

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF NOVEMBER, 2022



BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

CRIMINAL PETITION No.2340 OF 2022

BETWEEN:

- 1 . HEENA THIRUMALI SATEESH
DIRECTOR
AGED ABOUT 50 YEARS
HOYSALA PROJECTS PVT. LTD.,
NO.104, GROUND FLOOR
INFANTRY TECHNO PARK
INFANTRY ROAD
BENGALURU - 560 001.

- 2 . HANUMANTH INAMDAR
DIRECTOR
AGED ABOUT 45 YEARS
HOYSALA PROJECTS PVT. LTD.,
NO.104, GROUND FLOOR
INFANTRY TECHNO PARK
INFANTRY ROAD
BENGALURU - 560 001.

... PETITIONERS

(BY SRI DILIP KUMAR I.S., ADVOCATE)

AND:

M/S MINIMELT ENGINEERS INDIA
A PROPRIETORSHIP FIRM
HAVING ITS OFFICE AT

NO.115, M.S.R.NAGAR
NEW BEL ROAD
BENGALURU 560 054
REPRESENTED BY ITS PROPRIETOR
SRI K.MANICKAM
AGED ABOUT 77 YEARS
R/AT M.S.R.NAGAR
NEW BEL ROAD
BENGALURU - 560 054.

... RESPONDENT

(BY SRI AJAY R.A., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS AGAINST THE PETITIONERS IN C.C.NO.8836/2021 PENDING ON THE FILE OF THE XX ADDL.SCJ AND A.C.M.M., AT BENGALURU IN SO FAR AS THE PETITIONERS IS CONCERNED.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.10.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question proceedings in C.C.No.8836/2021, pending before the XX Additional S.C.J. and Additional Chief Metropolitan Magistrate (SCCH-22), Bengaluru, registered for the offences under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I.Act'). The petitioners are accused Nos.3 and 4 in the said proceedings.

2. Heard Sri Dilip Kumar I.S., learned counsel for the petitioners and Sri Ajay R.A., learned counsel for the respondent.

3. The facts adumbrated are as follows:

The petitioners are directors of Hoysala Projects Private Limited (for short 'the Company'). The respondent is the complainant. The respondent and the Company entered into certain transaction, in furtherance of which, the authorised signatory of the Company issues certain cheques in favour of the respondent - complainant. The cheques, when presented for its realisation, were returned for want of sufficient funds, which leads the complainant to take recourse to legal proceedings against the Company and the office bearers, who are the petitioners herein the others. A complaint comes to be registered before the concerned Court invoking Section 200 of the Cr.P.C., for the offence under Section 138 of the Act. The learned Magistrate takes cognizance of the offence, issues summons to the petitioners and other accused. The issuing of summons to the petitioners is what drives them to this Court in the subject petition.

4. Learned counsel for the petitioners while taking this Court through the documents would seek to demonstrate that the petitioners have no role to play in the transaction, which is between the Company and the complainant. They are only the directors of the Company and were not aware of the day-to-day affairs of the Company. Accused No.1 is the Company and accused No.2 is the Chairman and Managing Director, accused No.5 is the Director, the signatory to the cheques. Therefore, accused Nos.1, 2 and 5 are the ones who have to answer the charge and not the petitioners. Contending no role to play in the entire proceedings, he would seek quashment of the entire proceedings against them in C.C.No.8836/2021.

5. On the other hand, learned counsel for the respondent taking this Court through the complaint, would contend that the complaint does narrate the role of the petitioners being the Directors of the Company. He has placed on record certain documents to demonstrate that the petitioners are not only Directors, but, whole time directors and promoters of the Company. Therefore, he would submit that the petition be dismissed,

contending that it is for the petitioners to come out clean in the said case.

6. I have given my anxious consideration to the submissions made by the learned counsel for both the parties and have perused the material on record.

7. The afore-narrated transaction between the petitioners and the complainant is not in dispute. Before embarking upon the contentions of the respective learned counsel, I deem it appropriate to notice the law laid down by the Apex Court, in cases of hauling up a Director of a Company without there being indicated any role played by him in the complaint or otherwise. The Apex Court in the case of **S.M.S. PHARMACEUTICALS LTD VS. NEETA BHALLA & ANOTHER¹**, has held as follows:

"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.

¹ **(2005) 8 SCC 89**

(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."

(Emphasis supplied)

Later, the Apex Court in the case of **ASHUTOSH ASHOK**

PARASRAMPURIYA AND ANOTHER Vs. GHARRKUL

INDUSTRIES PVT. LTD. AND OTHERS², has held as follows:

"20. In this regard, taking note of the three-Judge Bench decision of this Court in S.M.S. Pharmaceuticals Ltd. (supra) would be apposite. While dealing with an offence under Section 138 of the NI Act, the Court explaining the duty of a Magistrate while issuing

² **2021 SCC OnLine SC 915**

process and his power to dismiss a complaint under Section 203 without even issuing process observed thus:—

"5. ... a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words 'if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding'. The words 'sufficient ground for proceeding' again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."

21. After so stating, the Court analysed Section 141 of the NI Act and after referring to certain other authorities answered a reference which reads as follows:—

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 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 subsection (2) of Section 141."

22. The same principle has been reiterated in *S.K. Alagh v. State of Uttar Pradesh*; *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.* and *GHCL Employees Stock Option Trust v. India Infoline Limited*.

23. In the light of the ratio in *S.M.S. Pharmaceuticals Ltd. (supra)* and later judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and they are in-charge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of Section 141 of the NI Act has been made, it may not open for the High Court to interfere under Section 482 CrPC unless it comes across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons.

24. The issue for determination before us is whether the role of the appellants in the capacity of the Director of the defaulter company makes them vicariously liable for the activities of the

defaulter Company as defined under Section 141 of the NI Act? In that perception, whether the appellant had committed the offence chargeable under Section 138 of the NI Act?

25. We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not the signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the conclusions drawn in the afore-stated judgment that it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company.

26. This averment assumes importance because it is the basic and essential averment which persuades the Magistrate to issue process against the Director. That is why this Court in S.M.S. Pharmaceuticals Ltd. (supra) observed that the question of requirement of averments in a complaint has to be considered on the basis of provisions contained in Sections 138 and 141 of the NI Act read in the light of the powers of a Magistrate referred to in Sections 200 to 204 CrPC which recognise the Magistrate's discretion to take action in accordance with law. Thus, it is imperative that if this basic averment is missing, the Magistrate is legally justified in not issuing process.

27. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the cheques were issued by the Company and dishonoured by the Bank, the appellants were the Directors of the Company and were responsible for its business and all the appellants were involved in the business of the Company and were responsible for all the affairs of the Company. It may not be proper to split while reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to fulfill the requirement of Section 141 of the NI Act. The complaint specifically refers to the point of time when the cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. In the given circumstances,

we have no hesitation in overruling the argument made by the learned counsel for the appellants.

28. Indisputedly, on the presentation of the cheque of Rs. 10,00,000/- (Rupees Ten Lakhs only) dated 2nd June 2012, the cheque was dishonoured due to "funds insufficient" in the account and after making due compliance, complaint was filed and after recording the statement of the complainant, proceedings were initiated by the learned Magistrate and no error has been committed by the High Court in dismissing the petition filed under Section 482 CrPC under the impugned judgment.

29. The submission of learned counsel for the appellants that they are the non-executive Directors in the light of the documentary evidence placed on record by Form No. 32 issued by the Registrar of Companies, both the appellants are shown to be the Directors of the Company, still open for the appellants to justify during course of the trial.

30. In our considered view, the High Court has rightly not interfered in exercise of its jurisdiction under Section 482 CrPC for quashing of the complaint."

(Emphasis supplied)

The Apex Court, in its subsequent judgment, in the case of

SUNITA PALITA AND OTHERS VS. PANCHAMI STONE

QUARRY³, by following the judgment of **S.M.S.**

PHARMACEUTICALS LTD (*supra*), has held as follows:

"45. Even though the High Court deprecated the adoption of a hyper technical approach in construing pleadings, to quash criminal proceedings, the High Court adopted a hyper technical approach in rejecting the application under Section 482 of the Cr.P.C., on a cursory reading of the formalistic pleadings in the complaint, endorsing the contents

³ 2022 SCC OnLine SC 945

of Section 141 of the NI Act, without any particulars. What the High Court overlooked was, the contention of these Appellants that they were non-Executive Independent Directors of the Accused Company, based on unimpeachable materials on record. **The High Court observed that in the petition it had specifically been averred that all the accused persons were responsible and liable for the whole business management of the Accused Company, and took the view that the averments in the complaint were sufficient to meet the requirements of Section 141 of the NI Act.**

46. As held by this Court in National Small Industries Corporation Ltd. v. Harmeet Singh Paintal (2010) 3 SCC 330 quoted with approval in the subsequent decision of this Court in Pooja Ravinder Devidasani v. State of Maharashtra (supra) the impleadment of all Directors of an Accused Company on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company, without anything more, does not fulfil the requirements of Section 141 of the NI Act."

(Emphasis supplied)

Considering the entire spectrum of law, the Apex Court in its latest judgment in the case of **S.P.MANI AND MOHAN DAIRY v. Dr. SNEHALATHA ELANGOVAN⁴**, – while formulating a point as to who is liable? Vicarious liability holds as follows:

"35. This Court in Assistant Commissioner, Assessment-II, Bangalore v. Velliappa Textiles Ltd., (2003) 11 SCC 405 : AIR 2004 SC 86, introduced the concept of ego and alter ego in relation to the employee and the employer corporation. The Court elucidated this principle in the following words:—

"In order to trigger corporate criminal liability for the actions of the employee (who must generally be liable

⁴ 2022 SCC OnLine SC 1238

himself), the actor-employee who physically committed the offence must be the ego, the centre of the corporate personality, the vital organ of the body corporate, the alter ego of the employer corporation or its directing mind. Since the company/corporation has no mind of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. To this extent there are no difficulties in our law to fix criminal liability on a company. The common law tradition of alter ego or identification approach is applicable under our existing laws."

36. Now, the logical question that would follow is who would be liable through the company for this offence? Can the company itself be prosecuted for this offence? Answering this question, the Section 141 says, 'every person who was in charge of' and 'was responsible to the company for the conduct of the business' shall be deemed to be guilty of the offence. This concept of vicarious liability has been explained by this Court in *Sabhitha Ramamurthy v. RBS Channabasavaradhya*, (2006) 10 SCC 581 : AIR 2006 SC 3086, as:—

"Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted."

[Emphasis supplied]

37. At this stage, we should look into the decision of this Court in the case of *K.K. Ahuja v. V.K. Vora*, (2009) 10 SCC 48,

in *K.K. Ahuja (supra)*, wherein this Court discussed the principles of vicarious liability of the officers of a company in respect of dishonour of a cheque and held-

"27. The position under section 141 of the Act can be summarized thus:

- (i) *If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in-charge of and are responsible to the company, for the conduct of the business of the company.*
- (ii) *In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.*
- (iii) *In the case of a Director, Secretary or Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in clauses (e) and (f) of section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or*

negligence, in the complaint, to bring the matter under that sub-section.

- (iv) Other Officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

[Emphasis supplied]

38. In a very recent pronouncement in the case of *Sunita Palita v. Panchami Stone Quarry*, 2022 SCC OnLine SC 945, this Court, after referring to *K.K. Ahuja (supra)* referred to above, observed as under:

"When the accused is the Managing Director or a Joint Managing Director of a company, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of the company. This is because the prefix "Managing" to the word "Director" makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an Officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under sub-section (2) of Section 141 of the NI Act by averring in the complaint, their position and duties, in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

39. In yet one another recent pronouncement in the case of *Ashutosh Ashok Parasrampuriah v. Gharrkul Industries Pvt. Ltd.* reported in 2021 SCC OnLine SC 915, this Court after due consideration of the decisions in the case of *SMS Pharmaceuticals (supra)*; *S.K. Alagh v. State of Uttar Pradesh*, (2008) 5 SCC 662; *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.*, (2010) 10 SCC 479, and *GHCL Employees Stock*

Option Trust v. India Infoline Limited, (2013) 4 SCC 505, observed as under:—

"In the light of the ratio in SMS Pharmaceuticals Ltd. (supra) and later judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and they are in-charge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of Section 141 of the NI Act has been made, it may not open for the High Court to interfere under Section 482 CrPC unless it comes across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abused of process of Court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons."

[Emphasis supplied]

40. The principles discernible from the aforesaid decision of this Court in the case of Ashutosh Ashok Parasrampuriya (supra) is that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made out against the particular Director/partner provided the Director/partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt.

Specific Averments in the complaint:

41. *In Gunmala Sales Private Limited (supra), this Court after an exhaustive review of its earlier decisions on Section 141 of the NI Act, summarized its conclusion as under:—*

- "a) Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;*
- b) If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director;*
- c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of*

such evidence or circumstances, complaint cannot be quashed;

- d) *No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director."*

42. *The principles of law and the dictum as laid in Gunmala Sales Private Limited (supra), in our opinion, still holds the field and reflects the correct position of law.*

43. *In the case on hand, we find clear and specific averments not only in the complaint but also in the statutory notice issued to the respondent. There are specific averments that the cheque was issued with the consent of the respondent herein and within her knowledge. In our view, this was sufficient to put the respondent herein to trial for the alleged offence. We are saying so because the case of the respondent that at the time of issuance of the cheque or at the time of the commission of the offence, she was in no manner concerned with the firm or she was not in-charge or responsible for day-to-day affairs of the firm cannot be on the basis of mere bald assertion in this regard. The same is not sufficient. To make good her case, the respondent herein is expected to lead unimpeachable and incontrovertible evidence. Nothing of the sort was adduced by the respondent before the High Court to get the proceedings quashed. The High Court had practically no legal basis to say that the averments made in the complaint are not sufficient to fasten the vicarious liability upon the respondent by virtue of Section 141 of the NI Act.*

44. We may also examine this appeal from a different angle. It is not in dispute, as noted above, that no reply was given by the respondent to the statutory notice served upon her by the appellant. In the proceedings of the present type, it is essential for the person to whom statutory notice is issued under Section 138 of the NI Act to give an appropriate reply. The person concerned is expected to clarify his or her stance. If the person concerned has some unimpeachable and incontrovertible material to establish that he or she has no role to play in the affairs of the company/firm, then such material should be highlighted in the reply to the notice as a foundation. If any such foundation is laid, the picture would be more clear before the eyes of the complainant. The complainant would come to know as to why the person to whom he has issued notice says that he is not responsible for the dishonour of the cheque. Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned.

45. Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the noticee. In such circumstances what more is expected of the complainant to say in the complaint.

46. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that

he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or Partner.

47. Our final conclusions may be summarised as under:—

- a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.**
- b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs**

of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Adherence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

- c.) Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.**
- d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention.**

He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.”

(Emphasis supplied)

At paragraph-47 the Apex Court summarizes its conclusions. While doing so, the Apex Court holds that once necessary averments are made in the statutory notice issued by the complainant in regard to vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reason to believe that what he has stated in the notice has been accepted by the noticee. The Apex Court further holds that the complainant is supposed to know only generally as to who were in-charge of the affairs of the Company. The other administrative matters would be within the special knowledge of the Company or the Firm and those who are in-charge of it. In such circumstances the complainant is expected to allege that the persons named in the complaint are in-charge of the affairs of the Company. It is only the Directors of the Company or the Partners of the Firm who will have special knowledge of the role that they play in the Company. The burden would be on the Board of Directors or persons in-charge of the affairs of the

Company to show that they are not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is particularly within their knowledge and it is for them to establish in the trial to show that at the relevant point in time they were not in-charge of the affairs of the Company.

8. On a coalesce of the judgments rendered by the Apex Court as quoted hereinabove what would unmistakably emerge is the contents of the notice, the reply given by the noticee and the contents of the complaint would form an important part of arraigning the accused into the proceedings under Section 138 of the NI Act. The petitioners are accused Nos.3 and 4 and the contention of the learned counsel for the petitioners is that the petitioners have nothing to do in the affairs of the Company and they are only Directors who are not aware of every day happenings in the Company. Therefore, the case at hand will have to be considered on the touchstone of the principles so laid down by the Apex Court in the afore-quoted judgments. The legal notice was caused by the respondent on the petitioners and other accused on 08-04-2021 and the submission is that they have not replied to the

said notice. Therefore, the contents of the complaint would become germane to be considered. The submission of the respondent is that the petitioners being Directors can be hauled into these proceedings.

9. The complaint insofar as the present petitioners are concerned narrates the role played by the petitioners at paragraph Nos.6 and 11 and they read as follows:

"6. That at the time of the issuing the above three cheque the accused had assured the complainant that the said cheques will be honoured by their banker upon presentation the accused No. 2 is the chairman and Managing Director of the accused No.1 and accused No.3 to 5 are the directors of the accused No. 1 at the time the three Cheques in respect of amount payable were issued by the accused No.1 to the complainant proprietor. The accused No.2 to 5 are in charge of and responsible to the accused No.1 for management and conduct of the business of the accused No.1.

....

11. The said cheques have been issued for and on behalf of the accused and the same have been signed by the authorized signatory of the accused No.1. The accused No 2 to 5 being the Directors on the Board of the accused No.1, have also been in-charge of and responsible to, the day to day affairs, management and conduct of the Accused No. 1. The accused No 2 to 5 have been responsible for the issuance of the aforesaid three cheques. The complainant on several occasions has demanded the money due from the accused, however, the accused have failed and neglected to adhere to the request."

The complainant in the afore-quoted paragraphs has clearly narrated that accused No.2 is the Chairman and Managing Director and accused Nos. 3 to 5 are the Directors of accused No.1 Company. They are responsible for the day to-day affairs being in-charge of all the affairs of the Company.

10. The respondent has produced certain documents before this Court which is form No.12 issued in terms of Section 7(1)(c), 168 & 170(2) of the Companies Act, 2013 which depict the petitioners to be whole time Directors and promoters of the Company. The said documents would become circumstance enough for the petitioners to be hauled into these proceedings as, in terms of the judgment of the Apex Court in the case of **S.P.MANI** (*supra*), a basic averment that is required for the complainant to allege is the role of the petitioners. It is later, for the petitioners to defend themselves in the proceedings. In view of the contents of the legal notice caused on the petitioners and the complaint averments (*supra*) making allegations and the documents, which depict the petitioners to be whole time Directors and Promoters, they cannot now contend that they are not responsible for day to

day affairs of the Company, particularly in the light of the judgments of the Apex Court in the cases of **ASHUTOSH ASHOK PARASRAMPURIYA** and **S.P.MANI** (*supra*). Therefore, it becomes a matter of trial for the petitioners to come out clean, as in the considered view of this Court, and as held by **S.P.MANI** (*supra*), basic requirement of an allegation that would become ingredient of an offence under 138 and 141 of the NI Act is clearly brought out in the complaint.

11. Insofar as the judgment relied on by the learned counsel appearing for the petitioners in the case of **SUNITA PALITA** (*supra*) it was concerning a case where there is not even an averment against the Managing Director or joint Managing Director of the Company therein. The said judgment would not become applicable to the facts of the case at hand, more so in the light of the later judgment rendered by the Apex Court in the case of **S.P.MANI** (*supra*).

12. For the aforesaid reasons, finding no merit in the petition, the petition would meet its dismissal and is accordingly dismissed.

**Sd/-
JUDGE**

bkp
CT: MJ