word ‘arrest’ would literally mean apprehending a person or take a person into custody. Court would require execution of warrant of arrest issued by it, by the police officer or any other person, so directed, to nail the accused and produce him before the Court.

On this, Mr. Bhattacharya has elaborately argued that, a company being a juridical person, though comes within the purview of definition of a ‘person’, as provided under the law, but cannot be subjected to the said provisions of law and “warrant of arrest” cannot be issued against a company. Both the parties have relied on eloquent arguments and sagacious judicial pronouncements as regards this.

- 35.** While enumerating provisions as to inquiries and trials, the Code has provided under Section 305 (3) as follows:-

“305. Procedure when corporation or registered society is an accused.—

(1) *****

(2) *****

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.”

Section 305 (3) is a provision, in case, Company representative appears in Court and represents the company. In a case, as it is in the present one, when inspite of receipt of summons company representative does not appear before the Court, the Court shall be bound by the provision under Section 305 (4), which is as follows:-

“305. Procedure when corporation or registered society is an accused.—

(1) *****

(2) *****

(3) *****

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.”

However, from the reading of provisions under Section 65 and under Section 305 of the Cr.P.C, it appears firstly that affixing duplicate of summons at a conspicuous place of the company would satisfy requirement of good service thereof to a company. It shows also that no coercive action has, however, been provided by the statute in case of absence of a representative of an accused company, even after due service of summons to it. In case he appears, according to section 305(3) of the CrPC, statutory requirements of things to be done, read, stated or explained in presence of the accused, would be construed to be required to be so done in presence of the said representative. It has further been provided that the requirement of law of examination of the accused company would be construed to be as the requirement of examination of the said representative. However, in his absence, the statute has provided that provisions under section 305(3) of the CrPC, would not apply.

- 36.** Obviously, the condition as prescribed under section 73(1) of the CrPC, that for issuance of a warrant, the Magistrate has to be satisfied that the person is evading arrest does not apply in case of a company. This is firstly because the actual physical apprehension in case of a body corporate, may not be a feasible proposition. Also that a company, physical existence of which is to be conceived through its Board of Directors and a permanent registered office, can hardly be perceived as a person evading arrest, as envisaged in section 73(1) of the Code.

It would be pertinent to mention the portion of judgment of this Court has referred to by the petitioner in this connection, i.e, **O.N. Goenka vs. State of West Bengal** reported in **2003 C Cr LR (Cal) 634**, the Hon'ble Court has held as follows:-

“21. For such reasons and to obviate further difficulties with regard to the progress of the trial, I like to put it on record that while setting aside the portion of the aforesaid order as indicated above, I direct the learned Magistrate to invoke the provision of Section 63 of the Code of Criminal Procedure for inviting the attention of the accused No.1 to select its representative for the purpose of conclusion of the present trial and if within one month from the date of receipt of such notice, no steps is taken by the company for appointing his representative in this case, in such event, the learned Magistrate shall proceed in accordance with the provision of Section 305 (4) of the Cr.P.C. without insisting upon the company for selecting his representative further in connection with this case.”

- 37.** It is also unavoidable to note that there is no law promulgated regarding that the representative of the company in case of his absence would be subjected to bail bond and surety bond or issuance of warrants of arrest to procure his presence in the Court. So far as recording of evidence is concerned, like any individual accused person the company representative has not been stipulated to be required to represent and also that he would be examined like any other accused person under Section 313 of the Cr.P.C.

- 38.** Company as a juridical person cannot be physical apprehended.
- 39.** Company being represented by its directors and having acted through the directors only and not individually, the provision as to arrest etc. is directed only against the person responsible for the business of the company.
- 40.** From the discussion as above the natural consequence would be that an order of issuance of warrant of arrest may not be an executable order under law against the company, which is a juridical person. However, company as an accused person cannot be seized of the liability to face the trial and punished, if found guilty, in case the Court finds the summons to have been duly served upon it. An appropriate punishment as prescribed under the law would be applicable in its case.
- 41.** Under such circumstances this Court finds it proper to interfere into the impugned order dated December 11, 2015, of the Magistrate, to the extent as necessary. So far as the issuance of warrant of arrest and order of attachment against the company namely M/s. AKJ Mineral Ltd, i.e, petitioner in CRR 278 of 2016 is concerned, the same is found to have been passed in disobedience and derogation of the statutory provisions and thus is violative of the same. For this reason the same cannot be maintained and should be set aside. For the Magistrate a decision pursuant to an enquiry regarding due service of summons to the accused company, would suffice, to let it proceed with the trial of the case --- so far as the accused company is concerned. The impugned order dated December 11, 2015, is modified to that extent.
- 42.** On the premise as above, the revision cases being CRR 196 of 2016 and CRR 197 of 2016 are dismissed. The case being CRR 278 of 2016 is allowed in part and all connected applications are disposed of.

- 43.** Needless to mention that in the trial before the Magistrate, any of the observation/finding of this Court in this case shall not bare any relevant as the same are for the purpose of disposing of these revision cases only. The Magistrate shall proceed in trial in dependently in an accordance with the merit of the case.
- 44.** Urgent Photostat certified copy of this judgment is applied for, be given to the parties, upon compliance of requisite formalities.

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(Rai Chattopadhyay, J.)