2024:BHC-AUG:27443

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 394 OF 2022
with
CRIMINAL WRIT PETITION NO. 395 OF 2022
with
CRIMINAL WRIT PETITION NO. 396 OF 2022
with
CRIMINAL WRIT PETITION NO. 663 OF 2023
with
CRIMINAL WRIT PETITION NO. 664 OF 2023
with
CRIMINAL WRIT PETITION NO. 665 OF 2023

S. Saraswathi Sankar,
Age- 55 years, Occu. Business &
Director of Shalini Television Network Pvt. Ltd.,
Office No.37, T.N.H.B. Complex,
Luz Golden Enclave No.180,
Luz Church Road, Mylapore,
Chennai. (Tamil Nadu). ... **PETITIONER**

V/s.

Sofiya Entertainment Pvt. Ltd.,
Through its Director and Owner,
Mr. Munir Kadar Shaikh,
Age: 53 years, Occ. Business,
Administrative Office, Behind Kute Hospital,
Near Over Bridge, Shrirampur,
District : Ahmednagar.
Registered Office: Safa Motors,
Safa Complex, Opp. Bhagwan
Homeopathic College, N-6,
Cidco, Aurangabad. ... **RESPONDENT**

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Mr. S.V. Dixit a/w. N.B. Sangle, Advocate for the Petitioner
Mr. Rahul A. Tambe, Advocate for the Respondent

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CORAM : Y.G. KHOBRAGADE, J.
RESERVED ON : 13.11.2024
PRONOUNCED ON : 22.11.2024

JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally with consent of both the sides.

2. In all these petitions, the Petitioner/accused is a Director of Shalini Television Network Pvt. Ltd., who has challenged the orders dated 14.08.2018, 01.08.2018, 07.06.2018 and 11.07.2022 passed in SCC Nos. 598/2018, 279/2018, 278/2018, 626/2022, 625/2022 and 624/2022 by the learned JMFC, Court No.1, Shrirampur, thereby issued process against the Petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 is challenged. The Petitioner further prayed for quashment of proceedings initiated against him for the offence punishable under Section 138 of the N.I. Act.

3. After hearing both the sides a common question has arisen is that whether the complaints under Section 138 of the N.I. Act, are maintainable as against the Director of the company without impleading the company as an accused, when the cheques involved in the complaints have been issued for discharging the legal liability of the company.

4. The Respondent in all these petitions is the original complainant and the present Petitioner is the original accused in complaint bearing SCC Nos. 598/2018, 279/2018, 278/2018, 626/2022, 625/2022 and 624/2022. For the sake of brevity, I would like to refer the parties in these petitions in their original capacity as complainant and accused. It is not out of record to mention here that the Respondent/ complainant company filed these separate complaints alleging that on 09.12.2015 an agreement was executed with M/s. Shalini Television Network Pvt. Ltd. for advertising. As per terms and conditions of the said agreement, it was obligatory on part of the accused to arrange an amount of Rs.10,00,000/- against the pending dues of Rs.78,00,000/- and fixed monthly rent as prescribed in the agreement. Therefore, the accused issued account payee cheque nos. 603282, 603283, 603284, 603253, 603252 and 603251 dated 10.11.2017, 10.12.2017, 10.01.2018, 10.10.2017 and 10.08.2017 for an amount of Rs.10,00,000/- each drawn on State Bank of India, LUZ Branch, Mylapore, Chennai from A/c No.64111620490 to discharge the legal liability. The said cheques were deposited by the complainant company with its Banker ICICI Bank, Shrirampur Branch, on different dates, however, said cheques were dishonored due to 'insufficient funds'. The complainant received intimation about dishonor of cheque nos.603282, 603283, 603284, 603253, 603252 and 603251 through his banker on 04.01.2018, 15.03.2018 and 06.11.2017. Thereafter, on

22.01.2018, 31.03.2018 and 27.11.2017, the complainant company issued mandatory notices under Section 138 of the N.I. Act in respect of each of the cheques and called upon the accused (Petitioner) to pay the amount of cheque. The said mandatory notices were duly served upon the accused (Petitioner) on 29.01.2018, 07.04.2018 and 04.12.2017 respectively but the Petitioner failed to comply with the notices within the statutory period, therefore the Respondent/complainant filed six complaints and prayed for appropriate punishment against the accused for the offence punishable under Section 138 of the N.I. Act.

5. On 14.08.2018, 01.08.2018, 07.06.2018 and 11.07.2022 the learned JMFC, Shrirampur passed an order below Exh.1 in SCC SCC Nos. 598/2018, 279/2018, 278/2018, 626/2022, 625/2022 and 624/2022 and issued process against the accused (Petitioner) for the offence punishable under Section 138 of the N.I. Act. Being aggrieved by said orders, the Petitioner has filed these petitions praying for quashing and setting aside the proceedings under Section 138 of the N.I. Act.

6. The learned counsel appearing for the Petitioner canvassed in vehemence that the Petitioner/accused is a Director of Shalini Television Network Pvt. Ltd. On 09.12.2015, the Respondent/complainant company through it's signatory and Shalini Television Network Pvt. Ltd., through it's

signatory entered into an agreement for broadcasting of some contents on certain terms and conditions. As per the terms and conditions of the contract, Rs.2,65,000/- per month was payable by the advertiser (Shalini Television Network Pvt. Ltd) to the Respondent/complainant along with cost of teleport and linking per month. It was further agreed by the Respondent/complainant that it would apply for change of name of the news channel from 'MK News' to 'Shalini Plus' after security deposit is paid. The rental and teleport rental was to be paid to the Respondent/complainant after the date of launching of channel. The Complainant Company/advertiser agreed to launch the channel in the name of Shalini Plus after such changes are approved by the Ministry of Information and Broadcasting. Both companies agreed to resolve the dispute through the Arbitrator, in case of any dispute arise in future. The said agreement was for a period of three years w.e.f. 09.12.2015.

7. It has been contended that as per Clause-III of the agreement dated 09.12.2015, the advertiser company Shalini Television Network Pvt. Ltd., agreed to pay monthly rental and teleport rental charges after changing channel's name to Shalini Plus, however, without changing the name of the channel, the Respondent/complainant insisted for payment of rental amount and teleport rental from January-2016. Therefore, the advertiser company paid security amount of Rs.7,95,000/- in addition to teleport deposit amount of Rs.5,25,000/- in the month of December-2015 and January-2016. However,

even after several requests made by the advertiser company the Respondent/ complainant company has not changed the name of the channel and caused damage to the reputation and brand name of the advertiser company. Further, though the name of the channel was not changed as per terms of the agreement but the Respondent/complainant insisted for issuance of post dated cheques. Therefore, in order to maintain cordial relationship, on 03.11.2017, the Advertiser company Shalini Television Network Pvt., Ltd., issued post dated cheques bearing nos.603282, 603283, 603284, 603253, 603252 and 603251 dated 10.11.2017, 10.12.2017, 10.01.2018, 10.10.2017 and 10.08.2017 in compliance of condition no.3 of the Agreement dated 09.12.2015.

8. The learned counsel appearing for the Petitioner canvassed that on 09.12.2015 an agreement was executed between the Respondent/ complainant company and Shalini Television Network Pvt. Ltd., for advertising the contents, however, the Respondent/complainant committed breach of terms of contract dated 09.12.2015. The advertiser company issued a notice dated 17.12.2021 for arbitration as per clause-V of the agreement but the dispute was not refferred to the Arbitrator, however, the complainant company issued a mandatory notice u/s 138 of the NI Act against the Petitioner, who is Director of Shalini Television Network Pvt. Ltd. It is further canvassed that the present Petitioner is the Director of the company and subject matter of complaints cheques are issued from the account of the company for discharging the legal

liabilities, therefore, without impleading the company as an accused for the offence punishable under Section 138 of the N.I. Act, the complaint as against the Director of the company is not maintainable.

9. The learned counsel appearing for the Petitioner further canvassed that the business agreement was entered between the Respondent/ complainant company and Shalini Television Network Pvt. Ltd. The cheques which are subject matter of the complaints are issued from the account of the company. Therefore, without impleading the company as an accused on whose account the cheques have been issued, the complaints u/s 138 of NI Act are not maintainable and said complaints as against the Petitioner/Director are not maintainable. However, the Respondent/complainant company only impleaded the Director of the company as an accused though the Director has no personal liability of the company. Therefore, the complaints against the Director are not maintainable, hence, prayed for quashing and setting aside the complaints as well as prayed for order of issuance of process.

10. To buttress these submissions the learned counsel appearing for the Petitioner placed reliance on the case of **Pawan Kumar Goel V/s. State of U.P. and Anr.; 2022 SCC OnLine 1598**, **Himanshu V/s. B. Shivamurthy and Anr.; (2019) 3 SCC 797**, **Aneeta Hada V/s. Godfather Travels and Tours Pvt. Ltd.;**

(2015) 5 SCC 661 and **Ramrajsingh V/s. State of M.P. and Anr.; AIR 2009 SC (Supp) 1726**.

11. Per contra, Mr. Tambe the learned counsel appearing for the Respondent/complainant company canvassed in vehemence that the Petitioner has not disputed about entering into an agreement dated 09.12.2015 between the complainant company and M/s. Shalini Television Network Pvt. Ltd. The said company was represented through the present Petitioner- S. Saraswathi Sankar. On 24.12.2015, the Respondent/company applied for change of name along with all necessary documents. The Petitioner being a Director of Shalini Television Network Pvt. Ltd., started using the services w.e.f. 01.06.2016. Therefore, the Respondent/company demanded rental amount and for payment of the same the Petitioner/accused issued the cheques. The Petitioner / accused has admitted vide e-mail about user of services w.e.f. 01.01.2016 but the payment as promised was not paid. Therefore, the Respondent/company deposited said cheques on assurance of the Petitioner about honouring of cheques. It is further argued that the Petitioner/accused had agreed that he is the Authority and Director of Shalini Television Network Pvt. Ltd. and accepted all the responsibility of payments described in the agreement and to clear all the dues. So also, as per the agreement the Petitioner agreed about use of services w.e.f. 09.12.2015 to 27.12.2017. Therefore, defence taken by the Petitioner about not using the services from

09.12.2015 is not justifiable. Further vide communication dated 27.12.2017, the Petitioner admitted about issuance of five cheques which have been dishonored and the Petitioner took all the responsibility being a Director of the company about clearance of all dues within one month from the date of the agreement. Therefore, the Respondent/company complainant initiated the proceedings under Section 138 of the N.I. Act for dishonor of cheques. Though, the Respondent/complainant issued the mandatory notices under Section 138 of the N.I. Act but the Petitioner/accused failed to reply and not complied with the mandatory notices within the stipulated period. Therefore, the Petitioner/accused has committed offence punishable under Section 138 of the N.I. Act. Therefore, though the drawer-company not been impleaded as an accused still the complaints as against the authorized signatory of the cheque-drawee company is maintainable and the Director can be prosecuted for the offence punishable under Section 138 of the N.I. Act.

12. In support of these submissions Mr. Tambe, the learned counsel appearing for the complainant relied on the following case laws:

i) U.P. Pollution Control Board V/s. Messrs Modi Distillery & Ors.; (1987) 3 SCC 684.

ii) S.R. Sukumar V/s. S. Sunaad Raghuram; (2015) 9 SCC 609

iii) S.P. Mani & Mohan Dairy V/s. Dr. Snehalatha Elangovan; (2023) 10 SCC 685.

iv) Managing Director, Bhuleshwar Sugar Works Ltd., Purandar & Anr. V/s. N.R. Fabricators and Erectors, Shri. N.r. Satpute (Director) & Anr (Criminal W.P. No.1418/2022) order dated 09.01.2023.

v) Anil Kumar Singhal V/s. State of Maharashtra & Ors.; 2023 (1) Mh.L.J. 555.

13. It is not in dispute that in all these matters, the Respondent/complainant company instituted complaints bearing SCC Nos. 598/2018, 279/2018, 278/2018, 626/2022, 625/2022 and 624/2022 for the offence punishable under Section 138 of the N.I. Act on account of dishonor of cheques, the details of which is as under:

Cri. W.P. Nos.	SCC Nos.	Cheque Nos.	Date of cheque	Date of dishonor
394/2022	598/2018	603282	10.11.2017	04.01.2018
395/2022	279/2018	603283	10.12.2017	04.01.2018
396/2022	278/2018	603284	10.01.2018	15.03.2018
663/2023	626/2022	603253	10.10.2017	06.11.2017
664/2023	625/2022	603252	10.08.2017	06.11.2017
665/2023	624/2022	603251	10.08.2017	06.11.2017

14. *Prima facie*, all above cheques are issued for discharge of legal liabilities from the account of Shalini Television Network Pvt. Ltd., as per terms and conditions of agreement executed between the Respondent/complainant company and Shalini Television Network Private Limited. No doubt, the present Petitioner/accused is a Director of Shalini Television Network Pvt. Ltd., and authorized signatory of Shalini Television Network Pvt. Ltd. Therefore,

merely being the authorized signatory i.e. the Petitioner/accused signed all these cheques on behalf of the company.

15. In ***Pawan Kumar Goel*** cited (supra), the Hon'ble Apex Court considered two issues; 1) Whether a director of a company would be liable for prosecution under Section 138 of NI Act without the company being arraigned as an accused and 2) Whether a complaint under Section 138 of NI Act would be liable to be proceeded against the director of the company without their being any averments in the complaint that the director arrayed as an accused was in charge of and responsible for the conduct and business of the company. The Hon'ble Supreme Court considered the scope of Section 138 and 141 of the N.I. Act and observed in para nos.25 to 29 as under:

> *"25. This Court has been firm with the stand that if the complainant fails to make specific averments against the company in the complaint for the commission of an offence under Section 138 of NI Act, the same cannot be rectified by taking recourse to general principles of criminal jurisprudence. Needless to say, the provisions of Section 141 impose vicarious liability by deeming fiction which pre-supposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-Section (1) and (2) would not be liable to be convicted on the basis of the principles of vicarious liablity.*
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> *26. Reference in this connection may also be made to another judgment of the two-Judge Bench of this Court in Himanshu Vs. B. Shivamurthy and Another (Supra), the facts wherein have a stark similarity to the facts of the present case, considering the issue where the complaint was lodged only against the director without arraigning the company as an accused and whether the company could be subsequently arraigned as an accused, it was observed as under:-*
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> > *"11. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. The complaint*

was lodged only against the appellant without arraigning the company as an accused.

12. The provisions of Section 141postulate that if the person committing an offence under Section 138 is a company, 4 (2018) 13 SC 663 every person, who at the time when the offence was committed was in charge of or 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.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused."

27. This issue stands concluded by a decision of three-Judge Bench of this Court in the case of Aneeta Hada Vs. Godfather Travels & Tours (P) Ltd. (Supra), wherein it has been held that for maintaining the prosecution under Section 141of NI Act, arraigning of the company as an accused is imperative and non-impleadment of the company would be fatal for the complaint. It may be relevant to extract the following from the said judgment:-

"58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself."

28. The observations made in the aforesaid judgment is also a complete answer to the arguments advanced by learned counsel for the appellant that in the *absence of any prohibition under the NI Act, the amendment in the complaint is permissible and the impleadment of an additional accused subsequent to filing of the complaint, would not be barred. At this juncture, we may also refer to the following observations made in the case of N. Harihara Krishnan Vs. J. Thomas (Supra) :-*

> *"26. The scheme of the prosecution in punishing under Section 138 of the Act is different from the scheme of Cr.PC. Section 138 creates an offence and prescribes punishment. No procedure for the investigation of the offence is contemplated. The prosecution is initiated on the basis of a written complaint made by the payee of a cheque. Obviously such complaints must contain the factual allegations constituting each of the ingredients of the offence under Section 138. Those ingredients are: (1) that a person drew a cheque on an account maintained by him with the banker; (2) that such cheque when presented to the bank is returned by the bank unpaid; (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier; (4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and (5) such a notice of payment is made within a period of 30 days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid. It is obvious from the scheme of Section 138 that each one of the ingredients flows from a document which evidences the existence of such an ingredient. The only other ingredient which is required to be proved to establish the commission of an offence under Section 138 is that in spite of the demand notice referred to above, the drawer of the cheque failed to make the payment within a period of 15 days from the date of the receipt of the demand. A fact which the complainant can only assert but not prove, the burden would essentially be on the drawer of the cheque to prove that he had in fact made the payment pursuant to the demand.*
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> *27. By the nature of the offence under Section 138 of the Act, the first ingredient constituting the offence is the fact that a person drew a cheque. The identity of the drawer of the cheque is necessarily required to be known to the complainant (payee) and needs investigation and would not normally be in dispute unless the person who is alleged to have drawn a cheque disputes that very fact. The other facts required to be proved for securing the punishment of the person who drew a cheque that eventually got dishonoured is that the payee of the cheque did in fact comply with each one of the steps contemplated under Section 138 of the Act before initiating prosecution. Because it is already held by this Court that failure to comply with any one of the steps contemplated under Section 138 would not provide "cause of action for prosecution". Therefore, in the context of a prosecution under Section 138, the concept of taking cognizance of the offence*

but not the offender is not appropriate. Unless the complaint contains all the necessary factual allegations constituting each of the ingredients of the offence under Section 138, the Court cannot take cognizance of the offence. Disclosure of the name of the person drawing the cheque is one of the factual allegations which a complaint is required to contain. Otherwise in the absence of any authority of law to investigate the offence under Section 138, there would be no person against whom a court can proceed. There cannot be a prosecution without an accused. The offence under Section 138 is person specific. Therefore, Parliament declared under Section 142 that the provisions dealing with taking cognizance contained in the CrPC should give way to the procedure prescribed under Section 142. Hence the opening of non obstante clause under Section 142. It must also be remembered that Section 142 does not either contemplate a report to the police or authorise the Court taking cognizance to direct the police to investigate into the complaint.

28. The question whether the respondent had sufficient cause for not filing the complaint against Dakshin within the period prescribed under the Act is not examined by either of the courts below. As rightly pointed out, the application, which is the subject-matter of the instant appeal purportedly filed invoking Section 319 CrPC, is only a device by which the respondent seeks to initiate prosecution against Dakshin beyond the period of limitation stipulated under the Act."

29. In view of the above, arguments advanced by learned counsel for the appellant that an additional accused can be impleaded subsequent to the filing of the complaint merits no consideration, once the limitation prescribed for taking cognizance of the offence under Section 142 of NI Act has expired. More particularly, in view of the fact that neither any effort was made by the petitioner at any stage of the proceedings to arraign the company as an accused nor any such circumstances or reason has been pointed out to enable the Court to exercise the power conferred by proviso to Section 142, to condone the delay for not making the complaint within the prescribed period of limitation."

16. In cited case the Hon'ble Supreme Court also considered the case of ***S.M.S. Pharmaceuticals Ltd. V/s. Neeta Bhalla (2005) 8 SCC 89***, wherein the provisions of Section 141 of the N.I. Act were considered wherein 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 offences etc.” and observed in para 33 and para 37 as under:

> *“33. .....*
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> *“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 :*
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> *“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."*
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> *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 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 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 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.*

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 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. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable."

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37. The Bench answered the questions posed in the reference as under :-

"19. (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 141and 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. Section 141

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable undet Section 141of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for 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 affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of

> *and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."*

17. In the case of ***Managing Director of M/s Castrol India Ltd.; 2018 ALL M. R. Cri. 465 (SC)***, it has been held that to determine vicarious liability of Officer of company, clear and categorical statement that he was In charge of the conduct of business of company in respect of which an offence is alleged to have been committed, is required to be made. If no such statement or averment is made in the complaint that the M.D. was responsible for conduct of business of the company or for commission of any act on the basis of which an offence is alleged to have been committed, the proceeding against the M.D. of company is liable to be quashed.

18. In the case in hand, the alleged cheques have been issued from the account of the company for discharging legal liability of the company in pursuance of the agreement executed between the complainant company and Shalini Television Network Pvt. Ltd. but those cheques were dishonored. Therefore, Shalini Television Network Pvt. Ltd. allegedly committed the offence u/s 138 of the N. I. Act and merely, the present Petitioner signed those cheques being the authorized signatory he cannot be solely prosecuted without impleading the cheque drawee company. Therefore, the complaints as against

the Petitioner/accused are not maintainable and continuation of proceedings as against the Petitioner will amount to abuse of process of law.

19. In case of **Himanshu** cited (supra) the Hon'ble Supreme Court held that the provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, every person, who at the time when the offence was committed was in charge of or 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. It is further held that in absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.

20. Similarly, in the case in hand, it *prima facie* appears that the present Petitioner is a Director of cheque drawee company and the Respondent/complainant has not issued mandatory notices under Section 138 of N.I. Act calling upon the company for compliance of mandatory notice u/s 138. So also, the company has not been impleaded as an accused to the

proceeding under Section 138. Therefore, in my considered view, the complaints as against the sole Petitioner/Director without impleading the company are not maintainable.

21. In view of the above, all these Writ Petitions are hereby allowed. All the complaints described herein-above as against the present Petitioner are hereby quashed and set aside. Resultantly, the orders of issuance of process passed by the learned JMFC, Shrirampur in all these complaints are also quashed and set aside. Parties to bear their own costs.

22. Rule is made absolute in the above terms.

[Y.G. KHOBRAGADE, J.]

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