2025 INSC 223

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2025
[Arising out of SLP (Crl.) Nos. 4051-4054 of 2020]

KAMALKISHOR
SHRIGOPAL TAPARIA ……..APPELLANT

Versus

INDIA ENER-GEN PRIVATE
LIMITED & ANR. ……. RESPONDENTS

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. Leave granted.

2. The present appeals have been preferred against the Impugned common Judgment and Order dated 06.08.2019 passed by the High Court of Judicature at Bombay dismissing the petitions under Section 482 of the Code of Criminal Procedure, 1973 (the "CrPC") seeking quashing of criminal proceedings initiated against the Appellant under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (the "NI Act").

3. The Appellant, who was an independent non-executive director of M/s D.S. Kulkarni Developers Ltd., has been arrayed as an accused in the complaints filed under section 138 of the NI Act alleging dishonor of cheques issued by the company. The High Court, while dismissing the Appellant's plea, observed that the role of the director is a matter of trial and that the complainant has made sufficient averments regarding the Appellant's involvement.

BACKGROUND

4. The Appellant was appointed as an additional independent non-executive director on 02.01.2008 and subsequently designated as an independent non-executive director on 27.09.2008. *Vide* the resolution passed at the annual general meeting held on 30.09.2014, and formally confirmed through a letter dated the same day, the Appellant was reappointed as an independent non-executive director. Notedly, the Appellant had no role in the financial operations or key-management of the company.

5. The company allegedly availed two loans from Respondent No. 1 during 2016-2017, amounting to ₹56,00,000/- and ₹70,00,000/- respectively. As repayment, the company issued various cheques, which were dishonoured due to

insufficient funds. Pertinently, the Appellant neither signed nor authorised the issuance of these cheques.

6. The details of the dishonoured cheques are as follows:

1. Cheque No. 455494, dated 24.11.2016, amounting to ₹8,00,000/-.

2. Cheque No. 455495, dated 25.12.2016, amounting to ₹8,00,000/-.

3. Cheque No. 455496, dated 25.01.2017, amounting to ₹8,00,000/-.

4. Cheques No. 455497, 455498, 455499, and 455500, dated 28.02.2017, amounting to ₹10,00,000/- each.

7. Importantly, the cheques were not signed by the Appellant, and in two out of the four criminal cases, the demand notices were initially not addressed to the Appellant. It was only in the second set of demand notices that the Appellant's name appeared, along with all directors, independent directors, non-executive directors, and additional directors.

8. The Appellant resigned from the position of independent non-executive director on 03.05.2017. His resignation was duly notified to the Registrar of Companies through Form DIR-11 and Form DIR-12, with effect from the same date.

9. The following complaints under Section 138 NI Act were filed against the company before the Learned Metropolitan Magistrate 28th Court, Esplanade, Mumbai:

1. Complaint No. 66/SS of 2017, filed on 31.07.2017, *qua* Cheque No. 455494.

2. Complaint No. 645/SS of 2017, filed on 23.02.2017, *qua* Cheque No. 455495.

3. Complaint No. 697/SS of 2017, filed on 07.04.2017, *qua* Cheque No. 455496.

4. Complaint No. 1595/SS of 2017, filed on 22.05.2017, *qua* Cheque No(s). 455497, 455498, 455499, and 455500.

10. The High Court dismissed the Appellant's applications under Section 482 CrPC (Criminal Application Nos. 21, 22, 116 & 255 of 2019) seeking quashing of the proceedings pending before Learned Metropolitan Magistrate 28th Court, Esplanade, Mumbai.

SUBMISSION BY THE PARTIES

11. The learned counsel for the Appellant argued that the Appellant was a non-executive director and had no involvement in the financial affairs of the company. The complaints do not

provide any specific averments detailing his role in the dishonoured cheques.

12. It was submitted that the Appellant had resigned from the company well before the offence occurred and that making him liable for an act committed post-resignation was a misuse of the legal process. Section 141 of the NI Act establishes vicarious liability only upon directors who were in-charge of and responsible for the conduct of the business of the company at the relevant time.

13. On the contrary, the learned counsel for the Respondent(s) submitted that the High Court rightly observed that the role of the Appellant was a matter to be examined during the trial. The Respondent(s) counsel argued that the vicarious liability under Section 141 of the NI Act could extend to directors, regardless of their executive or non-executive status.

14. The Respondent(s) further submitted that the Appellant, by virtue of his directorship, was part of the decision-making apparatus of the company, therefore, could not escape liability at the pre-trial stage.

ANALYSIS AND FINDINGS

15. This Court has consistently held that a mere designation as a director does not conclusively establish liability under section

138 read with section 141 of the NI Act. Liability is contingent upon specific allegations demonstrating the director's active involvement in the company's affairs at the relevant time.

15.1. This Court in ***National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another,*** (2010) 3 SCC 330 observed:

> *"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 role 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.*
>
> *x-x-x*
>
> *22. Therefore, this Court has distinguished the case of persons who are incharge of and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of the company.*

x-x-x

39. From the above discussion, the following principles emerge: (i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 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 offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.

(vii) 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."*

15.2. In ***N.K. Wahi v. Shekhar Singh,*** (2007) 9 SCC 481 this Court in *(Para:8)* observed:

> *"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."*

15.3. In ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another,*** (2005) 8 SCC 89, this Court laid down that mere designation as a director is not sufficient; specific role and responsibility must be established in the complaint.

15.4. In ***Pooja Ravinder Devidasani v. State of Maharashtra,*** (2014) 16 SCC 1 this Court while taking into consideration that a non-executive director plays a governance role, and are not involved in the daily operations or financial management of the company, held that to attract liability under section 141 of the NI Act, the accused must have been actively in-charge of the company's business at the relevant time. Mere directorship does

not create automatic liability under the Act. The law has consistently held that only those who are responsible for the day-to-day conduct of business can be held accountable.

16. Upon perusal of the record and submissions of the parties, it is evident that the Appellant was neither a signatory to the dishonoured cheques nor was he actively involved in the financial decision-making of the company. Moreover, he resigned from the post of independent non-executive director on 03.05.2017, duly notified through Form DIR-11 and DIR-12 to the Registrar of Companies.

17. The complaints do not contain any specific averments detailing how the Appellant was responsible for the dishonoured cheques.

18. Petitioner's role in the accused company was limited to that of an independent non-executive director, with no financial responsibilities or involvement in the day-to-day operations of the company. Furthermore, he was not responsible for the conduct of its business.

19. The legal precedents cited above, including ***Pooja Ravinder*** (supra), clearly hold that non-executive directors cannot be held liable under section 138 NI Act unless specific evidence proves their active involvement.

CONCLUSION

20. In view of the above observations, the Appellant cannot be held vicariously liable under section 141 of the NI Act. The complaints do not meet the mandatory legal requirements to implicate him.

21. Accordingly, the Impugned Judgment and Order dated 06.08.2019 of the High Court is set aside, and the criminal proceedings against the Appellant in Complaint Nos. 66/SS, 645/SS, 697/SS, 1595/SS (all) of 2017 pending against the present Applicant before the Learned Metropolitan Magistrate 28th Court, Esplanade, Mumbai are hereby quashed.

22. The appeals are allowed. No order as to costs.

…….J.
[B. V. NAGARATHNA]

…….J.
[SATISH CHANDRA SHARMA]

NEW DELHI
February 13th, 2025.