

## Calcutta High Court

HON'BLE JUDGE(S): TIRTHANKAR GHOSH , J

AVNEET BEDI V. STATE OF WEST BENGAL

CRR No. 1782 of 2021, decided on 15/12/2022

**Negotiable Instruments Act (26 of 1881) , S.138, S.141— Criminal P.C. (2 of 1974) , S.204— Dishonour of cheque - Issuance of process - Challenge against - Accused prosecuted in the capacity of director as well as in-charge of day-to-day business and affairs of accused company - After more than 10 years of initiation of case, accused pleading that averments made in the complaint were insufficient to be proceeded against him - Date for evidence had been already fixed - Further, allegations made in complaint satisfies the requirement for proceeding against accused and there was nothing on record to suggest that substance of accusation which was read over to him was wrong or incorrect - Plea being belated, not tenable - Issuance of process against accused, proper.**

(Para 8, 9)

### Case Referred :

### Chronological Paras

AIROnline 2022 SC 904

Para No.( 4 )

AIR 2022 SC 4883

Para No.( 7 )

AIR 2012 SC 31

Para No.( 4 )

2011 ACD 549 (SC)

Para No.( 7 )

AIR 2010 SC (Supp) 569

Para No.( 4 )

AIR 2005 SC 3512

Para No.( 4 )

### Name of Advocates

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Ayan Bhattacharya, R. Mantha, Rajeswara Rao, for Petitioner; Zareen N. Khan, Ashok Das, Atish Ghosh, Sumana Biswas, Antara Dey, for Respondent.

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1. **ORDER** :-The present revisional application has been preferred challenging the proceedings being complaint case No. C/8804/2011 under Section 138/141 of the Negotiable Instruments Act pending before the learned Metropolitan Magistrate, 9th Court, Calcutta including the orders passed therein.

2. The allegations made in the petition of complaint filed at the

instance of Tata Steel Processing and Distribution Ltd. (hereinafter referred to as the 'Complainant company') against IDEB Projects (P) Ltd. (hereinafter referred to as 'accused company') and its responsible persons were to the effect that in discharge of legally enforceable debts and liability arising out of supply of cut and bend reinforcement bar by the complainant company, the accused company issued a cheque of Rs.2,00,00,000/-. The said cheque bearing No. 022300 dated 19.07.2010 was drawn on AXIS Bank Ltd. Indiranagar, Bangalore (KT) Bangalore was signed by the accused No.2 (Harkirat Singh Bedi) as a Director and authorised person of the accused company and handed over to the complainant company at its office. The said cheque was presented by the complainant company with its banker State Bank of India, CAG Branch, Reliance House, 2 Floor, 34 Chowringhee Road, Kolkata 700071 within its validity period for encashment and collection of the proceeds. The said cheque was dishonoured and returned unpaid with remarks 'Insufficient fund" vide return memo dated 11.01.2011. The complainant received the said information of dishonoured cheque from AXIS Bank Ltd. Indiranagar, Bangalore (KT) Bangalore on 11.01.2011. The complainant company thereafter send notice through speed post with A/D on 09.02.2011 demanding the amount covered by the dishonoured cheque within 15 days of receipt of the demand notice. The A/D card did not return, however, from the official Website of India Post it was found that the said demand notice was duly served upon the accused No.1 to 3 at its office address on 10.02.2011. The notice was sent to the correct address and therefore it is presumed that the same was duly served to the accused persons in the eyes of law. In spite of receiving the demand notice within 15 days the accused persons did not pay the amount covered by the dishonoured cheque or any part thereof. It was alleged that the accused persons as such has made themselves liable to be prosecuted under the provisions of Section 138 read with Section 141 of the Negotiable Instruments Act.

3.The main emphasis in this revisional application filed in respect of

the accused No.3/petitioner as contended by the learned Advocate appearing on his behalf is that the allegations made in the petition of complaint even if accepted to be true do not make out any offence so far as the present petitioner namely, Avneet Bedi is concerned. To that effect the allegations relating to Section 141 of the N.I. Act as appearing in the relevant paragraph(s) of the petition of complaint, are set out as follows:

2. The accused in discharge of their legally enforceable debts and all liabilities arising out of supply of cut and bend reinforcement bar by the complainant company the accused No.1 company issued a cheque of Rs.2,00,00,000 (Indian Rupees Two Crores only) to the complainant company bearing No. 022300 dated 19th July, 2010 drawn on AXIS Bank Ltd., Indiranagar, Bangalore (KT), Bangalore. The said cheque was signed by the accused No.2 as the director and authorised person of the accused No.1 company and handed over to the complainant company at its office as mentioned above.

6. That the accused persons after receiving the said demand notice and being the responsible Directors/Officers of the said offending accused company and incharge of the day to day business and affairs of the accused company and liable for discharge of such liability of the accused No.1 company are also liable to be prosecuted and punished under section 138 read with section 141 of the said Act hence I pray for issuance of process. "

4. Mr. Bhattacharya learned Advocate appearing for the appellant challenged the continuity of the proceedings on two grounds, firstly regarding the absence of averment relating to personal knowledge of the representative of the complainant in the impugned complaint and secondly, insufficient averment in the petition of complaint. However, at the time of arguments the learned Advocate waived his

right of arguing his first point regarding absence of averment in the petition of complaint relating to personal knowledge of the representative of the complainant company. So far as the second issue is concerned learned Advocate submitted that criminal liability of an individual arise out of wrong act which is coupled with bad intention. Relying upon the established principle imbibed in the Latin Maxim "actus non facit reum nisi mens sit rea", it was submitted criminal liability is always person specific and the principle of "responsible superior" finds no place in criminal jurisprudence. According to the learned Advocate the principles of vicarious liability is an explanation which has been incorporated under Section 141 of the N.I. Act by virtue of which the act of a company and its officials are held responsible. It was argued that in order to bring a person within the dragnet of Section 141 of the N.I. Act, the specific role of the person must be the described and it is necessary for the complainant to aver in the complaint that the person accused was in charge of and was responsible for the conduct of the business of the company. According to the learned Advocate there is no deemed liability of a director, to this effect learned Advocate relied upon S.M.S. Pharmaceuticals Ltd. v. State of Maharashtra reported in (2005) 8 SCC 89 : **(AIR 2005 SC 3512)**; National Small Industries Corporation Ltd. v. Harmeet Singh Paintal ,reported in (2010) 2 SCC 330: **AIR 2010 SC (Supp) 569** ; Anita Malhotra v. Apparel Export Promotion, reported in (2012) 1 SCC 520 : **AIR 2012 SC 31**. The learned Advocate also candidly submitted that although from the judgment where the Hon'ble Apex Court has not insisted in the petition of complaint to allege regarding the specific or detailed role of the Directors, however, recently the Hon'ble Supreme Court of India in Pawan Kumar Goel v. State of U.P. and Anr., reported in 2022 SCC OnLine SC 1598 : **(AIROnline 2022 SC 904)** affirmed the principles set out by the Hon'ble Supreme Court

in S.M.S. Pharmaceuticals (supra). Additionally it has been submitted as there is no presumptive liability against the directors, the complaint falls short of the statutory requirement and as such the proceedings against the accused No.3/petitioner/Avneet Bedi should be quashed.

5.The records of the case reflects that the complaint under Section 138/141 of the N.I. Act was filed in the year 2010 and the case was transferred to the Learned Metropolitan Magistrate, 9th Court, Calcutta on the same date. On 22.03.2011 the learned Magistrate after examining the complainant along with affidavit filed under Section 145 of the N.I. Act was prima facie satisfied and pleased to issue process fixing 17.05.2011 for service return and appearance. On and from 20.08.2011 summons and warrant were issued on different dates and finally the accused company was allowed to be represented under Section 305 of the Code of Criminal Procedure and the individual accused persons i.e. the Directors of the company were allowed to be represented through their learned Lawyers under Section 205 of the Code of Criminal Procedure.

Records of the case reflect that the complaint case pursuant to the judgment of the Hon'ble Supreme Court in Dashrath Rupsing Rathod v. State of Maharashtra was returned to the learned Advocate appearing for the complaint. Pursuant to the amendment of the provisions of the N.I. Act on 09.04.2018 there was a fresh examination of the complainant under Section 200 of the Code of Criminal Procedure and Section 145 of the N.I. Act and thereafter the learned Magistrate was pleased to issue process against the accused persons, subsequently on or about 08.01.2021 the accused persons were examined under Section 251 of the Code of Criminal Procedure, the substance of the accusations were read over to them to which they pleaded not guilty and claimed to be tried. Learned Trial Court

thereafter fixed date for evidence.

6. More than 10 years have passed since the case was initiated. Now the accused has come with plea that the averments made in the complaint are insufficient to be proceeded against him. Date for evidence has already been fixed in this case by the learned Trial Court.

7. In *S.P. Mani and Mohan Diary v. Dr. Snehalatha Elangovan*, reported in 2022 SCC OnLine SC 1238 : **(AIR 2022 SC 4883)** the following paragraphs are worth to be set out for the purpose of deciding the present revisional application:

"33. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:-

(a) Vicarious liability can be fastened on those who are in-charge of and responsible to the company or firm for the conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;

(b) It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;

(c) If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed in regards the law.

(d) In construing a complaint a hyper-technical approach should not be adopted so as to quash the same.

(e) The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141 respectively should be kept in mind by the Court concerned.

(f) These provisions create a statutory presumption of dishonesty

exposing a person to criminal liability if payment is not made within the statutory period even after the issue of notice.

(g) The power of quashing should be exercised very sparingly and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed.

(h) The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking.

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 notice. In such circumstances what more is expected of the complainant to say in the complaint.

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.

48. We reiterate the observations made by this Court almost a decade back in the case of *Rallis India Ltd. v. Poduru Vidya Bhusan* (2011) 13 SCC 88: (2011 ACD 549 (SC)), as to how the High Court should exercise its power to quash the criminal proceeding when such proceeding is related to offences committed by the companies. "The world of commercial transactions contains numerous unique intricacies, many of which are yet to be statutorily regulated. More particularly, the principle laid down in Section 141 of the NI Act (which is *pari materia* with identical sections in other Acts like the Food Safety and Standards Act, 2006; the erstwhile Prevention of Food Adulteration Act, 1954; etc.) is susceptible to abuse by unscrupulous companies to the detriment of unsuspecting third parties."

The allegations made in paragraph 2 and 6 of the petition of complaint satisfies the requirement for proceeding against the petitioner. Till date there is nothing on record to suggest that the substance of the accusation which was read over to the accused was wrong or incorrect. The accused/petitioner therefore was able to understand the case against him. There has been a systematic delay in the proceedings for more than 10 years, the very purpose and object of the provisions of N.I. Act to provide speedy and efficacious remedy has been grossly ignored.

The issue taken up before the High Court is a belated plea, having regard to the stage of the case and evidence having commenced in

this case, I am of the opinion that it would not be fit and proper to interfere with the proceedings pending before the learned Metropolitan Magistrate, 9 Court, Calcutta.

Accordingly, CRR 1782 of 2021 is dismissed.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**Petition Dismissed**