

PARESH P. RAJDA

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v.

STATE OF MAHARASHTRA & ANR.

(Criminal Appeal No. 921 of 2008)

MAY 16, 2008

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[TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.]

*Negotiable Instruments Act, 1881, sections 138 and 141:*

*Dishonour of cheques — Notice summoning accused, Chairman of a company, to appear before Court — Accused filing application for quashing of proceedings before the High Court stating that no case for summoning has been made out against him in the complaint — High Court directing the Magistrate to decide the application — Application dismissed by Magistrate — Accused filed another application before High Court — Dismissed by the High Court holding that specific allegation had been levelled against him — Correctness of — Held: Liability of director/Chairman of a company could be fixed only after examining nature of averments made in the complaint and as to whether specific allegation had been levelled against accused person or not — A perusal of averments made in the complaint in the instant case would show that specific allegations against the accused to the effect that they were responsible officers of the company made in the complaint — Moreover, trial has not yet been started, therefore, it would be inappropriate to pass any order about quashing of the proceedings — Code of Criminal Procedure, 1973 — s. 395.*

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**In connection with business dealing, accused-appellant had issued two cheques for certain amount in favour of a company. Since the cheques were dishonoured by the bank with certain remarks, notice was issued to accused No.1, the company, accused No.2, the appellant, Chairman of the Company and accused No.4, appellant in connected appeal, a Director of the company. It was**

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A only after issuance of non-bailable warrants against the  
accused, they appeared before the Court. The accused-  
appellant moved an application avering therein that no  
case for summoning had been made out against him as  
no overt act with regard to the issuance of dishonoured  
B cheques had been attributed to him. The Magistrate dis-  
missed the application holding that the process under  
Section 395 Cr.P.C. had already been issued. The High  
Court held that specific allegations had been levelled  
against him as being a responsible officer of the accused  
C Company and he, was therefore equally liable. Hence, the  
present appeals.

Accused-appellants contended that no allegation  
whatsoever had been made against him and he had been  
arrayed in a mechanical manner, merely because he hap-  
D pened to be Chairman/Director of the company; that if an  
offence was committed by 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, would be deemed to be  
E guilty of the offence and would be liable to be proceeded  
against and as no such allegations had been made in the  
complaint, the issuance of process against him was not  
justified.

Respondents submitted that it was not possible at  
F this stage and without evidence to reach a conclusion as  
to the liability of the appellant and it was, therefore, ap-  
propriate that the matter be left to trial, as had been ob-  
served by the High Court; that the allegations that the  
accused were in fact, responsible officers of the Company  
G and were also conducting its day-to-day activities, had  
been specifically made in the complaint; that a great deal  
of material had been put on record to show that the ac-  
cused company and its officers had issued several  
cheques to other organizations as well, which too had

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bounced, and that huge sums were due from the Company on that account and, they being habitual offenders, were not entitled to any relief.

Dismissing the appeal, the Court

HELD: 1. In *S.M.S Pharmaceuticals vs. Neeta Bhalla\**, a three Judge Bench of this Court examined the scope and ambit of Section 141 of the Negotiable Instruments Act and the liability created with respect to the Directors and other persons responsible for the affairs of the company. As this matter had come before the three-Judge Bench on a reference, the Bench reverted the matter for a discussion on facts to a Bench of two-Judges. The matter was again examined by the Bench and it was found that the necessary averments had been made in the complaint so as to attract the provisions of Section 141 of the Act. The matter came up yet again for consideration in the case of *N.K. Wahi vs. Shekhar Singh & Ors.\*\**, which reiterated the earlier view and held that where there were no clear averment in the complaint or the evidence with regard to the role played by the Directors and as to whether and they were in charge and responsible for the conduct of the affairs of the company, it would not be possible to maintain the prosecution against them and they were entitled to acquittal. It will be clear from the afore quoted judgments that the entire matter would boil down to an examination of the nature of averments made in the complaint. (Paras 5, 6, 7 & 8) [1198- D & E; 1199-C,D & E]

*\*S.M.S Pharmaceuticals vs. Neeta Bhalla & Anr. (2005)8 SCC 89; S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr. (2007) 4 SCC 70 and \*\*N.K.Wahi vs. Shekhar Singh & Ors. (2007) 9 SCC 481 – relied on.*

2. A perusal of paragraphs '5' and '8' of the complaint would show that accused No.2 is the Chairman of the Company, and as per the impugned judgment of the High Court, the question of his responsibility for the business

A of the Company has not been seriously challenged. The Court nonetheless, found clear allegations against both the accused/appellants to the effect that they were officers and responsible for the affairs of the company. This Court is of the opinion that at a stage where the trial has not yet started, it would be inappropriate to quash the proceedings against them in the light of the observations of this Court in the earlier cases. (Para – 9) [1200- D & E]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 921 of 2008

C From the Judgment and final Order dated 20.12.2005 of the High Court of Judicature at Bombay in CrI. Application No. 5311/2004

D Bhaskar P. Gupta, Pradip Ghosh, G.S. Chatterjee, Raja Chatterjee and Sachin Das for the Appellant.

Amar Dave, Nandini Gore and Ravindra Keshavrao Adsure for the Respondents.

The Judgment of the Court was delivered by

E **HARJIT SINGH BEDI, J.** 1. Leave granted.

2. This judgment will dispose off Criminal Appeals arising out of SLP (CrI.) Nos.3074 and 3075 of 2006. The facts have been taken from the record of SLP (CrI.) No. 3074 of 2006.

F They are as under:

3. Tata Finance Limited, which had commercial dealings with the accused, filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called the "Act") alleging that the accused had issued two cheques dated 25<sup>th</sup> November 2001 and 18<sup>th</sup> December 2001, each for Rupees One Lakh, which had been dishonoured on 20<sup>th</sup> December 2001 with the remarks "Exceeds Arrangements". Notice was issued to accused No.1 i.e. the Company, including accused No.2 Pares P.Rajda, the Chairman and accused No.4 Vijay Shroff, a director of the Company and they appeared reluctantly be-

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fore the court afterailable warrants had been issued. Accused Paresh Rajda thereupon moved an application that as per the averments made in the complaint itself, no case for summoning him had been made out as no overt act with regard to the issuance of the dishonoured cheques had been attributed to him. The High Court, however, vide its order dated 9<sup>th</sup> June 2004 directed that the application under Section 395 of the Code of Criminal Procedure, 1974 which had already been made before the Metropolitan Magistrate be decided at the first instance. The Magistrate, however, rejected the application on 18<sup>th</sup> October 2004 holding that he had no jurisdiction in the matter, as process under Section 395 of the Code had already been issued. It is in this circumstance that the accused once again moved the High Court. The High Court in its order dated 20<sup>th</sup> December 2005 held that the argument that the accused had been arrayed as such merely because he was a Director of the Company was wrong inasmuch as an over-all reading of the complaint showed that specific allegations had been levelled against him as being a responsible officer of the accused Company and therefore equally liable, and that if it was ultimately found that the accused had, in fact, no role to play, he would be entitled to an acquittal. The petition was accordingly dismissed. It is in this background that the present appeal is before us.

4. The learned counsel for the appellant has argued that a perusal of the complaint would show that no allegation whatsoever had been made against the accused and he had been arrayed in a mechanical manner, merely because he happened to be a Director of the company. He has, in particular, referred us to the provisions of Section 141 of the Act that if an offence was committed by 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, would be deemed to be guilty of the offence and would be liable to be proceeded against and as no such allegations had been made in the complaint, the issuance of process against the accused was not justified. In support of this argument, he

A has placed reliance on *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr.* (2005) 8 SCC 89 and *N.K. Wahi vs. Shekhar Singh & Ors.* (2007) 9 SCC 481. The learned counsel for the respondents has, however, submitted that it was not possible at this stage and without evidence to reach a conclusion as to the liability of the appellant and it was, therefore, appropriate that the matter be left to trial, as had been observed by the High Court. The learned counsel has also drawn our attention to paragraphs 2 and 8 of the complaint to contend that the allegations that the accused were, in fact, responsible officers of the Company and were also conducting its day-to-day activities, had been specifically made. It has also been pointed out that a great deal of material had been put on record to show that the accused company and its officers had issued several cheques to other organizations as well, which too had bounced, and that huge sums were due from the Company on that account and, they being habitual offenders, were not entitled to any relief. The learned counsel has relied upon *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr.* (2007) 4 SCC 70, *Everest Advertising (P) Ltd. vs. State, Govt of NCT of Delhi & Ors.* (2007) 5 SCC 54 and *N. Rangachar vs. Bharat Sanchar Nigam Ltd.* (2007) 5 SCC 108 in support of his submissions.

5. We have gone through the judgments cited by the learned counsel. In *S.M.S. Pharmaceuticals [(2005) 8 SCC 89]*, a three Judge Bench of this Court examined the scope and ambit of Section 141 of the Act and the liability created with respect to the Directors and other persons responsible for the affairs of the company. Three questions were posed:

"(a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.

- (b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary. A
- (c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against." B  
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The above questions were answered in the following terms:

- (a) It is necessary to specifically aver in a complaint under Section 141 that at the time offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averments 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. D  
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- (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. F  
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A (c) The answer to Question ( C ) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When  
B that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint  
C managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.”

D 6. As this matter had come before the three-Judge Bench on a reference, the Bench reverted the matter for a discussion on facts to a Bench of two-Judges. It was this matter which was again examined by the Bench and reported as *S.M.S.Pharmaceuticals Ltd. (2007) 4 SCC 70* and it was found  
E that the necessary averments had been made in the complaint so as to attract the provisions of Section 141 of the Act. The appeal filed by the company was accordingly dismissed. This matter once again came up for consideration in *Rangachari's case (supra)* and in paragraph 21 it was observed:

F “A person normally having business or commercial dealings with a company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its memorandum or articles of association.  
G Other than that, he may not be aware of the arrangements within the company in regard to its management, daily routine, etc. Therefore,, when a cheque issued to him by the company is dishonoured, he is expected only to be aware generally of who are in charge of the affairs of the  
H company. It is not reasonable to expect him to know whether

the person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the company and those in charge of it. So, all that a payee of a cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in charge of its affairs. The Directors are prima facie in that position.”

7. A reading of this passage would reveal a slight departure vis-à-vis the other judgments in favour of the complainant. It will be noticed that this decision too was rendered on a consideration of both the judgments in *S.M.S. Pharmaceuticals*. The matter came up yet again for consideration in *N.K. Wahi case (supra)* which reiterated the earlier view and held that where there were no clear averment in the complaint or the evidence with regard to the role played by the Directors and as to whether and they were in charge and responsible for the conduct of the affairs of the company, it would not be possible to maintain the prosecution against them and they were entitled to acquittal. It may however be noticed that this was a case where an acquittal was recorded after trial.

8. It will be clear from the afore quoted judgments that the entire matter would boil down to an examination of the nature of averments made in the complaint though we observe a slight digression in the judgment in *N. Rangachari case (supra)*. It is in this background, that the complaint needs to be examined. Paragraphs 2 and 8 are reproduced below:

“(2) I know the all the accused. The accused No.1 is company registered under the Companies Act, 1956. Accused No.2 is the Chairman of the accused No.1. Accused No.3 is the Joint Managing Director of the Accused No.1 and accused No.4,5 and 6 are the Directors of the accused No.1.

(8) The accused No.2 is the Chairman of accused No.1 and is responsible for the day to day affairs of

A accused No.1 and therefore he is liable to repay  
amount of dishonoured cheques. Accused No.3 being  
Joint Managing Director and accused No.4,5 and 6  
being the Director of the accused No.1 are  
responsible officer of accused No.1 and therefore  
B they are liable to repay the amounts of the dishonoured  
cheques. As the accused have failed to make the  
payment within the stipulated period of 15 days after  
receipt of statutory notice they have committed an  
offence punishable under Section 138 r/w 141 of the  
C Negotiable Instruments Act 1881 (As amended).  
Hence this complaint is filed before this Hon'ble  
Court."

9. A perusal of the aforesaid paragraphs would show that  
accused No.2 is Paresh Rajda, the Chairman of the Company,  
D and as per the impugned judgment of the High Court, the ques-  
tion of his responsibility for the business of the Company has  
not been seriously challenged. We, nonetheless, find clear alle-  
gations against both the accused/appellants to the effect that  
they were officers and responsible for the affairs of the com-  
pany. We are of the opinion that at a stage where the trial has  
E not yet started, it would be inappropriate to quash the proceed-  
ings against them in the light of the observations of this Court  
quoted above. We, accordingly, find no merit in the appeals.  
They are dismissed.

S.K.S.

Appeal dismissed