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SABITHA RAMAMURTHY AND ANR.

v.

R.B.S. CHANNABASAVARADHYA

SEPTEMBER 13, 2006

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[S.B. SINHA AND DALVEER BHANDARI, JJ.]

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*Negotiable Instruments Act, 1881—Sections 138 to 141—Dishonour of cheque issued on behalf of company—Complaint petition u/s.138 not stating that accused-directors were in charge of business of the company—Liability of accused-directors under S.141—Held: Merely being a director of a company is not sufficient to make the accused liable under S.141—It is necessary to specifically aver that at the time of commission of offence, accused were in charge of, and responsible for the conduct of business of the company—Liability—Vicarious liability.*

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The K Company had borrowed a sum of money from the respondent. Towards payment of the said loan, the appellants issued two cheques to the respondent on behalf of K Company which on presentation were dishonoured for insufficiency of funds. Respondent filed complaint petition u/s. 138 of Negotiable Instruments Act, 1881. The processes were directed to be issued for commission of an offence u/s. 138 of the Act. Appellants filed an application u/s. 482 CrPC praying for quashing of the processes issued against them in the said proceedings. High Court dismissed the application. Hence the present appeal.

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Allowing the appeal, the Court

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**HELD:** 1.1. A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. Although it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a *prima facie* opinion that the accused are vicariously liable. 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,

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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 of the statutory requirements would be insisted. [13-C-F]

1.2. The averments made in the complaint petitions do not meet the said statutory requirements. The sworn statement made by the son of Respondent also does not contain any statement that Appellants were in charge of the business of the company. In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist strict compliance of the statutory requirements. In terms of Section 200 of the Code of Criminal procedure, the complainant is bound to make statements on oath as to how the offence has been committed and how the accused persons are responsible therefor. In the event, ultimately, the prosecution is found to be frivolous or otherwise mala fide, the court may direct registration of case against the complainant for *mala fide* prosecution of the accused. The accused would also be entitled to file a suit for damages. [130-F-H; 131-A]

2.1. 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. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied. [132-C-D]

2.2. 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. [132-D-F]

*Monaben Ketanbhai Shah and Anr. v. State of Gujarat and Ors.* [2004] 7 SCC 15; *Katta Sujatha (Smt) v. Fertilizers & Chemicals Travancore Ltd. and Anr.*, [2002] 7 SCC 655; *K.P.G. Nair v. Jindal Menthol India Ltd.*, [2001] 10 SCC 218 and *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.*, [2005] 8 SCC 89, relied on.

A CRIMINAL APPELLATE JURISDICTION : Civil Appeal No. 950 of 2006.

From the Judgment and Order dated 22.8.2005 of the High Court of Karnataka at Bangalore in C.R.L.P. Nos. 3432-3433/2004.

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CrI. A.No. 951/2006.

A.T.M. Ranga Ramanujam, Gouri Karuna Das, Anu Gupta, Rajesh Singh and Rani Jethmalani for the Appellants.

C S.N. Bhat for the Respondent.

The Judgment of the Court was delivered by

**S.B. SINHA, J** : Leave granted in SLPs.

D Two cheques dated 23.6.2001 and 30.6.2001 for a sum of Rs. 1,24,406 each were issued in favour of the Respondent allegedly on behalf of a company known as Karnataka News Net (Bangalore) Ltd. The Appellants herein were not directors of the said company at the material time. Two complaint petitions were filed by the Respondent herein before the Addl. Chief Metropolitan  
E Magistrate, Bangalore wherein Appellants were described as Accused Nos. 6 and 8. In the said complaint petitions, it was categorically stated that the company which had been dealing with imparting of computer education in rural areas represented by its Managing Director, Chairman, Vice-Chairman and other Directors borrowed a sum of Rs. 2,25,000/- from the Respondent  
F on an interest of 24% per annum. Towards payment of the said loan, the accused had issued two cheques on 23.6.2001 and 30.6.2001 for a sum of Rs. 1,24,406/- each which upon being presented were dishonoured as the company did not have sufficient fund. In the complaint petition, it was averred:

G “7) The complainant submits that the accused persons have failed to clear the liability. The accused being Company and all the directors are responsible for the clearance of liability under Section 141 of the N.I. Act and the acts and deeds of the accused persons is punishable under Section 138 of N.I. Act.”

H In support of the said complaint petition, one Ravidraradya, son of the

complainant filed a sworn affidavit stating:

“...The accused No. 2 is the M.D. and others are Chairman and partners. The accused-company towards repayment of the loan, issued a cheque in favour of the complainant. The M.D. signed and issued the cheque dated 23.6.2001 for Rs. 1,24,406/- on the account maintained by the company. On presentation of the said cheque to the Bank for collection, the same was returned on 30.6.2001 as insufficient funds. Notice dated 12.7.2001 was issued through Advocate to the accused was served on 13.7.2001. The case was filed on 27.8.2001....”

Processes were directed to be issued on the said statement for alleged commission of an offence under Section 138 of the Negotiable Instruments Act.

Appellants herein filed an application under Section 482 of the Code of Criminal Procedure praying for quashing of the processes issued against them in the said proceedings.

The High Court by reason of the impugned judgment dismissed the said application stating:

“(3) The material on record *prima facie* disclose that these petitioners were Directors on the date of the offence i.e. on 30.7.2003. The question as to whether these petitioners were involved in day to day affairs of the business of the company is to be decided based on the material on record collected during the course of trial.”

Section 138 of the Negotiable Instruments Act provides that where a cheque drawn by a person is returned by the bank unpaid on the grounds specified therein, the person who had drawn the said cheque shall be deemed to have committed an offence thereunder. Section 139 provides for a presumption in favour of a holder of a negotiable instrument. Section 141 of the Act provides for offences by a company. Sub-section (1) of Section 141 reads as under:

“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

A 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.

B 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.”

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D A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a *prima facie* opinion that the accused are vicariously liable. 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 of the statutory requirements would be insisted. Not only the averments made in paragraph 7 of the complaint petitions do not meet the said statutory requirements, the sworn statement of the witness made by the son of Respondent herein, does not contain any statement that Appellants were in charge of the business of the company. In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist strict compliance of the statutory requirements. In terms of Section 200 of the Code of Criminal procedure, the complainant is bound to make statements on oath as to how the offence has been committed and how the accused persons are responsible therefor. In the event, ultimately, the prosecution is found to be frivolous or otherwise *mala fide*, the court may direct registration of case against the complainant for mala fide prosecution of the accused. The accused would also be entitled to

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file a suit for damages. The relevant provisions of the Code of Criminal Procedure are required to be construed from the aforementioned point of view. A

This Court in *Monaben Ketanbhai Shah and Anr. v. State of Gujarat and Ors.*, [2004] 7 SCC 15 held as under:

“From the above, it is evident that in the complaint there are no averments against the appellants except stating in the title that they are partners of the firm. Learned counsel for the respondent complainants contended that a copy of the partnership deed was also filed which would show that the appellants were active in the business. No such document was filed with the complaint or made part thereof. The filing of the partnership deed later is of no consequence for determining the point in issue. Section 141 does not make all partners liable for the offence. The criminal liability has been fastened on those who, at the time of the commission of the offence, were in charge of and were responsible to the firm for the conduct of the business of the firm. These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complaint.” B C D E F

Yet again in *Katta Sujatha (Smt) v. Fertilizers & Chemicals Travancore Ltd. and Anr.*, [2002] 7 SCC 655 it was held:

“...However, one thing is clear that the appellant was in no way involved in any of the transactions referred to in the complaint and it was not stated that she was in charge of the business and was responsible for the conduct of the business of the firm in terms of Section 141 of the Act nor was there any other allegation made against the appellant that she had connived with any other partner in H

A the matter of issue of cheque...”

[See also *K.P.G. Nair v. Jindal Menthol India Ltd.*, [2001] 10 SCC 218]

B The question has been set at rest by a Three-Judge Bench of this Court in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.*, [2005] 8 SCC 89 wherein the law has been laid down in the following terms:

“In view of the above discussion, our answers to the questions posed in the reference are as under:

C (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.

D (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.”

E F As the law laid down in the aforementioned decisions are clearly attracted in the instant case, we are of the opinion that the impugned judgments cannot be sustained which are set aside accordingly and the processes issued by the court of the Addl. Chief Metropolitan Magistrate, Bangalore against Appellants herein are quashed. The appeals are, thus, allowed.

D.G.

Appeals allowed.