$~J~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th June 2023

+ CRL.M.C. 2480/2017 & CRL.M.A.10318/2017

SASHI KUMAR NAGARAJI & ORS ..... Petitioners
Through: Mr. Mukul Gupta, Senior Advocate with Mr. Achin Mittal, Mr. Sumit and Mr. Saurav Tomar, Advocates.

versus

M/S MAGNIFICO MINERALS PVT LTD & ORS ..... Respondents
Through: Mr. Ayush Jindal with Mr. Pankush Goyal and Mr. Anuj Kapoor, Advocates for R1.

+ CRL.M.C. 2481/2017 & CRL.M.A. 10320/2017

SASHI KUMAR NAGARAJI & ORS ..... Petitioners
Through: Mr. Mukul Gupta, Senior Advocate with Mr. Achin Mittal, Mr. Sumit and Mr. Saurav Tomar, Advocates.

versus

M/S MAGNIFICO MINERALS PVT LTD & ORS ..... Respondents
Through: Mr. Ayush Jindal with Mr. Pankush Goyal and Mr. Anuj Kapoor, Advocates for R1.

+ CRL.M.C. 2487/2017 & CRL.M.A. 10347/2017

SASHI KUMAR NAGARAJI & ORS ..... Petitioners
Through: Mr. Mukul Gupta, Senior Advocate with Mr. Achin Mittal, Mr. Sumit and Mr. Saurav Tomar, Advocates.

versus

M/S MAGNIFICO MINERALS PVT LTD & ORS ..... Respondents
Through: Mr. Ayush Jindal with Mr. Pankush Goyal and Mr. Anuj Kapoor, Advocates for R1.

+ CRL.M.C. 2489/2017 & CRL.M.A. 10356/2017, CRL.M.A. 10357/2017

SASHI KUMAR NAGARAJI & ORS ..... Petitioners
Through: Mr. Mukul Gupta, Senior Advocate with Mr. Achin Mittal, Mr. Sumit and Mr. Saurav Tomar, Advocates.

versus

M/S MAGNIFICO MINERALS PVT LTD & ORS ..... Respondents
Through: Mr. Ayush Jindal with Mr. Pankush Goyal and Mr. Anuj Kapoor, Advocates for R1.

+ CRL.M.C. 2490/2017 & CRL.M.A. 10358/2017

SASHI KUMAR NAGARAJI & ORS ..... Petitioners
Through: Mr. Mukul Gupta, Senior Advocate with Mr. Achin Mittal, Mr. Sumit and Mr. Saurav Tomar, Advocates.

versus

M/S MAGNIFICO MINERALS PVT LTD & ORS ..... Respondents
Through: Mr. Ayush Jindal with Mr. Pankush Goyal and Mr. Anuj Kapoor, Advocates for R1.

+ CRL.M.C. 2491/2017 & CRL.M.A. 10360/2017

SASHI KUMAR NAGARAJI & ORS ..... Petitioners
Through: Mr. Mukul Gupta, Senior Advocate with Mr. Achin Mittal, Mr. Sumit and Mr. Saurav Tomar, Advocates.

versus

M/S MAGNIFICO MINERALS PVT LTD & ORS ..... Respondents

Through: Mr. Ayush Jindal with Mr. Pankush Goyal and Mr. Anuj Kapoor, Advocates for R1.

+ CRL.M.C. 2492/2017 &CRL.M.A. 10362/2017

SASHI KUMAR NAGARAJI & ORS ..... Petitioners

Through: Mr. Mukul Gupta, Senior Advocate with Mr. Achin Mittal, Mr. Sumit and Mr. Saurav Tomar, Advocates.

versus

M/S MAGNIFICO MINERALS PVT LTD & ORS ..... Respondents

Through: Mr. Ayush Jindal with Mr. Pankush Goyal and Mr. Anuj Kapoor, Advocates for R1.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petitions filed under section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') the petitioners seek quashing of summoning orders dated 08.03.2017 passed by the learned Metropolitan Magistrate, District Courts, Saket, Delhi in CC Nos. 2999/2017 (New CC No. 7355/2017), 3000/2017 (New CC No. 7359/2017), 2996/2017 (New CC No. 7357/2017), 2997/2017 (New CC No. 7358/2017), 3002/2017 (New CC No. 7356/2017), 2998/2017 (New CC No. 7361/2017), 3001/2017 (New CC No. 7360/2017) and

the respective complaints seeking prosecution of the petitioners under section 138 Negotiable Instruments Act, 1881 ('NI Act').

Brief Facts

2. A brief conspectus of facts leading-up to the filing of the present petition is as follows :

2.1 Petitioner No. 1 (Sashi Kumar Nagaraji), petitioner No. 2 (Sanjay Kumar Nagaraji) and petitioner No. 3 (Swaminathan Nagaraji) are directors of respondent No. 2 company (M/s. Saravana Alloys Steels Pvt Ltd). Respondent No. 1 company/complainant (M/s Magnifico Minerals Pvt Ltd) is engaged in the business of resale of imported steam coal. Respondent No. 3/Nagaraji Saravana is the signatory of the cheques that are subject matter of the present petition and has therefore been impleaded as a *pro-forma* respondent in the present petitions.

2.2 The allegation in the criminal complaints is that the respondent No. 2 company had placed an oral order for purchase of coal at the registered office of the complainant in Delhi, pursuant to which the goods ordered were supplied between 19.10.2012 and 06.09.2013; consequent whereupon an amount of Rs.3,74,25,537/- became due and recoverable by respondent No. 1 from respondent No. 2.

2.3 Toward payment for the above-mentioned transaction, respondent No. 2 issued to respondent No. 1 the following 07

cheques, which were however dishonoured and returned with different remarks, as summarised in the table below :

S. No.	CRL.M.C. No.	Cheque No. & Date	Date of Dishonour of Cheque	Reason for dishonour	Date of Statutory Notice
1.	2480/2017	1518 04.04.2014	20.06.2014	Other Reasons	12.07.2014
2.	2481/2017	1516 31.03.2014	14.06.2014	Other Reasons	11.07.2014
3.	2487/2017	1514 27.03.2014	21.05.2014	Funds Insufficient	11.06.2014
4.	2489/2017	1519 07.04.2014	19.06.2014	Other Reasons	12.07.2014
5.	2490/2017	1513 25.03.2014	17.05.2014	Funds Insufficient	11.06.2014
6.	2491/2017	1515 29.03.2014	13.06.2014	Exceeds Arrangement	12.07.2014
7.	2492/2017	1517 02.04.2014	18.06.2014	Other Reasons	12.07.2014

2.4 Each of the cheques issued were for an amount of Rs.50,00,000/- and all cheques were drawn on City Union Bank Ltd., Sultanpet Circle, Bangalore and were dishonoured at Canara Bank, Okhla Industrial Estate, New Delhi.

2.5 Multiple statutory notices were issued in relation to the dishonoured cheques on different dates as aforementioned,

demanding the payment of the amounts due. However, it is the petitioners' case that, contrary to what is claimed by respondent No. 1 company, no statutory notice was received by the petitioners.

2.6 Upon not receiving the cheque amounts, 07 complaints were filed alleging the offence under section 138 of the NI Act in Bangalore and Delhi. 02 complaints were filed on 23.07.2014 in the court of the learned Chief Metropolitan Magistrate, Saket, Delhi ('CMM, Delhi') that are subject matter of challenge in CRL.M.C. Nos. 2487/2017 and 2490/2017 and 05 other complaints were filed on 27.08.2014 in the court of the learned Additional Chief Metropolitan Magistrate, Bangalore ('ACMM, Bangalore') that are subject matter of challenge in CRL.M.C. Nos. 2480/2017, 2481/2017, 2489/2017, 2491/2017 and 2492/2017.

2.7 In the 05 complaints filed in Bangalore, the learned ACMM, Bangalore was satisfied that the complainant had made-out a *prima-facie* case against the accused persons, and therefore, *vide* order dated 10.09.2014, the learned ACMM, Bangalore proceeded to issue summons to all the accused persons in those complaints.

2.8 As for the 02 complaints initiated in Delhi, the learned CMM, Saket, Delhi transferred those to the court of learned ACMM, Bangalore since the bank of the accused company was situate within the local jurisdiction of the Bangalore court. Thereafter,

the learned ACMM, Bangalore issued summons to the accused in those two complaints as well *vide* order dated 19.02.2015.

2.9 Thereafter, following the change brought about by the Negotiable Instruments (Amendment) Act, 2015 (Act No. 26 of 2015), the proceedings in all the complaints were transferred to the learned CMM, South East, Saket, New Delhi since the bank of the complainant company was situate within the local jurisdiction of the Saket court and thereupon came to be marked to a learned Metropolitan Magistrate, Saket Courts, Delhi ('MM, Delhi').

2.10 Observing that since a summoning order had already been passed by the Transferor Court in respect of all accused persons, *vide* order dated 08.03.2017, the learned MM, Delhi issued fresh summons, which are subject matter of challenge before this court.

2.11 It may be stated here that though by reason of 05 complaints having been initiated in Bangalore and 02 in Delhi; and the 02 complaints having subsequently been transferred from Delhi to Bangalore and thereafter having been returned to Delhi by reason of the amendment in the law, there is some lack of clarity as to the first orders by which the petitioners were summonsed. The position however is, that in effect and substance, the petitioners stand summonsed in all 07 criminal complaints *vide* order dated 10.09.2014 passed by the learned ACMM, Bangalore and order dated 08.03.2017 passed by the

learned MM, Delhi. In fact, a perusal of the record shows that there was also another order dated 19.02.2015 passed by the learned ACMM, Bangalore, which also appears to have been an order summoning the petitioners. Since the order is virtually unintelligible, a screenshot of that order is being reproduced below.

2.12 The impugned summoning orders dated 08.03.2017 made by the learned MM Delhi, which proceed on the basis of orders dated 19.02.2015 and 10.09.2014 made by the learned ACMM Bangalore, all of which are template orders in all the criminal complaints, are extracted herein-below for reference :

Summoning orders dated 08.03.2017 passed by learned Magistrate, Saket, Delhi :

" * * * * *

It is submitted that matter has been transferred to this Court under the N.I. Amendment Act, 2015 and accused persons have already been summoned.

File perused.

All accused persons have already been summoned by the Transferor Court. Accordingly, issue fresh summons to the accused on filing of PF/RC/Speed post/Courier with directions to the process server to serve the accused person through affixation in case of non availability or refusal or if the premise was found locked, returnable for ***11.07.2017****. Steps be taken withing seven days.*

* * * * * *"*

Summoning orders dated 19.02.2015 passed by learned ACMM, Bangalore :

(extracted from the record)

Summoning order dated 10.09.2014 passed by learned ACMM, Bangalore :

" * * * * *

Complainant is present.
Affidavit by way of Sworn Statement is filed.
Complainant is accordingly examined.
List with certified copy of documents filed.
After verification, same are returned to the complainant.

Heard the Complainant.
Perused the complaint, documents and the sworn statement of the complainant.
Complainant has made out a prima facie case against the accused that he has committed an offence u/sec 138 of N.I. Act. Hence the following

ORDER

Register a case against the accused in Register No.III for the offence u/sec 138 of N.I. Act.
Issue process to the accused through court and RPAD if PF, copy of complaint, documents and list of witness is furnished by the complainant.
Call on 20-10-2014

(Typed to my dictation in the open court)

* * * * * "

3. Since the present judgment contains reference to sections 138 and 141 of the NI Act, it would also be beneficial to extract the relevant portions of the said provisions below :

"***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 extend 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) * * * * *

(b) * * * * *

(c) * * * * *

Explanation.— * * * * * *"*

*"**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

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

(emphasis supplied)

4. The court has heard Mr. Mukul Gupta, learned senior counsel appearing for the petitioners and Mr. Ayush Jindal, learned counsel for respondent No. 1.

Submissions on behalf of the petitioners

5. Mr. Gupta submits that the petitioners were mere directors of respondent No. 2 company and were neither in-charge of the company nor were they responsible for the conduct of the affairs of the company at any point in time. Senior counsel submits that the mandate of section 141 of the NI Act clearly is that not every director or employee of an accused company is liable for the offence under section 138 of the NI Act. Such person is liable only if, at the time when the offence was committed, the person was in charge-of and responsible for the conduct of the business of the company. It is submitted that merely being a director of the company does not affix liability on a person by virtue of their position in the company. To buttress this submission, reliance is primarily placed on the seminal

decision of the Supreme Court in ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla***.[1]

6. Furthermore, it is submitted that there is no specific averment whatsoever in the complaints ascribing any role to the petitioners or to show that the petitioners were in-charge of the day-to-day affairs of the accused company. Learned senior counsel submits that to initiate prosecution against a director of a company, there must be a specific allegation in a criminal complaint with regard to the role played by that individual in the alleged offence; and that in absence of any specific allegation in the complaint, no prosecution can lie against a director. To support this assertion, reliance is placed on ***Sabitha Ramamurthy vs. R.B.S. Channabasavaradhya***[2] , ***Saroj Kumar Poddar vs. State (NCT of Delhi)***[3] and ***N.K. Wahi vs. Shekhar Singh & Ors***.[4]

7. Attention in this behalf is drawn to the following paragraphs the 05 criminal complaints filed in Bangalore, which read substantially the same, and which refer to the persons who the complainant holds liable for the dishonour of the cheques :

> *"6. The Cheques had been signed by the Authorized Signatory and as such Authorized Representative is involved and concerned with the business transaction entered by the Accused Company with the Complainant Company besides others.*

---

[1] (2005) 8 SCC 89 at paras 10, 12, 18 & 19(a)

[2] (2006) 10 SCC 581

[3] (2007) 3 SCC 693

[4] (2007) 9 SCC 481

"7. It is submitted that the Complainant deposited the said cheque within stipulated period with his Banker i.e., Canara Bank, Okhla Indl. Estate, New Delhi, having Current A/c therein, but the said cheque had not been encashed for reason "Other reasons". As per the statement given in preceding paragraph accused Company and its representatives are liable to pay the amount in respect of cheque issued which has not been encashed, which was informed to the Complainant vide bank return memo report dated 20/6/2014.

* * * * *

"10. The complainant submits that within 30 days of the receipt of the information from the Bank i.e., Canara Bank, Okhla Indl Estate, New Delhi (vide Document no.2.) regarding the return of the cheque as unpaid, the complainant sent Legal Notice by Registered Post Acknowledgement Due dated 12/07/2014 and through his Advocate to the Accused calling upon the Accused for the repayment of the said amount within 15 days from the date of receipt of the said notice. A copy of the legal notice dated 12/07/2014 sent through RPAD, postal receipts and postal acknowledgement card which is duly served on the Accused on 15/07/2014 and are respectively produced herewith as ***Document No. 3, 4, 5, 6, 7, 8, 9 & 10****."*

(underscoring supplied; bold in original)

7.1 Attention is also drawn to the following paragraphs of the 02 other complaints filed in Delhi, which contain a somewhat different narration in relation to the accused persons, and again read substantially the same, as follows :

"3. That accused approached the complainant at Delhi office of complainant on different occasions for placing orders for purchase of Coal and all the above noticees had held discussions in finalizing purchase order with complainant at his Delhi office.

* * * * *

> *"9. As the purchase order was given by accused company in discussion with all the directors at Delhi Office of the complainant and the Cheques issued in favour of complainant at Delhi office of the complainant had been signed by Authorized Signatory of Accused. As such all the noticees / had participated in finalization of purchase order relating to sale of Coal. Authorised Signatory who issued impugned Cheques and all other directors are involved and concerned with the business transaction entered by accused with complainant and as such are liable u/s 138 of N.I. Act."*
>
> (emphasis supplied)

8. Lastly, placing reliance on two decisions of the Supreme Court in ***Pepsi Foods Ltd. vs. Special Judicial Magistrate***[5] and ***Mehmood Ul Rehman vs. Khazir Mohammad Tunda***[6], it is argued that summons cannot be issued against the accused in a mechanical manner; and the summoning order passed by a Magistrate must reflect application of mind to the facts of the case and the law governing the issue.

Submissions on behalf of respondent No. 1

9. Per *contra*, on behalf of respondent No. 1/complainant Mr. Jindal submits that the issuance of the cheques that are subject matter in the present proceedings and the liability have not been challenged by the petitioners. Moreover, it is contended that the ingredients of section 138 of the NI Act are satisfied in the complaints before the learned MM, Delhi.

---

[5] (1998) 5 SCC 749

[6] (2015) 12 SCC 420

10. Counsel for the complainant submits that the present petition has been filed after 03 years of issuance of the summoning order in 2014. Furthermore, it is argued that the petitioners had an alternative efficacious remedy of filing a revision petition under section 397 Cr.P.C., for which the limitation period was 90 days but the petitioners chose not to avail that remedy, and instead filed the present petitions, which ought not to be entertained. Reliance is placed on the decisions of this court in ***A.K. Dixit vs. Manoj Kumar and Ors***[7] and of the Bombay High Court in ***V.K. Jain and Ors. vs. Pratap V. Padode and Anr***.[8], to argue that the inherent powers of the High Court under section 482 Cr.P.C. should only be exercised at the initial stages of a proceedings and should not be exercised especially when there is a specific remedy available under the Cr.P.C.

11. Counsel further submits that on a bare perusal of section 141 of the NI Act it can be concluded that the words "*every person*" and "*proves*" appearing in the provision indicate that *all* directors of an accused company can be made party to the proceedings and the exception in the proviso is applicable only when it is *proved* pursuant to the trial that the offence was committed without the director's knowledge, or that he had exercised all due diligence to prevent the commission of the offence.

[7] 1999 (1) JCC (Delhi) 181

[8] (2005) 3 Mah LJ 778

12. Furthermore, counsel places reliance on a decision of the Supreme Court in ***Sunil Todi vs. State of Gujarat***[9], in which case, relying on ***Sunil Bharti Mittal vs. CBI***[10] and *S.M.S. Pharmaceuticals* (supra), it was held that the determination of whether the conditions stipulated in section 141 of the NI Act have been fulfilled is a matter of trial and recourse to the proviso to section 141 cannot be taken at the stage of issuance of process. Therefore, it is argued that the question whether a director was in-charge of and responsible for the affairs of the company; or what the role of a given director was in relation to such affairs, is a question for trial. It is further argued that all the directors of the company are liable since the statutory regime itself attracts the doctrine of vicarious liability by specifically incorporating such provision in section 141 NI Act.

13. For whatever it is worth, in the context of the statutory notice issued to the petitioners, as directors of respondent No. 2 company, counsel has also cited the 'doctrine of indoor management' and 'doctrine of constructive notice', to argue that people in the business world would be shy to enter into transactions with a company if they were to be required to check in-depth into the internal workings of the company. The decision in ***Morris vs. Kanssen***[11] has also been relied-upon for this purpose. It would appear that the essential point sought to be made by citing the said doctrines, is to say that since no reply was

---

[9] 2021 SCC OnLine SC 1174

[10] (2015) 4 SCC 609

[11] (1946) 1 All ER 586 at 592

sent by the petitioners to the statutory notice, denying their role as directors, it can safely be presumed that the petitioners were also responsible for the dishonour of the cheques.

14. Lastly, on the strength of the decision of the Supreme Court in ***Kanti Bhadra Shah vs. State of West Bengal***[12], it is submitted that the learned Magistrate is not required to write detailed orders at the stage of issuing summons to an accused person.

15. Counsel for respondent No. 1 also relies on the following judgments in support of their contentions: ***Col. B.S. Sarao vs. Securities and Exchange Board of India***[13], ***Gunmala Sales (P) Ltd. vs. Anu Mehta***[14], ***Standard Chartered Bank vs. State of Maharashtra***[15], ***Ambica Plastopack Pvt. Ltd. vs. State***[16], ***Kusum Ingots & Alloys Ltd. vs. Pennar Peterson Securities Ltd.***[17].

Brief re-cap of legal landscape

16. Expatiating on section 141 of the NI Act, in one of its earlier decisions in *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla* (supra), the Supreme Court had this to say in answer to a reference made to a 3-Judge Bench :

> *"**10.** While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed*

---

[12] (2000) 1 SCC 722 at para 12

[13] 2008 SCC OnLine Del 158 at para 15 and 16

[14] (2015) 1 SCC 103 at paras 34.1 to 34.3

[15] (2016) 6 SCC 62 at paras 26 and 33

[16] 2013 SCC OnLine Del 4416 at para 8

[17] (2000) 2 SCC 745 at paras 10, 12, 13 and 14

by a company. The key words which occur in the section are "every person". These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words:

> *"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, etc.*"

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***.

"***11.*** *A reference to sub-section (2) of Section 141 fortifies the above reasoning because sub-section (2) envisages direct involvement of any director, manager, secretary or other officer of a company in the commission of an offence. This section 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 these offices in a company. In such a case, such persons are to be held liable. Provision has been made for directors, managers, secretaries and other officers of a company to cover them in cases of their proved involvement.*

"***12.*** *The conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company.* ***Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable.***

* * * * *

"***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 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 to be averred as a fact as there is no deemed liability of a director in such cases****.*

*(c) * * * * * "*

(emphasis supplied)

17. Again, in *Sabitha Ramamurthy vs. R.B.S. Channabasavaradhya* (supra) the Supreme Court reiterated that to fasten vicarious liability upon a director for an offence committed by a company, requisite statements have to be made in the complaint and in the complainant's evidence, before the criminal process can be initiated against a director :

*"**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 therefore. ***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 of the statutory requirements*** *would be insisted. Not only the averments made in paragraph 7 of the complaint petitions does not meet the said statutory requirements, the sworn statement of the witness made by the son of Respondent herein, does not contain any statement that 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 of the statutory 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 therefore. In the event, ultimately, the prosecution is found 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 construed from the aforementioned point of view."*

(emphasis supplied)

18. In its decision in *Saroj Kumar Poddar* (supra) the Supreme Court said this :

> *"**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**.*
>
> *"**15.** Our attention, however, has been drawn to the averments made in paras 7 and 10 of the complaint petition, but on a perusal thereof, it would appear that therein merely allegations have been made that the cheques in question were presented before the bank and they have been dishonoured. **Allegations to satisfy the requirements of Section 138 of the Act might have been made in the complaint petition but the same principally relate to the purported offence made by the company. With a view to make a 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 in law**."*
>
> (emphasis supplied)

19. The same principle has been reiterated by the Supreme Court in *N.K. Wahi* (supra) :

> *"**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 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****."*

(emphasis supplied)

20. The observations of the Supreme Court in *Gunmala Sales (P) Ltd. vs. Anu Mehta* (supra), also address the circumstance where process has been issued based on foundational averments contained in the complaint against a director, explaining the satisfaction required for quashing a complaint at the instance of such director. The following paragraphs of the judgement are instructive :

> *"**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 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.*
>
> * * * * *
>
> *"**34.1.** Once in a complaint filed under Section 138 read with Section 141 of the NI Act* ***the basic averment is made that the Director was in charge of and responsible for the conduct of the***

business of the company at the relevant time when the offence was committed*, the Magistrate can issue process against such Director.*

*"**34.2.** If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint* ***because the complaint contains the basic averment which is sufficient to make out a case against the Director.***

*"**34.3.** In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed.*

*"**34.4.** **No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court**. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and*

circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director."

(emphasis supplied)

21. In its recent decision in ***Sunita Palita and Ors. vs. Panchami Stone Quarry***[18], the Supreme Court emphasised the need for substantiating the contentions contained in the complaint against a director, who is not a signatory to the cheque nor a managing director or joint managing director, in the following words:

> "***41.*** *A Director of a company who was not in charge or responsible for the conduct of the business of the company at the relevant time, will not be liable under those provisions. As held by this Court in, inter alia, S.M.S. Pharmaceuticals Ltd. (supra), the liability Under Section 138/141 of the NI Act 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. It would be a travesty of justice to drag Directors, who may not even be connected with the issuance of a cheque or dishonour thereof, such as Director (Personnel), Director (Human Resources Development) etc. into criminal proceedings under the NI Act, only because of their designation.*
>
> "***42.*** *Liability depends on the role one plays in the affairs of a company and not on designation or status alone as held by this Court in S.M.S. Pharmaceuticals Ltd. (supra). The materials on record clearly show that these Appellants were independent, non-executive Directors of the company. As held by this Court in Pooja Ravinder Devidasani v. State of Maharashtra and Anr. (supra) a non-Executive Director is not involved in the day-to-day affairs of*

[18] (2022) 10 SCC 152

> *the company or in the running of its business. Such Director is in no way responsible for the day-to-day running of the Accused Company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque,* ***specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such Director was in charge of and responsible for conduct of the business of the Company*** *or the Company, unless such Director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and/or its business and affairs."*
>
> (emphasis supplied)

22. Clearly, therefore, for summons to be sustained and for trial to continue, it is *absolutely essential that the basic or foundational averments* must be contained in a criminal complaint against a director in relation to his alleged role in the offence.

23. As to the need for application of mind by the courts, and for not passing summoning orders in criminal complaints mechanically, one of the leading decisions of the Supreme Court in *Pepsi Foods Ltd. vs. Special Judicial Magistrate* (supra), may be cited for reference :

> *"**28.** Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion.* ***The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused****. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence*

brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

(emphasis supplied)

24. The above-referred principle has been reiterated by the Supreme Court in *Sunil Todi vs. State of Gujarat* (supra), observing that :

> *"**39.** This Court has held that the Magistrate is duty bound to apply his mind to the allegations in the complaint together with the statements which are recorded in the enquiry while determining whether there is a prima facie sufficient ground for proceeding. In Mehmood UI Rehman v. Khazir Mohammad Tunda, this Court followed the dictum in Pepsi Foods Ltd. v. Special Judicial Magistrate, and observed that setting the criminal law in motion against a person is a serious matter. Hence, there must be an application of mind by the Magistrate to whether the allegations in the complaint together with the statements recorded or the enquiry conducted constitute a violation of law. The Court observed:*
>
> > *"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.*
> >
> > * * * * *
> >
> > *"22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the*

Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate ***that he is satisfied that the allegations in the complaint constitute an offence*** *and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance.* ***The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment****."*

* * * * *

"53. *The test to determine if the Managing Director or a Director must be charged for the offence committed by the Company is to determine if the conditions in Section 141 of the NI Act have been fulfilled i.e., whether the individual was in-charge of and*

> *responsible for the affairs of the company during the commission of the offence. However, the determination of whether the conditions stipulated in Section 141 of the MMDR Act (sic, NI Act) have been fulfilled is a matter of trial. There are sufficient averments in the complaint to raise a prima facie case against them. It is only at the trial that they could take recourse to the proviso to Section 141 and not at the stage of issuance of process."*
>
> (emphasis supplied)

25. For completeness, it may be recorded that counsel for the respondent No. 1 has also placed reliance upon the decision of Supreme Court in *Col. B.S. Sarao* (supra) to substantiate his contention that the stage for a director of a company to show that he was not associated with the company at all or that he had ceased to be a director at the time of commission of offence, would be available at the stage of leading his defence (cf. paras 15 and 16 of that judgment). But to be sure, in the same decision the Supreme Court has also observed that the stage for a director to lead his defence would arise (only) *after the complainant has discharged the initial burden;* and that in order to invoke the deeming provision in the statute (which was section 27 of the SEBI Act in that matter), it will have to be averred in the complaint that the person who has been arraigned in his capacity as director of such company was in-charge of the affairs of the company and was responsible to it for the conduct of its business at the time of the commission of offence (cf. para 11). In the opinion of this court therefore, respondent No. 1 is selectively reading the decision of the Supreme Court in *Col. B.S. Sarao* (supra), which judgment does not support respondent No.1's submission.

26. Furthermore, counsel for respondent No.1 has also cited the decision of Supreme Court in *Kanti Bhadra Shah* (supra)**,** to submit that it is not necessary for a Magistrate to write detailed orders at the stage of issuing summons (cf. para 12 of the judgment). A meaningful reading of the said judgment would show that the Supreme Court has expressed that it is quite unnecessary to write "*detailed orders*" at stages such as when issuing process, which is not to say that the need for at least briefly stating the reasons for issuing summons sufficient to disclose that the Magistrate has applied his mind, is to be dispensed with completely. It is not the purport of the Supreme Court observation in *Kanti Bhadra Shah* (supra) that summoning order can be passed mechanically without even a barebones reference or reasoning as to how a *prima-facie* case is made-out against a given accused.

27. Lastly, counsel for respondent No. 1/complainant has objected to the petitioner having invoked the remedy under section 482 Cr.P.C. at a belated stage, also urging that the present petition ought not to be entertained since the petitioners have an efficacious statutory remedy of filing a criminal revision petition under section 397 Cr.P.C. to challenge the summoning orders. This objection requires to be addressed briefly. Though there is no cavil with the position that the summoning orders were originally passed by the learned ACMM, Bangalore on 10.09.2014 and 19.02.2015, which were amenable to challenge by way of a criminal revision petition before the competent court, by reason of the chequered history of the case, another set of summoning orders came to be passed by the learned MM, Delhi on

08.03.2017. Principally it is these orders dated 08.03.2017 passed by the learned MM, Delhi that have been impugned by way of the present petitions before this court, which petitions were filed on 03.07.2017. Considering the manner in which the criminal complaints filed in the matter have been transferred to-and-from the court in Bangalore, the petitioners cannot be blamed for any undue delay in invoking the remedy under section 482 Cr.P.C. To address the other facet of the submission, *viz.* the existence of a statutory remedy by way of a criminal revision petition, though the complainant/respondent No. 1 is not wrong in arguing that *ordinarily* where there is a statutory remedy, the inherent powers of the High Court ought not to be lightly invoked or exercised, it is also the settled position of law that the existence of a statutory remedy *does not legally bar* the invocation of the inherent powers of the High Court under section 482 Cr.P.C. in an appropriate case.[19] The existence of a statutory remedy most certainly does not detract from the invocation and exercise of the inherent powers of the High Court under section 482 Cr.P.C. *ex debito justitiae*.[20] Suffice it to say that in the facts and circumstances of the present case, this court is persuaded to exercise its inherent powers under section 482 Cr.P.C.

[19] ***Dhariwal Tobacco Products Ltd. vs. State of Maharashtra***, (2009) 2 SCC 370 at paras 6 & 7

[20] ***State of Karnataka vs. M. Devendrappa***, (2002) 3 SCC 89 at para 6; ***Gian Singh vs. State of Punjab*** (2012) 10 SCC 303 at para 51

Discussion & Conclusions

28. In the backdrop of the submissions made by counsel on both sides; being guided by the legal position on relevant aspects as laid-down by the Supreme Court in the judgements cited above; and, most importantly, on a bare reading of the allegations contained in the criminal complaints (or the lack of them), based on which the impugned summoning orders have been passed, the following inferences plainly arise :

28.1 It is not the complainant's case that any of the petitioners was signatory to the cheques that were dishonoured;

28.2 In fact, in the body of the criminal complaints the complainant does not even aver that the petitioners, or any of them, were directors of the accused company; and if so, whether they were directors at the relevant time. *Only* the memorandum of parties to the criminal complaints set-out the names of the petitioners with the designation 'Director' alongside each name;

28.3 In all the criminal complaints there is no allegation that the petitioners were involved in *issuance* of the cheques; nor any allegation that they were responsible for the dishonour of the cheques. No role has been ascribed to the petitioners in that behalf;

28.4 Though, in the two criminal complaints filed in Delhi it is narrated that *all the directors* of the accused company *"had held discussions in finalizing purchase order"*; that *"the purchase order was given by accused company in discussion*

with all the directors"; that all the directors *"had participated in finalization of purchase order";* and that hence *"all other directors are involved and concerned with the business transaction"*, yet again there is no specificity as to the role ascribed to the petitioners individually. At best, there is a vague and sweeping allegation claiming that all directors of the accused company had engaged with the complainant in relation to the transaction, which is insufficient to impute any criminal liability upon any of the petitioners;

28.5 Neither the summoning orders made by the Bangalore court nor the summoning orders made by the Delhi court contain any reference, leave alone any discussion, as to any allegations against the petitioners or any of them. This is so evidently because *there are no specific allegations spelt-out against the petitioners in the criminal complaints*;

28.6 Since no allegations have been spelt-out against the petitioners in relation to the commission of the alleged offence, there is no question of the learned Magistrates having applied their mind, or having satisfied themselves that the petitioners had committed the offence even on a *prima-facie* basis;

28.7 In fact, as seen from the table set-out above, though some of the cheques were dishonoured for 'insufficiency of funds' or for 'exceeding arrangement', some other cheques have been dishonoured for '*other reasons*'. The record does not reflect as to what these 'other reasons' may have been. Even a cursory

reading of section 138 of the NI Act would show that for an offence to be made-out under that provision a cheque must be returned unpaid by a bank "*... 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 ...*". Accordingly, insufficiency of funds in an account or the cheque amount exceeding the arrangement with the drawer's bank are the grounds that form the gravamen of the offence contained in section 138 of the NI Act. However, when a cheque is returned with a noting that it has been dishonoured for "*other reasons*", it certainly begs the question as to what the specific reason for dishonour was. This question ought to have been raised in the course of proceedings *before* summons were issued, failing which it is not even clear if the basic ingredients of the offence under section 138 are made-out in relation to a given cheque.

29. Before parting with the matter, this court is constrained to observe that it appears to have become commonplace for complainants to arraign all and sundry directors of a company as accused in a criminal complaint in relation to dishonour of cheques, with the evident intention of pressurising and arm-twisting a company into paying-up a claimed debt. It is necessary to articulate that a criminal complaint under section 138 of the NI Act is not, in and of itself, a money recovery proceedings, even though fine and compensation may be imposed upon conviction. The wanton arraignment of directors

without reference to their role in relation to a transaction, or to the issuance or dishonour of a cheque by the company, requires to be deprecated and discouraged, since it amounts to abuse of the salutary process of criminal law.

30. Testing the summoning orders on the touchstone of the settled law, based on the inevitable inferences as set-out above, this court is clear that for *one*, there are no allegations in the criminal complaints in relation to the petitioners, muchless any specific allegations as to their role in the alleged offence. In these circumstances, it cannot be said that the petitioners would incur any vicarious liability alongwith the accused company merely because they were directors of the company. *Two*, absent any allegations against the petitioners in the criminal complaints, the issuance of the summoning orders was evidently not informed by any application of mind, but was the outcome of a purely mechanical process.

31. In the above view of the matter, the summoning orders cannot be sustained in law; and the same are accordingly quashed. All proceedings arising from the summoning orders *insofar as they relate to the petitioners* are also set-aside.

32. The petitions stand disposed-of in the above terms.

33. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

Pronounced *via* video-conferencing on
JUNE 28, 2023/*ak*