



complainant. However, the said cheque when presented before bank was returned on 14.12.2010 as unpaid due to insufficient fund. The complainant then sent legal notice to them on 10.01.2011 calling upon them to pay the amount. Since the accused persons did not pay the amount within the stipulated period then the complainant filed the instant complaint on 24.02.2011.

5. Mr. A. K. Kashyap, learned senior counsel for the petitioners in both cases submitted that in the complaint it has been stated that a friendly loan was given but in the statement on the solemn affirmation it has been stated that amount was given as share for purchasing shares of Rudra Steel Private Limited. He submitted that the complainant had applied for share allocation for which he had paid the money. He submitted that an undated and blank cheque no. 007411 was issued to Deol Finance as security against loan sometimes in the year, 2000. He submitted that the complainant has utilized the said cheque in the year, 2010 after ten years with malafide and fraudulent intention. By way of referring annexure-3 he submitted that the Central Bank of India, Kanke Branch has issued letter confirming that no cheque book has been issued to M/s Rudra Steel Private Limited since 31.12.2002. He submitted that M/s Rudra Steel Private Limited is not in operation from 2004. He further submitted that the petitioner namely, Pramod Shankar Dayal has resigned from the post of Director w.e.f. 26.10.2003 from the said M/s Rudra Steel Private Limited and his resignation was accepted in Form-32 of the Registrar of the Companies contained in Annexure-4. By way of referring Form-32 contained in Annexure-4 he submitted that so far as petitioner-Pramod Shankar Dayal is concerned, the case has been malafidely filed as was not the Director w.e.f. 26.10.2003 He submitted that there is no allegation that the petitioner was incharge of the company at the time of offence. He submitted that in view of section 141 of the N.I. Act the specific statement was required to be there

about the responsibility of the petitioners. He further submitted that there is delay of one day. He further submitted that the complaint was filed on 31<sup>st</sup> day on 24.02.2011 where as it should have been filed 23.02.2011 taking the date of issue of legal notice i.e.10.01.2011. He submitted that in the complaint receiving date of notice by the petitioners is not disclosed. To buttress this argument, he relied in the case of **"Gunmala Sales Private Limited Vs. Anu Mehta and others"** along with other cases **(2015) 1 SCC 103**. He referred to para 33 and 35 of the said judgment which is quoted here-in-below:-

**"33.** As already noted in *Anita Malhotra* [*Anita Malhotra v. Apparel Export Promotion Council*, (2012) 1 SCC 520 : (2012) 1 SCC (Civ) 329 : (2012) 1 SCC (Cri) 496] , relying on *Harshendra Kumar* [*Harshendra Kumar D. v. Rebatilata Koley*, (2011) 3 SCC 351 : (2011) 1 SCC (Civ) 717 : (2011) 1 SCC (Cri) 1139] this Court quashed the complaint filed under Section 138 read with Section 141 of the NI Act relying on the certified copy of the annual return which was a public document as per the Companies Act read with Section 74(2) of the Evidence Act, which established that the appellant/Director therein had resigned from the directorship much prior to the issuance of cheques. This was done despite the fact that the complaint contained the necessary averments. In our opinion, therefore, there could be a case where the High Court may feel that filing of the complaint against all Directors is abuse of process of court. The High Court would be justified in such cases in quashing the complaint after looking into the material furnished by the accused. At that stage there cannot be a mini trial or a roving inquiry. The material on the face of it must be convincing or uncontroverted or there must be some totally acceptable circumstances requiring no trial to establish the innocence of the Directors.

**35.** We will examine the facts of the present case in the light of the above discussion. In this case, the High Court answered the first question raised before it in favour of the respondents. The High Court held that "*in the complaint except the averments that the Directors were in charge of and responsible to the Company at the relevant time, nothing has been stated as to what part was played by them and how they were responsible regarding the finances of the Company, issuance of cheque and control over the funds of the Company*". After so observing, the High Court quashed the proceedings as against the respondents. In view of this conclusion, the High Court did not go into the second question raised before it as to whether the Director, who has resigned can be prosecuted after his resignation has been accepted by the Board of Directors of the Company. Pertinently, in the application filed by the respondents, no clear case was made out that at the material time, the Directors were not in charge of and were not responsible for the conduct of the business of the Company by referring to or producing any incontrovertible or unimpeachable evidence which is beyond suspicion or doubt or any totally acceptable circumstances. It is merely stated that Sidharth Mehta had resigned from the directorship of the Company on 30-9-2010 but no incontrovertible or unimpeachable evidence was produced before the High Court as was done in *Anita Malhotra* [*Anita Malhotra v. Apparel Export Promotion Council*, (2012) 1 SCC 520 : (2012) 1 SCC (Civ) 329 : (2012) 1 SCC (Cri) 496] to show that he had, in fact, resigned long before the cheques in question were issued. Similar is the case with Kanhaiya Lal Mehta and Anu Mehta. Nothing was produced to substantiate the contention that they were not in charge of and not responsible for the conduct of the business of the Company at the relevant time. In the circumstances, we are of the opinion

that the matter deserves to be remitted to the High Court for fresh hearing. However, we are inclined to confirm the order passed by the High Court quashing the process as against Shobha Mehta. Shobha Mehta is stated to be an old lady who is over 70 years of age. Considering this fact and on an overall reading of the complaint in the peculiar facts and circumstances of the case, we feel that making her stand the trial would be an abuse of process of court. It is however, necessary for the High Court to consider the cases of other Directors in light of the decisions considered by us and the conclusions drawn by us in this judgment."

6. Learned senior counsel for the petitioners further relied in the case of **"Anita Malhotra Vs. Apparel Export Promotion Council and Another"** (2012) 1 SCC 520. He referred to para 12, 13, 18 and 21 of the said judgment which is quoted hereinbelow:-

*" 12. Mr Akhil Sibal, learned counsel for the appellant, by drawing our attention to a certified copy of the annual return of the Company dated 30-9-1999 filed with the Registrar of Companies, which was placed on record before the High Court, contended that it is a public document in terms of Section 74(2) of the Evidence Act, 1872 and the High Court ought to have accepted the same as a valid document and quashed the criminal proceedings insofar as the appellant is concerned. The High Court, in the impugned order, after recording the statement of the counsel for the petitioner therein (the appellant herein) that Form 32 is not available in the record of the Registrar of Companies and finding that Form 32 is the only authentic document and the annual return dated 30-9-1999 filed by the accused Company is not a public document, rejected the claim of the appellant and dismissed the petition filed for quashing the complaint.*

*13. As regards the reference made by the High Court as to the statement said to have been made by the counsel for the petitioner therein that Form 32 is not available in the record of the Registrar of Companies, the learned counsel for the appellant submitted that no such statement was ever made by the counsel before the High Court and he placed on record a copy of Form 32 as Annexure P-2. A perusal of the document makes it clear that with effect from 31-8-1998, the appellant Smt Anita Malhotra ceased to be a Director since she resigned from the Directorship of the Company i.e. Lapareil Exports (P) Ltd. The High Court proceeded that Form 32 is the only authentic document and in the absence of the same, reliance on the annual return is not permissible. The High Court has further held that annual return is not a public document. It is the assertion of the appellant that no such statement was ever made or could have been made as the petition itself enclosed copies of Form 32 and the receipt of filing of the same.*

*18. In DCM Financial Services Ltd. v. J.N. Sareen [(2008) 8 SCC 1 : (2008) 3 SCC (Cri) 401], this Court, while considering Sections 138 and 141 of the Act came to the following conclusion which is relevant for our purpose: (SCC pp. 10-11, para 21)*

*"21. The cheque in question was admittedly a post-dated one. It was signed on 3-4-1995. It was presented only sometime in June 1998. In the meantime the first respondent had resigned from the Directorship of the Company. The complaint petition was filed on or about 20-8-1998. Intimation about his resignation was given to the complainant in writing by the first respondent on several occasions. The appellant was, therefore, aware thereof. Despite having the knowledge, the first respondent was impleaded as one of the accused in the complaint as a Director in charge of the affairs of the Company on the date of commission of the offence, which he was not. If he was proceeded against as a signatory to the cheques, it should have been disclosed before the learned Judge as also the High Court so as to enable him to apply his mind in that behalf. It was not done. Although, therefore, it may be that as an authorised signatory he will be deemed to be person in-charge, in the facts and circumstances of the case, we are of the opinion that the said contention should not be permitted to be raised for the first time before us. A person who had resigned with the knowledge of the complainant in 1996 could not be a*

*person in charge of the company in 1998 when the cheque was dishonoured. He had no say in the matter of seeing that the cheque is honoured. He could not ask the company to pay the amount. He as a Director or otherwise could not have been made responsible for payment of the cheque on behalf of the company or otherwise. [See also Saroj Kumar Poddar v. State (NCT of Delhi) [(2007) 3 SCC 693 : (2007) 2 SCC (Cri) 135] , Everest Advertising (P) Ltd. v. State (Govt. of NCT of Delhi) [(2007) 5 SCC 54 : (2007) 2 SCC (Cri) 444] and Raghu Lakshminarayanan v. Fine Tubes [(2007) 5 SCC 103 : (2007) 2 SCC (Cri) 455] .]"*

**21.** *Inasmuch as the certified copy of the annual return dated 30-9-1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with Section 74(2) of the Evidence Act, 1872, we hold that the appellant had validly resigned from the Directorship of the Company even in the year 1998 and she cannot be held responsible for the dishonour of the cheques issued in the year 2004."*

7. Relying on aforesaid two judgments, he submitted that in both the cases considering Form-32 and resignation, the petitioners of those cases were exonerated and the identical is situation in the case in hand and the entire criminal proceeding may kindly be quashed.

8. Per contra, Mr. Rajeev Kr. Sinha, learned counsel for the O.P. no.2 submitted that the petitioners have not come to this Court with clean hands and suppressed the material facts. He submitted that the petitioners and another are directors of M/s Rudra Steel Private Limited and there was legal debt and liability of Rs. 11,90,000/- and thus the petitioners issued a cheque bearing no. 007411 dated 11.12.2010 for a sum of Rs. 11,90,000/- under their joint signature to the O.P. No.2 and when the said cheque was presented before the bank for its encashment which was returned unpaid on 14.12.2010 with endorsement of "insufficient fund". Thereafter the O.P. No.2 is sent a legal notice to the petitioners on 10.01.2011 calling upon them to pay the cheque amount but the petitioners did not pay and thus the present complaint has been filed on 24.02.2011 within stipulated period of time. He further submitted that in view of complaint as well as solemn affirmation the plea taken by the petitioners can be only appreciated in the trial. He further submitted that the complaint was filed in the year, 2011 wherein resignation was made on 26.10.2003. He further submitted that cheque was issued in the signature of the petitioners which can only be appreciated by the learned trial

Court. He submitted that there are disputed questions of fact which cannot be subject matter of proceeding under section 482 of Cr.P.C. He relied in the case of **"Rathish Babu Unnikrishnan Vs. The State (Govt. of NCT of Delhi) & Anr. (2022) SCC Online SC 513**. He referred to para 17 and 18 of the said judgment which is quoted hereinbelow:-

*"17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.*

*18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."*

9. Relying on the said judgment, he submitted that a company although is a legal entity cannot act by itself but can only act through its director.

10. Learned counsel for the O.P. No.2 further relied in the case of **"S.P. Mani and Mohan Dairy Vs. Dr. Snehlatha Elangovan" 2022 SCC Online 1238**. He relied on para 24 of the said judgment which is quoted hereinbelow:-

*"24. Evidently, the gist of Section 138 is that the drawer of the cheque shall be deemed to have committed an offence when the cheque drawn by him is returned unpaid on the prescribed grounds. The conditions precedent and the conditions subsequent to constitute the offence are drawing of a cheque on the account maintained by the drawer with a banker, presentation of the cheque within the prescribed period, making of a demand by the payee by giving a notice in writing within the prescribed period and failure of the drawer to pay within the prescribed period. Upon fulfilment of these requirements, the commission of the offence which may be called the offence of 'dishonour of cheque' is complete. If the drawer is a company, the offence is primarily committed by the company. By virtue of the provisions of sub-section (1) of Section 141, the guilt for the offence and the liability to be prosecuted and punished shall be extended to every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of its business; irrespective of whether such person is a director, manager, secretary or other officer of the company. It would be for such responsible person, in order to be exonerated in terms of the first proviso, to prove that the offence was committed without his knowledge or despite his due diligence."*

11. Relying on the said judgment, he submitted that drawer of the cheque shall be deemed to have committed an offence when the cheque drawn by him is returned unpaid on the prescribed ground.

12. Relying on the aforesaid two judgments, he submitted that no case of interference is made out.

13. Mrs. Priya Shrestha, learned counsel for the State submitted that the cases relied by the learned senior counsel for the petitioners are distinguishable in the facts and circumstances of the present case.

14. In view of above submissions of the learned counsel for the parties, the Court has gone through the complaint petition as well as order taking cognizance and the solemn affirmation. Looking into the complaint petition the Court finds that M/s Rudra Steel Private Limited has been made accused no.1 and petitioners are accused nos.2 and 3 in the complaint petition. Thus company has also been made accused and one of requirement under the Negotiable Instrument Act in the light of Section 141 is complied with. The concerned cheque contained in page 19 to the tune of Rs. 11,90,000/- clearly suggests that cheque was issued by the signatures of both the petitioners namely, Pramod Shankar Dayal and Krishna Singh. In the argument of learned counsel for the petitioners much emphasis has been made on the Annexure-4 which is Form-32 with regard resignation of one Pramod Shankar Dayal w.e.f. 26.10.2003.

15. The main point of the argument which is Form-32 with regard to petitioner-Pramod Shankar Dayal. There is no Form-32 of the petitioner Krishna Singh in Cr.M.P. No. 1573 of 2014.

16. The companies are being governed by their Board of Directors. The directors of the company would retire by rotation and may or may not be re-appointed by the Board under the relevant provisions of the Companies Act. The directors can also resign from the company. There may be change in the

management of the company and that change is not private affairs of the company.

17. In view of that the once the directors who have resigned years before the cheque came to be dishonoured, are not liable to be prosecuted and he cannot be said to be in charge of and responsible to the company for the conduct of the business of the company only on the ground that at one point of time he played the role of a director. Reference may be made to the case of **"Suhas Bhand Vs. State of Maharashtra & Anr."** 2008 SCC Online 1610 wherein following legal propositions with regard to the resignation of the director emerges:-

(i) If the accused in a criminal prosecution under Section 138 of the Negotiable Instruments Act produces a certified copy of Form No. 32 certified by the ROC and there is no dispute of the factum of his resignation, the accused is entitled to be discharged from the prosecution.

(ii) If his resignation is not accepted or admitted by the complainant upon production of the certified copy of Form No. 32, the accused would have to prove the truth of the contents of the said certified copy i.e. the factum of his resignation. Such accused cannot be discharged simplicitor upon production of a certified copy of Form No. 32.

(iii) If the complainant produces any evidence showing the continuance of the accused as Director of the Company after the date of the resignation claimed by him as per the certified copy of Form No. 32 produced by him, such accused cannot be discharged simplicitor upon production of such certified copy of Form No. 32. He would have to lead evidence to prove the factum of his resignation. Similarly the complainant would be entitled to prove the factum of his continuing as Director. The trial under Section 138 read with Section 141 of the Negotiable Instruments Act would, therefore, proceed.

18. In the present case the resignation of the petitioners have been

disputed by the complainant by way of filing counter-affidavit. The cheque was dishonoured on 14.12.2010 wherein the resignation was made on 26.10.2003 for Pramod Shankar Dayal. In the said Form-32 the appointment date is mentioned as 26.10.2003 wherein the cheque has been issued by these petitioners much before their resignation. Thus, this is disputed question of facts and not clear-cut admission of resignation and based upon the above this is requirement to prove by way of leading evidence in trial.

19. Further when the legal notice was issued, the petitioners have not replied to the said notice by way of saying that they are no longer directors of the said company

20. In the case of "***Gunmala Sales Private Limited***"(*supra*) which was relied by the learned senior counsel for the petitioners, the directors resigned from the directorship much prior to issuance of cheque and their resignation was not in dispute and in that background the said judgment was passed by the Hon'ble Supreme Court. The facts of the present case are otherwise. Thus, the said judgment is not helping the petitioners.

21. Identical was the situation in the case of "***Anita Malhotra***"(*supra*) relied by the learned senior counsel for the petitioners. In that case Director resigned in the year, 1998 well before the relevant date of 2004 when the cheque was issued and certified copy of annual report of company was dated 30.09.1999 and Form 32. In that case also the resignation was prior to presentation of cheque and that fact is not here in the case of the petitioners. In view of that the said judgment is also not helping the petitioners.

22. Admittedly in the case in hand in the signatures of both the petitioners cheque has been issued.

23. Sub-Section 2 of Section 141 of Negotiable Instrument Act speaks as under:-

*"141(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.*

*Explanation-For the purposes of this section;-*

*(a) "company" means any body corporate and includes a firm or other association of individuals; and*

*(b) "director", in relation to a firm, means a partner in the firm.*

24. Looking into sub-section 2 of Section 141 of N.I. Act prima facie it appears that when the signature itself of these petitioners in the cheque they are deemed to be guilty of that offence and that can be only appreciated in trial. Further the petitioners have not disputed their signatures and the argument advanced by the learned senior counsel for the petitioners are required to be proved by leading evidence.

25. In the present case the petitioners are the signatory of the cheque. The Hon'ble Supreme Court in the case of "**Sunita Palita and others Vs. Panchami Stone Quarry**" (2022) 10 SCC 152 in para 36 held as under

*"36. The High Court also rightly held that the Managing Director or Joint Managing Director would admittedly be in charge of the company and responsible to the company for the conduct of its business 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 the business of the company and they get covered under section 141 of the N.I. Act. A signatory of a cheque is clearly liable under sections 138/141 of the N.I. Act."*

26. In view of above judgment the signatory of the cheque is clearly liable under sections 138/141 of the N.I. Act.

27. In the case of "**K.K. Ahuja Vs. V.K. Vora and Anr.**" (2009) 10 SCC 48 in para 9 & 10 it has been held as under:-

*"9. A three-Judge Bench of this Court considered the scope of Section 141 of the Act in SMS Pharma (I) [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] and held that it is necessary to specifically aver in a complaint under Sections 138 and 141 of the Act, that at the time when the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company and that in the absence of such averment, Section 141 cannot be invoked. This Court held: (SCC pp. 98-99 & 102-03, paras 10 & 18)*

*"10. ... What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the*

*ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a Director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a Director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of 'every person' the section would have said 'every Director, manager or secretary in a company is liable' ..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.*

*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." (emphasis supplied)*

**10.** *This Court in SMS Pharma (I) [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] then proceeded and identified the nature of allegations required to be made against members of Board of Directors and person signing the cheque as follows:*

*(i) Managing Director/Joint Managing Director.—By virtue of the office they hold, these persons are in charge of and responsible for the conduct of the business of the company. Therefore, they would fall under Section 141(1), even though there is no specific averment against them.*

*(ii) Person signing the cheque.—The signatory of a cheque which is dishonoured, is clearly responsible for the act and will be covered under sub-section (2) of Section 141. Therefore, no special averment would be necessary to make him liable.*

*(iii) Director.—The fact that a person is a Director of a company is not by itself sufficient to make him 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 there is no deemed liability upon a Director."*

28. Looking into the above directions particularly (ii) the person who is signatory of the cheque is clearly responsible under sub-section 2 of Section 141 of N.I. Act.

29. In view of above and considering that cheque was

presented earlier, the petitioner-Pramod Shankar Dayal resigned on 26.10.2003 much after presentation of resignation, the petitioners are the signatory of the cheque further considering two of the judgements relied by the learned counsel for the O.P. No.2 this is not a case of quashing the proceeding at this stage under section 482 of Cr.P.C. and further petitioner-Krishna Singh has not filed any Form 32 under the relevant provision of the Companies Act. He has only relied in Annexure-4 dated 04.10.2006 which is resignation letter. Further he was also the signatory of the cheque and later on he has resigned. Thus, cases of both the petitioners are identical.

30. In view of above facts, reasons and analysis, the entire criminal proceeding cannot be quashed. Accordingly, both the petitions are dismissed. Interim order is vacated. Pending I.A, if any, stands dismissed.

31. It is open to the petitioners to take all the grounds in the trial and the trial will proceed in accordance with law without being prejudice to this order which is for the purpose of deciding the case under section 482 of Cr.P.C.

**( Sanjay Kumar Dwivedi, J.)**

Jharkhand High Court, Ranchi  
Dated 18th of October 2023  
Satyarthi/A.F.R.