

[2013] 9 S.C.R. 1069

A.K. SINGHANIA

v.

GUJARAT STATE FERTILIZER CO. LTD. & ANR.  
(Criminal Appeal Nos. 1692-1718 of 2013 etc.)

OCTOBER 17, 2013

[CHANDRAMAULI KR. PRASAD AND  
KURIAN JOSEPH, JJ.]

NEGOTIABLE INSTRUMENTS ACT, 1881:

*s. 141 r/w s. 138 - Complaint against a company, its Chairman, Managing Directors and Directors - Petitions by two directors seeking to quash the proceedings against them - Held: In case of offence by company for dishonour of cheque, culpability of Directors has to be decided with reference to s. 141 -- To bring the Directors within the mischief of s. 138, it shall be necessary to allege that at the relevant time they were in charge of and responsible to the conduct of business of the Company -- It is necessary ingredient to proceed against such Directors -- In the instant case, the averments in the complaints nowhere suggest that the two Directors concerned were incharge and responsible for conduct of business of the company at the time when the offence was committed - Thus, the necessary averment in the complaints is lacking - Therefore, prosecution of two Directors concerned cannot be allowed to continue and their prosecution in all the cases, is quashed.*

**Respondent no. 1 in Crl. A. No. 1726-1732 of 2013 and the appellant in Crl. A. No. 1692-1718 of 2013 were arraigned as accused Nos. 7 and 9, respectively in Complaint Case No. 331 of 1996 filed against accused Nos. 1 to 13 alleging commission of offence u/s 138 of the Negotiable Instruments Act, 1881. Several other similar complaints were also filed by Gujarat State**

A Fertilizer Company against Esslon Synthetics Ltd., its  
Chairman, Managing Directors and other Directors  
including the said accused Nos. 7 and 9. The Magistrate  
took cognizance of the offence and issued process to the  
accused persons. Accused Nos. 7 and 9 in Complaint  
B Case No. 331 of 1996 filed petitions u/s 482 Cr.P.C. before  
the High Court seeking to quash the proceedings against  
them. The High Court allowed the petitions of accused  
No. 7, but rejected those of accused No. 9.

C Disposing of the appeals, the Court

HELD: 1.1 In the case of offence by company for  
dishonour of cheque, culpability of the Directors has to  
be decided with reference to s. 141 of the Act. To bring  
the Directors within the mischief of s. 138 of the Act, it shall  
D be necessary to allege that at the time the offence was  
committed, they were in charge of and responsible to the  
conduct of the business of the Company. It is necessary  
ingredient which would be sufficient to proceed against  
such Directors. If reading of the complaint shows and  
E substance of accusation discloses necessary averments,  
that would be sufficient to proceed against such of the  
Directors and no particular form is necessary. However,  
it may not be necessary to allege and prove that, in fact,  
such of the Directors have any specific role in respect of  
F the transaction leading to issuance of cheque. Section  
141 of the Act makes the Directors in charge and  
responsible to Company "for the conduct of the  
business of the Company" within the mischief of s. 138  
of the Act and not particular business for which the  
cheque was issued. [para 17-18] [1078-F; 1080-A-D]  
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*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, 2005 (3)  
Suppl. SCR 371 = (2005) 8 SCC 89; *National Small  
Industries Corpn. Ltd. v. Harmeet Singh Paintal* 2010 (2) SCR  
805 = (2010) 3 SCC 330; *Harshendra Kumar D. v. Rebatilata*

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**Koley, 2011 (2) SCR 670 = (2011) 3 SCC 351; N. Rangachari v. Bharat Sanchar Nigam Ltd., 2007 (5) SCR 329 = (2007) 5 SCC 108; and K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48 - relied on.**

**1.2 On facts, according to the complainant itself, it was accused Nos. 1 to 5 who were taking decisions; and the allegation was that in taking the decisions they used to consult accused nos. 7 and 9 also. From the allegations made in the complaint, it cannot be inferred that there is any averment that these two accused were in-charge of and responsible for the conduct of the business of the company at the time the offence was committed. Therefore, there is no essential averment in the complaints. In this view of the matter, prosecution of accused nos. 7 and 9 cannot be allowed to continue. Accordingly, the order of the High Court quashing the prosecution of the accused No. 7 is not fit to be interfered with. For the same reason the order passed by the High Court declining the prayer of accused no.9 for quashing of the prosecution cannot be sustained, and, as such, is set aside. [para 15, 16 and 22] [1077-E-H; 1078-A; 1082-E-F]**

**Case Law Reference:**

<b>2005 (3) Suppl. SCR 371</b>	<b>relied on</b>	<b>para 19</b>
<b>2010 (2) SCR 805</b>	<b>relied on</b>	<b>para 20</b>
<b>2011 (2) SCR 670</b>	<b>relied on</b>	<b>para 21</b>
<b>2007 (5) SCR 329</b>	<b>relied on</b>	<b>para 21</b>
<b>2009 (10) SCC 48</b>	<b>relied on</b>	<b>para 21</b>

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1692-1718 of 2013.**

**From the Judgment and Order dated 07.02.2012 of the**

A High Court of Gujarat at Ahmedabad in Crl. Misc. Nos. 1566, 1567, 1568, 1569, 1570, 1571 and 1572 of 2012.

WITH

Crl. A. Nos. 1719-1725, 1726-1732 & 1733-1759 of 2013.

Ranjit Kumar, Kavita Wadia, Shashank Tripathi, Khaitan & Co. for the Appellant.

Jayant Bhushan, Ashok Kr. Shrivastava, Nitish Massey, Sanjeev K. Kapoor (for Khaitan & Co.), Shubhada Deshpande (for Hemantika Wahi), Kunal Verma, Vijeta Ohri, Arpita Seth for the Respondents.

The Judgment of the Court was delivered by

**CHANDRAMAULI KR. PRASAD, J.** 1. In all these special leave petitions common question of law and facts arise and, therefore, they have been heard together and are being disposed of by this common judgment.

2. Leave granted.

3. In all these cases we are concerned with accused A.K. Singhania and Vikram Prakash. Several complaints were filed by Gujarat State Fertilizer Company against Esslon Synthetics Ltd., its Chairman, Managing Director and other Directors including aforesaid A.K. Singhania and Vikram Prakash alleging commission of an offence under Section 138 of the Negotiable Instruments Act, hereinafter referred to as 'the Act'.

4. In Complaint Case No. 331 of 1996 the allegations which are relevant for the decision of these appeals read as follows:

"3. The accused No. 14 is a Limited Company registered under the Companies Act, 1956 and are doing business of chemicals, synthetics etc. The accused No. 1 is Managing Director of accused company No. 14 and

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accused No. 2 is Deputy Managing Director, accused No. 3 is Chairman, accused No. 4 is Whole Time Director, accused No. 5 is Finance Director, accused No. 6 to 12 are the Directors and the accused No. 13 was Senior Manager (Finance) of the accused company No. 14 Esslon Synthetics Ltd.

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4. All the business and financial affairs of the accused company No. 14 are decided, organized, administered by accused No. 1 being Managing Director and accused No. 2 being Deputy Managing Director, accused No. 3 Chairman, accused No. 4 Whole Time Director, accused No. 5 Finance Director with consultation of other Directors from accused Nos. 6 to 12 and accused No. 13 was Sr. Manager (Finance) of accused company No. 14. So accused Nos. 1 to 12 and accused No. 13 are also responsible for all the transactions and business affairs done on behalf of accused Company No. 14 and are responsible for all the financial affairs and administration of accused Company No. 14."

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5. A.K. Singhania is the accused No. 7 and Vikram Prakash is accused No. 9 in this complaint.

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6. In Complaint Case No. 1293 of 1996, the allegations ( with which we are concerned in these appeals read as follows:

"4. All the business and financial affairs of the accused company No. 1 are decided, organized, administered by the accused No. 2 being Managing Director and accused No. 3 being Managing Director, accused No. 4 Chairman, accused No. 5 Whole Time Director, accused No. 6 Finance Director with consultation of other Directors from accused Nos. 7 to 13 and accused No. 14 was Sr. Manager (Finance) of accused No. 1. At the time the offence was committed, they were incharge of and were responsible to the company for the conduct of the business of the accused company. Therefore, they are responsible

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A for day to day affairs and all the transactions and business done on behalf of the accused Company No. 1 and they are also responsible for all the financial affairs and administration of accused company No. 1."

B 7. A.K. Singhania and Vikram Prakash have been arrayed as accused Nos. 8 and 10 in this complaint and in all other complaints, the allegations against A.K. Singhania are identical to what have been alleged in the Complaint Case No. 331 of 1996.

C 8. Taking into account the allegations made in the respective complaints, the learned Magistrate took cognizance of the offence, issued process to the accused aforesaid besides other accused to face trial for commission of the offence under Section 138 of the Act.

D 9. Vikram Prakash, aggrieved by the order issuing summons to face trial under Section 138 of the Act in different complaints, filed applications under Section 482 of the Code of Criminal Procedure for quashing the order taking cognizance and issuing process. The applications filed by said Vikram Prakash were registered as Criminal Miscellaneous Application Nos. 13393-13399 of 2007. The High Court by its common order dated January 20, 2012 allowed all the applications and quashed his prosecution. While doing so, the High Court held as follows:

F "7.....It is to be noted that as such there are general allegations and averments against the applicant in the complaints, however there are no specific allegations and averments in the complaint against the applicant with respect to transaction for which the cheques were issued by the accused no. 14 company. Under the circumstance, on the ground that applicant was non Executive Director of the Company on the board of the company, which is not disputed by the complainant, the applicant cannot be prosecuted for the offence under Sections 138 r/w 141 of

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the Negotiable Instruments Act and cannot be held vicariously liable for the offence alleged to have been committed by the accused no. 14 company. Under the circumstance, this Court is of opinion that this is a fit case to exercise the powers under Section 482 of the Code of Criminal Procedure and to quash and set aside the impugned complaint/criminal case qua applicant-original accused no. 9....."

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10. It is this common order which has been assailed by the Gujarat State Fertilizer Company Ltd. in the special leave petitions filed by it.

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11. A.K. Singhania also, aggrieved by the order issuing process under Section 138 of the Act, filed separate applications for quashing the entire prosecution including the aforesaid order under Section 482 of the Code of Criminal Procedure. All the applications filed by A.K. Singhania were taken together by the High Court for consideration and by the impugned order the applications filed by him have been dismissed. While doing so, the High Court observed as follows:

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"9. As the paragraphs of the complaint reproduced in earlier part of decision specifically para 4 and subsequent paragraphs would reveal that the applicant in the capacity of Director was responsible for business affairs and he was in-charge of the Company. Not only that but nowhere it can be said that the applicant was non-Executive Director and even if it is so the said argument is in realm of defence to be decided by Court trying the case under the Negotiable Instruments Act. Since sufficient averments attracting of Section 138 of Negotiable Instrument Act are the foundation of the complaint and it is further averred that cheques were issued with mischievous, dishonest intention, knowingly and willingly to cheat the complainant company. Arguments canvassed by learned advocate for the applicant do not require any further deliberation in exercise of powers under Section

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A 482 of the Code since quashing the complaint would not  
secure end of justice but would result into miscarriage of  
justice....."

B 12. A.K. Singhania, aggrieved by the aforesaid common  
order, has preferred these special leave petitions.

13. Leave granted.

C 14. We have heard Mr.Ranjit Kumar, learned Senior  
Counsel on behalf of the accused A.K. Singhania and  
Mr.Ashok Kr. Srivastava, learned Senior Counsel on behalf of  
D Vikram Prakash whereas the complainant, Gujarat State  
Fertilizer Company Ltd. is represented by Mr. Jayant Bhushan,  
E learned Senior Counsel. Mr. Ranjit Kumar appearing on behalf  
of the accused submits that necessary averments that at the  
time the offence was committed, the accused were in-charge  
of and responsible for the conduct of the business of the  
company have not been averred, which is sine qua non for  
proceeding against the Directors of the company. He has  
drawn our attention to the averments made in the complaints,  
F which we have reproduced in the preceding paragraphs of this  
judgment and submits that mere assertion that these accused  
G persons were the Directors of the company is not sufficient to  
make them liable under Section 141 of the Act. Mr. Jayant  
H Bhushan however, submits that there is clear averment in the  
complaint that these accused persons were the Directors of the  
company and, in fact, in-charge of and responsible for the  
conduct of the business of the company and, hence, they were  
rightly summoned to face the trial. He points out that the  
judgment and order of the High Court quashing the prosecution  
of accused Vikram Prakash is under challenge in this batch of  
appeals and accused A.K. Singhania cannot take benefit of the  
said order and the fate of both the accused shall depend upon  
the decision in all these appeals. Mr. Ranjit Kumar submits that  
on same set of facts when the prosecution of the accused  
Vikram Prakash has been quashed, there does not seem any  
justification to decline the prayer of the accused A.K. Singhania.

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15. In view of rival submissions, we proceed to consider the exact allegations made against the accused A.K. Singhania and accused Vikram Prakash. It is not in dispute that allegations against both the accused in different complaints are one and the same. In Complaint Case No. 331 of 1996, the allegation is that "all business and financial affairs of the accused company are decided, organized, administered by Accused Nos. 1 to 5". It has further been alleged that Accused Nos. 1 to 5 do so with consultation of other Directors namely, Accused Nos. 6 to 12. In view of aforesaid, according to the complainant, accused Nos. 1 to 13 are also responsible for all the transactions and business affairs, financial affairs and administration done on behalf of the accused company. It is relevant here to state that A.K. Singhania and Vikram Prakash are accused Nos. 7 and 9 in this complaint. The averments made in the complaint nowhere suggest that these two accused, at the time the offence was committed, were in-charge of and responsible for the conduct of the business of the company. According to the complainant itself, it was accused Nos. 1 to 5 who were taking decisions and the allegation that in taking the decisions they used to consult these accused also will not mean that these two accused were at the time the offence was committed, were in-charge of and responsible for the conduct of business of the company. In complaint Case No. 1293 of 1996 and all other complaints with which we are concerned in the present appeals the allegation is that "all business and financial affairs of the accused company No.1, are decided, organized, administered by accused Nos. 2 to 6 and in consultation of other directors i.e. from accused Nos. 7 to 13". It has further been averred that at the time the offence was committed "they were in-charge and responsible to the company for the conduct of the business" and, therefore, "they are responsible for day to day affairs and transaction, business and all financial affairs of the accused company." Mr. Ranjit Kumar submits that the aforesaid averments are not sufficient and from that it cannot be inferred that accused A.K. Singhania and accused Vikram Prakash

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A have been alleged to be in-charge and responsible for the  
 conduct of the business of the company at the time the offence  
 was committed. He points out that A.K. Singhania is accused  
 No. 8 whereas accused Vikram Prakash is accused No. 10 in  
 these complaints. Mr. Jayant Bhushan, however, joins issue and  
 B submits that the substance of the accusation clearly indicates  
 that the two accused were in-charge and responsible for the  
 conduct of the business of the company at the time of the  
 offence.

C 16. We have perused the complaints and, in fact, the  
 relevant portions of the allegations have been reproduced in  
 the foregoing paragraphs of the judgment. From that it is difficult  
 to infer that there is any averment that these two accused were  
 in-charge of and responsible for the conduct of the business  
 of the company at the time the offence was committed. The  
 D allegations in the complaints in sum and substance mean that  
 business and financial affairs of the company used to be  
 decided, organized and administered by accused Nos. 2 to 6  
 and while doing so, other Directors including the two accused  
 herein were consulted. The inference drawn by the complainant  
 E on that basis that these two accused, therefore, are in-charge  
 and responsible to the company for the conduct of its business,  
 is absolutely misconceived. We are, therefore, of the opinion  
 that essential averment in the complaints is lacking.

F 17. In case of offence by company for dishonour of cheque,  
 the culpability of the Directors has to be decided with reference  
 to Section 141 of the Act, same reads as follows:

G **"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  
 H accordingly:

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18. 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:

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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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(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.

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

19. From a plain reading of the aforesaid provision it is evident that every person who at the time the offence was committed is in charge of and responsible to the Company shall be deemed to be guilty of the offence under Section 138 of the Act. In the face of it, will it be necessary to specifically state in the complaint that the person accused was in charge of and

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A responsible for the conduct of the business of the Company? In our opinion, in the case of offence by Company, to bring its Directors within the mischief of Section 138 of the Act, it shall be necessary to allege that they were in charge of and responsible to the conduct of the business of the Company. It is necessary ingredient which would be sufficient to proceed against such Directors. However, we may add that as no particular form is prescribed, it may not be necessary to reproduce the words of the section. If reading of the complaint shows and substance of accusation discloses necessary averments, that would be sufficient to proceed against such of the Directors and no particular form is necessary. However, it may not be necessary to allege and prove that, in fact, such of the Directors have any specific role in respect of the transaction leading to issuance of cheque. Section 141 of the Act makes the Directors in charge and responsible to Company "for the conduct of the business of the Company" within the mischief of Section 138 of the Act and not particular business for which the cheque was issued. We cannot read more than what has been mandated in Section 141 of the Act.

E 20. A large number of authorities of this Court have been cited by the counsel representing the party to bring home their point. We deem it inexpedient to refer to all of them. Suffice it to say that this question has been answered eloquently by a three-Judge Bench decision of this Court in the case of *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89, in the following words:

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

G (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." A

21. This Court in the case of *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330, after reviewing all its earlier judgments summarized the legal position as follows: B

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

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

(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. D

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with. E F

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

(v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their H

A position they are liable to be proceeded with.

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

B (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."

C In *Harshendra Kumar D. v. Rebatilata Koley*, (2011) 3 SCC 351, after referring to its earlier decisions in *S.M.S. Pharmaceuticals Ltd.* (supra), *National Small Industries Corpn. Ltd.* (supra), *N. Rangachari v. Bharat Sanchar Nigam Ltd.*, (2007) 5 SCC 108 and *K.K. Ahuja v. V.K. Vora*, (2009) 10 SCC 48, this Court reiterated the same view.

D 22. We have found on fact that there is no averment that the two accused herein were in charge of and responsible for the conduct of the business of the company at the time the offence was committed. Hence, there is no essential averment in the complaints. In view of what we have observed above, the prosecution of accused A.K. Singhania and accused Vikram Prakash cannot be allowed to continue. Accordingly, the order of the High Court quashing the prosecution of the accused E Vikram Prakash is not fit to be interfered with. For the same reason the order passed by the High Court declining the prayer of A.K. Singhania for quashing of the prosecution cannot be F sustained and the appeals preferred by him deserve to be allowed.

G 23. In the result, we dismiss the appeals preferred by the complainant Gujarat State Fertilizers Company Ltd. and allow the appeals preferred by A.K. Singhania and quash his prosecution in all these cases.

H R.P.

Appeals disposed of.