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STANDARD CHARTERED BANK

v.

STATE OF MAHARASHTRA AND OTHERS ETC.

(Criminal Appeal Nos. 271-273 of 2016)

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APRIL 06, 2016

**[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]**

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*Negotiable Instruments Act, 1881 – ss. 138 and 141 – Complaint under – Against a company and its executive Director and Directors – Summons issued – Quashed by High Court in exercise of its power u/s 482 Cr.P.C. – Held: s.141 creates a constructive liability on the person responsible for the conduct of the business of the accused-Company – In the present case, in view of the assertion in the complaint that the appellants-accused were in-charge of day to day affairs of the Company, the summons issued were wrongly set aside by High Court – Magistrate directed to proceed with the complaint – Code of Criminal Procedure, 1973 – s.482.*

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Allowing the appeals, the Court

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**HELD:** On a perusal of s. 141 of Negotiable Instruments Act, 1881, it is clear that if the person who commits an offence u/ s. 138 of the Act is a company, the company as well as other person in charge of or responsible to the company for the conduct of the business of the company at the time of commission of the offence is deemed to be guilty of the offence. Thus, it creates a constructive liability on the persons responsible for the conduct of the business of the company. In the present case, the accused Nos.4 and 5 were whole-time Directors of accused-Company, and the assertion in the complaint is that they were in charge of day to day business of the Company and all the accused had with active connivance, mischievously and intentionally issued the cheques in question. Thus, considering the totality of assertions made in the complaint and also taking note of the averments put forth relating to accused Nos. 4 and 5 that they are whole-time Director and Executive Director and they were in charge of day to day affairs of the Company, the High Court has fallen into grave

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error by coming to the conclusion that there are no specific averments in the complaint for issuance of summons against the said accused persons. [Paras 12, 33 and 34] [295-B; 305-G-H; 306-A-B]

*Gunmala Sales Pvt. Ltd. v. Anu Mehta and Ors.* (2015) 1 SCC 103: 2014 (10) SCR 1117 – relied on.

*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and another* (2005) 8 SCC 89: 2005 (3) Suppl. SCR 371; *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal & Anr.* (2010) 3 SCC 330: 2010 (2) SCR 805;

*Tamil Nadu News Print & Papers Ltd. v. D. Karunakar & Ors.* (2015) 8 SCALE 733; *A.K. Singhania v. Gujarat State Fertilizer Company Ltd. & Anr.* (2013) 16 SCC 630: 2013 (9) SCR 1069; *Aneeta Hada v. Godfather Travels and Tours Private Limited* (2012) 5 SCC 661:2012 (5) SCR 503; *Secunderabad Health Care Ltd. v. Secunderabad Hospitals (P) Ltd.* (1999) 96 Comp

Cas 106 (AP); *V. Sudheer Reddy v. State of A.P.* (2000) 107 Comp Cas 107 (AP); *R. Kanan v. Kotak Mahindra Finance Ltd.* (2003) 115 Comp Cas 321 (Mad); *Lok Housing ad Constructions Ltd. v. Raghupati Leasing and Finance Ltd.* (2003) 115 Comp Cas 957 (Del); *Sumil Kumar Chhaparia v. Dakka Eshwaraiah* (2002) 108

Comp Cas 687 (AP); *State of Haryana v. Brij Lal Mittal* (1998) 5 SCC 343: 1998 (3) SCR 104; *K.P.G. Nair v. Jindal Menthol India Ltd.* (2001) 10 SCC 218; *Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd.* (2002) 7 SCC 655; *S.M.S. Pharmaceuticals Ltd. v.*

*Neeta Bhalla and another* (2007) 4 SCC 70: 2007 (2) SCR 862; *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* (2006) 10 SCC 581: 2006 (6) Suppl. SCR 126; *Saroj Kumar Poddar v. State (NCT of Delhi) and another* (2007) 3 SCC 693: 2007 (1)

SCR 907; *Everest Advertising (P) Ltd. v. State, Govt. of NCT of Delhi and others* (2007) 5 SCC 54: 2007 (4) SCR 1055; *K.K. Ahuja v. V.K. Vora and Anr* (2009) 10 SCC 48; *Tamil Nadu News Print & Papers Ltd. v. D. Karunakar and Others* (2015) 8 SCALE 733 – referred

to.

| A | <u>Case Law Reference</u>     |             |         |
|---|-------------------------------|-------------|---------|
|   | 2005 (3) Suppl. SCR 371       | referred to | Para 8  |
|   | 2014 (10) SCR 1117            | relied on   | Para 8  |
|   | 2010 (2) SCR 805              | referred to | Para 8  |
|   | (2015) 8 SCALE 733            | referred to | Para 8  |
| B | 2013 (9) SCR 1069             | referred to | Para 8  |
|   | 2012 (5) SCR 503              | referred to | Para 13 |
|   | (1999) 96 Comp Cas 106 (AP)   | referred to | Para 17 |
|   | (2000) 107 Comp Cas 107 (AP)  | referred to | Para 17 |
| C | (2003) 115 Comp Cas 321 (Mad) | referred to | Para 17 |
|   | (2003) 115 Comp Cas 957 (Del) | referred to | Para 17 |
|   | (2002) 108 Comp Cas 687 (AP)  | referred to | Para 17 |
|   | 1998 (3) SCR 104              | referred to | Para 17 |
|   | (2001) 10 SCC 218             | referred to | Para 17 |
| D | (2002) 7 SCC 655              | referred to | Para 17 |
|   | 2007 (2) SCR 862              | referred to | Para 19 |
|   | 2006 (6) Suppl. SCR 126       | referred to | Para 19 |
|   | 2007 (1) SCR 907              | referred to | Para 20 |
| E | 2007 (4) SCR 1055             | referred to | Para 22 |
|   | (2009) 10 SCC 48              | referred to | Para 24 |
|   | (2015) 8 SCALE 733            | referred to | Para 30 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
Nos. 271-273 of 2016.

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From the Judgment and Order dated 13.10.2015 of the High Court of Judicature at Bombay in Criminal Writ Petition Nos. 1482, 1483 & 1484 of 2015.

G Shyam Divan, Sr. Adv., Ateev Mathur, Amol Sharma, Gagan Gupta,  
Advs. for the Appellant.

Ms. Indu Malhotra, Sr. Adv., Rajiv Tyagi, Nishant Ramakantrao  
Katneshwarkar, Advs. for the Respondents.

The Judgment of the Court was delivered by

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**DIPAK MISRA, J.** 1. Leave granted.

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2. The present appeals, by special leave, are directed against the order dated 13<sup>th</sup> October, 2015, passed by the High Court of Judicature at Bombay in Criminal Writ Petition Nos. 1482-1484 of 2015 whereby the learned single Judge by the common impugned order has quashed the orders of issuance of summons against the respondent Nos. 2 and 3 herein (original accused Nos. 5 and 4) by the Metropolitan Magistrate, 23<sup>rd</sup> Court at Esplanade, Mumbai, under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'). Be it noted that the High Court has declined to quash the order of the Magistrate issuing summons against the respondent No. 4 (original accused No. 2), but the said accused has not approached this Court.

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3. The facts, briefly stated, are that M/s ABG Shipyard Ltd. is a company registered under the Companies Act, 1956. On being approached by the authorities of the company, a short term loan facility for a sum of Rs. 200 crores was granted by the appellant-bank to the company on 28.04.2012. As averred in the complaint, the company executed an indemnity in favour of the appellant-bank and agreed to repay the amount in three instalments; one on 15.12.2012, the second on 15.01.2013 and the last on 15.02.2013. The company issued three cheques, one dated 15.12.2012 for Rs.66,67,00,000/-, and the two others dated 15.01.2013 and 15.02.2013 for Rs.66,67,00,000/- and Rs.66,66,00,000/- respectively towards the repayment of the liability. As per the dates mentioned in the cheques, they were presented before the bank but due to "insufficient funds" and "account blocked" the cheques were dishonoured. The appellant-bank issued requisite statutory notice for each cheque. As no response was given by the respondents, the appellant filed three complaints, being C.C. No. 451/SS of 2013, C.C. No. 843/SS of 2013 and C.C. No. 1145/SS of 2013 under Section 138 of the Act before the Metropolitan Magistrate, 23<sup>rd</sup> Court at Esplanade, Mumbai who took cognizance and issued summons against all the accused persons.

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4. The respondent nos. 2 to 4 herein, being grieved by the orders issuing summons, preferred three revision petitions, that is, Revision Application Nos. 1123 to 1125 of 2014 before the City Civil & Sessions Court, Mumbai, and the revisional court after due deliberation did not perceive any merit in the said challenge and dismissed the revision petitions.

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5. The dismissal order constrained the respondents to prefer criminal writ petitions, bearing Criminal Writ Petition Nos. 1482 to 1484

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A of 2015, before the High Court of Judicature at Bombay and the learned single Judge by the order impugned allowed the writ petitions preferred by accused nos. 4 and 5 holding that the complainant had averred the said respondent to be responsible without making any specific assertion in the complaint about their role. As mentioned earlier, the High Court dismissed the writ petition preferred by the respondent no.4.

B 6. On a perusal of the impugned order, it transpires that the learned Single Judge of the High Court has quashed the summons singularly on the ground that there are no allegations against the successful writ petitioners connecting them with the affairs of the Company.

C 7. Criticizing the aforesaid order passed by the High Court, it is submitted by Mr. Divan, learned senior counsel appearing for the appellant-bank that the High Court has failed to properly scrutinize the assertions made in the complaint, for the complaint has clearly stated about the role of the accused persons in the complaint. Learned counsel would submit that it is a case where the respondents had availed loan of Rs.200 crores and the cheques that had been issued were dishonoured on due presentation, the High Court should not have exercised the inherent jurisdiction under Section 482 CrPC to set aside the order issuing summons against the Executive Director and the whole-time Director who are really the persons responsible and in charge of day to day affairs of the company.

E 8. Resisting the aforesaid submissions put forth by Mr. Divan, Ms. Indu Malhotra, learned senior counsel appearing for the respondents would contend that the learned Magistrate had taken cognizance in a mechanical manner without perusing the averments made in the complaint petition and, therefore, the exercise of jurisdiction by the High Court in setting aside the order issuing summons cannot be faulted. She has commended us to the decisions in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and another*<sup>1</sup> (hereinafter referred to as '*SMS Pharma I*'), *Gunmala Sales Pvt. Ltd. v. Anu Mehta and Ors.*<sup>2</sup>, *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal & Anr.*<sup>3</sup>, *Tamil Nadu News Print & Papers Ltd. v. D. Karunakar & Ors.*<sup>4</sup>, *A.K. Singhania v. Gujarat State Fertilizer Company Ltd. & Anr.*<sup>5</sup>.

<sup>1</sup> (2005) 8 SCC 89

<sup>2</sup> (2015) 1 SCC 103

<sup>3</sup> (2010) 3 SCC 330

<sup>4</sup> (2015) 8 SCALE 733

H <sup>5</sup> (2013) 16 SCC 630

9. To appreciate the controversy in proper perspective, it is appropriate to refer to Sections 138 and 141 of the Act. Section 138 reads as follows:-:-

**“138. Dishonour of cheque for insufficiency, etc., of funds in the account.**—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 person 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 agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision 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:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

*Explanation.*—For the purposes of this section, ‘debt or other liability’ means a legally enforceable debt or other liability.”

10. On a studied scrutiny of the aforesaid provision, it is quite limpid that to constitute the criminal liability the complainant is required to show that a cheque was issued; that it was presented in the bank in question; that on due presentation, it was dishonoured; that, as enshrined

A in the provision, requisite notice was served on the person who was sought to be made liable for criminal liability; and that in spite of service of notice, the person who has been arraigned as an accused did not comply with the notice by making payment or fulfilling other obligations within the prescribed period, that is, 15 days from the date of receipt of notice.

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11. Section 141 of the Act deals with offences by companies. It reads as follows:-

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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:

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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—

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(a) ‘**company**’ means any body corporate and includes a firm or other association of individuals; and

(b) ‘director’, in relation to a firm, means a partner in the firm.”

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12. On a perusal of the aforesaid provision, it is clear as crystal that if the person who commits an offence under Section 138 of the Act is a company, the company as well as other person in charge of or responsible to the company for the conduct of the business of the company at the time of commission of the offence is deemed to be guilty of the offence. Thus, it creates a constructive liability on the persons responsible for the conduct of the business of the company.

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13. At one point of time, an issue had arisen before this Court, whether a complaint could be held to be maintainable without making the company a party. The said controversy has been put to rest by a three-Judge Bench decision in *Aneeta Hada v. Godfather Travels and Tours Private Limited*<sup>6</sup> wherein it has been held that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. It has been further held therein that there cannot be any vicarious liability unless there is a prosecution against the company. In the case at hand, the company has been arrayed as the accused No. 1 along with the Chairman and other Directors.

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14. Now, we must go back in time to appreciate what has been stated in *S.M.S. Pharma I* (supra), wherein a three-Judge Bench answered a reference on three issues. The answers on two issues which are relevant for the present purpose are as follows:-

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“(a) .....

(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.

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(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.”

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15. The three-Judge Bench referred to Section 138 and 141 of the Act, Sections 203 and 204 of CrPC and observed that a complaint must

<sup>6</sup>(2012) 5 SCC 661

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A contain material to enable the Magistrate to make up his mind for issuing process and if this were not the requirement, consequences would be far-reaching. If a Magistrate has to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process has to be issued would be tremendous. It has been observed therein that Section 204 of the CrPC commences with the words “if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding” and that apart, the words “sufficient ground for proceeding” again suggest that ground should be made out in the complaint for proceeding against the respondent. The three-Judge Bench has ruled that it is settled law that at the time of issuing of the process, the Magistrate is required to see only the allegations in the complaint and where the allegations in the complaint or the chargesheet do not constitute an offence against a person, the complaint is liable to be dismissed.

D 16. After so stating, the Court adverted to the complaint filed under Section 138 of the Act and opined that the complaint should make out a case for issue of process. As far as the officers responsible for conducting the affairs of the company are concerned, the Court referred to various provisions of the Companies Act, 1956 and analysed Section 141 of the Act to lay down as follows:-

E “What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and 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. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this 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 under the provision. The liability arises from being in charge of and responsible for the conduct of 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. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of

a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of “every person” the section would have said “every director, manager or secretary in a company is liable”..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action”.

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17. After so stating, the Court placed reliance on sub-Section 2 of Section 141 of the Act for getting support of the aforesaid reasoning as the said sub-Section envisages direct involvement of any Director, Manager, Secretary or other officer of a company in the commission of an offence. The Court proceeded to observe that the said provision operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of the offices in a company. It has also been observed that provision has been made for directors, managers, secretaries and other officers of a company to cover them in cases of their proved involvement. It is because a person who is in charge of and responsible for conduct of business of a company would naturally know why a cheque in question was issued and why it got dishonoured and simultaneously it means no other person connected with a company is made liable under Section 141 of the Act. The liability arises, as the three-Judge Bench opined, on account of conduct, act or omission on the part of an officer and not merely on account of holding office or position in a company and, therefore, in order to bring a case within Section 141 of the Act, the complaint must disclose the necessary facts which makes a person liable. In the said case, the Court has referred to the decisions in *Secunderabad Health Care Ltd. v. Secunderabad Hospitals (P) Ltd.*<sup>7</sup>, *V. Sudheer Reddy v. State of A.P.*<sup>8</sup>, *R. Kanan v. Kotak Mahindra Finance Ltd.*<sup>9</sup>, *Lok Housing ad Constructions Ltd. v. Raghupati Leasing and Finance Ltd.*<sup>10</sup>, *Sunil Kumar Chhaparia v. Dakka Eshwaraiah*<sup>11</sup>,

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<sup>7</sup> (1999) 96 Comp Cas 106 (AP)

<sup>8</sup> (2000) 107 Comp Cas 107 (AP)

<sup>9</sup> (2003) 115 Comp Cas 321 (Mad)

<sup>10</sup> (2003) 115 Comp Cas 957 (Del)

<sup>11</sup> (2002) 108 Comp Cas 687 (AP)

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A *State of Haryana v. Brij Lal Mittal*<sup>12</sup>, *K.P.G Nair v. Jindal Menthol India Ltd.*<sup>13</sup>, *Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd.*<sup>14</sup> and eventually expressed thus:-

B “A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal  
 C 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  
 D 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”.

E 18. On the basis of the aforesaid analysis, the Court in this regard concluded that:-

F “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”.

G 19. After the three-Judge Bench answered the reference, the matter was placed before a two-Judge Bench. The two-Judge Bench, hearing *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and another*<sup>15</sup> (hereinafter referred to as ‘SMS Pharma II’), reproduced a passage

<sup>12</sup> (1998) 5 SCC 343

<sup>13</sup> (2001) 10 SCC 218

<sup>14</sup> (2002) 7 SCC 655

H <sup>15</sup> (2007) 4 SCC 70

from *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya*<sup>16</sup> which reads as follows:- A

“7. 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 with the statutory requirements would be insisted.” B C D

20. Thereafter the Court referred to the authority in *Saroj Kumar Poddar v. State (NCT of Delhi) and another*<sup>17</sup> and noted the observations which we think it apt to reproduce:- E

“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.” F G

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<sup>16</sup> (2006) 10 SCC 581

<sup>17</sup> (2007) 3 SCC 693

A 21. The said observations were clarified by stating that:-

B “26. A faint suggestion was made that this Court in *Saroj Kumar Poddar* (supra) has laid down the law that the complaint petition not only must contain averments satisfying the requirements of Section 141 of the Act but must also show 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. A plain reading of the said judgment would show that no such general law was laid down therein. The observations were made in the context of the said case as it was dealing with a contention that although no direct averment was made as against the appellant of the said case fulfilling the requirements of Section 141 of the Act but there were other averments which would show that the appellant therein was liable therefor.”

C 22. The said clarification was reiterated in *Everest Advertising (P) Ltd. v. State, Govt. of NCT of Delhi and others*<sup>18</sup>.

D 23. In the said case, taking note of the assertions in the complaint which were really vague, the Court declined to interfere with the order passed by the High Court which had opined that the complainant did not disclose commission of offence against the accused persons.

E 24. Be it noted, the observations made in *Saroj Kumar Poddar* (supra) and clarification given in *SMS Pharma II* (supra) and *Everest Advertising (P) Ltd.* (supra) were taken note of in *K.K. Ahuja v. V.K. Vora and Anr*<sup>19</sup>. In the said case, the Court explaining the position under Section 141 of the Act has stated thus:-

F “The position under Section 141 of the Act can be summarised thus:

G (i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix “Managing” to the word “Director” makes it clear that they were in charge of and are responsible to the company, for

<sup>18</sup> (2007) 5 SCC 54

H <sup>19</sup> (2009) 10 SCC 48

the conduct of the business of the company.

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(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

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(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

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(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

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25. In *Harmeet Singh Paintal* (supra), a two-Judge Bench did not agree with the stand of the appellant, emphasized on the averments and found that in the complaint petition there were no specific averments and, accordingly, dismissed the appeal filed by the appellant-Corporation therein. The Court in paragraphs 17 and 18 of the judgment reproduced the part of the complaint. We have carefully perused the said averments in the claim petition and we are of the opinion that there cannot be any shadow of doubt that the assertions made therein did not meet the requirements of Section 141 of the Act.

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26. In *A.K. Singhania* (supra), after referring to the previous judgments, the Court found that it was difficult to infer that there was

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A any averment that the two accused persons who had come to this Court, were in charge and responsible for the conduct of the business of the Company at the time the offence was committed. The allegation in the complaints in sum and substance was that business and financial affairs of the Company used to be decided, organized and administered by accused persons along with other Directors.

B 27. In *Gunmala Sales Pvt. Ltd.* (supra) the Court was concerned with Directors who issued the cheques. This authority, as we notice, has to be appositely understood. The two-Judge Bench referred to *SMS Pharma I* and other earlier decisions, and came to hold that:-

C “30. When a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, the High Court may find that the basic averment is sufficient, that it makes out a case against the Director; that there is nothing to suggest that the substratum of the allegation against the Director is destroyed rendering the basic averment insufficient and that since offence is made out against him, his further role can be brought out in the trial. In another case, the High Court may quash the complaint despite the basic averment. It may come across some unimpeachable evidence or acceptable circumstances which may in its opinion lead to a conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time and therefore making him stand the trial would be an abuse of process of court as no offence is made out against him.

E 31. When in view of the basic averment process is issued the complaint must proceed against the Directors. But, if any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be

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sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint it must be shown that no offence is made out at all against the Director.”

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[Emphasis supplied]

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28. After so stating, the Court proceeded to summarise its conclusions, appreciated the averments made in the complaint petition and opined thus:-

“... Pertinently, in the application filed by the respondents, no clear case was made out that at the material time, the Directors were not in charge of and were not responsible for the conduct of the business of the Company by referring to or producing any incontrovertible or unimpeachable evidence which is beyond suspicion or doubt or any totally acceptable circumstances. It is merely stated that Sidharth Mehta had resigned from the directorship of the Company on 30-9-2010 but no incontrovertible or unimpeachable evidence was produced before the High Court as was done in *Anita Malhotra*<sup>20</sup> to show that he had, in fact, resigned long before the cheques in question were issued. Similar is the case with Kanhaiya Lal Mehta and Anu Mehta. Nothing was produced to substantiate the contention that they were not in charge of and not responsible for the conduct of the business of the Company at the relevant time. In the circumstances, we are of the opinion that the matter deserves to be remitted to the High Court for fresh hearing. However, we are inclined to confirm the order passed by the High Court quashing the process as against Shobha Mehta. Shobha Mehta is stated to be an old lady who is over 70 years of age. Considering this fact and on an overall reading of the complaint in the peculiar facts and circumstances of the case, we feel that making her stand the trial would be an abuse of process of court. It is however, necessary for the High Court to consider the cases of other Directors in light of the decisions considered by us and the conclusions drawn by us in this judgment.”

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29. We have referred to the aforesaid decision in extenso, as we are

<sup>20</sup> (2012) 1 SCC 520

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A of the convinced opinion that the analysis made therein would squarely apply to the case at hand and it shall be clear when we reproduce certain passages from the complaint.

B 30. Prior to that, we may profitably refer to a two-Judge Bench decision in *Tamil Nadu News Print & Papers Ltd. v. D. Karunakar and Others*<sup>21</sup>. In the said case, the Court has referred to the decision rendered in *S.M.S. Pharma I* (supra) and, thereafter, taken note of the averments made in the complaint. Be it noted, in the said case it had been averred in the complaint petition that the accused Nos. 2 to 9 were Directors and were in day to day management of the accused company and in that context the Court has opined as follows:-

C “Upon perusal of the complaint, we find that an averment has been made to the effect that Accused Nos.3 to 10 were in fact, in-charge of the day-to-day business of Accused No.1-company.”

D 31. We have referred to these decisions as they explicitly state the development of law and also lay down the duty of the High Court while exercising the power of quashing regard being had to the averments made in the complaint petition to attract the vicarious liability of the persons responsible under Section 141 of the Act.

E 32. Now, is the time to scan the complaint. Mr. Divan, learned senior counsel appearing for the appellant-bank, has drawn our attention to paragraphs 2, 4 and 10 of the complaint petition. They read as follows:-

F “2. I further say that I know the accused above named. The accused No.1 is a Company incorporated under the Companies Act, 1956 having its registered address as mentioned in the cause title. The accused Nos.2 to 7 are the Chairman, Managing Director, Executive Director and whole time Director and authorized signatories of accused No.1 respectively. As such being the Chairman, Managing Director, Executive Director and Whole Time Director were and are the persons responsible and in charge of day to day business of the accused No.1 viz. When the offence was committed. The accused Nos.6 and 7 being signatories of the cheque are aware of the transaction and therefore the accused Nos.2 to 7 are liable to be prosecuted jointly or severally for having consented and/or connived in the commission of present offence in their capacity as the Chairman, Managing Director, Executive

H <sup>21</sup> (2015) 8 SCALE 733

Director, Whole Time Director and authorized signatories of accused No.1, further the offence is attributable to accused Nos.2 to 7 on account of their neglect to ensure and make adequate arrangements to Honour the cheque issued by accused No.1 and further on account of the neglect of accused Nos.1 to 7 to comply with the requisition made in the Demand Notice issue under the provisions of Section 138(c) of the Negotiable Instruments Act within the stipulated period. The accused are therefore liable to be proceeded.

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4. I say that the Accused No. 1 through Accused Nos. 2 and 3 approached the Complainant Bank at its Branch situated at Mumbai for a Short Term Loan facility for a sum of Rs. 200 Crore to meet the expenditure of Four ORV vessels being built at ABG Shipyard. After verifying the documents submitted the Complainant Bank vide its sanction letter dated 28<sup>th</sup> April 2012 sanctioned the said Facility for the purpose mentioned therein. The said terms and conditions mentioned in the sanction letter dated 28<sup>th</sup> April 2012 were duly accepted by the Accused No. 1 by signing the same. Accused No. 1 also agreed to pay interest at the negotiated rate by the Complainant bank. Hereto annexed the marked as Exhibit 'B' is a copy of the said sanction letter dated 28<sup>th</sup> April 2012.

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10. I say that the accused Nos.1 to 7 were aware that the aforesaid cheque would be dishonoured for being "Account Blocked" and all the accused, in active connivance mischievously and intentionally issued the aforesaid cheques in favour of the complainant Bank."

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33. The aforesaid averments, as we find, clearly meet the requisite test. It is apt to mention here that there are seven accused persons. Accused No.1 is the Company, accused Nos.2 and 3 are the Chairman and Managing Director respectively and accused Nos.6 and 7 were signatory to the cheques. As far as the accused Nos.4 and 5 were concerned, they were whole-time Directors and the assertion is that they were in charge of day to day business of the Company and all of them had with active connivance, mischievously and intentionally issued the cheques in question.

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A            34. Thus, considering the totality of assertions made in the complaint and also taking note of the averments put forth relating to the respondent Nos. 2 and 3 herein that they are whole-time Director and Executive Director and they were in charge of day to day affairs of the Company, we are of the considered opinion that the High Court has fallen into grave error by coming to the conclusion that there are no specific averments in the complaint for issuance of summons against the said accused persons. We unhesitatingly hold so as the asseverations made in the complaint meet the test laid down in *Gunmala Sales Pvt. Ltd.* (supra).

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C            35. Resultantly, the appeals are allowed and the order passed by the High Court is set aside. The learned Magistrate is directed to proceed with the complaint cases in accordance with law.

Kalpana K. Tripathy

Appeals allowed.