

Cr.MMO 218 of 2010

28.02.2011 Present: Mr. Rajneesh K. Lal, Advocate, for the petitioner.

Mr. Neeraj Gupta, Advocate, for the respondent.

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The petitioner is aggrieved by the order Annexure P-3 summoning both the petitioners in a complaint under Section 138 of the Negotiable Instrument Act (hereinafter referred to as the Act) instituted against the petitioners by the respondent.

Learned counsel appearing for the petitioner submits that the trial Court has no jurisdiction to take cognizance of the complaint inter alia for the reasons: (a) that petitioner No. 2 Rajiv Verma was not the Director during the period when the alleged cheque is supposed to have been issued; (b) petitioner No. 1 Mrs Anuradha Verma is a lady and housewife and has no role in running the business affairs of the company and as such, she cannot be tried as charged; (c) that the complaint does not plead the requirements of Section 141 of the Act as there is no averment in the complaint regarding the role of any of the Directors etc.

For this purpose, learned counsel appearing for the petitioner relies upon the judgment of the Supreme Court in *National Small Industries Corporation Limited vs. Harmeet Singh Paintal and another* (2010) 3 SCC 330 holding:

“12. 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

commission 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.

13. *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 rule of the Director. But the complaint should spell out as to how and in what manner Respondent 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.*

14. *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 without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141.*

15. *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.”*

(at p. 336)

The question raised by the petitioners herein relates to the jurisdiction of the trial Court for taking cognizance of the complaint. In these circumstances, it would be in the fitness of things that this point amongst

others which is raised by the petitioner on the jurisdiction of the learned trial Court to take cognizance be raised and tried by the trial Court before proceeding with the case further. It is directed accordingly. This Court does not pronounce on the merits of the respective case of the parties.

It is also directed that in case the petitioners seek exemption from their personal appearance, the learned trial Court shall grant the same in accordance with law. In the first instance, the petitioners shall either personally or through their counsel be present before the Additional Chief Judicial Magistrate, Kandaghat on *30th April, 2011*. Since the complaint pertains to the year 2001, the learned Court shall made endeavour to dispose of as expeditiously as possible and to ensure that no unnecessary adjournments are granted in the case. Petition stands disposed of. Record of the trial Court be sent back forthwith.

February 28, 2011

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**(Dev Darshan Sud),
Judge**