A POOJA RAVINDER DEVIDASANI

v.

STATE OF MAHARASHTRA & ANR.

(Criminal Appeal Nos. 2604-2610 of 2014)

B DECEMBER 17, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND N. V. RAMANA, JJ.]

Negotiable Instruments Act, 1881 – s. 141 – Vicarious C *liability – Inference of – Held: Liability u/s. 141 can be inferred on a person only when such person was at the helm of affairs of the Company actively looking after its day to day affairs, at the material time – There should be specific averment against such person showing as to how the person was* D *responsible for the conduct of business of the Company.*

Code of Criminal Procedure, 1973 – s. 482 – Criminal proceeding – Initiated u/s. 138 r/w. s. 141 of Negotiable Instruments Act – Quashing of Held: Criminal law not to be E *set into motion as a matter of course without examining nature of allegations and evidence in support thereof and without ascertaining whether the offence was* prima facie *committed – In the present case, continuation of the criminal proceedings against the appellant-accused Act is pure abuse* F *of process of law – The appellant cannot be held vicariously liable for the act of the Company as her role in the day to day affairs of the company was not explained – Negotiable Instruments Act, 1881 – s. 138 r/w s. 141.*

Allowing the appeals, the Court

G **HELD: 1. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. 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**

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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. 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. [Para 22][1483-F-H; 1484-A-B]

Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. **(1998) 5 SCC 343 : 1998 (3) SCR 104 – relied on.**

2. To fasten vicarious liability under Section 141 of the Negotiable Instruments Act, on a person, at the material time that person shall have been at the helm of affairs of the Company, one who actively looks after the day-to-day activities of the Company and particularly responsible for the conduct of its business. Simply because a person is a Director of a Company, does not make him liable under the Act. Every person connected with the Company will not fall into the ambit of the provision. There must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company. [Paras 17 and 20][1481-D-F; 1483-A]

National Small Industries Corporation v. Harmeet Singh Paintal & Anr. **2010 (3) SCC 330 : 2010 (2) SCR 805;** *Girdhari Lal Gupta v. D.H. Mehta & Anr.* **(1971) 3 SCC 189 : 1971 (3) SCR 748;** *State of Karnataka v. Pratap Chand & Ors.* **(1981) 2 SCC 335 : 1981 (3) SCR 200 ;** *Sabitha Ramamurthy & Anr. v. R.B.S. Channbasavaradhya* **(2006) 10 SCC 581 : 2006 (6) Suppl. SCR 126 – relied on.**

A 3. The vicarious liability u/s. 141 can be informed 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. By verbatim reproducing the B wording of the Section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person u/s. 141. [Para 21][1483-D-E]

C 4. The factum of appellant resigning from the Board of Directors is established. Two persons, were inducted as Director-Operations of the Company on the same date, the appellant had ceased to be a Director. Respondent No. 2 was well aware of the change of D Directors. Respondent No. 2 on the one hand raises a doubt about the genuineness of Form 32, a public document, through which the default Company had communicated the change of Directors to the Registrar of the Companies and on the other hand, he has arrayed E the two newly appointed Directors-Operations as accused whose names were communicated to the Registrar of Companies by the very same Form 32. [Paras 24, 25 and 26][1485-D; 1486-A-C, E]

F 5. In the entire complaint, neither the role of the appellant in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained. The trade finance facility was extended by the Respondent No. 2 to the default Company after the G appellant resigned from the Board of Directors. [Para 28] [1487-B-D]

6. Therefore, continuation of the criminal proceedings against the appellant u/s. 138 r/w. s. 141 of

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the Act is a pure abuse of process of law and it has to be interdicted at the threshold. [Para 28][1487-D]

7. It cannot be said that the appellant is liable u/s. 138 r/w. s. 141, because the cheques were issued by virtue of letter of Guarantee from the appellant-accused. The Letter of Guarantee issued by the appellant gives way for a civil liability. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and Courts cannot be a mere spectator to it. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of the Court. [Paras 29 and 30][1487-E-H; 1488-A]

Gunmala Sales Private Ltd. v. Anu Mehta & Ors. **2015 (1) SCC 104 – relied on.**

Chand Dhawan v. Jawahar Lal **(1992) 3 SCC 317 : 1992 (2) SCR 837;** *Malwa Cotton and Spinning Mills Ltd. v. Virsa Singh Sidhu* **(2008) 17 SCC 147 : 2008 (12) SCR 68 – referred to.**

Case Law Reference

1992 (2) SCR 837	**referred to**	**Para 12**
2008 (12) SCR 68	**referred to**	**Para 12**
2015 (1) SCC 104	**relied on**	**Para 14**
2010 (2) SCR 805	**relied on**	**Para 17**
1971 (3) SCR 748	**relied on**	**Para 18**
1981 (3) SCR 200	**relied on**	**Para 19**
2006 (6) Suppl. SCR 126	**relied on**	**Para 21**
1998 (3) SCR 104	**relied on**	**Para 22**

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 2604-2610 of 2014.

From the Judgment and Order dated 06.10.2010 of the High Court of Judicature at Bombay in Criminal Writ Petition Nos. 614-620 of 2010.

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Akhil Sibal, Mrs. Vanita Bhargava, Ajay Bhargava, Nitin Mishra, Pradeep Chindra, Nikhil Chawla (for M/s. Khaitan & Co.), Advs., for the Appellant.

Gaurav Pachnanda, Sr. Adv., Biju Mattam, Tabrez M., Ms. C Shruti Gupta, Ms. Indu Shrma, A. P. Mayee, Nitin Lonkar, A. Selvin Raja, Ms. Asha Gopalan Nair, Advs., for the Respondents.

The Judgment of the Court was delivered by

D **N. V. RAMANA, J.** 1. Leave granted.

2. These appeals by special leave are filed by the appellant challenging the impugned judgment and order dated 6th October, 2010 passed by the High Court of Judicature at Bombay in Writ Petition Nos. 614-620 of 2010 whereby the E High Court dismissed the writ petitions filed by the appellant seeking quashing of the complaints filed by the Respondent No.2 under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the N.I. Act").

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3. The brief facts of these appeals are that Respondent No. 2, a finance Company, filed seven complaints under the N.I. Act against the appellant and others viz., (1) Complaint No. 3370/SS/2008 claiming Rs.1,64,69,801-14 (2) Complaint No. 3641/SS/2008 claiming Rs.1,06,55,289-91 (3) Complaint G No. 3368/SS/2008 claiming Rs. 1,41,95,806-40 (4) 3640/SS/2008 claiming Rs. 85,21,294/- (5) 3369/SS/2008 claiming Rs. 1,88,12,292/- (6) 3642/SS/2008 claiming Rs. 1,69,95,353-50 and (7) Complaint No. 4086/SS/2009 for a claim of Rs. 8,08,973-25. In all the complaints the allegation was that H the Respondent No. 2 Company had extended trade finance

facility to M/S Elite International Pvt. Ltd. to which the appellant was a Director at the relevant time and several Cheques (119 in number) issued by M/S Elite International Pvt. Ltd. aggregating to Rs.8,64,58,810-16, in discharge of its liability towards part payment, stood dishonoured with the banker's remarks "insufficient funds". According to the complainant, at the material time, the accused (appellant) was in charge and at the helm of affairs of M/S Elite International Pvt. Ltd. and therefore she is vicariously liable for the default of the Company as she is responsible for the conduct of its business. Metropolitan Magistrate, 12th Court, Bandra, Mumbai took cognizance of the complaints and issued process against the accused (appellant) for the offence punishable under Section 138 of the N.I. Act.

4. The aggrieved appellant filed Criminal Writ Petitions before the High Court under Section 482, Cr.P.C. seeking quashing of the criminal proceedings pending before the Metropolitan Magistrate. The High Court initially by an interim order dated 28th July, 2010 granted stay of the criminal proceedings qua the appellant and directed the trial to be proceeded against the other accused. Finally, by the impugned order, the High Court dismissed the writ petitions filed by the appellant. Challenging the said order of dismissal, the appellant has preferred these appeals before this Court.

5. The main contention advanced by the learned counsel for the appellant is that the appellant is merely a housewife who was appointed as a Non-Executive Director of M/s Elite International Private Ltd. and had no active role in the conduct of business of the Company, particularly in the issuance of the cheques in question. As a matter of fact, the appellant had resigned as the Director much before the issuance of the cheques in question, her resignation was also approved by the Board of Directors in the meeting held on 17th December, 2005. The resignation of the appellant as Director of M/S Elite International Pvt. Ltd. has also been informed to the Registrar of Companies by Form No. 20B under Section 159,

A Schedule V, Part II of the Companies Act, 1956 when the annual return for the year ending on 31st March, 2006 was filed. The trade facility was sanctioned by the Respondent No. 2 on 19th January, 2005 as per the Letter of Guarantee executed by the appellant on the same date. The effective date of resignation
B of the appellant as Director of the Company was 17th December, 2005. With the result of approval of her resignation by the Board of Directors, the appellant ceased to play any role in the activities of the Company. The Cheques in question were issued by the Company in the year 2008 i.e. about two
C and half years after resignation of the appellant as Director. This fact itself emphasizes that the appellant was not involved in the affairs of the Company when the Cheques were issued and had no role either in the conduct of the business of the Company or in issuing the Cheques.

D 6. After resignation of the appellant as a Director, Form 32 under the Companies Act, 1956, pursuant to Section 303(2), was filed by M/S Elite International Pvt. Ltd. on 20th December, 2005 with the Registrar of Companies indicating the appointments and changes among Directors. In the said
E Form 32, the names of two Directors who were newly appointed were shown with remarks "appointed as a Director-Operations" and against the name of the appellant the remarks "resigned as a Director" were shown. Taking note of this Form 32, Respondent No. 2 arrayed the newly appointed Directors as
F accused Nos. 4 & 5 in the complaints. It is thus clear that the Respondent No. 2 is well aware of the fact that the appellant was no longer a part of M/S Elite International Pvt. Ltd, yet initiated criminal proceedings fastening vicarious liability on the appellant.

G 7. Learned counsel submitted that to fasten vicarious liability it is necessary under Section 141 of the N.I. Act that the complainant must aver and prove how and in what manner the appellant was responsible in the conduct of the business of the Company. The complainant shall also state in the light of
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proviso to Section 141(1), in what capacity the appellant was in charge of day to day affairs of the default Company at the relevant time, particularly when cheques were issued. Respondent No. 2 (complainant) did not fulfill these prerequisites contemplated by the Act but sought to impute the appellant with vicarious liability only on account of the fact that the appellant had attended the Board Meeting of M/S Elite International Pvt. Ltd. held on 14th August, 2004. In that meeting, the Board of Directors authorized another Director to execute necessary documents in connection with trade finance facility from Respondent No. 2. The mere presence of the appellant in the Board Meeting on 14th August, 2004 would not amount to an offence punishable under Section 138 of the N.I. Act. Merely arraying a Director of a Company as an accused in the Complaint and making a bald or cursory statement without attributing any specific role, that the Director is responsible for the conduct of the business would not make a case of vicarious liability against a Director of the company under Section 141 of the N.I. Act. Similarly, simply stating that the appellant was in charge of the affairs of the Company would not be sufficient to justify the allegation under Section 138 of the N.I. Act. In other words, the complainant must explain the role specifically attributable to the appellant in the commission of the offence. Placing reliance on this Court's judgment in ***National Small Industries Corporation*** Vs. ***Harmeet Singh Paintal & Anr.*** (2010) 3 SCC 330 learned counsel submitted that the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible.

8. Despite Respondent No. 2 has knowledge of the resignation of the appellant as Director of the Company and she has no role in the issuance of cheques in question, yet as an arm twisting measure, the complainant arrayed the appellant in the complaint as a defaulter and initiated criminal proceedings against her. Knowing fully well about the change

A of Directors, Respondent No. 2 unnecessarily dragged the name of appellant into the litigation in a casual and callous manner and initiated criminal proceedings against her along with the existing Directors of the Company which is untenable under the law. The Metropolitan Magistrate without proper B application of mind issued process and the High Court also erred in construing the penal provision enunciated under the N.I. Act, and wrongfully dismissed the Criminal Writ Petitions filed by the appellant under Section 482, Cr.P.C.

9. In support of his contention that the appellant was no C more a Director of the Company and responsible for the conduct of its business at the relevant time, learned counsel relied upon the following:

(i) Agenda item 4 of the Minutes of the Board meeting D dated 17th December, 2005 which reads as under:

"4. RESIGNATION OF DIRECTOR

Chairman placed before the Members of the Board a letter received from Ms. Pooja Devidasani tendering her resignation as a Director of the Company.

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Members of the Board noted the same and then they unanimously resolved as under:

RESOLVED THAT resignation tendered by Ms. Pooja Devidasani be and is hereby accepted from the F conclusion of this Board Meeting".

(ii) Form 32 submitted to the Registrar of Companies in pursuance of requirements of provisions of the Companies Act, 1956 in which against the name of appellant, it was shown as "resigned as a Director". Whereas against the names of G Mr. Hitesh Haria and Mr. Parag Tejani, the words "appointed as a Director-Operations" were shown. Against the column "Date of appointment or change" the dates against all the above three persons were shown as 17th December, 2005. Taking note of these changes, Respondent No. 2 arrayed the newly

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added Directors as defaulters, but not omitted the appellant who has resigned as a Director which is specified in the very Form 32.

(iii) The Annual Return filed by the Company for the year ending 31st March, 2006 which also showed that the appellant was no longer a Director of the Company. In Column IV of the Annual Return against the name of appellant, it was clearly mentioned as "Date of ceasing : 17-12-2005".

(iv) A letter dated 5th February, 2009 issued by the default Company in favour of Respondent No. 2. In the said letter, while forwarding certain details/information, a list of Directors was also sent. The said list did not contain name of the appellant.

Learned counsel for the appellant submitted that in the light of the above Respondent No. 2 was fully aware that appellant was ceased to be a Director of the Company (a) prior to the issuance of cheques (b) prior to the dishonor of cheques (c) prior to the date of issuance of legal notice (d) prior to the expiry of 15 days period after issuance of legal notice after which cause of action to file criminal complaints arose and (e) prior to the filing of the criminal complaints.

10. Learned counsel finally submitted that the allegations set out in the complaint do not constitute any offence against the appellant and the High Court committed a manifest error in interpreting Section 141 of the N.I. Act in its proper perspective, which led to travesty of justice. He therefore urged for setting aside the impugned judgment and quash the criminal proceedings against the appellant.

11. Learned senior counsel appearing for the respondents, on the other hand, supported the impugned judgment of the High Court and submitted that by dismissing the writ petitions of the appellant the High Court had neither committed any illegality nor misinterpreted the provisions of the N.I. Act. Vehemently contending that the resignation of the appellant itself is a disputed fact, he submitted that no certified

A copy of Form 32 was produced by the appellant and only a certified copy of Annual Return has been filed before this Court. Under Section 79 of the Evidence Act, 1872, a Court can presume genuineness of a document only when a certified copy is filed. Even if certified copy of Form 32 is produced by the B appellant to contend that at the time of issuance of cheques, she had already resigned, when such Form 32 is disputed by the complainant, it shall be the bounden duty of the appellant to prove such Form 32 by leading evidence in the trial. Only supplying a copy of Form 32, without proving its contents, would C not be sufficient to quash a complaint under Section 138 read with Section 141 of the N.I. Act.

12. In support of his contention that when the Form 32 furnished by the appellant was disputed by the Respondent No. 2 the High Court cannot draw an inference on the basis of D such disputed document, learned counsel relied on decisions of this Court in ***Chand Dhawan*** Vs. ***Jawahar Lal*** (1992) 3 SCC 317, ***Malwa Cotton and Spinning Mills Ltd.*** Vs. ***Virsa Singh Sidhu*** (2008) 17 SCC 147. Therefore, the High Court was right in dismissing the writ petitions preferred by the E appellant. Hence the appellant cannot take the plea of her resignation to escape from legal liability that too when the resignation itself is a disputed fact. Unless and until trial takes place, it cannot be held that the appellant is no more a Director and not liable. At the material time relating to the financial F transaction between Respondent No. 2 and the accused Company, the appellant was a Director and looking after the day to day affairs of the Company as a Director and hence she is liable to be prosecuted since she had connived in the commission of offence.

G 13. Learned counsel further submitted that apart from the averments made in the complaint, the appellant has also executed an irrevocable Letter of Guarantee on 19th January, 2005 in favour of Respondent No. 2—Complainant, for availing trade finance facility. In the said Letter of Guarantee, the H

appellant categorically undertook that in the event of the Company failing or neglecting or refusing to pay the amount remaining unpaid, the same would be payable by her. She further agreed that her liability and obligation under the Guarantee shall be continuing, absolute, unconditional and irrevocable until the borrower is fully discharged from all liabilities, irrespective of any disputes or differences between the parties. The binding clause of the guarantee reads:

> "I, the Guarantor, expressly, irrevocably and unconditionally agree that your Company shall be entitled to enforce this Guarantee without making any demand on or taking any proceedings against the Client for all the amounts due and payable by the Client to your Company under and in relation to the Agreement".

The cheques in question were issued on the basis of the said Guarantee given by the appellant and on the simple ground of resignation she cannot deviate from vicarious liability as per the assurance given by her in the Letter of Guarantee.

14. Learned counsel for the respondents made a reference to the Judgment of this Court in ***Gunmala Sales Private Ltd.*** Vs. ***Anu Mehta & Ors.*** (Criminal Appeal No. 2228 of 2014) decided on October 17, 2014 and submitted that once in a complaint filed under Section 138 read with Section 141 of the N.I. 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 and the basic averment is sufficient to make out a case against the Director. Hence, learned senior counsel concluded that there is no illegality in issuing process against the appellant.

15. We have given our thoughtful consideration to the arguments advanced by the counsel on either side at length. The questions that arise for determination are (i) whether the

A appellant is liable for prosecution under Section 138 read with Section 141 of the N.I. Act for the alleged offence of dishonor of cheques committed by the default Company?; (ii) whether the High Court was right in dismissing the writ petitions filed by the appellant seeking quashing of the criminal proceedings
B initiated against her by the Respondent No. 2?

16. Before delving into the merits of the case, it would be apt to take note of relevant portions of the complaints filed by Respondent No. 2 which read thus:

C "I say that the accused No. 2 to 5 on behalf of accused No. 1 have approached us with request for trade finance facility and accordingly the said facility has been granted by us to the accused as per their request and requirement.

D I say that accused No. 1 is private limited Company of which accused No. 2, 3 & 5 are Directors and accused No. 4 is the Director & authorized signatory of accused No. 1 M/S Elite International Pvt. Ltd.—Imprest. At all material time relevant and relating to the complaint,
E accused No. 2 to 5 were and are in charge of and responsible for the conduct of business of accused No. 1 and are also looking after day to day affairs of accused No. 1. It is further submitted that accused No. 2 to 5 with accused No. 1 are liable to be prosecuted and / or
F connived in the commission of the present offence, in their capacity as a Director/signatory of the said private limited Company.

I say that as narrated in para 4 accused No. 2 to 5 being responsible for the affairs of accused No. 1 i.e. private
G limited Company are liable to be prosecuted for having committed a criminal offence in the event of failure on their part to comply with the requisitions contained in the statutory notice dated 03-11-08, which was sent to them both under R.P.A.D. & U.P.C. on 06/11/08. I say that notice
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was received by all the accused on or about 08/11/08 and notice sent through U.P.C. are deemed to have been served. However, accused have failed and neglected to make our payment under the above said dishonored cheques".

17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company—M/S Elite International Pvt. Ltd. on 1st July, 2004 and had also executed a Letter of Guarantee on 19th January, 2005. The cheques in question were issued during April, 2008 to September, 2008. So far as the dishonor of Cheques is concerned, admittedly the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the Company but does not involve in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the Company, one who actively looks after the day-to-day activities of the Company and particularly responsible for the conduct of its business. Simply because a person is a Director of a Company, does not make him liable under the N.I. Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the N.I. Act. In ***National Small Industries Corporation*** (supra) this Court observed:

A "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 B 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 C of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely D on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141.

E 18. In ***Girdhari Lal Gupta*** Vs. ***D.H. Mehta & Anr.*** (1971) 3 SCC 189, this Court observed that a person 'in charge of a business' means that the person should be in overall control of the day to day business of the Company.

F 19. A Director of a Company is liable to be convicted for an offence committed by the Company if he/she was in charge of and was responsible to the Company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any G negligence on the part of the Director concerned [See: ***State of Karnataka*** Vs. ***Pratap Chand & Ors.*** (1981) 2 SCC 335].

20. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the N.I. Act,

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there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

21. In ***Sabitha Ramamurthy & Anr.*** Vs. ***R.B.S. Channbasavaradhya*** (2006) 10 SCC 581, it was held by this Court 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 is 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 therefor. 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.** By verbatim reproducing the wording of the Section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the N.I. Act.

22. As held by this Court in ***Pepsi Foods Ltd. & Anr.*** Vs. ***Special Judicial Magistrate & Ors.*** (1998) 5 SCC 343, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. 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

A 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
B allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

23. In ***Gunmala Sales Private Ltd.*** (supra) on which learned counsel for the respondents has heavily relied, this Court at Para 33(c) held :

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"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**
D **role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that**
E **the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out**
F **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**
G **merely an arm-twisting tactics, the High Court may quash the proceedings.** It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have
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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". A

24. In the light of the law laid down by this Court, the present case be examined. It is not in dispute that two persons, namely, Parag Tejani and Hitesh Haria, were inducted as Director-Operations of the Company w.e.f. 17th December, 2005 by virtue of a resolution passed by the Company on the same date. It is on the same date the appellant had ceased to be a Director as per the Annual Report which is not disputed by the Respondent No. 2. A perusal of the Complaint shows that Respondent No. 2 has made the newly appointed Directors-Operations Parag Tejani and Hitesh Haria also as accused stating that all the accused approached him with a request for trade finance facility and accordingly the said facility was granted as per their request. It thus gives an impression that Respondent No. 2 is well aware of the change of Directors in the accused Company. In spite of knowing the developments taken place in the Company that the appellant was no longer a Director of the Company and two new Directors were inducted, the Respondent No. 2 has chosen to array all of them as accused in the Complaints. Moreover, Respondent No. 2 had not disputed this fact emphatically in the proceedings before the High Court. We have gone though the reply affidavit filed by Respondent No. 2 before the High Court of Bombay. B C D E F

25. A bare reading of the averment of Respondent No. 2 before the High Court, suggests that his case appears to be that the appellant has not proved her resignation in unequivocal terms and it is a disputed question of fact. It is noteworthy that the respondent No. 2 except making a bald statement and throwing the burden on the appellant to prove authenticity of documents, has not pleaded anywhere that the public documents Form 32 and Annual Return are forged and fabricated documents. Curiously, respondent No. 2 on the one hand raises a doubt about the genuineness of Form 32, a public G H

A document, through which the default Company had communicated the change of Directors to the Registrar of the Companies with the effect of resignation of the appellant and induction of two Directors-Operations and on the other hand, he has arrayed the two newly appointed Directors-Operations B as accused whose names were communicated to the Registrar of Companies by the very same Form 32. The respondent/complainant cannot be permitted to blow hot and cold at the same time. When he denies the genuineness of the document, he cannot act upon it and array the newly C appointed Directors as accused.

26. We have also perused the copy of Annual Return filed by M/S Elite International Pvt. Ltd. for the year 2006, on 31st March, 2006 furnished in Form 20B as per Section 159 of the Companies Act, 1956. Column IV of Schedule V – Part II of D the Annual Return, requires information regarding Directors/ Manager/Secretary (Past and Present) in which against the name of Devidasani Ravinder Pooja—appellant it was mentioned "Date of ceasing : 17-12-2005". Admittedly, a certified copy of the Annual Return became part of record. E Hence, we are of the considered opinion that the factum of appellant resigning from the Board of Directors is established.

27. Unfortunately, the High Court did not deal the issue in a proper perspective and committed error in dismissing the F writ petitions by holding that in the Complaints filed by the Respondent No. 2, specific averments were made against the appellant. But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the appellant in the commission of offence. It is settled law that to attract a case under Section 141 of the N.I. G Act a specific role must have been played by a Director of the Company for fastening vicarious liability. But in this case, the appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged offence. There is not H

even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged.

28. In the entire complaint, neither the role of the appellant in the affairs of the Company was explained nor in what manner the appellant is responsible for the conduct of business of the Company, was explained. From the record it appears that the trade finance facility was extended by the Respondent No. 2 to the default Company during the period from 13th April, 2008 to 14th October, 2008, against which the Cheques were issued by the Company which stood dishonored. Much before that on 17th December, 2005 the appellant resigned from the Board of Directors. Hence, we have no hesitation to hold that continuation of the criminal proceedings against the appellant under Section 138 read with Section 141 of the N.I. Act is a pure abuse of process of law and it has to be interdicted at the threshold.

29. So far as the Letter of Guarantee is concerned, it gives way for a civil liability which the respondent No. 2—complainant can always pursue the remedy before the appropriate Court. So, the contention that the cheques in question were issued by virtue of such Letter of Guarantee and hence the appellant is liable under Section 138 read with Section 141 of the N.I. Act, cannot also be accepted in these proceedings.

30. Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and Courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Section 138/141 of the N.I. Act, making a person vicariously liable has to ensure strict

A compliance of the statutory requirements. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of the Court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law.

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31. For all the foregoing reasons, we are of the view that this is a fit case for quashing the complaint, and accordingly allow these appeals by setting aside the impugned judgment passed by the High Court and quash the criminal proceedings pending against the appellant before the Trial Court.

C

Kalpana K. Tripathy Appeals allowed.