

NATIONAL SMALL INDUSTRIES CORP. LTD.

v.

HARMEET SINGH PAINTAL AND ANR.
(Criminal Appeal No. 320-336 of 2010)

FEBRUARY 15, 2010

[P. SATHASIVAM AND H.L. DATTU, JJ.]

Negotiable Instruments Act, 1881: ss.138, 141 – Vicarious liability of Directors of a Company – Held: Director of a Company who is not in-charge of and is not responsible for the conduct of the business of the company would not be liable for a criminal offence under s.138 – s.141 is a penal provision creating vicarious liability, and must be strictly construed – Complaint under s.138 must spell out as to how and in what manner the accused-director was in-charge of or was responsible to the accused company for the conduct of its business – If averments made against accused-Directors are unspecific and general and no particular role is assigned to them, then vicarious liability in accordance with s.141 cannot be fastened on them – On facts, in the absence of specific averment as to the role of the respondents and particularly since they were in no way connected with the affairs of the company, the summoning orders against them were rightly quashed by High Court – Companies Act, 1956 – s.291.

The question which arose for consideration in these appeals was whether High Court was justified in quashing the summoning orders passed by trial court against accused-Directors under Section 138 of the Negotiable Instruments Act, 1881, on the ground that the averments made against them were unspecific and general and no particular role was assigned to them.

A Dismissing the appeals, the Court

B HELD: 1.1. Section 141 of the Negotiable Instruments Act requires that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, at the time the offence was committed, were in-charge of, and were responsible to the company for the conduct of the business of the company. Every person connected with the company would not fall within the ambit of the provision. Only those persons who were in-charge of and responsible for the conduct of the business of the company at the time of commission of an offence would be liable for criminal action. If a Director of a Company who was not in-charge of and was not responsible for the conduct of the business of the company at the relevant time, he would not be liable for a criminal offence under the provisions. The liability arises from being in-charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. [Para 9]

E [814-A-D]

F 1.2. Section 141 is a penal provision creating vicarious liability, and must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner the accused was in-charge of or was responsible to the accused company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability. A company may have a number of Directors and to make any or all the Directors as accused in a complaint

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merely 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 is not a sufficient or adequate fulfilment of the requirements under Section 141. In order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the concerned Directors should be specific. The description should be clear and there should be some unambiguous allegations as to how the concerned Directors were alleged to be in-charge of and was responsible for the conduct and affairs of the company. [Paras 10 and 14] [814-E-H; 815-A; 818-F-G]

SMS Pharmaceuticals v. Neeta Bhalla and Anr. (2005) 8 SCC 89; *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* (2006) 10 SCC 581; *Saroj Kumar Poddar v. State (NCT of Delhi)* (2007) 3 SCC 693; *N.K. Wahi v. Shekhar Singh & Ors.* (2007) 9 SCC 481; *Ramraj Singh v. State of M.P. & Anr.* (2009) 6 SCC 729; *SMS Pharmaceuticals v. Neeta Bhalla* (2007) 4 SCC 70; *Everest Advertising Pvt. Ltd. v. State Govt. of NCT of Delhi & Ors.* (2007) 5 SCC 54; *N. Rangachari v. Bharat Sanchar Nigam Ltd.* (2007) 5 SCC 108; *Paresh P. Rajda v. State of Maharashtra & Anr.* (2008) 7 SCC 442; *K.K. Ahuja v. V.K. Vora & Anr.* (2009) 10 SCC 48, referred to.

2.1. Section 291 of the Companies Act provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. A company, though a legal entity, can act only through its Board of Directors. The settled position is that a Managing Director is *prima facie* in-charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in-charge of and responsible for the conduct

A of the business of the company. [Para 24] [826-C-E]

2.2. Section 141 does not make all the Directors liable for the offence. For fastening the criminal liability, there is no presumption that every Director knows about the transaction. 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. 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 accused therein vicariously liable for offence committed by company along with averments in the petition containing that 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. Vicarious liability on the part of a person must be pleaded and proved and not inferred. If accused is Managing Director or 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. If 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 complaint. 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. [Para 25] [828-A-H]

2.3. In the appeals of National Small Industries Corporation, respondent No.1 was no more a Director of the company when the cheques alleged in the complaint were signed and the same is evidenced from the Sixth Annual Report for the year 1996-97 of the accused company. The said report is dated 30.08.1997 and the

same was submitted with the Registrar of Companies on 05.12.1997 and assigned as document No. 42 dated 09.03.1998 by the Department. Those documents were placed before this Court by respondent No.1 as an additional document. In view of these particulars and in addition to the interpretation relating to Section 141, no liability could be fastened on respondent No.1. Further, it was pointed out that though he was an authorized signatory in the earlier transactions, after settlement and in respect of the present cause of action, admittedly fresh cheques were not signed by the first respondent. In the same way, respondent no.1 in the appeal of the DCM Financial Services, also filed additional documents to show that on the relevant date, namely the date of issuance of cheque he had no connection with the affairs of the company. In the absence of specific averment as to the role of the respondents and particularly in view of the acceptable materials that at the relevant time, they were in no way connected with the affairs of the company, the conclusion arrived at by the High Court is upheld. [Paras 26 and 27] [829-A-F]

Case Law Reference:

(2005) 8 SCC 89	referred to	Para 14
(2006) 10 SCC 581	referred to	Para 15
(2007) 3 SCC 693	referred to	Para 16
(2007) 9 SCC 481	referred to	Para 17
(2009) 6 SCC 729	referred to	Para 18
(2007) 4 SCC 70	referred to	Para 19
(2007) 5 SCC 54	referred to	Para 20
(2007) 5 SCC 108	referred to	Para 21
(2008) 7 SCC 442	referred to	Para 22

A (2009) 10 SCC 48 referred to Para 23

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 320-336 of 2010.

B From the Judgment & Order dated 24.10.2007 of the High
Court of Delhi at New Delhi in Crl. M.C. No. 1853, 1854, 1857,
1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1905, 1906,
2568, 2597, 2598 & 2603 of 2005.

WITH

C Crl. Appeal No. 337/2010.

Sanat Kumar, Sanjay Sharma and Sanjay Sharawat for the
Appellants.

D P.P. Malhotra, ASG, Vikas Bansal, Sadhna Sandhu, Anil
Katiyar, Vikash Mehta, Narhari and Rohit Bhat for the
Respondents.

The Judgment of the Court was delivered by

E **P. SATHASIVAM, J.** 1. Leave granted in all the above
special leave petitions.

F 2. The appeals arising out of S.L.P. (Criminal) Nos. 445-
461 of 2008 have been filed by the appellant-National Small
Industries Corporation Limited against the common judgment
and order dated 24.10.2007 passed by the High Court of Delhi
at New Delhi in a batch of cases whereby the High Court
quashed the summoning orders passed by the trial Court
against respondent No.1 - Harmeet Singh Paintal, under
G Section 138 read with Section 141 of the Negotiable
Instruments Act, 1881 (for short "the Act")

H 3. The connected criminal appeal arising out of S.L.P. Crl.
No. 1079 of 2008 is filed against the judgment and order dated
24.05.2007 passed by the High Court of Delhi in Criminal
Revision Petition No. 163 of 2005, whereby the High Court

quashed the summoning order passed by the trial Court against respondent No.1 - Dev Sarin under Section 138 read with Section 141 of the Act. A

4. Since all these appeals are identical and same legal issues arise, they are being disposed of by this common judgment. B

5. The appellant - National Small Industries Corporation Ltd. had filed 12 criminal complaints under Section 138 read with Sections 141 and 142 of the Act against M/s Jay Rapid Roller Limited, a Company incorporated under the Companies Act, its Managing Director - Shri Sukhbir Singh Paintal, and its Director - Shri Harmeet Singh Paintal. It is the claim of the appellant that so as to make the Managing Director and Director of the Company liable to be prosecuted under the provisions of the Act, they had specifically averred in the complaint that all the accused persons approached it for financing of bill integrated market support programme. It was also stated that the accused persons had issued cheques which were dishonoured on presentation against which the appellant had filed criminal complaints under the provisions of the Act against all the respondents herein. It is their further case that all the accused persons accepted their liability and delivered various cheques, which are the subject matter of the present appeals. C
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6. In the connected appeal, the appellant - DCM Financial Services Ltd., entered into a hire purchase agreement on 25.02.1996 with M/s International Agro Allied Products Ltd. At the time of entering into contract, the Company handed over post-dated cheques to the appellant towards payment of monthly hire/rental charges. Respondent No.1 – Dev Sarin was one of the Directors of the said Company. The cheque issued by International Agro and Allied Products Ltd. in favour of the appellant was duly presented for payment on 28.10.1998 and the same was returned unpaid for the reason that the Company had issued instructions to the bankers stopping payment of the F
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A cheque. The appellant issued a legal notice on 05.12.1998 to the Company, Respondent No.1 and other Directors under Section 138 of the Act informing them about the dis-honouring of the cheque in question. Despite the service of the notice, the Company did not make the payment to the appellant. The appellant, on 11.01.1999, filed a complaint before the Metropolitan Magistrate, New Delhi against respondent No.1 and others under Section 138 read with Section 141 of the Act. By order dated 04.02.1999, the Metropolitan Magistrate, New Delhi, after recording evidence summoned the accused persons including respondent No.1 herein. Respondent No.1 filed an application before the Additional Sessions Judge, Delhi for dropping of proceedings against him. By order dated 08.09.2004, the Metropolitan Magistrate dismissed the said application. Aggrieved by the said order, the respondent filed a petition under Section 482 of the Criminal Procedure Code before the High Court for quashing of the complaint. The High Court, after finding that the averments against respondent No.1 are unspecific and general and no particular role is assigned to the appellant, quashed the summoning order insofar as it concerned to him.

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7. In this factual matrix, the issue which arises for determination before this Court is whether the order of the High Court quashing the summoning orders insofar as the respondents are concerned is sustainable and what should be the averments in the complaint under Section 138 read with Section 141 of the Act against the Director of a Company before he can be subjected to criminal proceedings.

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8. Heard learned counsel for the appellants as well as the learned ASG and senior counsel for the respondents.

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9. Section 138 of the Act refers about penalty in case of dishonour of cheque for insufficiency of funds in the account. We are more concerned about Section 141 dealing with offences by Companies which reads as under:-

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"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

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A (b) 'director', in relation to a firm, means a partner in the firm."

B It is very clear from the above provision that what is required is that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, 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. Every person connected with the company shall not fall within the ambit of the provision. Only those persons who were in-charge of and responsible for the conduct of the business of the company at the time of commission of an offence will be liable for criminal action. It follows from the fact that if a Director of a Company who was not in-charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for a criminal offence under the provisions. The liability arises from being in-charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company.

E 10. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent No.1 was in-charge of or was responsible to the accused company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in-charge of and responsible for the conduct of the business of the company

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without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141. A

11. In a catena of decisions, this Court has held that for making Directors liable for the offences committed by the company under Section 141 of the Act, there must be specific averments against the Directors, showing as to how and in what manner the Directors were responsible for the conduct of the business of the company. B

12. In the light of the above provision and the language used therein, let us, at the foremost, examine the complaints filed by National Small Industries Corporation Limited and the DCM Financial Services Ltd. In the case of National Small Industries Corpn. Ltd., the High Court has reproduced the entire complaint in the impugned order and among other clauses, clause 8 is relevant for our consideration which reads as under: C D

“8. That the accused No. 2 is the Managing Director and accused No. 3 is the Director of the accused company. The accused No. 2 and 3 are the in-charge and responsible for the conduct of the business of the company accused No. 1 and hence are liable for the offences.” E

13. In the case of DCM Financial Services Ltd., in complaint-Annexure-P2 the relevant clause is 13 which reads as under: F

“13. That the accused No. 1 is a Company/Firm and the accused Nos. 2 to 9 were in charge and were responsible to the accused No. 1 for the conduct of the business to the accused No. 1 at the time when offence was committed. Hence, the accused Nos. 2 to 9 in addition to the accused No. 1, are liable to be prosecuted and punished in accordance with law by this Hon’ble Court as provided by section 141 of the N.I. Act, 1881. Further the offence has been committed by the accused No. 1 with the consent and connivance of the accused Nos. 2 to 9.” G H

A 14. Now, let us consider whether the abovementioned
complaint in both cases has satisfied the necessary
ingredients to attract Section 141 insofar as the respondents,
namely, Directors of the company are concerned. Section 141
of the Act has been interpreted by this Court in various
B decisions. As to the scope of Section 141 of the Act, a three-
Judge Bench of this Court considered the following questions
which had been referred to it by a two-Judge Bench of this Court
in *SMS Pharmaceuticals vs. Neeta Bhalla and Anr.* (2005) 8
SCC 89:

C “(a) Whether for purposes of Section 141 of the Negotiable
Instruments Act, 1881, it is sufficient if the substance of the
allegation read as a whole fulfil the requirements of the said
section and it is not necessary to specifically state in the
D complaint that the person accused was in charge of, or
responsible for, the conduct of the business of the
company.

E (b) Whether a director of a company would be deemed to
be in charge of, and responsible to, the company for
conduct of the business of the company and, therefore,
deemed to be guilty of the offence unless he proves to the
contrary.

F (c) Even if it is held that specific averments are necessary,
whether in the absence of such averments the signatory
of the cheque and or the managing directors or joint
managing director who admittedly would be in charge of
the company and responsible to the company for conduct
of its business could be proceeded against.”

G While considering the above questions, this Court held as
under:

H “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. 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 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 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 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:

(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

A 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
 B 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
 C 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
 D 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)
 E of Section 141."

Therefore, this Court has distinguished the case of persons who
 are in-charge of and responsible for the conduct of the business
 of the company at the time of the offence and the persons who
 F are merely holding the post in a company and are not in-charge
 of and responsible for the conduct of the business of the
 company. Further, in order to fasten the vicarious liability in
 accordance with Section 141, the averment as to the role of
 the concerned Directors should be specific. The description
 G should be clear and there should be some unambiguous
 allegations as to how the concerned Directors were alleged to
 be in-charge of and was responsible for the conduct and affairs
 of the company.

H 15. In *Sabitha Ramamurthy vs. R.B.S.*

Channabasavaradhya, (2006) 10 SCC 581, this Court while A
dealing with the same issue observed as under:

“.....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 B
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 C
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 D
be made vicariously liable, strict compliance with the
statutory requirements would be insisted. Not only the
averments made in para 7 of the complaint petitions do
not meet the said statutory requirements, the sworn
statement of the witness made by the son of the E
respondent herein, does not contain any statement that the
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 with the statutory F
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 G
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. The relevant provisions
of the Code of Criminal Procedure are required to be H

A construed from the aforementioned point of view.”

B 16. In *Saroj Kumar Poddar vs. State (NCT of Delhi)* (2007) 3 SCC 693, while following *SMS Pharmaceuticals case* (supra) and *Sabhita Ramamurthy case* (supra), this Court held that with a view to make the Director of a company vicariously liable for the acts of the company, it was obligatory on the part of the complainant to make specific allegations as are required under the law and under Section 141 of the Act and further held that in the absence of such specific averments in the complaint showing as to how and in what manner the Director is liable, the complaint should not be entertained. The relevant portion of the judgment is reproduced hereinbelow:-

D “12. A person would be vicariously liable for commission of an offence on the part of a company only in the event the conditions precedent laid down therefor in Section 141 of the Act stand satisfied. For the aforementioned purpose, a strict construction would be necessary.

E 13. The purported averments which have been made in the complaint petitions so as to make the appellant vicariously liable for the offence committed by the Company read as under:

F “That Accused 1 is a public limited company incorporated and registered under the Companies Act, 1956, and Accused 2 to 8 are/were its Directors at the relevant time and the said Company is managed by the Board of Directors and they are responsible for and in charge of the conduct and business of the Company, Accused 1. However, cheques referred to in the complaint have been signed by Accused 3 and 8 i.e. Shri K.K. Pilania and Shri N.K. Munjal for and on behalf of Accused 1 Company.

H 14. Apart from the Company and the appellant, as noticed hereinbefore, the Managing Director and all other Directors

were also made accused. The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in para 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act.”

17. *In a subsequent decision in N.K. Wahi vs. Shekhar Singh & Ors.*, (2007) 9 SCC 481 while following the precedents of *SMS Pharmaceuticals's case* (supra), *Sabhita Ramamurthy's case* (supra) and *Saroj Kumar Poddar's case* (supra), this Court reiterated that for launching a prosecution against the alleged Directors, there must be a specific allegation in the complaint as to the part played by them in the transaction. The relevant portion of the judgment is as under:

“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.

8. 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 in-charge and responsible for the

A 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.
 B But still, in the absence of any averment or specific
 evidence the net result would be that complaint would not
 be entertainable.”

18. The said issue again came up for consideration before
 a three-Judge Bench of this Court recently in *Ramraj Singh vs.*
State of M.P. & Anr. (2009) 6 SCC 729. In this case, the earlier
 C decisions were also considered in detail. Following the
 decisions of *SMS Pharmaceuticals’* case (supra), *Sabhita*
Ramamurthy’s case (supra), *Saroj Kumar Poddar’s* case
 (supra) and *N.K. Wahi’s* case (supra) this Court held that it is
 D necessary to specifically aver in a complaint under Section 141
 that at the time when the offence was committed, the person
 accused was in-charge of, and responsible for the conduct of
 the business of the company. Furthermore, it held that vicarious
 liability can be attributed only if the requisite statements, which
 are required to be averred in the complaint petition, are made
 E so as to make the accused/Director therein vicariously liable
 for the offence committed by the company. It was further held
 that before a person can be made vicariously liable, strict
 compliance of the statutory requirements would be insisted.
 Thus, the issue in the present case is no more *res integra* and
 F has been squarely covered by the decisions of this Court
 referred above. It is submitted that the aforesaid decisions of
 this Court have become binding precedents.

19. In the case of second *SMS Pharmaceuticals vs. Neeta*
 G *Bhalla*, (2007) 4 SCC 70, this Court has categorically held that
 there may be a large number of Directors but some of them
 may not assign 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.

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Para 20 of the said judgment is relevant which is reproduced hereunder:- A

“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.” B
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20. Relying on the judgment of this Court in *Everest Advertising Pvt. Ltd. vs. State Govt. of NCT of Delhi & Ors.*, (2007) 5 SCC 54, learned counsel for the appellants argued that this Court has not allowed the recalling of summons in a criminal complaint filed under sections 138 and 141. However, a perusal of the judgment would reveal that this case was of recalling of summons by the Magistrate for which the Magistrate had no jurisdiction. Further, para 22 of the judgment would reveal that in the complaint “allegations have not only been made in terms of the wordings of section but also at more than one place, it has categorically been averred that the payments were made after the meetings held by and between the representative of the Company and accused nos. 1 to 5 which would include Respondent Nos. 2 and 3.” In para 23, this Court concluded that “it is therefore, not a case where having regard to the position held by the said respondents in the Company, E
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A they could plead ignorance of the entire transaction". Furthermore, this Court has relied upon *S.M.S. Pharmaceutical's* case (three-Judge Bench) (supra), *Saroj Kumar Poddar's* case (supra) and *N.K. Wahi's* case (supra).

B 21. Relying on the judgment of this Court in *N. Rangachari vs. Bharat Sanchar Nigam Ltd.*, (2007) 5 SCC 108, learned counsel for the appellants further contended that a payee of cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in-charge of its affairs and the Directors are prima facie in that position. However, it is pertinent to note that in this case it was specifically mentioned in the complaint that (i) accused no. 2 was a director and in charge of and responsible to the accused Company for the conduct of its business; and (ii) the response of accused no. 2 to the notice issued by BSNL that the said accused is no longer the Chairman or Director of the accused Company was false and by not keeping sufficient funds in their account and failing to pay the cheque amount on service of the notice, all the accused committed an offence. Therefore, this decision is clearly distinguishable on facts as in the said case necessary averments were made out in the complaint itself. Furthermore, this decision does not and could not have overruled the decisions in *S.M.S. Pharmaceutical's* case (three-Judge Bench)(supra), *Ramraj Singh's* case (three-Judge Bench)(supra), *Saroj Kumar Poddar's* case (supra) and *N.K. Wahi's* case (supra) wherein it is clearly held that specific averments have to be made against the accused Director.

G 22. Learned counsel for the appellants after elaborately arguing the matter, by inviting our attention to *Paresh P. Rajda vs. State of Maharashtra & Anr.*, (2008) 7 SCC 442 contended that a departure/digression has been made by the Court in the case of *N. Rangachari vs. BSNL* (supra). However, in this case also the Court has observed in para 4 that the High Court had noted that an overall reading of the complaint showed that specific allegations had been leveled against the accused as

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being a responsible officer of the accused Company and therefore, equally liable. In fact, the Court recorded the allegations in the complaint that the Complainant knew all the accused and that accused no. 1 was the Chairman of the accused Company and was responsible for day to day affairs of the Company. This Court though has only noted the decision in *N. Rangachari's* case (supra) and observed that an observation therein showed a slight departure vis-à-vis the other judgments (i.e. *S.M.S. Pharmaceuticals* first case and *S.M.S. Pharmaceutical's* second case), but then Court went on to record that in *N.K. Wahi's* case (supra) this Court had reiterated the view in *S.M.S. Pharmaceutical's* case (supra). The Court then concluded in para 11 that it was clear from the aforequoted judgments that the entire matter would boiled down to an examination of the nature of averments made in the complaint. On facts, the Court found necessary averments had been made in the complaint.

23. Though, the learned counsel for the appellants relying on a recent decision in *K.K. Ahuja vs. V.K. Vora & Anr.*, (2009) 10 SCC 48, it is clearly recorded that in the complaint it was alleged that the accused were in-charge of and was responsible for the conduct of the day-to-day business of the accused Company and further all the accused were directly and actively involved in the financial dealings of the Company and the same was also reiterated in the pre-summoning evidence. Furthermore, this decision also notes that it is necessary to specifically aver in a complaint that the person accused was in-charge of and responsible for the conduct of the business of the Company. After noting *Saroj Kumar Poddar's* case (supra) and *N.K. Wahi's* case (supra), this Court further noted in para 9 that ".....the prevailing trend appear to require the Complainant to state how a Director who is sought to be made an accused, was in-charge of the business of the Company, as every Director need not be and is not in-charge of the business of the Company.....". In Para 11, this Court has further recorded that ".....When conditions are prescribed for extending

A such constructive criminal liability to others, courts will insist upon strict literal compliance. There is no question of inferential or implied compliance. Therefore, a specific averment complying with the requirements of Section 141 is imperative...” Though the Court then said that an averment in
B the complaint that the accused is a Director and in-charge of and responsible for the conduct of the business may be sufficient but this would not take away from the requirement that an overall reading of the complaint has to be made to see whether the requirements of Section 141 have been made out
C against the accused Director or not. Furthermore, this decision cannot be said to have overruled the various decisions of this Court.

24. Section 291 of the Companies Act provides that
D subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. A company, though a legal entity, can act only through its Board of Directors. The settled position is that a
E Managing Director is *prima facie* in-charge of and responsible for the company’s business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in-charge of and responsible for the conduct of the business of the
F company. A combined reading of Sections 5 and 291 of Companies Act, 1956 with the definitions in clauses 24, 26, 30, 31 and 45 of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:

- G (a) the Managing Director/s;
(b) the whole-time Director/s;
(c) the Manager;
H (d) the Secretary;

(e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; A

(f) any person charged by the Board of Directors with the responsibility of complying with that provision; B

Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors: C

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form. D

But if the accused is not one of the persons who falls under the category of "persons who are responsible to the company for the conduct of the business of the company" then merely by stating that "he was in-charge of the business of the company" or by stating that "he was in- charge of the day-to-day management of the company" or by stating that "he was in-charge of, and was responsible to the company for the conduct of the business of the company", he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act. E
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25. From the above discussion, the following principles emerge : H

- A (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.
- B (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.
- C (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 accused therein vicariously liable for offence committed by company along with averments in the petition containing that 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.
- D (iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.
- E (v) If accused is Managing Director or 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.
- F (vi) If 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 complaint.
- G (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.
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26. Apart from the legal position with regard to compliance of Section 141 of the Act, in the appeals of National Small Industries Corporation, respondent No.1-Harmeet Singh Paintal was no more a Director of the company when the cheques alleged in the complaint were signed and the same is evidenced from the Sixth Annual Report for the year 1996-97 of the accused company. The said report is of dated 30.08.1997 and the same was submitted with the Registrar of Companies on 05.12.1997 and assigned as document No. 42 dated 09.03.1998 by the Department. Those documents have been placed before this Court by respondent No.1 as an additional document. In view of these particulars and in addition to the interpretation relating to Section 141 which we arrived at, no liability could be fastened on respondent No.1. Further, it was pointed out that though he was an authorized signatory in the earlier transactions, after settlement and in respect of the present cause of action, admittedly fresh cheques were not signed by the first respondent. In the same way, in the appeal of the DCM Financial Services, the respondent therein, namely, Dev Sarin also filed additional documents to show that on the relevant date, namely the date of issuance of cheque he had no connection with the affairs of the company.

27. In the light of the above discussion and legal principles, we are in agreement with the conclusion arrived at by the High Court and in the absence of specific averment as to the role of the respondents and particularly in view of the acceptable materials that at the relevant time they were in no way connected with the affairs of the company, we reject all the contentions raised by learned counsel for the appellants. Consequently, all the appeals fail and are accordingly dismissed.

D.G.

Appeals dismissed.