

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

Date of decision: 12th February, 2013

+ **CRL. M.C. 3749/2012**

CHINTAN ARVIND KAPADIA & ANR. Petitioners

Through: Mr. Tanmaya Mehta, Advocate

versus

STATE & ANR. Respondents

Through: Ms. Rajdipa Behura, APP for the State
/Respondent No.1.

Mr. Harshvardhan Singh, Advocate for
the Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Petitioners invoke inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973(Cr.P.C.) for quashing of the order dated 26.05.2012 passed by the learned Metropolitan Magistrate ("MM), Rohini, summoning the Petitioners and other accused in a complaint case No.596/2012 titled "M/s. Rama Krishna Electro Components Pvt. Ltd. v. Sandeep Ramkrishan Arora @ Karan Arora & Ors."
2. In the complaint, it was alleged that M/s. High Ground Enterprises Pvt. Ltd. (Accused No.3 before the Court of MM) had issued certain cheques in favour of the Respondent No.2 in discharge of its liability. The

cheques when presented were dishonoured with the remarks “payment stopped by the drawer”. A statutory notice under Section 138 of the Negotiable Instruments Act, 1881(the Act) was served upon the drawer company. Accused No.4 was alleged to be the authorized signatory of accused No.3 company and accused Nos.1 and 4 to 6 were alleged to be directors of the company and responsible for day to day affairs of the accused company.

3. The only ground of challenge raised by the learned counsel for the Petitioner is that the Complaint filed by Respondent No.2 did not reveal as to how the Petitioner was in charge of and responsible for the conduct of business of the accused company and mere averments in the complaint that the Petitioner being a Director was in charge of and responsible for conduct of the business of the company was not enough to issue process against the Petitioner.
4. Referring to *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal & Anr. (2010) 3 SCC 330*; *Central Bank of India v. Asian Global Limited & Ors. (2010) 11 SCC 203*; and *Anita Malhotra v. Apparel Export Promotion Council & Anr. (2012) 1SCC 520*, the learned counsel for the Petitioner urges that unless it was specifically averred in the complaint as to how and in what manner the Petitioner was in charge of and responsible for the conduct of the business of the company, he cannot be made vicariously liable.
5. On the other hand, learned counsel for Respondent No.2 argues that it will be enough to aver in the Complaint that the Director or the officer

concerned was in charge of and responsible for the conduct of the business of the Company, it would be only matter of trial as to how the person sought to be prosecuted was in charge of and responsible for the conduct of the business. Learned counsel for the Respondent presses into service *Paresh P. Rajda v. State of Maharashtra & Anr.* (2008) 7 SCC 442 and *Rallis India Limited v. Poduru Vidya Bhusan & Ors.*, (2011) 13 SCC 88.

6. To appreciate the contention raised, it would be appropriate to extract Para 2 of the Complaint whereby vicarious liability is sought to be fixed on the Petitioner. The same reads as under:

“2. That the accused No.1 is the director of the accused No.3 company and is responsible and liable for day to day affairs of accused No.3 company. Further, accused No.2 is the authorized signatory of the accused No.3 company and has been duly authorized for the same. Apart, the accused No.4 to 6 are also the directors of the company and are responsible for day to day affairs of the accused No.3 company.”

7. In *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal & Anr.*, (2010) 3 SCC 330, the Supreme Court analysed the provisions of Section 141 of the Act and observed that mere repetition of the words as given in Section 141(2) of the Act will not be enough to make a director or an officer vicariously liable for the act of the company. Para 38 of the report is extracted hereunder:

“38. But if the accused is not one of the persons who falls under the category of “persons who are responsible to the company for the conduct of the business of the company” then merely by stating that “he was in charge of the business of the company” or by

stating that “he was in charge of the day-to-day management of the company” or by stating that “he was in charge of, and was responsible to the company for the conduct of the business of the company”, he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under subsection (2) of Section 141 of the Act.”

8. To the same effect are the observations of the Supreme Court in *Central Bank of India v. Asian Global Limited & Ors.*, (2010) 11 SCC 203. The Supreme Court held that although the managing director or a joint managing director of the company would be admittedly in charge of the company and responsible for the conduct of its business, the same yardstick would not apply to a director. It was stated that for making a director vicariously liable for the act of the company, there has to be clear and unambiguous averments as to the part played by the director in the transaction in question and how they were in charge of and responsible to the company for the conduct of its business. Paras 17 to 19 of the report are extracted hereunder:

“17. The law as laid down in S.M.S. Pharmaceuticals Ltd. case (2005) 8 SCC 89 has been consistently followed and as late as in 2007, this Court in N.K. Wahi case (2007) 9 SCC 481 while considering the question of vicarious liability of a Director of a company, reiterated the sentiments expressed in S.M.S. Pharmaceuticals Ltd. that merely being a Director would not make a person liable for an offence that may have been committed by the company. For launching a prosecution against the Directors of a company under Section 138 read with Section 141 of the 1881 Act,

there had to be a specific allegation in the complaint in regard to the part played by them in the transaction in question. It was also laid down that the allegations had to be clear and unambiguous showing that the Directors were in charge of and responsible for the business of the company. This was done to discourage frivolous litigation and to prevent abuse of the process of court and from embarking on a fishing expedition to try and unearth material against the Director concerned.

18. In this case, save and except for the statement that the respondents, Mr Rajiv Jain and Sarla Jain and some of the other accused, were Directors of the accused Companies and were responsible and liable for the acts of the said Companies, no specific allegation has been made against any of them. The question of proving a fact which had not been mentioned in the complaint did not, therefore, arise in the facts of this case. This has prompted the High Court to observe that the Bank had relied on the mistaken presumption that as Directors, Rajiv Jain, Sarla Jain and the other Directors were vicariously liable for the acts of the Company.

19. Admittedly, except for the aforesaid statement, no other material has been disclosed in the complaint to make out a case against the respondents that they had been in charge of the affairs of the Company and were responsible for its action. The High Court, therefore, rightly held that in the absence of any specific charge against the respondents, the complaint was liable to be quashed and the respondents were liable to be discharged.”

9. There is a latest report of the Supreme Court in *Anita Malhotra v. Apparel Export Promotion Council & Anr. (2012) 1 SCC 520*, wherein it was laid down that reproduction of the statutory requirement (as laid down in Section 141(2) of the Act) by itself would not be sufficient to make director of a company liable. The complainant should specifically spell out as to how and in what manner the director was in charge and responsible to the accused company for conduct of its business. Relying

on *National Small Industries Corporation Ltd.*, the Supreme Court held as under:

“22. This Court has repeatedly held that in case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. (Vide National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal (2010) 3 SCC 330. In the case on hand, particularly, in Para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day-to-day affairs of the Company. We have verified the averments as regards to the same and we agree with the contention of Mr Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day-to-day affairs of the Company. On this ground also, the appellant is entitled to succeed.”

10. The judgment in *Paresh P. Rajda v. State of Maharashtra & Anr. (2008) 7 SCC 442* was distinguished by the Supreme Court in *National Small Industries Corporation Ltd* and it was held that necessary averments had been made in the Complaint in *Paresh P. Rajda*. Para 32 of the report is extracted hereunder:-

“32. Learned counsel for the appellants after elaborately arguing the matter, by inviting our attention to Paresh P. Rajda v. State of Maharashtra (2008) 7 SCC 442 contended that a departure/digression has been made by the Court in N. Rangachari v. BSNL (2007) 5 SCC 108. However, in this case also the Court has observed in para 4 that the High Court had noted that: (Paresh P. Rajda case)

“4. ... an overall reading of the complaint showed that specific allegations had been levelled against [the accused]

as being a responsible officer of the accused Company and therefore equally liable....”

In fact, the Court recorded the allegations in the complaint that the complainant knew all the accused and that Accused 1 was the Chairman of the accused Company and was responsible for day-to-day affairs of the Company. This Court though has only noted the decision in N. Rangachari case and observed that an observation therein showed a slight departure vis-à-vis the other judgments (i.e. S.M.S. Pharmaceuticals Ltd. case (2005) 8 SCC 89 and S.M.S. Pharmaceuticals Ltd. case (2007) 4 SCC 70, but then the Court went on to record that in N.K. Wahi case (2007) 9 SCC 481 this Court had reiterated the view in S.M.S. Pharmaceuticals Ltd.. The Court then concluded in para 11 that:

“11. It was clear from the aforequoted judgments that the entire matter would boil down to an examination of the nature of averments made in the complaint....”

On facts, the Court found necessary averments had been made in the complaint.”

11. Similarly in *Rallis India Limited* relied upon by the learned counsel for the Respondent, the accused persons were the working partners in the firm. There were disputed questions as to when the earlier partnership was dissolved and since which date the Respondents (in that case) ceased to be the partners of the firm. It was in that context that the Supreme Court ruled that the High Court should not have discharged the respondents who were being prosecuted under Section 141 of the Act being working partners of the firm.
12. I have also extracted above para 2 of the complaint. There are simply bald allegations that the Petitioner (accused No.6) and other directors were responsible for day to day affairs of the accused company. Following the law laid down in *National Small Industries Corporation*

Ltd., Central Bank of India and Anita Malhotra, these averments were not sufficient to issue process against the Petitioner. The Petitioner's summoning is, therefore, quashed.

13. The Petition, therefore, has to be allowed. I accordingly quash the complaint No.596/2012 so far as it concerned the Petitioners.
14. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 12, 2013
pst/vk