Neutral Citation No. - 2024:AHC:152334

HIGH COURT OF JUDICATURE AT ALLAHABAD

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A.F.R

Judgement Reserved on 27.08.2024

Judgement Delivered on 19.09.2024

Court No. - 79

Case :- APPLICATION U/S 482 No. - 4898 of 2019

Applicant :- Kishore Shankar Signapurkar

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Santosh Yadav

Counsel for Opposite Party :- Anura Singh,G.A.,Prateek Dwivedi

Connected with

Case :- APPLICATION U/S 482 No. - 4924 of 2019

Applicant :- Kishore Shankar Signapurkar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Santosh Yadav

Counsel for Opposite Party :- Anura Singh,G.A.,Prateek Dwivedi

AND

Case :- APPLICATION U/S 482 No. - 4951 of 2019

Applicant :- Kishore Shankar Signapurkar

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Santosh Yadav

Counsel for Opposite Party :- Anura Singh,G.A.,Prateek Dwivedi

AND

Case :- APPLICATION U/S 482 No. - 4878 of 2019

Applicant :- Kishore Shankar Signapurkar
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Santosh Yadav
Counsel for Opposite Party :- Anura Singh,G.A.,Prateek Dwivedi

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Santosh Yadav, learned counsel for the applicant, Sri Prateek Dwivedi, learned counsel appearing on behalf of opposite party No.2 and Sri Prem Prakash Tiwari, learned AGA for the State.

2. The instant application under Section 482 Cr.P.C. No. 4898 of 2019 has been filed seeking quashing of summoning order dated 31.10.2015 as well as the entire criminal proceedings in Case No. 1723 of 2015 (M/s Indcoat Shoe Component Ltd. vs. M/s Signapurkar's Leather House Pvt. Ltd. and Others) under Section 138 of the Negotiable Instruments Act, 1881 (in short, '*the N.I. Act*'), Police Station- Kakadev, District- Kanpur Nagar, pending before the Metropolitan Magistrate- III, District- Kanpur Nagar, the instant application under Section 482 Cr.P.C. No. 4924 of 2019 has been filed seeking quashing of summoning order dated 04.12.2015 as well as the entire criminal proceedings in Case No. 2342 of 2015 (M/s Indcoat Shoe Component Ltd. vs. M/s Signapurkar's Leather House Pvt. Ltd. and Others) under Section 138 of the N.I. Act, Police Station- Kakadev, District- Kanpur Nagar, pending before the Metropolitan Magistrate- III, District- Kanpur Nagar, the instant application under Section 482 Cr.P.C. No. 4924 of 2019 has been filed seeking quashing of summoning order dated 04.12.2015 as well as the entire criminal proceedings in Case No. 2342 of 2015 (M/s Indcoat Shoe Component Ltd. vs. M/s Signapurkar's Leather House Pvt. Ltd. and Others) under Section 138 of the N.I. Act, Police Station- Kakadev, District- Kanpur Nagar, pending before the Metropolitan Magistrate- III, District- Kanpur Nagar and the instant application under Section 482 Cr.P.C.

No. 4951 of 2019 has been filed seeking quashing of summoning order dated 31.10.2015 as well as the entire criminal proceedings in Case No. 1725 of 2015 (M/s Indcoat Shoe Component Ltd. vs. M/s Signapurkar's Leather House Pvt. Ltd. and Others) under Section 138 of the N.I. Act, Police Station- Kakadev, District- Kanpur Nagar, pending before the Metropolitan Magistrate- III, District- Kanpur Nagar and the instant application under Section 482 Cr.P.C. No. 4878 of 2019 has been filed seeking quashing of summoning order dated 08.09.2015 as well as the entire criminal proceedings in Case No. 1724 of 2015 (M/s Indcoat Shoe Component Ltd. vs. M/s Signapurkar's Leather House Pvt. Ltd. and Others) under Section 138 of the N.I. Act, Police Station- Kakadev, District- Kanpur Nagar, pending before the Metropolitan Magistrate- III, District- Kanpur Nagar.

3. All the aforesaid applications, are arising out of the summoning orders passed in the complaint cases under Section 138 of N.I. Act filed by opposite party No.2 whereby the trial court has summoned only the applicant herein and has not summoned the Company, which is also made the accused No.1 in all the complaint cases.

4. Since the parties are same in all the applications, all these matters are taken up together and heard together.

5. Brief facts of the case are that the applicant herein is the Director of M/s Signapurkar's Leather House Pvt.Ltd. (herein after referred to as 'the company') along with other directors, who have been made party to the complaint case under Section 138 N.I. Act filed by the opposite party No.2 in each complaint case. The applicant being authorized signatory of the company had issued 12 cheques in favour of opposite party No.2 in discharge of lawful liability for material supplied by opposite party No.2. The aforesaid cheques were presented for encashment, which were dishonourned for the reason 'stop payment' by the applicant herein. Thereafter, the demand notice was sent by the opposite party No.2 and when the demand notice was not complied with, the instant complaint case under Section 138 of N.I. has been filed by the opposite party No.2 against the company as well as its Directors including the applicant herein. Thereafter,

trial court having found the prima facie case made out under Section 138 of N.I. Act against the applicant herein has summoned the applicant herein alone, who had signed the cheques and did not summon the company.

6. The aforesaid summoning orders have been challenged by the applicant in these applications mainly on the ground that without summoning the company the proceeding under Section 138 of N.I. Act cannot be proceeded only against the applicant herein. In support of his submissions, learned counsel for the applicant has relied upon the judgment of Apex Court in ***Anil Gupta vs. Star India Pvt. Ltd. : (2014) 10 SCC 373*** and also the judgment of ***N.Harihara Krishnan vs. J.Thomas : (2018) 13 SCC 663***.

7. Learned counsel for the applicant has further submitted that in the proceedings under Section 138 of N.I. Act, the Magistrate takes the cognizance of the offenders not of the offence, therefore, the summoning order only against the applicant is unwarranted. He further relies upon the judgment of ***Aneeta Hada vs. M/s. Godfather Travels & Tours Pvt. Ltd. : (2012) 5 SCC 661***. Therefore, learned counsel for the applicant submits that the summoning order is bad in law and could not survive and, therefore, he seeks quashing of the summoning order against the applicant herein in all the aforesaid cases.

8. *Per contra*, learned counsel appearing for opposite party No.2 submits that the complaints under Section 138 of the N.I. Act were filed by opposite party No.2 against the company as well as all the known directors and they were made party to the said complaints and proper averments in compliance of Section 141 of the N.I. Act have also been made in the complaints. However, the trial court has issued summons only against the applicant herein in its discretion for which the opposite party No.2 cannot be held responsible. Learned counsel for the opposite party No.2 while relying upon the judgment of ***Jang Singh vs. Brijlal : AIR 1966 SC 1631*** submitted that for the mistakes of the court, the complainant cannot be held responsible. Learned counsel for the opposite party No.2 has further submitted that at the most non-summoning of the company is an irregularity, which can be cured by the trial court by summoning the company as well if so directed by this

Court. Learned counsel for the opposite party No.2 has further relied upon the judgment of ***Sarabjit Singh vs. State of NCT Delhi and others : (2018) SCC Oniline Del 12257*** wherein it was held by Delhi High Court that even though if the company is not made party, however, the allegations are made in the complaint. The company can be summoned by the trial court by curing the defect if there are sufficient allegations against the company. Therefore, learned counsel for the opposite party No.2 further submits that it is the applicant herein, who has issued the cheques and also the instructions to stop the payment of the cheque, therefore, he was responsible for day to day affairs of the company. The signatures on the cheque has not been denied by the applicant nor the issuance of the cheque, therefore, relying upon the judgment of ***Modi Cements Ltd. vs. Kuchil Kumar Nandi : (1998) 3 SCC 249***, learned counsel for the opposite party No.2 has submitted that the provisions of Section 138 of the N.I. Act are attracted even in the cases of 'stop payment' instructions issued by the drawer of the cheque. In view thereof, he submits that no interference is called for in the instant case at the most, these applications may be disposed of with a direction to trial court to issue a fresh summoning order against the company as well without interfering with the summoning order qua the applicant herein. Learned counsel for the opposite party No.2 has also submitted that in the instant case, the complaints were filed in the year 2015 and the summoning orders were issued in the year 2015 and instant application is nothing, but a dilatory tactics on the part of the applicant herein to delay the proceedings without disputing the issuance of cheque and the signatures thereon.

9. To appreciate the arguments advanced by learned counsels for the parties it would relevant to take note of the provisions of Sections 138 and 141 of the N.I.Act, which reads as under:

> ***"138. Dishonour of cheque for insufficiency, etc., of funds in the account.*** *—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of*

this Act, be punished with imprisonment for 4[a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—
(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, 5[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

***141. Offences by companies.**— 1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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. "

10. From the plain reading of the provisions of Section 138 of the N.I. Act, it is apparent that the offence under Section 139 of the N.I Act would be constituted after fulfilment of the following conditions:

1) the cheque has been presented to the Bank within its validity period and the said cheque has been dishonoured for the reasons:

(i) the amount outstanding in account is insufficient to honour the cheque; or

(ii) it exceeds the amount arranged to be paid from that account by an agreement made with that bank.

2) After the dishonour of cheque for the aforesaid reasons the holder in due course of the cheque give notice to the drawer of the cheque within a period of 30 days and makes a demand for payment of the cheque amount.

3) the payee or the holder in due course of the cheque gives notice to the drawer of the cheque within a period of thirty days and makes a demand for payment of the cheque amount.

4) The drawer of the cheque fails to make the payment of the cheque amount within fifteen days from the receipt of the said notice.

11. In ***Electronics Trade and Technology Development Corpn. Ltd. vs Indian Technologists and Engineers (Electronics) (P) Ltd. : (1996) 2 SCC 739***, the Apex Court has held that the dishonour of cheque with the endorsement like refer to the drawer, instructions of stop payment and exceeds arrangement are well covered within the meaning of dishonour of cheque under Section 138 of the N.I. Act.

12. In ***Modi Cements Ltd. vs. Kuchil Kumar Nandi : (1998) 3 SCC 249,*** the Three Judges' Bench of the Apex Court has held that the dishonour of cheque for the reason *stop payment* is well covered within the meaning of Section 138 of the N.I. Act.

13. Further, in ***C.C. Alavi Haji vs. Palapetty Muhammed and Another : (2007) 6 SCC 555***, the Apex Court has categorically held that where the payee dispatches the demand notice by registered post with correct address of the drawer of the cheque, the principle incorporated in Section 27 of the General Clauses Act, 1977 would be attracted and the requirement of Clause (b) of proviso 2 to Section 138 of the N.I. Act stands complied with and the cause of action to file a complaint arises on expiry of the period prescribed in Clause (c) of the said proviso for payment by the drawer of the cheque.

14. In view of the aforesaid authoritative pronouncement of the Apex Court once the demand notice issued by the payee of the cheque was dispatched on the correct address of the drawer of the cheque, the presumption shall be drawn and after the expiry of 15 days from such dispatch, it shall be presumed that the demand notice was served on the opposite party no.2, however, such presumption is a rebuttable presumption and the drawer of the cheque may prove during the trial that he had no notice with regard to the aforesaid dishonour of cheque and demand notice issued by the payee of the cheque. However, in the aforesaid judgement of ***C.C. Alavi Haji (supra)***, it has been further clarified that a person who does not pay within 15 days from the receipt of the summons from the court alongwith the copy of the complaint under Section 138 of the N.I. Act, cannot obviously contend that there is no proper service of notice as required under Section 138 of the N.I. Act, by ignoring the statutory presumption to the contrary under Section 27 of the General Clauses Act, 1977 and Section 114 of the Indian Evidence Act, 1872. Therefore, the offence under Section 138 of the N.I. Act, would be constituted after expiry of 15 days period from the date of dispatch of the notice to the drawer of the cheque and as per Section 142 (1)(b) of the N.I. Act, the complaint under Section 138 of the N.I. Act, is required to be filed within a period of one month from the cause of action so arises in favour of the payee of the cheque.

15. So far as the requirement under Section 141 of the N.I. Act is concerned, which deals with the offences under Section 138 of the N.I. Act, committed by the companies, provides that the person, who at the time of the offence

was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against for the punishment, accordingly. The provisions of sub-section (1) of Section 141 of the N.I. Act, makes out an exception and holds that if a person is able to prove that when the offence was committed, he was not in-charge of the day-to-day affairs of the company or such offence was committed without his knowledge, despite he has exercised all due diligence to prevent the commission of such offence, such person cannot be punished for the offence.

16. In ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Another : (2005) 8 SCC 89***, the Apex Court has held as under:

> *"**4.** .....A company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. The proviso to the sub-section contains an escape route for persons who are able to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence.*
>
> ***9. The position of a managing director or a joint managing director in a company may be different. These persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. In order to escape liability such persons may have to bring their case within the proviso to Section 141(1), that is, they will have to prove that when the offence was committed they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.****"*
>
> *(Emphasis Supplied)*

17. Following the aforesaid principles in ***K.K. Ahuja vs. V.K. Vora : (2009) 10 SCC 48***, the Apex Court has held as under:

> *"**27.** The position under Section 141 of the Act can be summarised 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 the 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)

18. In ***National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330***, the Apex Court has held as under:

*"**39.** From the above discussion, the following principles emerge:*

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 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 offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) ***If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.***

> *(vi)* ***If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.***
>
> *(vii) 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.*"
>
> *(Emphasis Supplied)*

19. In ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661***, the Apex Court has held as under:

> *"**53.** It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.*
>
> ***56.** We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and **a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused.** It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the section is of immense significance and, in its tentacle, it brings in the company as well as the Director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the Directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context.*
>
> ***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 drag-net on the touchstone of vicarious liability as the same has been stipulated in the*

> *provision itself. We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove."*
>
> *(Emphasis Supplied)*

20. Relying upon the judgement of ***Aneeta Hada (supra),*** the Division Bench of Apex Court had held that once the High Court had quashed the summons against the company, the proceedings against the Director cannot continue.

21. In the judgement of ***Sunita Palita v. Panchami Stone Quarry, (2022) 10 SCC 152***, referring to the judgement of ***K.K. Ahuja (supra),*** the Apex Court has held as under:

> *"**29.** .....As held in K.K. Ahuja v. V.K. Vora [K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181] **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."*
>
> *(Emphasis Supplied)*

22. In ***Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd., 2021 SCC OnLine SC 915,*** the Apex Court has held as under:

> *"**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 incharge 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."

(Emphasis Supplied)

23. In the recent judgement of ***S.P. Mani & Mohan Dairy v. Snehalatha Elangovan, (2023) 10 SCC 685***, the Apex Court has held as under:

*"**58.1.** 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.*

58.2.** 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.** Advertence 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.

58.3.** 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.

58.4.** 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)*

24. Thus, from above judgements it is crystal clear that when the offence is committed under Section 138 of the N.I. Act by the companies, then, the Joint Managing Director and signatory of the cheque are liable for the offence alongwith the company. So far as the other Directors are concerned it is required to be stated in the complaint that they were in-charge of the day-to-day affairs of the company and this is, if such assertion is made in the complaint, then, the Magistrate is competent to summon them for the trial and during the trial they can prove otherwise.

25. From the aforesaid judgements it is also categorically held that the company is a necessary party and must be impleaded as an accused in the complaint under Section 138 of the N.I. Act, for the offence committed by the company. Now, the question which is relevant to be decided in the instant case is if the complainant has arrayed the company in his complaint case and has also made the necessary assertions with regard to the signatory of the cheque, Managing Director of the company and also the Directors who were allegedly in-charge of the day-to-day affairs of the company and thereupon having found a *prima facie* case the trial court summoned the signatory of the cheque or the Managing Director of the company. Without summoning the company as such what would be the effect of such a summoning order?

26. Learned counsel for the applicant submitted that for the offences under the N.I. Act, the principle that the Magistrate takes the cognizance of the offence and not of the offender, is not applicable. For the offences under Section 138 of the N.I. Act, the Magistrate must take cognizance not only of the offence but also of the offenders and since in the instant cases the Magistrate has not summoned the company as such, therefore, the prosecution against the Director alone cannot be sustained as the company is the principal offender and its Directors and signatories are liable vicariously in view of the provisions of Section 141 of the N.I. Act.

27. In reply thereto, learned counsel for the opposite party no.2 has submitted that since there is no fault on the part of the opposite party no.2 that is the complainant, as the complaint has been filed against the company as well as against the Directors responsible for the offence.

28. Before dealing with the aforesaid it would be relevant to keep note of the objects of Chapter XVII of the N.I. Act, which contains the provisions from Sections 138 to 142 of the N.I. Act, which are initially inserted in the N.I. Act by way of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act , 1988 with the object of promoting and inculcating faith in the efficacy of banking system and its operations and giving credibility of negotiable instruments in business transactions. The introduction of the said chapter was intended to create atmosphere of reliance on banking system by discouraging people from not honouring their commitments by way of payment through cheque. The aforesaid provisions were enacted to punish those unscrupulous persons who are purported to discharge liability without any real intention to do so. Subsequently, making the aforesaid provisions more effective some more sections were inserted in Chapter XVII of the N.I. Act. Therefore, as per the doctrine of purposive interpretation the provisions ought to have been interpreted in such a manner which gives effect to the object of the legislation and not frustrate the same.

29. It is to be noted that company is a juristic person and not a corporal persons. In view thereof, once a complainant has been made against the company as an accused alongwith the Directors and the person in-charge in day-to-day affairs of the company including the signatory of the cheque and also made assertions in the company in terms of Section 141 of the N.I. Act, there is sufficient compliance on the part of the complainant. Therefore, such juristic person can be summoned only through the person who is in-charge of the affairs of the company and if the person in-charge of the company is summoned, therefore, it can’t be said that the company has not been summoned for the trial.

30. Section 63 of the Criminal Procedure Code deals with the *service of summons on the corporate bodies and the societies*, which reads as under:

> *"**Section 63- Service of summons on corporate bodies and societies**- Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed, to have been effected when the letter would arrive in ordinary course of post."*

31. Therefore, once the company has been arrayed as an accused alongwith the signatory Director and if the trial court summons the signatory Director the sufficient summoning of the company shall be presumed. Therefore, the submission of learned counsel for the applicant is that the company has not been summoned is not sustainable. A similar view has been taken by the Coordinate Bench of this Court in ***Shashibala Agrawal v. State of U.P. : 2024 SCC OnLine All 1216***, wherein it has been held as under:

> *"13. In the present case, while issuing the summon, the learned Magistrate in his order dated 9.11.2017, specifically mentioned that the offence was committed on behalf of M/s Anupam Omerian Infrastructure Pvt. Ltd. that was impleaded as respondent No.1 in the complaint. Therefore, notice was not required to be issued to the company but to its signatory director (applicant). It is clear from the order dated 9.11.2017 that the company was impleaded as a party in the complaint, and the learned Magistrate summoned the applicant after determining that the offence had been committed on behalf of the company and being the signatory and active director of the company, notice should be served to the present applicant on behalf of the company. Therefore, there was no illegality in the summoning order dated 9.11.2017. "*
>
> *(Emphasis Supplied)*

32. In view thereof, this Court does not find any illegality in the summoning order and by summoning the applicant herein, the summoning of the company is also presumed as the company was also being prosecuted through the applicant herein. Therefore, there is no illegality in the summoning order. The judgement of ***Anil Gupta (supra)*** would not be applicable to the facts of the instant case as in that case the company and its Director were summoned in different capacities and it appears that the company was summoned through any other person than the Director who was also summoned alongwith the company and the proceedings in that case were quashed against the company being time barred. In the instant

case there was no bar of prosecution against the company as the demand notice was issued against the company as well and the company is sued through the applicant herein. Therefore, by summoning applicant the company is also summoned as the applicant is representing the company as also individually.

33. In the instant case the company was also made an accused through the applicant herein, who was the Director of the company and also the signatory of the cheque. Therefore, by summoning the applicant herein the company is also deemed to have been summoned and served, therefore, there is no illegality in the summoning order and by summoning the applicant herein the summoning of the company is also presumed, therefore, in the considered view of this court by summoning the applicant, the learned Magistrate has also summoned the company which was represented by the applicant herein. Therefore, no interference is called for in the instant case and these applications are without any merit, hence ***dismissed***.

34. Since, the instant complaint cases were filed by the opposite party no.2 in the year, 2015 since then the same are pending trial, therefore, the trial court is directed to proceed in the complaint cases as expeditiously as possible, and try to conclude the proceedings of the instant cases preferably within a period of six months from the production of certified copy of this Order, if there is no legal impediment.

Order Date :- 19.09.2024
Shubham Arya

(Anish Kumar Gupta, J.)