

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3048 of 2015
With
CRAN 3 of 2016 (Old No. 1336 of 2016)
With
CRAN 4 of 2016 (Old No. 4841 of 2016)

Parekh Aluminex Ltd. & Anr.
Versus
Venus Orchards Private Limited

For the Petitioners : Mr. Tarique Quasimuddin, Adv.
Ms. Sanchita Chaudhuri, Adv.
Ms. Syed Khafiz Zamar, Adv.

Heard on : 17.04.2025

Judgment on : 18.06.2025

Ajay Kumar Gupta, J:

1. By filing this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'), the petitioners have prayed for quashing of the proceeding being Complaint Case No. C-6501 of 2013 filed under Sections 138/141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act') pending before the Court of the Learned Metropolitan Magistrate, 15th Court at Calcutta.

2. The brief facts, leading to filing of this instant Criminal Revisional application, are as under:

2a. The petitioner no. 1 is a registered company under the Companies Act, 1956 and petitioner no. 2 is the Company Secretary of petitioner no. 1/Company, M/s. Parekh Aluminex Ltd. The petitioner no. 2 had no role in policy making or in any day-to-day business affairs of the company. She had a role of discharging her duties and function as Company Secretary as prescribed under the Companies Act, 1956.

2b. The cheque involved in the present proceeding was issued by one Mr. Amitabh Arun Parekh @ Amitabh A. Parekh in favour of the complainant. Mr. Parekh expired on 06.01.2013. Petitioner No. 2 had no role in issuance of the said cheque or in conducting business

dealing that gave rise to any alleged legal debt and liabilities. A general averment made by the complainant in the complaint is that the petitioner no. 2 along with other four accused persons, were/are in control of the company's affairs and are responsible for day-to-day business of the company though the petitioner no. 2 was merely a Company Secretary and had no control over the affairs. She retired from the company on 31.03.2013 and was never responsible for day-to-day business affairs of the company. Therefore, ingredients of offence as alleged under Sections 138/141 of the N.I. Act against the petitioner no. 2 are not attracted.

2c. The registered office of the petitioner no. 1/company is situated in Mumbai and petitioner no. 2 is also a resident of Mumbai which is beyond the territorial jurisdiction of the Learned Trial Court but without considering the said facts, the Learned Trial Court issued process against the petitioner no. 2 without complying with the mandatory provision of Section 202 of CrPC which results that the entire proceeding is liable to be vitiated. Furthermore, she retired from the company on and from 31st March, 2013. Therefore, she cannot be held liable for any offence for commission of an offence punishable under Sections 138/141 of the N.I. Act.

2d. Lastly, it is averted that other two accused persons, namely, Kiran Kumar Chandulal Parekh and Devanshu Pravinbhai Desai were

the non-executive directors of the petitioner no. 1/company. They have filed two Criminal Revisional Applications before the Learned 2nd Judge, City Sessions Court, Calcutta being Crl. Rev. No. 115 of 2013 and Crl. Rev. No. 177 of 2013 for quashing their cases. After hearing the parties, the Learned Judge quashed the proceedings against them since they were neither executive directors nor involved in any affairs or responsible for day-to-day business affairs of the company.

2e. In view of the above facts and circumstances, petitioner no. 2 filed this application seeking for quashing of the proceeding against her in view of the facts stated herein above. Hence, this application.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsel appearing on behalf of the Petitioners vehemently argued and submitted that the Learned Trial Court had issued summons against the petitioner no. 2 in a casual and mechanical manner and further without applying judicious mind. Though, it is evident from the complaint itself that the office of petitioner no. 1/company and residence of petitioner no. 2 are situated outside the territorial jurisdiction of the Learned Trial Court. The Learned Trial Court ought to have satisfied with regard to prima facie case of the complainant.

3a. However, Learned Trial Court ignored the mandatory provision as stipulated in Section 202 of the CrPC prior to issuance of the summons, as such same is issued violating the provision and, accordingly, the entire proceeding is liable to be quashed as none of the ingredients as required while initiation of the proceeding are fulfilled.

3b. It is further submitted that the complainant has not disclosed the specific role played by the petitioner no. 2 in the alleged offence. The complaint merely contains vague and general averments that all the four accused persons were/are in control over the affairs and are responsible for the day-to-day business affairs of the company. Therefore, the proceeding against the petitioner no. 2 is liable to be quashed as similar as other accused persons.

3c. Their cases have been quashed by the Learned Sessions Judge as they were not involved in the alleged offence. They have not played any role of the day-to-day affairs of the company. Similarly, Petitioner no.2 being the company's Secretary, had only statutory duty under the Companies Act, 1956 and she has a key responsibility in several areas of the management of the company as required under the law and the Company Secretary never dealt and had no control over the day-to-day business affairs of the company. To bolster his submission, the learned counsel relied upon the following judgments as under: -

1. *Susela Padmavathy Amma Vs. Bharti Airtel Limited*¹;

2. *Sunita Palita and Ors. Vs. Panchami Stone Quarry*²;

3. *Gunmala Sales Private Limited and Others Vs. Navkar Promoters Private Limited and Others*³;

4. *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr.*⁴;

4. On the other hand, none appears on behalf of the opposite party despite service of summons. Therefore, the matter has been taken up for disposal.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

5. Considering the submissions made by the learned counsel appearing on behalf of the petitioner, judgments relied upon by the petitioner and on perusal of the record, it reveals the Opposite party has initiated a proceeding under Section 200 of the CrPC for commission of the offence punishable under Section 138/141 of the N.I. Act against the Company and others, who were associated with the company.

¹ 2024 SCC OnLine SC 311;

² (2022) 10 SCC 152 : 2022 SCC OnLine SC 945;

³ Criminal Appeals No. 2228 of 2014 with Nos. 2229-65 of 2014;

⁴ (2005) 8 SCC 89 : 2005 SCC OnLine SC 1363;

6. It is an admitted fact that two accused persons, namely Kiran Kumar Chandulal Parekh and Devanshu Pravinbhai Desai were non-executive directors of the petitioner no. 1/company. They have filed two Criminal Revisional Applications before the Learned 2nd Judge, City Sessions Court, Calcutta being CrI. Rev. No. 115 of 2013 and CrI. Rev. No. 177 of 2013. After hearing the parties, the Learned Judge quashed the proceedings against them since they were neither executive directors nor involved in any affairs and responsible for day-to-day business affairs of the company. Similarly, the Petitioner no.2 was merely a Company Secretary associated with the Company. In support of her contention, she placed a form 32 (pursuant to sections 303 (2), 264 (2) or 266(1) (a) and 266 (1) (b) (iii) of the Companies Act, 1956). Upon perusal of the Form 32, it reveals she was a Company Secretary of the company/petitioner no. 1 and ceased to be associated with the company on and from 31.03.2013.

7. According to the petitioner no. 2, she is innocent and not involved in the offence as alleged by the complainant. In addition, the complainant has not disclosed any ingredients or role played by the petitioner no. 2 in the offence punishable under Sections 138/141 of the N.I Act. No specific averment is made either in the complaint or affidavit with regards to her role played in a transaction involved between the complainant and the company. Petitioner No.2 is

unaware about the transaction and issuance of cheque on behalf of the Company. Actually, cheque was issued by one Amitabh Arun Parekh @ Amitabh A. Parekh. He expired on 06.01.2023.

8. The Petitioner no.2 has prayed for quashing the proceeding on mainly on two grounds. **Firstly**, she was mere by a Company Secretary of the petitioner no. 1 and had no role in the day-to-day business affairs of the company nor played any role in financial transactions of the company. **Secondly**, she resides in Mumbai beyond the area in which the Learned Trial Court exercises its jurisdiction but the Learned Trial Court issued summon without conducting the mandatory inquiry or investigation as per Section 202 of the CrPC corresponding to Section 225 of BNSS against her for the purpose of deciding whether or not there is sufficient ground for proceeding against her.

9. Nothing transpires from the documents to suggest that the petitioner no.2 was/is director or a share holder of the company, she had no role to play in any transaction or day-to- day business affair of the company. She was a Company Secretary. She had not issued any cheques. She cannot be said to be an active Director or who can be termed as responsible for running the day-to-day management of the company. The liability of the Company Secretary (non-executive) is very limited and it does not extend to managing of the day-to-day

affairs of the company. She was not a signatory of the cheque which was dishonoured. In this regard, this Court finds the judgments relied upon by the petitioner in the cases of **1) S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr. 2) Sunita Palita and Ors. Vs. Panchami Stone Quarry** and **3) Susela Padmavathy Amma Vs. Bharti Airtel Limited** are squarely applicable in the present case. The Hon'ble Supreme Court, time and again, reiterated as under: -

“A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable for offence punishable under Section 138/141 of the N.I.Act. The liability under Section 138/141 of the N.I.Act arises from being in charge of and responsible for the conduct of the 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. It would be a travesty of justice to drag directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development), etc into Criminal Proceedings under the N.I. Act, only because of their designation”

(Emphasis supplied)

10. In the case in hand, the petitioner no. 2 was mere by a Company Secretary, who was neither in charge nor responsible for the conduct of the business of the company at the relevant point of time. She was not a signatory of the cheque which was dishonoured.

11. So far as the issue of process against the petitioner No.2 is concerned, this court also finds it is admitted facts that the Petitioner No.2 resides beyond the area in which the Learned Trial Court exercises its jurisdiction, the Learned Trial Court failed to consider that while issuing process, the Learned court should have convinced itself as to how the petitioner no. 2 was being considered as being in charge of the day to day business affairs of the company and responsible for issuance of cheques. Merely relying on the averments made in the complaint against the petitioner No.2 that she is responsible for the offence is insufficient. It does not take away the responsibility of the Trial court to ascertain the credibility of such averments prior to issuing process against particular person. It is not clear from the order as to how the Learned Trial court could come to a conclusion that the Petitioner No. 2 was an active Director of the said company and also she is responsible and was in charge of the day-to-day affairs of the company. There is mandatory provision to postpone the issue of process under Section 202 of the CrPC for the purpose of deciding whether or not there is sufficient ground for

proceeding against the petitioner no.2 but the Ld. Trial court ignored and neglected to do so and mechanically issued process against her.

12. In view of the above circumstances, this court is of the view that process which has been issued against the Petitioner no.2 is not commensurate with the position of petitioner no. 2 held as Company Secretary. It is relevant to mention that opposite party/complainant has not produced anything before the court where from it would be evident that the Petitioner No. 2 was in any manner responsible for day-to-day business affairs of the company and was involved in business transaction and issuance of cheque, which was dishonoured. Accordingly, if such proceeding is allowed to be continued against the petitioner no. 2 it would be gross abuse of process of law.

13. Consequentially, this Court can exercise its inherent power under Section 482 of the Cr.PC to prevent the abuse of the process of Court or otherwise to secure the end of justice.

14. In the light of aforesaid discussion and judgments referred by the Parties, this Court is of the view that the proceedings being Complaint Case No. C/6501 of 2013 filed under Sections 138/141 of the Negotiable Instruments Act, 1881 pending before the Court of the Learned Metropolitan Magistrate, 15th Court at Calcutta should not

be allowed to be continued insofar as the Petitioner no.2 is concerned and, accordingly, the same stands quashed.

15. Consequently, **CRR 3048 of 2015** is, thus, **allowed**. Connected applications being **CRAN 3 of 2016 (Old No. 1336 of 2016)** and **CRAN 4 of 2016 (Old No. 4841 of 2016)** are also, thus, disposed of.

16. Case Diary, if any, is to be returned to the learned Advocate for the State.

17. Let a copy of this judgment and order be sent to the Learned Court below for information.

18. Interim order, if any, stands vacated.

19. Parties shall act on the server copies of this Judgment uploaded on the official website of this Court.

20. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)