

IN THE HIGH COURT OF DELHI

CRL.M.C.1813-14/2005

Anuj Aggarwal & Anr. Petitioner
! through: Mr.M.S.Rohilla, Advocate

VERSUS

\$ M/s Aman Fincap Ltd. Respondents
^ through: Mr.Manish Makhija, Advocate.

CRL.M.C.1821-22/2005

Anuj Aggarwal & Anr. Petitioner
! through: Mr.M.S.Rohilla, Advocate

VERSUS

\$ M/s Prasidh Fincap Ltd. Respondents
^ through: Mr.Manish Makhija, Advocate.

CRL.M.C.5779-80/2005

Anuj Aggarwal & Anr. Petitioner
! through: Mr.M.S.Rohilla, Advocate

VERSUS

\$ M/s Aman Fincap Ltd. Respondents
^ through: Mr.Manish Makhija, Advocate.

CRL.M.C.5783-84/2005

Anuj Aggarwal & Anr. Petitioner
! through: Mr.M.S.Rohilla, Advocate

VERSUS

\$ M/s Prasidh Fincap Ltd. Respondents
^ through: Mr.Manish Makhija, Advocate.
% DATE OF DECISION: 30.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
 2. To be referred to the Reporter or not?
 3. Whether judgment should be reported in Digest?
- : **PRADEEP NANDRAJOG, J.** (Oral)

1. Respondent has filed 4 complaints under Section 138 read with Section 141 of N.I.Act. Petitioners have been impleaded as accused No.5 and 6. In the memo of parties to the complaint they have been referred to as Directors of accused No.1 'M/s Hira Lal Printing Works Ltd'.

2. Vide order dated 19.3.2005, petitioners have been summoned as to why they should not be prosecuted pursuant to the 4 complaints.

3. In the complaint, complainant has stated that it had advanced Rs.1.25 crores to accused No.1 as a loan. 4 cheques detailed in para 5 of the complaint were alleged to have been issued from the account of accused No.1 by accused No.3 who was stated to have signed the cheques. Alleging that the cheques had been dishonoured, 4 complaints were filed.

4. Pertaining to the directors of the company, which needless to state, included the petitioners, only averments made are in para 10 of the complaint. Being relevant same

reads as under :-

“10. That the accused No.1 is a company and accused Nos.2 to 6 being its Directors/Officers in charge of and responsible to the day-to-day affairs and the conduct of the business of accused company, are thus jointly and severally liable for the offences committed by them.”

5. Contention urged by learned counsel for the petitioners as would be noted hereinunder is well founded inasmuch as a similar contention found favour with the Supreme Court in the decision reported as AIR 1983 SC 67, Municipal Corporation of Delhi Vs. Ram Kishan Rastogi & Anr.

6. Since criminal liability has to be fastened with certainty, a complaint under Section 138 read with Section 141 of N.I.Act must make it manifestly clear as to what is the gravement of an allegation against a particular accused.

7. Needless to state, unless law presumes, there cannot be any presumption that a person is guilty of an offence.

8. In case of offence by a company, a presumption would arise that the offence has been committed with the active knowledge, consent or supervision of the Managing Director for the reason by virtue of the designation of his office, namely, 'Managing' law presumes that such person would be liable. But in the case of Directors, position is to the contrary.

No legal presumption arises. Vicarious liability has to be pleaded and proved.

9. Sub-Section 1 of Section 141 of the N.I. Act, 1881 reads as under :-

“141. Offences by companies.-(1)

If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”

10. A bare reading of Sub-Section 1 of Section 141 of the N.I. Act makes it clear that to fasten liability on a Director it has to be proved that the person named as the Director was responsible to the company and was incharge of the affairs of the company pertaining to the conduct of the business of the company.

11. Thus, an essential ingredient of an actionable complaint, where liability is fastened on the shoulders of a Director, requires an averment to be made that the person concerned was in-charge of and was responsible to the company for the conduct of the business of the company.

12. In the decision reported as AIR 1983 SC 67 Municipal Corporation of Delhi Vs. Ram Kishan Rastogi & Anr.,

pertaining to an offence under the Prevention of Food Adulteration Act, 195, following averment in the complaint was made :-

“5. That the Accused No.3 is the Manager of Accused No.2 and Accused No.4 to 7 are the Directors of Accused No.2 and as such they were incharge of and responsible for the conduct of business of Accused No.2 at the time of sampling.”

13. Considering the aforementioned pleadings, Hon'ble Supreme Court, in para 14 of the report, opined that a meaningful reading of the pleading shows that the complaint had merely presumed that the Directors of the company would be guilty because of holding a particular office since law would assume so.

14. In para 15 it was opined that no such inference is presumed by law and that since Directors are vicariously liable for offences by the company and vicarious liability being an incident of an offence under the Act, there have to be specific averments of fact against the Directors wherefrom a reasonable inference could be drawn that if proved, they, i.e. the Directors would also be vicariously liable.

15. In the report published as AIR 2007 SC 1454 N.K.Wahi Vs. Shekhar Singh & Ors., dealing with Sections 141 and 138 of the N.I. Act, noting an earlier decision of the Supreme Court reported as (2005) 8 SCC 89 SMS

Pharmaceuticals Ltd. Vs. Neeta Bhalla, in para 8 of the report,

their Lordships of the Supreme Court observed as under :-

“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 incharge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the Court can always come to a conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”

16. In para 19, legal position was summarized and in

sub-para 'a' of para 19 it was clarified as under :-

“19(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 the 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.”

17. A perusal of para 10 of the pleading in each complaint shows that the complainant has pleaded liability on the accused on the allegation that law envisages them to be liable. The use of the words “*being its Directors*” and the words “*are thus*” clearly evidences that the complainant has

pleaded a presumptive pleading and not a pleading by way of a statement of a fact.

17. Thus, the petitions are allowed. Summoning order dated 19.3.2005 against the petitioners is quashed.

August 29, 2007
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PRADEEP NANDRAJOG, J.