

Hindustan Petroleum Corporation ... vs Sri Arindam Taraphdar And Anr on 11 July, 2024

1

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 185 of 2010

Hindustan Petroleum Corporation Limited and Ors.
-Vs-
Sri Arindam Taraphdar and Anr.

For the Petitioners	: Mr. Dipanjan Dutt Mr. Prasun Mukherjee Mr. Deepak Agarwala
For the Opposite Party No.1	: Mr. Swapan Kumar Pal
Heard on	: 10.01.2024, 09.02.2024, 20.02.2024, 01.05.2024
Judgment on	: 11.07.2024

Ananya Bandyopadhyay, J.: -

1. The instant revisional application has been filed by the petitioners for quashing the proceedings of Case No. C.R. 230 of 2008 pending before the Learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad under Sections 37(1)(vii), 9, 38, 39(1), 39(2), 61 and 62 read with Section 60 of the Standards of Weights and Measures (Enforcement) Act, 1985.
2. The Inspector of Legal Metrology, Jangipur Unit No.46, District-Murshidabad, instituted a complaint in the Court of Learned Additional

Chief Judicial Magistrate, Jangipur, Murshidabad, being authorized to file the same by the Controller of Legal Metrology, West Bengal under Section 63 of the Standard of Weights and Measures (Enforcement) Act, 1985

2

(hereinafter referred to as 'the said Act') against the present petitioners no.1, 2 and 3 who are described as follows:-

The petitioner no. 1, Hindustan Petroleum Corporation Limited is a Government Company under the Companies Act, 1956 and also a Government of India Enterprise functioning under the administrative control of Ministry of Petroleum and Natural Gas, Government of India dealing with the business of refining, distributing and marketing various petroleum products such as High Speed Diesel (HSD), Motor Spirit (MS), Superior Kerosene Oil (SKO), Lubricants, Greases, LPG etc., throughout the Country.

At the material point of time, petitioner no. 2 and petitioner no. 3 were the Manager and Deputy Manager of Hindustan Petroleum Corporation Limited, Inland Road fed Depot, Rajbandh, P.S. Kanksa, Dist. - Burdwan respectively.

3. Petitioner no.1/ Company had engaged Gorai Transport accused No. 4 amongst other transporters for transportation of its bulk petroleum products from its refilling depots to diverse retail outlets.
4. The aforesaid complaint precisely stated that on 01.04.2008 at about 10:00 a.m., one Shri Goutam Kumar Roy, the Proprietor of M/s. Amar Service Station, informed the complainant that on 31 st March, 2008 one of the Tank Trucks owned by accused no. 4 and bearing registration no. WB-41C/4908 transported 12000 litres of Turbojet High Speed Diesel from Rajbandh Depot of the petitioner no.1/Company, while the said diesel was being decanted

from the said Tank Truck to a Retail Outlet dealer viz. M/s. Amar Service Station, it was noticed that the service fuel tank of the said vehicle was over-
3

flowing. Being suspicious, the employees examined the vehicle tank discreetly and found a fitting of pipes diverting the portion of the oil of a vehicle tank meant for consignee into the service fuel tank. The capacity of the fuel tank was 150 litres to 160 litres of oil. A device was detected which was capable of being operated behind the driver's seat by means of an adjusting knob/wheel being hidden. Subsequently, the police was informed for assistance. The vehicle was inspected in the presence of Sub-Inspector of Police Raghunathganj P.S., Assistant Controller of Legal Metrology, Shri Goutam Kumar Roy, Proprietor of Amar Service Station etc. amongst other employees of the Office of Assistant Controller of Legal Metrology, Jangipur, Murshidabad as well as the employees of Amar Service Station.

5. The complaint in question described the following anomalies:-

"That a separate fittings in the form of a pipe line (Polythene) which is connected to the delivery line of the compartment No. 3 of the Vehicle Tank at one end and to the Service fuel Tank of the Vehicle Tank at the other was there along the chassis under Tank compartments. The said Pipe line is connected to the delivery line before a Check Valve installed on it meant for regulating delivery of Oil from the compartment No. 3. At the place where the unauthorized Pipe line meets the delivery line a small metal connector welded on the line connect the two. This meeting point is further covered by a small Metal Box which is fixed on the chassis of the Vehicle Tank by means of nuts & bolts. The said illegal pipeline has one adjusting knob/wheel hidden at the back of the Driver Seat.

ii. When the adjusting Knob/wheel was turned on, it was found that the

Fuel Tank got over flowed.

4

iii. Such fitting was evidently resorted to for Ulterior purposes, that is for filling up of the Vehicle Tank's Fuel Tank (who's capacity is 150-160 litres approx) by using the hidden Pipe Line through the adjusting Knob/wheel from the Drivers Cabin presumably at the time of decanting Vehicle Tank's oil for its delivery to the consignee.

iv. The entire proceeding of the inspection has been taken on videos and still Photographs, which are annexed to this complaint as Annexure- 3 & 4.

08. That such fittings are not allowed in any standard Vehicle Tank as Capacity Measure, which has to conform to the standards as laid down in the Standards of Weights and Measures (General) Rules - 1987.

09. That the Vehicle was calibrated being a standard one on 23.08.2007 (Annexure-5).

10. That the fittings actually diverted oil meant for the consignee in the Service Fuel Tank of the Vehicle. So it was used for fraudulent purposes and with an intention to deceive the consignees.

11. That such alteration of a Vehicle Tank being a capacity Measure is an offence under Section 37 (1) (vii) of the Standards of Weights and Measures (Enforcement) Act-1985.

12. The possession and use of non standard weights or measure is violator of Section 9 of the said Enforcement Act of 1985 and corresponding provision of Section 39 (1) of the said Enforcement Act.

13. That giving short quantity of oil that was contracted to and paid for is an offence under Section 39(2) of the said Enforcement Act.

14. That by fixing such un-authorized fittings mentioned above the accused persons have rendered the Vehicle Tank as non standard one and

5

possession and use of the such non standard, that is false measure by the Driver of the Vehicle, WB-41C/4908 is an offence under Section 9 of the said Enforcement Act, read with Section 39(1) of the said Enforcement Act.

15. That by diverting oil in to the Service Fuel Tank of the Vehicle from the total 12000 litres of oil meant for consignee the Driver supplied less quantity of oil, contracted and paid for, thus the Driver Sk. Dalim violated Sec. 39(2) of the said Enforcement Act (Actually the Service Tank was found full and over following though the Vehicle had run a distance of nearly 170 KM from Rajbundh Depot to the said retail outlet.

16. That by fixing such a device in the Vehicle Tank, the Vehicle Tank was altered by the accused person and as the oil was being diverted into the Service Fuel Tank, the alteration was made with a view to deceive the consignee which is an offence under Section 37(1) (vii) of the said Enforcement Act."

6. The complainant concluded that the owners of the vehicle being the employer of the driver abetted the offence as employee under Section 61 of the aforesaid Act. The Gorai Transport committed an offence under Section 9 and 37 (1) (vii) read with Section 60 of the said Act and the company being the petitioner no.1/Company violated the provision of Section 9 and was liable under Section 38 of the aforesaid Act for sale and deliver of commodities by non-standard measures. Moreover, it was further opined as per provision of Section 62 of the said Act, M/s. Hindustan Petroleum Corporation Limited, its Manager and Deputy Manager of Inland Roadfed Depot, Rajbundh, Burdwan, viz., Sri Ranjan Bhowmik and Sri Pijush Kanti Chattopadhaya respectively were also liable under Section 9 and 38 of the

Enforcement Act, since there was every likelihood that they had either

neglected their duties to check the measure physically before loading or acted in collusion with the vehicle owner/driver for the commission of the offence as alleged.

7. According to the complaint, the complainant was initially informed by the proprietor of the said service station, Mr. Goutam Roy, about the said incident on 1st April, 2008 in his mobile phone. Subsequently the said proprietor had also filed a written complaint with the complainant.
8. It was alleged that the petitioner no. 1/Company had fraudulently used the said vehicle fitted with the illegal pipeline from the Rajbandh depot violating the provisions of Section 9 of the said Act, being liable to be prosecuted under Section 38 of the said Act.
9. The complainant had further alleged that petitioner nos. 2 and 3 were also liable under Sections 9 and 38 of the said Act, "since there is every likelihood that they had either neglected their duties to check the measure physically before loading or acted in collusion with the owner/driver for the commission of the offence as alleged. They are liable to be proceeded against and punished accordingly."
10. The Learned Advocate for the petitioners submitted as follows:-
 - i. The contraption alleged to have been engineered by the accused nos. 1 to 4, was not visible to the naked eye since the siphon came to light only when fuel, while being decanted at the petrol pump, overflowed from the service tank of the truck. Moreover, the device was hidden behind the driver's seat and controlled by a knob within the exclusive control of the driver. Therefore, the allegation that the siphon was
7
devised to evade detection at any rate, could not be discovered by ordinary care and diligence.

- ii. The detection was entirely fortuitous as the fuel overflowed from the service tank during detection. In as much as fuel was filled, and not decanted, in the tanker at HPCL, there arose no opportunity for detection of the siphon at HPCL depot, either by HPCL or its officers.
 - iii. It could not be claimed that HPCL or its officers had failed to adopt reasonable care and diligence in the discharge of its duties.
 - iv. Only 150 litres out of 12,000 litres, was a fragmental quantity of siphon, which could not sustain a charge of complicity in the act, against a PSU having the status of a Navratna Public Sector Undertaking of the Nation, or its high officials, being the petitioners herein.
 - v. The instant complaint against the petitioners is based on implication by "Likelihood" and not by any statement on the alleged facts reflecting any complicity of petitioners in the alleged act.
11. It was further submitted that the petitioners have been implicated by the complainant on the basis of "likelihood" of the petitioners' involvement which the law does not permit.
12. It was further contended that Learned Magistrate may take cognizance of an offence under Section 190(1)(a) of the Cr.P.C., upon receiving a complaint of facts which constitute such offence. To entitle a Learned Magistrate to take cognizance under Section 190(1)(a) of the Cr.P.C., there must not only be a complaint, which meant allegation of commission of offence, but it must contain facts which constitute the offence. Basic facts and materials on
- 8
- which the allegation is founded are required to be stated. As held by This Hon'ble Court in J. Th. Zwart v. Indrani Mukherjee -

"15. Factual details or evidential details need not be however

incorporated in the complaint, but it must contain the pith and substance of primary facts on the basis of which the allegation of the commission of an offence is being made. To cite an example. To be a 'complaint' under section 2(d) of the Code only an allegation of the sort that somebody has committed the murder of 'A' is sufficient. But to enable a Magistrate to take cognizance of such a complaint, such allegation would not be sufficient; and the basic facts and circumstances on the basis of which the above allegation are being made are required to be stated."

13. It was further submitted in the agreement dated 6th July, 2007, i.e. prior to the date of the instant complaint, the petitioner no. 1 was described as "The Company", the accused no. 4 (M/s Gorai Transport) was described as "The Carrier". It stipulated that the Carrier, i.e. M/s Gorai Transport shall provide the petitioner no. 1/Company with 20 nos. of tank trucks for transporting petroleum products. M/s Gorai Transport shall ensure that the tank trucks are inter alia properly calibrated under the Weights and Measures Act. M/s Gorai Transport shall be responsible for cost of fuel etc.
14. Considered the rival contentions of the Learned Advocate for the opposite party no. 1 claiming the proceedings at a nascent stage should not be quashed.
15. Relevant Sections of the Standards of Weights and Measures (Enforcement) Act, 1985 states as follows:-

9

"9. Prohibition of use of weights and measures other than standard weights and measures.-(1) Notwithstanding any custom, usage or method of whatever nature, no weight or measure, other than the standard weight or measure, shall be used or kept in any premises in such

circumstances as to indicate that such weight or measure is intended, or is likely to be used, for any weightment or measurement.

(2) On and from the commencement of this Act, no weight, measure or number, other than the standard weight or measure shall be used in, or form the basis of, any contract or other agreement in relation to any trade, commerce, production or protection.

(3) Any contract or other agreement, which contravenes the provisions of sub-section (2), shall be void."

Section 38 of the said Act states as follows:-

"38. Penalty for sale or delivery of commodities, etc., by non-standard weight or measure. -

(1) Except where he is permitted under the Standards Act so to do, whoever sells, or causes to be sold, delivers or causes to be delivered, any commodity, article or thing by any weight, measure or number other than the standard weight or measure, shall be punished with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which shall not be less than three months but which may extend to one year and also with fine.

(2) Whoever renders, or causes to be rendered, any service in terms of any weight, measure or number other than the standard weight or measure,

10

shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence with imprisonment for a term which may extend to one year and also with fine."

Section 60 of the said Act states as follows:-

"60. Presumption to be made in certain cases.-

- (1) If any person- (a) makes or manufactures, or causes to be made or manufactured, any false weight or measure, or
- (b) uses, or causes to be used, any false or unverified weight or measure in any transaction or for industrial production or for protection, or
- (c) sells, distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred, any false or unverified weight or measure, it shall be presumed, until the contrary is proved, that he had done so with the knowledge that the weight or measure was a false or unverified weight or measure, as the case may be.
- (2) If any person has in his possession, custody or control any false or unverified weight or measure in such circumstances as to indicate that such weight or measure is likely to be used in any transaction or for industrial production or for protection, it shall be presumed, until the contrary is proved, that such false or unverified weight or measure was possessed, held or controlled by such person with the intention of using the same in any transaction or for industrial production or for protection."

11

28. The following was held in S.P. Mani & Mohan Dairy v. Snehalatha

Elangovan¹ by the Hon'ble Supreme Court:-

45. Now, the logical question that would follow is who would be liable through the company for this offence? Can the company itself be prosecuted for this offence? Answering this question, Section 141 says, "every person who was in charge of" and "was responsible to the company for the conduct of the business" shall be deemed to be guilty of the offence.

46. This concept of vicarious liability has been explained by this Court in *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* [Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621], as : (SCC p. 585, para 7)

"7. ... 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. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted."
(emphasis supplied)

47. At this stage, we should look into the decision of this Court in K.K. Ahuja v. V.K. Vora [K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181] , wherein this Court discussed the principles of vicarious liability of the officers of company in respect of dishonour of a cheque and held : (SCC pp. 61-62, para 27)

1(2023) 10 SCC 685

12

"27. The position under Section 141 of the Act can be summarised thus:

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in-charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary or Manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other Officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the

13

complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

(emphasis supplied)

48. In a very recent pronouncement in *Sunita Palita v. Panchami Stone Quarry* [*Sunita Palita v. Panchami Stone Quarry*, (2022) 10 SCC 152 : (2023) 1 SCC (Civ) 612 : (2023) 1 SCC (Cri) 91] , this Court, after referring to *K.K. Ahuja* [*K.K. Ahuja v. V.K. Vora*, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181] referred to above, observed as under : (*Sunita Palita* case [*Sunita Palita v. Panchami Stone Quarry*, (2022) 10 SCC 152 : (2023) 1 SCC (Civ) 612 : (2023) 1 SCC (Cri) 91] , SCC pp. 164-65, para 29) "29. ... when the accused is the Managing Director or a Joint Managing Director of a company, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of the company. This is because the prefix "Managing" to the word "Director" makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under sub-section (2) of Section 141 of the NI Act by averring in the complaint, their position and duties, in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

49. In yet one another recent pronouncement in *Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.* [*Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.*, (2023) 14 SCC 770 : 2021 SCC OnLine SC 915] , this Court after due consideration of the decisions in *S.M.S. Pharmaceuticals* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] ; *S.K. Alagh v. State of U.P.* [*S.K. Alagh v. State of U.P.*, (2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] ; *Maharashtra State Electricity Distribution*

14

Co. Ltd. v. Datar Switchgear Ltd. [*Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.*, (2010) 10 SCC 479 : (2011) 1 SCC (Cri) 68] , and *GHCL Employees Stock Option Trust v. India Infoline Ltd.* [*GHCL Employees Stock Option Trust v. India Infoline Ltd.*, (2013) 4 SCC 505 : (2013) 2 SCC (Cri) 414] , observed as under : (*Ashutosh Ashok Parasrampuriya* case [*Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd.*, (2023) 14 SCC 770 : 2021 SCC OnLine SC 915] , SCC para 24) "24. In the light of the ratio in *S.M.S. Pharmaceuticals* [*S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] and later judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and

they are in-charge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of Section 141 of the NI Act has been made, it may not be open for the High Court to interfere under Section 482CrPC unless it comes across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abused of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons."

(emphasis supplied)

50. The principles discernible from the aforesaid decision of this Court in Ashutosh Ashok Parasrampuriya [Ashutosh Ashok Parasrampuriya v. Gharrkul Industries (P) Ltd., (2023) 14 SCC 770 : 2021 SCC OnLine SC 915] are that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not

15

have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made out against the particular Director/partner provided the Director/partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt.

Specific averments in the complaint

51. In Gunmala Sales [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580] , this Court after an exhaustive review of its earlier decisions on Section 141 of the NI Act, summarised its conclusion as under : (SCC pp. 126-27, para 34)

"34. ... 34.1. Once in a complaint filed under Section 138 read with Section 141 of the NI 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.

34.2. If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

34.3. 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 the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court. Despite the

presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a

16

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 merely an arm-twisting tactic, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have 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. In the absence of such evidence or circumstances, complaint cannot be quashed.

34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director."

52. The principles of law and the dictum as laid in Gunmala Sales [Gunmala Sales (P) Ltd. v. Anu Mehta, (2015) 1 SCC 103 : (2015) 1 SCC (Civ) 433 : (2015) 1 SCC (Cri) 580] , in our opinion, still holds the field and reflects the correct position of law.

53. In the case on hand, we find clear and specific averments not only in the complaint but also in the statutory notice issued to the respondent. There are specific averments that the cheque was

issued with the consent of the respondent herein and within her knowledge. In our view, this was sufficient to put the respondent herein to trial for the alleged offence. We are saying so because the case of the respondent that at the time of issuance of the cheque or at the time of the commission of the offence, she was in no manner concerned with the firm or she was not in-charge or responsible for day-to-day affairs of the firm cannot be accepted on the basis of mere bald assertion in this regard. The same is not sufficient. To make good her case, the respondent herein is expected to lead unimpeachable and incontrovertible evidence. Nothing of the sort was adduced by the respondent before the High Court to get the proceedings quashed. The High Court had practically no legal basis to say that the averments made in the complaint are not sufficient to fasten the vicarious liability upon the respondent by virtue of Section 141 of the NI Act.

54. We may also examine this appeal from a different angle. It is not in dispute, as noted above, that no reply was given by the respondent to the statutory notice served upon her by the appellant. In the proceedings of the present type, it is essential for the person to whom statutory notice is issued under Section 138 of the NI Act to give an appropriate reply. The person concerned is expected to clarify his or her stance. If the person concerned has some unimpeachable and incontrovertible

material to establish that he or she has no role to play in the affairs of the company/firm, then such material should be highlighted in the reply to the notice as a foundation. If any such foundation is laid, the picture would be more clear before the eyes of the complainant. The complainant would come to know as to why the person to whom he has issued notice says that he is not responsible for the dishonour of the cheque.

55. Had the respondent herein given appropriate reply highlighting whatever she has sought to highlight before us then probably the complainant would have undertaken further enquiry and would have tried to find out what was the legal status of the firm on the date of the commission of the offence and what was the status of the respondent in the firm. The object of notice before the filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission to make his stance clear so far as his liability under Section 138 of the NI Act is concerned.

56. Once the necessary averments are made in the statutory notice issued by the complainant in regard to the vicarious liability of the partners and upon receipt of such notice, if the partner keeps quiet and does not say anything in reply to the same, then the complainant has all the reasons to believe that what he has stated in the notice has been accepted by the noticee. In such circumstances what more is expected of the complainant to say in the complaint.

57. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of Court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner.

58. Our final conclusions may be summarised as under:

58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the Court that at the relevant point of time they were not in charge of the affairs of the company.

Advertence to Sections 138 and Section 141, respectively, of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

58.3. Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners "qua" the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

58.4. If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.

59. We reiterate the observations made by this Court almost a decade back in *Rallis India Ltd. v. Poduru Vidya Bhushan* [*Rallis India Ltd. v. Poduru Vidya Bhushan*, (2011) 13 SCC 88 : (2012) 3 SCC (Civ) 269 : (2012) 1 SCC (Cri) 778], as to how the High Court should exercise its power to quash the criminal proceeding when such proceeding is related to offences committed by the companies :

(SCC p. 93, para 13) "13. ... The world of commercial transactions contains numerous unique intricacies, many of which are yet to be statutorily regulated.

More particularly, the principle laid down in Section 141 of the NI Act (which is in parimateria with identical sections in other Acts like the Food Safety and Standards Act, 2006; the erstwhile Prevention of Food Adulteration Act, 1954, etc.) is susceptible to abuse by unscrupulous companies to the detriment of unsuspecting third parties."

(emphasis supplied)

29. In the case of *Siby Thomas v. Somany Ceramics Ltd.*² the following was held by the Hon'ble Supreme Court:-

18. Thus, in the light of the dictum laid down in *Ashok Shewakramani case* [*Ashok Shewakramani v. State of A.P.*, (2023) 8 SCC 473 : (2023) 4 SCC (Civ) 116 : (2023) 3 SCC (Cri) 568 : 2023 INSC 692], it is evident that a vicarious liability would be attracted only when the ingredients of Section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of Section 141(1) of the NI Act, would reveal that only that 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, as well as the company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

30. In *Ashok Shewakramani v. State of A.P.* ³ the Hon'ble Supreme Court held the following:-

21. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section (1) of Section 141 are satisfied. The section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company shall be deemed to be guilty of the offence under Section 138 of the NI Act.

23. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the Company. This is hardly relevant in the context of sub-section (1) of Section 141 of the NI Act.

2(2024) 1 SCC 348 3(2023) 8 SCC 473 The allegation that they are in charge of the Company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the Company for the conduct of the business. Only by saying that a person was in charge of the Company at the time when the offence was committed is not sufficient to attract sub-section (1) of Section 141 of the NI Act.

24. Sub-section 1 of Section 141 reads thus:

"141. Offences by companies.--(1) If the person committing an offence under Section 138 is 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, as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: [Provided further that where a person is nominated as a Director of a Company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]"

(emphasis supplied) On a plain reading, it is apparent that the words "was in charge of"

and "was responsible to the Company for the conduct of the business of the Company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between.

25. Therefore, even by giving a liberal construction to what is averred in Para 1 of the complaints, we are unable to accept the submission made by the learned counsel appearing for the second respondent that these averments substantially comply with sub- section (1) of Section 141 of the NI Act.

31. As per the acknowledged copy of the Invoice, on 31 st March 2008, the dealer had received 7900 litres of diesel against the despatched quantity of 12000 litres.

32. Letter dated 9th May, 2008 issued by Gorai Transport mentioned the Tank Truck was seized by the Legal Metrology Department with petroleum product in its third chamber with a shortage of 100 litres of the same in the second chamber.

33. As per Clause 9 (c) of the Agreement entered into with the said proprietor of the transport company, dated 6th July 2007 as also under Clause II (a) of the Transport Discipline Guidelines, the entire onus for such actions rest with the proprietor/owner of the transport company.

34. There was no averment in the complaint petition that the petitioners were responsible and in charge of operating the business of the corporation in any manner whatsoever. No averments were specified as to how and in what manner the accused petitioners were directly or vicariously liable for the alleged offence.

35. Mens rea or guilty motive has to be established for commission of the alleged offence. In this case there is no averment whatsoever against the accused petitioners to indict them in absence of mens rea. Mere assumption of their involvement on the ground of 'likelihood' is obliterated. 'Likelihood' presupposes 'probabilities', 'chance' and peculiarly 'suspicion' the implication of the petitioners is devoid of prima facie constituents to commit the alleged offence in the particular

instance.

36. There was also no averment that the petitioners no. 2 and 3 were responsible for the running of its day to day business of the petitioner no. 1/Company. In the absence of such mandatory specific averment in the said complaint, the petitioners no. 2 and 3 cannot be held vicariously liable for the commission of the alleged offence.

37. The commission of offence punishable under Sections 9 and 38 of the Standards of Weights and Measures (Enforcement) Act, 1985 was not primarily attributed to the petitioners despite inference of possibility.

38. The provisions enumerated in Section 9 or 38 nor Sections 60 nor 62 of the Standards of Weights and Measures (Enforcement) Act, 1985 cannot fasten culpable liability on the petitioners no.2 and 3 merely because they were the Managers of the Hindustan Petroleum Corporation Limited. The Managers were liable to be proceeded against and punished only when it could be proved that the offence was committed with the consent or connivance of or was directly attributable to any negligence on their part. In the instant case the nature of the offence secretly conducted beyond human visibility of any negligence and therefore is abrogated the Act. The offence was detected solely because the hidden knob behind the driver's seat was turned on and the service tank overflowed; had it been turned off, the offence would not have been perceived as the oil would not have overflowed from the service tank.

39. Clause 9(e) of the aforesaid Road Transport Agreement unequivocally stated that the carrier, i.e. M/s Gorai Transport should be solely responsible for any shortage in quantity after despatch of the tanker truck from the oil depot. The same was reflected in the admitted agreement between the carrier and the petitioner no. 1/Company, whereby the carrier had assured the petitioner no. 1/Company to bear the responsibility of delivery of the contracted amount of fuel to the consignee.

40. The crux of the allegation was that the transporter, contrary to agreement, defrayed its fuel costs, by diverting a minuscule part of the fuel meant for supply at the retail outlet, to the service tank of the truck, to illegally save on making any expenses towards its fuel cost for the transport.

41. However, as the transport of fuel had been contracted to the accused no. 4, namely M/s Gorai Transport, the conspectus of allegations in the instant case, do not admit of any complicity by the petitioners, who are wholly unconnected with the transport of fuel. The petitioner no. 1/Company had paid to the Carrier for the transportation work, and there was no imputation to the contrary.

42. Subsequently, a letter was addressed by Gorai Transport, the accused no. 4 to the Manager, HPCL, Rajbandh Depot, endorsing the termination of the services of the driver of WB-41C/4908 and endorsement of the deduction of the siphoned amount by HPCL from the transportation bill of M/s Gorai Transport. Moreover, M/s Gorai Transport was responsible for loading and discharging the tank trucks. M/s Gorai Transport was also responsible for quantity and quality of products received by it for transportation. M/s Gorai Transport was also responsible, if inter alia any shortage in quantity of product was found at any stage after the tank truck left the dispatch point, and the

petitioner no. 1/Company would be entitled to damages.

43. In the instant complaint, there is no averment by the complainant that the petitioner nos. 2 and 3 was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company.

44. In the absence of the basic averment, as held by the Hon'ble Supreme Court in S.M.S Pharmaceuticals Ltd., while enunciating the law in connection with the pari materia provisions of section 141 of the Negotiable Instruments Act, 1881, a person cannot be impleaded as an accused only by virtue of being an office holder in a company.

45. Thus, the complainant has not laid the foundation for the invocation of the provision of section 62 of the Standards of Weights and Measures (Enforcement) Act-1985, qua the petitioner nos. 2 and 3.

Section 62 of the said Act is reproduced herein below:

"62. Offences by companies. - (1) If the person committing an offence under this Act is 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, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed, with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purposes of this section,-

a) "company" means anybody corporate and includes a firm or other association of individuals, and

(b) "director", in relation to a firm, means a partner in the firm.

48. The act of fraud was detected only accidentally when the service tank of the Tank Truck started overflowing; if the knob hidden behind the driver's seat had been turned off, then such fraud would not have been detected.

49. The officers of the petitioner no.1/Company could not be held liable for failing to detect such fraud, as the same would not have been detected even upon inspection; the pipeline connecting the service tank with the main Tank Truck was not visible upon normal inspection.

50. The petitioner nos. 2 and 3 cannot be held vicariously responsible for any offence alleged to have been committed by the transporters of Hindustan Petroleum Corporation Limited, the petitioner no. 1/Company herein in view of the Agreement dated 6th July 2007, whereby the transporter was entrusted with the responsibilities.

51. In view of the above discussions, the proceedings in Case No. C.R. 230 of 2008 pending before the Learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad under Sections 37(1)(vii), 9, 38, 39(1), 39(2), 61 and 62 read with Section 60 of the Standards of Weights and Measures (Enforcement) Act, 1985 is quashed.

52. Under the facts and circumstances, the criminal revisional application being no. CRR 185 of 2010 is allowed.

53. Accordingly, CRR 185 of 2010 stands disposed of. Connected application, if there be any, also stands disposed of.

54. There is no order as to costs.

55. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

56. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)