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RAMRAJSINGH

v.

STATE OF M.P. & ANR.

(Criminal Appeal No. 1103 of 2003)

APRIL 15, 2009

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**[DR. ARIJIT PASAYAT, LOKESHWAR SINGH PANTA
AND P. SATHASIVAM, JJ.]**

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Negotiable Instruments Act, 1881 – ss. 138 and 141 – Dishonour of cheque – Complaint against appellant working as general manager of the company – Conviction of appellant u/s. 138 by courts below – Justification of – Held: Not justified – There was no evidence that appellant was in charge and responsible for the conduct of the business of the Company – He was not given any notice nor specific role was attributed to him in the complaint petition – Hence, conviction not maintainable.

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S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr. 2007(4) SCC 70 and N.K. Wahi vs. Shekhar Singh and Ors. 2007 (9) SCC 481, relied on.

Case Law Reference:

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2007(4) SCC 70) Relied on. Paras 9, 11

2007 (9) SCC 481 Relied on. Paras 10, 11

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1103 of 2003.

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From the Judgment & Order dated 18.10.2002 of the High Court of Madhya Pradesh, at Indore in CrI. Rev. No. 584/2002.

Samir Ali Khan, Rashid, Gaurav Dhama and Prashant Chaudhary for the Appellants.

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Dr. Prabhat Kumar, Ajya Amitraj, Vibha Datta Makhija and Vijay K. Jain for the Respondents. A

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Madhya Pradesh High Court, Indore Bench, dismissing the revision application filed by the appellant questioning his conviction for an offence relating to Section 138 of the Negotiable Instruments Act, 1881 (in short the 'Act'). B

2. Respondent No.2-complainant was dealing in the business of transportation. The appellant was the General Manager of J.K. Utility Division of J.K. Synthetics Ltd. whereas the absconding accused Anup Chaturvedi was the Finance Manager. Both were working under the Managing Director Manoj Kumar Mathur. The non-applicant and the co-accused Anup Chaturvedi placed order No.U/QMR/Coal 96028 dated 7.8.1996 with one Vinayak Coal Corporation. In pursuance of this order, the coal was transported by Maruti Road Carrier, Indore which is owned by the appellant. The transportation charges of Rs.9,45,000/- were paid through four cheques. All the four cheques were given to the appellant by the co-accused. C D E

3. As per the information given by the co-accused to the appellant, the appellant placed the cheques before the Bank for encashment but the same were dishonored. All the cheques were issued on Bank of Rajasthan Branch Jhalawad. The cheques were returned dishonoured with the endorsement of 'Stop Payment'. On 28.11.1996, a registered notice was sent to the Company which was served by "Registered Acknowledgment Due" on 6.12.1996. Even thereafter payments were not made. Therefore, the complaint was filed by respondent No.2 against the appellant and co-accused Anup Chaturvedi and Manoj Mathur and the case was proceeded against the appellant and absconding accused Anup Chaturvedi. F G H

A 4. Respondent No.2 had stated in the complaint that
appellant was working in the company. The order of
transportation was placed by him, the material was received
by him and the cheques were given to him by the appellant
and co-accused Anup Chaturvedi. Out of four cheques, the
B complaint in regard to the cheque amount of Rs.2,00,000/-
dated 12.9.1996 was not pressed because a separate
complaint was filed for dishonour of this cheque.

5. The learned Judicial Magistrate, First Class, Indore,
found the appellant guilty and the appeal was dismissed by
C learned Additional Sessions Judge, Indore. Both the courts
found the appellant guilty. The appellant's stand was that he
was not in charge and responsible for the conduct of the
business of the company and, therefore, he should not have
been held guilty. The cheques were not signed by him and a
D notice under Section 138 proviso (b) of the Act was not given
in his name. The High Court did not accept the stand and
dismissed the revision application.

6. Learned counsel for the appellant submitted that there
E is no evidence that the appellant was in charge and responsible
for the conduct of the business of the company. A notice was
not given to him. There was no specific role attributed to him
in the complaint petition. Therefore, the conviction as recorded
cannot be maintained.

F 7. Learned counsel for respondent No.2-complainant
supported the judgment of the High Court.

8. It appears that the accused No.3 (Manoj Mathur) was
discharged.

G 9. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and
Anr.* (2007(4) SCC 70) it was inter-alia observed held as
follows:

H "16. Section 141 of the Act does not say that a Director

of a company shall automatically be vicariously liable for commission of an offence on behalf of the Company. What is necessary is that sufficient averments should be made to show that the person who is sought to be proceeded against on the premise of his being vicariously liable for commission of an offence by the Company must be in charge and shall also be responsible to the Company for the conduct of its business.

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20. The liability of a Director must be determined on the date on which the offence is committed. Only because Respondent 1 herein was a party to a purported resolution dated 15-2-1995 by itself does not lead to an inference that she was actively associated with the management of the affairs of the Company. This Court in this case has categorically held that there may be a large number of Directors but some of them may not associate themselves in the management of the day-to-day affairs of the Company and, thus, are not responsible for the conduct of the business of the Company. The averments must state that the person who is vicariously liable for commission of the offence of the Company both was in charge of and was responsible for the conduct of the business of the Company. Requirements laid down therein must be read conjointly and not disjunctively. When a legal fiction is raised, the ingredients therefor must be satisfied.

10. In *N.K. Wahi v. Shekhar Singh and Ors.* (2007 (9) SCC 481) it was observed as follows:

"6. Chapter XVII has been incorporated under the Act with effect from 1.4.1989. In certain contingencies referred to under Section 138 of the Act on the cheques being dishonored a new offence as such had been created. But to take care of the offences purported to have been committed provisions of sub-section (1) to Section 141 of

A the Act come into play. It reads as under:-

B “141 – Offence 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.

C 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.”

D 7. This provision clearly shows that so far as the companies are concerned if any offence is committed by it then every person who is a Director or employee of the company is not liable. Only such person would be held liable if at the time when offence is committed he was in charge and was responsible to the company for the conduct of the business of the company as well as the company. Merely being a Director of the company in the absence of above factors will not make him liable.

F To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are incharge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not

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be entertainable.

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9. Section 138 of the Act reads as under:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account -

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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 persons 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 arrangement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for 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.”

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10. In order to bring application of Section 138 the complaint must show:

1 That Cheque was issued;

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2. The same was presented;

3. It was dishonored on presentation;

4. A notice in terms of the provisions was served on the person sought to be made liable;

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5. Despite service of notice, neither any payment was made nor other obligations, if any, were complied with within fifteen days from the date of receipt of the notice.

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A 11. Section 141 of the Act in terms postulates constructive liability of the Directors of the company or other persons responsible for its conduct or the business of the company.

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B 13. In *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another* (2007 (4) SCC 70) it was, inter-alia, held as follows:-

C “18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself.

D It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the

E Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely

F being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the

G purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

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

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(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.

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(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.

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(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."

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14. The matter was again considered in *Sabitha*

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A *Ramamurthy and Anr. v. R.B.S. Channabasavaradhya and Anr.* (2006 (9) SCALE 212) and *Saroj Kumar Poddar v. State (NCT of Delhi) and Anr.* (JT 2007 (2) SC 233). It was, inter -alia, held as follows:

B “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.....”

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E 11. When the factual background of the present case is considered in the light of the principles referred to in *Neeta Bhalla* and *N.K. Wahi* cases (supra), the inevitable conclusion is that the appeal is bound to succeed. The conviction as recorded cannot be maintained. The appeal is allowed.

N.J.

Appeal allowed.