

**(2018) 14 Supreme Court Cases 202**

(BEFORE N.V. RAMANA AND PRAFULLA C. PANT, JJ.)

ASHOKE MAL BAFNA

.. Appellant;

a

*Versus*

UPPER INDIA STEEL MANUFACTURING AND  
ENGINEERING COMPANY LIMITED

.. Respondent.

Criminal Appeal No. 529 of 2017<sup>†</sup>, decided on March 6, 2017

b

**A. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — S. 141 — Offences by companies — Vicarious liability under S. 141 — How to be construed and fastened on a person — When can Director of a Company be made liable for offences committed by Company under S. 141 — Principles summarised**

— Reiterated, S. 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 Director (arrayed as an accused) is in charge of and responsible to Company for conduct of business of Company, without anything more as to the role of Director — Complaint should spell out as to how and in what manner, accused was in charge of or was responsible to Company for conduct of its business — Aforesaid is in consonance with strict interpretation of penal statutes especially where such statutes create vicarious liability

c

— To fasten vicarious liability under S. 141 on a person, law is well settled by Supreme Court, that complainant should specifically show as to how and in what manner accused was responsible — Simply because a person is a Director of defaulter Company, does not make him liable under the Act — Only the person who was at the helm of affairs of the Company and in charge of and responsible for conduct of business at the time of commission of an offence, will be liable for criminal action

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e

— Hence, for making a Director of a Company liable for offences committed by Company under S. 141, there must be specific averments against Director showing as to how and in what manner the Director was responsible for conduct of business of Company — Interpretation of Statutes — Particular Statutes or Provisions — Penal statutes or provisions — Strict interpretation — Criminal Law — Constructive/Vicarious liability (Paras 7 to 10)

f

*Girdhari Lal Gupta v. D.H. Mehta*, (1971) 3 SCC 189 : 1971 SCC (Cri) 279; *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113; *Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378, *relied on*

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<sup>†</sup> Arising out of SLP (Crl.) No. 10899 of 2015 (Arising out of Diary No. 41118 of 2015). Arising from the impugned final Judgment and Order in *Ashoke Mal Bafna v. Upper India Steel Mfg. and Engg. Co. Ltd.*, 2015 SCC OnLine P&H 20031 [Punjab and Haryana High Court, Chandigarh Bench, Crl. Misc. No. M-35870 of 2010 (O&M), dt. 17-11-2015]

h

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**B. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 141 and 138 — Duty of Magistrate under when summoning Director in case of offence under S. 138 allegedly committed by Company**

*a* — Held, before summoning an accused under S. 138, Magistrate is expected to examine nature of allegations made in complaint and evidence, both oral and documentary, in support thereof, and then to proceed further with proper application of mind to legal principles on the issue — Impliedly, it is necessary for courts to ensure strict compliance with statutory requirements as well as settled principles of law before making a person vicariously liable — Criminal Law — Constructive/Vicarious liability — Duty of courts before making a person vicariously liable — What is (Para 12)

**C. Criminal Trial — Practice and Procedure — Abuse of process — Duty of superior courts — What should be — Held, superior courts should maintain purity in administration of justice and should not allow abuse of process of court**

*d* **D. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 138 and 141 — Dishonour of cheques — Complaint by respondent Company under S. 138, NI Act r/w S. 420 IPC — Appellant-accused had resigned from post of Director of defaulter Company long before the date on which cause of action arose in present case**

*e* — Cheques issued during his tenure as Director, with validity of six months, were neither deposited by drawee nor dishonoured by bank and after lapse of six months' period, they ceased to be negotiable instruments under NI Act — Indisputably, therefore, cheques which bounced in present case due to insufficient funds, were neither issued by appellant nor appellant was involved in day-to-day affairs of defaulter Company — Therefore, High Court erred in dismissing appellant's petition under S. 482 CrPC for quashing complaint, summoning order and subsequent criminal proceedings — High Court ought to have allowed application of appellant because of absence of clear particulars about role of appellant at the relevant time in day-to-day affairs of Company — Criminal proceedings pending against appellant before trial court, hence, quashed — Penal Code, 1860 — S. 420 — Criminal Procedure Code, 1973, Ss. 482 and 299 (Paras 3 and 7 to 14)

*g* *Ashoke Mal Bafna v. Upper India Steel Mfg. and Engg. Co. Ltd.*, 2015 SCC OnLine P&H 20031, *reversed*

*DCM Financial Services Ltd. v. J.N. Sareen*, (2008) 8 SCC 1 : (2008) 3 SCC (Cri) 401, *referred to*

Y-D/59587/SVR

Advocates who appeared in this case :

Nikhil Goel, Ms Naveen Goel and Ashutosh Ghade, Advocates, for the Appellant;  
 Nitin Kumar, Rajesh Sharma, C.S. Bakshi, Ms Nidhi Singh Dubey and Ms Shalu Sharma, Advocates, for the Respondent.

*h*

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***Chronological list of cases cited***

***on page(s)***

1. 2015 SCC OnLine P&H 20031, *Ashoke Mal Bafna v. Upper India Steel Mfg. and Engg. Co. Ltd. (reversed)* 204c, 204f, 205b-c, 207b **a**
2. (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378, *Pooja Ravinder Devidasani v. State of Maharashtra* 206c-d
3. (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113, *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal* 205g
4. (2008) 8 SCC 1 : (2008) 3 SCC (Cri) 401, *DCM Financial Services Ltd. v. J.N. Sareen* 205b-c **b**
5. (1971) 3 SCC 189 : 1971 SCC (Cri) 279, *Girdhari Lal Gupta v. D.H. Mehta* 205f-g

**ORDER**

**1.** Leave granted. The appellant preferred this appeal aggrieved by the judgment and order passed by the High Court of Punjab & Haryana in *Ashoke Mal Bafna v. Upper India Steel Mfg. and Engg. Co. Ltd.*<sup>1</sup> by which the High Court dismissed the appellant's petition for quashing the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act") read with Section 420 of the Penal Code, 1860. **c**

**2.** The brief history of the case as per the complaint is that the appellant-accused issued nine cheques on 6-7-2006 in favour of the complainant Company for Rs 8,00,000 each, and one other cheque for Rs 9,40,780.05 in discharge of legal liability of M/s Coventry Spring and Engineering Company Ltd. (for short "the defaulter Company") of which the appellant was a Director. When the cheques were presented for clearance, they were dishonoured by the bank with remarks "insufficient funds" on 24-8-2006. The complainant respondent thereafter, served legal notice dated 6-9-2006 demanding payment but the appellant-accused did not make payment. The learned Judicial Magistrate took cognizance of the complaint and summoned the appellant-accused. On his failure to turn up before the Court, the learned Magistrate proceeded under Section 299 of the Criminal Procedure Code (for short "the Code"). The appellant-accused thereafter filed a petition before the High Court under Section 482 of the Code for quashing the complaint, summoning order and subsequent criminal proceedings, which came to be dismissed by the order<sup>1</sup> impugned in the present appeal. **d**  
**e**  
**f**

**3.** The case of the appellant is that the respondent Company has unnecessarily made him a party to the complaint though he was not associated with the defaulter Company on the date of cause of action. The complaint in question is not pertaining to the cheques issued by him on 28-12-2004 in the capacity of Director of the defaulter Company. He had resigned from the post of Director w.e.f. 2-1-2006, long before the date on which cause of action arose in the present case. The cheques issued during his tenure as Director with the validity of six months, were neither deposited by the drawee nor dishonoured by the bank and after the lapse of six months' period they ceased to be negotiable instruments under the Act. The cheques against which the present **g**  
**h**

1 2015 SCC OnLine P&H 20031

complaint was lodged were issued by the defaulter Company on 6-7-2006 much later after his resignation and were dishonoured on 24-8-2006 against which the legal notice dated 6-9-2006 was served and subsequently the complaint in question has been filed. The learned counsel further argued that since the bounced cheques were not actually issued by the appellant, nor he was holding the post of Director at that point of time and he has nothing to do with that transaction therefore he is not liable. Simply for the reason that at one point of time, the appellant had played some role in the activities of the defaulter Company as a Director would not bind him to the constructive liability under Section 141 of the Act. In support of his argument, the learned counsel relied on a decision of this Court in *DCM Financial Services Ltd. v. J.N. Sareen*<sup>2</sup>.

4. The learned counsel for the respondent, on the other hand, supported the impugned judgment<sup>1</sup> and submitted that as a matter of fact the cheques were issued by the appellant towards the amount due since the year 2004 when the appellant was Director. On 16-12-2004, a letter was written to the defaulter Company demanding payment of outstanding dues. Thereafter, on 9-7-2005, the earlier cheques were replaced by new cheques to the tune of Rs 67.49 lakhs and on 1-1-2006 again new cheques were issued. Thus the cheques initially issued by the appellant were getting replaced with new cheques till their presentation and finally on 24-8-2006 they were dishonoured at the bank. Since the dues were originated at the time when the appellant-accused was Director of the defaulter Company, he is liable under the Act and the High Court has rightly dismissed his application for quashing criminal proceedings under Section 482 CrPC.

5. We have given our thoughtful consideration to the arguments advanced by the counsel on either side. The issue for determination before us is whether the role of the appellant in the capacity of erstwhile Director of the defaulter Company makes him vicariously liable for the activities of the defaulter Company as defined under Section 141 of the Act? In that perception, whether the appellant had committed the offence chargeable under Section 138 of the Act; and whether the High Court was right in dismissing the criminal miscellaneous application filed by the appellant seeking quashing of the criminal proceedings?

6. Before delving into the issue further, it would be apt to look into the principles of law settled by this Court on the subject.

7. In *Girdhari Lal Gupta v. D.H. Mehta*<sup>3</sup>, 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.

8. Interpreting the provisions of Section 141 this Court in *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*<sup>4</sup> observed that Section 141 is a penal provision creating vicarious liability, and which, as per settled law,

<sup>2</sup> (2008) 8 SCC 1 : (2008) 3 SCC (Cri) 401

<sup>1</sup> *Ashoke Mal Bafna v. Upper India Steel Mfg. and Engg. Co. Ltd.*, 2015 SCC OnLine P&H 20031

<sup>3</sup> (1971) 3 SCC 189 : 1971 SCC (Cri) 279

<sup>4</sup> (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113

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 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 the accused was in charge of or was responsible to the Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes especially where such statutes create vicarious liability.

9. To fasten vicarious liability under Section 141 of the Act on a person, 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. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business *at the time of commission of an offence* will be liable for criminal action. (See *Pooja Ravinder Devidasani v. State of Maharashtra*<sup>5</sup>.)

10. 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 Act, 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.

11. Turning to the case on hand, admittedly the cheques dated 28-12-2004 were issued while the appellant was Director of the Company with validity for a period of six months but during that period they were not presented for realisation at the bank. The appellant has resigned as Director w.e.f. 2-1-2006 and the fact of his resignation has been furnished by Form 32 to the Registrar of Companies on 24-3-2006 in conformity with the rules. Thereafter, the appellant had played no role in the activities of the defaulter Company. This fact remains substantiated with the statement filed by the defaulter Company on 20-2-2006 with the Registrar of Companies that in an advertisement of the Company seeking deposits (Annexure P-3), only the names of three Directors of the Company were shown as involved in the working of the Company and the name of the appellant was not therein. Indisputably, therefore, the cheques bounced on 24-8-2006 due to insufficient funds were neither issued by the appellant nor the appellant was involved in the day-to-day affairs of the Company.

12. Before summoning an accused under Section 138 of the Act, the Magistrate is expected to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and then to proceed further with proper application of mind to the legal principles on the issue. Impliedly, it is necessary for the courts to ensure strict compliance with the statutory requirements as well as settled principles of law before making a person vicariously liable.

5 (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675

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**13.** The superior courts should maintain purity in the administration of justice and should not allow abuse of the process of court. Looking at the facts of the present case in the light of settled principles of law, we are of the view that this is a fit case for quashing the complaint. The High Court ought to have allowed the criminal miscellaneous application of the appellant because of the absence of clear particulars about the role of the appellant at the relevant time in the day-to-day affairs of the Company.

**14.** For all the foregoing reasons, we allow this appeal by setting aside the impugned judgment<sup>1</sup> passed by the High Court and quash the criminal proceedings pending against the appellant before the trial court. Ordered accordingly.

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<sup>1</sup> *Ashoke Mal Bafna v. Upper India Steel Mfg. and Engg. Co. Ltd.*, 2015 SCC OnLine P&H 20031