

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2228 OF 2014

[Arising out of Special Leave Petition (Crl.) No.1724 of 2013]

Gunmala Sales Private Ltd. ... Appellants

Vs.

Anu Mehta & Ors. ... Respondents

WITH

CRIMINAL APPEAL Nos.2261-2265 OF 2014

[Arising out of Special Leave Petition (Crl.) Nos.5500-5504 of 2013]

Gunmala Sales Private Ltd., etc. ... Appellants

Vs.

Navkar Infra Projects Pvt. Ltd. & etc. ... Respondents

WITH

CRIMINAL APPEAL NOS. 2250-2260 OF 2014

[Arising out of Special Leave Petition (Crl.) Nos.5460-5470 of 2013]

Gunmala Sales Private Ltd., etc. ... Appellants

Vs.

Navkar Buildhome Pvt. Ltd. & etc. ... Respondents

WITH
CRIMINAL APPEAL NOS. 2229-2241 OF 2014

[Arising out of Special Leave Petition (Crl.) Nos.5377-5389 of 2013]

Gunmala Sales Private Ltd., etc. ... Appellants

Vs.

Navkar Buildestates Pvt. Ltd. & etc. ... Respondents

WITH
CRIMINAL APPEAL Nos.2242-2249 OF 2014

[Arising out of Special Leave Petition (Crl.) Nos.5437-5444 of 2013]

Gunmala Sales Private Ltd., etc. ... Appellants

Vs.

Navkar Promoters Pvt. Ltd. & Ors etc. ... Respondents

J U D G M E N T

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.
2. In these appeals, we are concerned with the question as to whether the High Court was justified in quashing the proceedings initiated by the Magistrate on the ground that there was merely a bald assertion in the complaint filed under Section 138 read with Section 141 of the Negotiable

Instruments Act, 1881 (**“the NI Act”**) that the Directors were at the time when the offence was committed in charge of and responsible for the conduct and day-to-day business of the accused-company which bald assertion was not sufficient to maintain the said complaint.

3. These appeals arise out of several complaints filed under Section 138 read with Section 141 of the NI Act. The complaints were filed by Gunmala Sales Private Limited or Rooprekha Sales Private Limited or by both. In the complaints, the respondents herein and others were arrayed as accused. After the process was issued, the respondents filed various applications under Section 482 of the Code of Criminal Procedure, 1973 (**“the code”**) in the High Court. The High Court disposed of one application being C.R.R. No.4099 of 2011 by a reasoned order. As the same issue was involved in all the applications, the other applications were disposed of in terms of judgment in C.R.R. No.4099 of 2011. Special Leave Petition (Crl.) No.1724 of 2013 was filed challenging the said judgment in C.R.R. No.4099 of 2011. We may, therefore,

for the disposal of these appeals, refer to the facts in civil appeal arising out of Special Leave Petition No.1724 of 2013, treating the same as the lead case.

4. It is the case of the appellant that in or about February, 2008, one Navkar Buildestates Private Limited ("**the said Company**") through its Directors - respondents 1 to 3 approached the appellant for certain financial assistance to meet the working capital requirement of the said Company. Accordingly, at the request of respondents 1 to 3, the appellant lent and advanced certain amount of money to the said Company. The said amount carried interest at the rate of 6% per annum. Respondents 1 to 3 along with the Managing Director of the said Company agreed and undertook to pay the said amount on or before 31/7/2011. It was further agreed by the respondents that on their failure to pay the amount on or before 31/7/2011, the appellant would be entitled to claim interest at the rate of 18% per annum. The respondents failed to repay the entire amount on or before 31/7/2011.

5. On 31/7/2011, in acknowledgment of their liability and towards repayment of the amount due, the said Company issued cheques in favour of the appellant. On 2/8/2011, when the appellant presented the said cheques to its banker – Canara Bank, the same were returned unpaid with the remark “*Insufficient Funds*”. On 20/8/2011, the appellant sent a statutory demand notice to respondents 1 to 4 under Section 138 of the NI Act. The said notice was received by respondents 1 to 4 on 27/8/2011. As respondents 1 to 4 failed to repay the amount as demanded in the said notice, on 26/9/2011, the appellant filed a complaint in the Court of the Chief Metropolitan Magistrate at Calcutta. Learned Magistrate accepted the said complaint and passed the summoning order.

6. Respondents 1 to 4 filed an application before the High Court of Calcutta under Section 482 of the Code for quashing the proceedings pending before the learned Magistrate. The High Court framed two questions as under:

- “(i) *Whether the Directors can be prosecuted on the bald assertion made in the complaint, that “the Directors thereof and were at the time when the*

offence committed in charge of and were responsible for the conduct and day to day business of the said accused No.1 company”.

- (ii) *Whether the Director who has resigned can be prosecuted after his resignation has been accepted by the Board of the Directors of the Company”.*

So far as the first question is concerned, the High Court, after referring to certain judgments of this Court, held that except the averment that the Directors were in-charge of and responsible for the conduct and day to day business of the Company, nothing has been stated in the complaint as to what part was played by them and how they were responsible for the finances of the company, issuance of cheques and whether they had control over the funds of the company. The High Court observed that the complaint lacked material averments. The High Court quashed the proceedings on this ground. So far as the second question is concerned, the High Court held that it is not necessary to answer it because the first question is answered in favour of respondents 1 to 4. The High Court quashed the complaint. Being aggrieved by the said order, the appellant has approached this Court by way of this appeal.

7. We have heard Mr. Gurukrishna Kumar, learned senior counsel appearing for the appellant as well as Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the respondents. We have perused the written submissions filed by the parties.

8. Gist of the written submissions of the appellants.

- a) It is settled law that a specific averment in the complaint that he/she is in charge of and is responsible to the company for the conduct of the business of the company is sufficient to maintain the complaint under Section 138 of the NI Act. It is not incumbent upon the complainant to elaborate in the complaint the role played by each of the Directors in the transaction forming the subject matter of the complaint. A Director is, in law, in charge of and is responsible to the company for the business of the company in view of the various provisions of the Companies Act and, therefore, his

position is different from that of other officers when arrayed as a co-accused in a complaint under Section 138 of the NI Act. The vicarious liability of Director/secretary/manager/other officers of a company under Section 141 of the NI Act has to be understood in the light of the statutory language employed in Section 141(1) and Section 141(2) of the NI Act. At any rate, the individual role of a Director is exclusively in the realm of internal management of a company and at the initial stage of a complaint, it would be unreasonable to expect a complainant to elaborate the specific role played by a Director in the transactions forming the subject matter of the complaint. In the present case, the appellant has pleaded that *“the accused 2, 3, 4 and 5 are the directors of accused 1 and were at the time when the offence committed in charge of and were responsible for the conduct and day to day business of the said accused-company”*.” The High Court on a complete misconstruction of legal position

enunciated by this Court in various judgments, quashed the complaint on the ground that “nothing has been stated as to what part was played by the Directors petitioners and how they were responsible regarding the finances of the company, issuance of cheques and control over the funds of the company.” In this connection, it is necessary to turn to **K.K. Ahuja v. V.K. Arora and anr.**¹ where this Court has referred to relevant provisions of the Companies Act and observed that in 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 NI Act and no further averment would be necessary in the complaint

¹ (2009) 10 SCC 48

though some particulars would be desirable. In

SMS Pharmaceuticals Limited v. Neeta Bhalla

and anr.² (“SMS Pharma-(1)”), this Court has

observed that the requirement of Section 141 is that

the person sought to be made liable should be in

charge of and responsible for the conduct of the

business of the company at the relevant time. This

has to be averred as a fact as there is no deemed

liability of the Director in such cases. Reference

may also be made to **Mannalal Chamaria v.**

State of West Bengal³, **A.K. Singhania v.**

Gujarat State Fertilizer Company Ltd.⁴, **Rallis**

India Limited v. Poduru Vidya Bhushan and

ors.⁵, **Paresh P. Rajda v. State of Maharashtra**

and anr.⁶, **Malwa Cotton and Spinning Mills**

Ltd. v. Virsa Singh Sidhu and ors.⁷ and **N.**

Rangachari v. Bharat Sanchar Nigam Ltd.⁸

² (2005) 8 SCC 89

³ (2014) 4 SCALE 55

⁴ 2013(12) SCALE 673

⁵ (2011) 13 SCC 88

⁶ (2008) 7 SCC 442

⁷ (2008) 17 SCC 147

⁸ (2007) 5 SCC 108

- b) So far as the decisions cited by the respondents are concerned, all these decisions purported to follow the law laid down in **SMS Pharma-(1)**, which does not lay down any general proposition of law that the specific role of a Director sought to be arrayed as an accused has to be elaborated in the complaint itself.
- c) The doctrine of '*Indoor Management*' would be a relevant factor to be considered while assessing the averments to be made to satisfy the requirements of Section 141 of the NI Act. A complainant to whom a cheque is issued by a company may not be aware of the functions performed by a particular Director in the company. The responsibility of each of the Directors is exclusively the internal management of the company itself. In this connection, it would be useful to refer to **Rangachari** and Delhi High Court's judgment in **Shree Raj Travels and Tours**.

Ltd. v. Destination of the World (subcontinent)

Pvt. Ltd.⁹ .

- d) Finally, it must be noted that vicarious liability is contemplated in the NI Act to ensure greater transparency in commercial transactions. This object has to be kept in mind while considering individual cases and hardship arising out of a particular case cannot be the basis for Directors to try to wriggle out of prosecution. Section 482 of the Code can be invoked where it is clear from documents on record, such as Form-32, that the Director is wrongly arraigned and not in any other case. The High Court clearly fell into an error in quashing the proceedings and, hence, impugned order deserves to be set aside.

Mr. Gurukrishna Kumar, learned senior counsel for the appellant reiterated the above submissions.

9. Gist of the written submissions of the respondents:

⁹ 66 Comp Cas 26 (Delhi)

- a) The main accused Shantilal Mehta is facing trial in all matters. The present appeal is limited to other family members of Shantilal Mehta i.e. his father Kanhaiyalal Mehta and his mother Shobha Mehta, who are over 70 years of age, his wife who is 52 years of age and his son who is 24 years of age. They are dragged in to harass them.
- b) Mere bald statement that the Director is in charge of responsible to the company is not sufficient to maintain prosecution [**G.N. Verma v. State of Jharkhand and anr.**¹⁰].
- c) Reproduction of statutory language of Section 141 is not sufficient. The necessary requirements of the complaint which need to be indicated in the complaint are “how”, “in what manner”, “the role”, “description” and “specific allegation” as to the part played by a person before he could be made an accused. In this connection, reliance is placed on

¹⁰ (2014) 4 SCC 282

National Small Industries Corporation Limited
v. Harmeet Singh Paintal and anr.¹¹, Anita
Malhotra v. Apparel Export Promotion Council
and anr.¹², N.K. Wahi v. Shekhar Singh and
ors.¹³. These conditions are intended to ensure that

a person who is sought to be made vicariously liable for an offence of which the principle accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable.

- d) The appellants' plea of Indoor Management is totally misconceived. This doctrine is limited to protecting outsiders regarding internal infirmities of Memorandum of Articles. Its real application in a cheques bouncing case would have been if a plea was taken that the company never had a power to incur debt and hence there is no legal liability. This

¹¹ (2010) 3 SCC 330

¹² (2012) 1 SCC 520

¹³ (2007) 9 SCC 481

doctrine cannot be invoked to give a carte blanche to an outsider to list all Directors for prosecution without even giving their “role” or “part played”. In this connection, reliance is placed on **MRF Limited etc. v. Manohar Parrikar and ors. etc.**¹⁴. The judgment of Delhi High Court in **Shree Raj Travels & Tours** is in teeth of the law laid down by this Court and, hence, does not appear to be correct. Moreover, in commercial world, whether a person deals with a company at the company’s office or enters into a commercial transaction by e-mail, in both cases, there is an awareness of the persons responsible for the act of giving a cheques, without the intention of honouring it. There is, therefore, complete non-applicability of the doctrine of Indoor Management in such cases.

- e) It would be against the interest of justice to prosecute all Directors. Such approach would delay trials and would be against the very scheme of NI

¹⁴ (2010) 11 SCC 374

Act. If all Directors are unnecessarily prosecuted, it would hinder good persons to come forward and become Directors. It would have adverse effect on corporate well being.

Dr. A.M. Singhvi, learned senior counsel for the respondents reiterated the above submissions.

10. It is necessary to first reproduce Section 141 of the NI Act because the issue involved in this matter revolves around it.

Section 141 of the NI Act 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 subsection 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.]

(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 any body corporate and includes a firm or other association of individuals; and*
- (b) “director”, in relation to a firm, means a partner in the firm.]”*

11. It is also necessary to quote the relevant paragraphs of the complaint which relate to the Directors of the accused company. They read as under:

“2. The Accused No.1 is a company within the meaning of the Companies Act, 1956, having its registered office at 103-104, Shubh Apartment, 99-L,

Bhopalpura, Udaipur, P.S. Bhupalpura, Rajasthan – 313001 and the Accused Nos.2, 3, 4 and 5 are the Directors thereof and were at the time when the offence committed in charge of and were responsible for the conduct and day to day business of the said accused No.1 company.

3. In discharge of the accused persons' existing legal debt and/or liability, the accused No.1 company had, issued and made over to the complainant an account payee cheque signed by the accused No.2 being No.008049 dated 31st July, 2011 for Rs.40,00,000/- drawn on The Rajsamand Urban Co-Op. Bank Limited, Udaipur Branch, Rajasthan – 313001.”

It must be noted here that the complaint is quashed by the High Court against all other accused except accused 2 who has signed the cheques.

12. Several judgments have been cited before us. It is necessary to refer to them in brief to get an idea as to how different Benches of this Court have dealt with this issue. We must begin with **SMS Pharma-(1)**, which is a decision of three-Judge Bench of this Court. All subsequent decisions are of two-Judge Benches. The three-Judge Bench was dealing with the reference made by a two-Judge Bench for determination of the following questions:

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

(b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against.”

13. After considering Sections 138 and 141 of the NI Act, Sections 203 & 204 of the Code and the relevant provisions of the Companies Act, this Court answered the questions posed in the reference as under:

“(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of

business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.”

14. In **Saroj Kumar Poddar v. State (NCT of Delhi) and anr.**¹⁵, the appellant therein was the Director of a public limited company which had issued three cheques in favour of respondent 2, who was manufacturer and supplier of chemical compounds. The cheques having been dishonoured, the complaint came to be filed. Application for quashing of the complaint was filed by the appellant in the High Court. The High Court dismissed the said application. While setting aside the High Court's order and after referring to **SMS Pharma-(1)**, a two-Judge Bench of this Court observed as under:

“14. The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in para 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act.”

¹⁵ (2007) 3 SCC 693

This Court further observed that with a view to making a Director of a company vicariously liable for the acts of the company, it was obligatory on the part of the complainant to make specific allegations as are required in law.

15. The reference having been answered in **SMS Pharma-(1)** individual cases were directed to be listed before an appropriate Bench for disposal according to law. Pursuant to this order the appeal was placed before a two-Judge Bench of this Court. The two-Judge Bench of this Court in **SMS Pharmaceuticals Ltd. (2) v. Neeta Bhalla**¹⁶ (“**SMS Pharma-(2)**”) noted that the High Court had quashed the complaint against respondent 1 holding that the allegations contained in the complaint as against respondent are vague and indefinite. The two-Judge Bench observed that on a plain reading of the averments made in the complaint it was satisfied that the statutory requirements as contemplated under Section 141 of the NI Act were not satisfied, and, therefore, the High Court judgment cannot be faulted. It must be noted that when the attention of this Court was drawn to

¹⁶ (2007) 4 SCC 70

observations made in **Saroj Kumar Poddar** that the complaint must not only contain averments justifying the requirements of Section 141 of the NI Act but must also show as to how and in what manner the appellant therein was responsible for the conduct of the business of the company or otherwise responsible to it in regard to its functioning, this Court observed that a plain reading of the said judgment would show that no such general law was laid down therein and the observations were made in the context of the said case as it was dealing with the contention that although no direct averment was made as against the appellant therein fulfilling the requirements of Section 141 of the NI Act, but, there were other averments which would show that the appellant therein was liable therefor.

16. In **N.K. Wahi** it was pleaded by the appellants therein in the complaint that M/s. Western India Industries Limited is a limited company and the respondents therein and some others were the Directors/persons responsible for carrying on the business of the company and their liability shall be joint and

several. The respondents therein filed an application invoking Section 482 of the Code. The High Court quashed the order issuing summons on the ground that the evidence does not establish that the respondents were either in charge of or were responsible to the company for the conduct of business. In the appeal, following **SMS Pharma-(1)**, **Sabitha Ramamurthy v. R.B.S. Channabaasavaradhya**¹⁷ and **Saroj Kumar Poddar**, a two-Judge Bench of this Court reiterated what is stated in the said judgments that Section 141 raises a legal fiction by reason of which a person, although is not personally liable for commission of such an offence, would be vicariously liable therefor. Such vicarious liability can be inferred against the company only if the requisite statement is made in the complaint. It was further observed that before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted. It is clear that this is a case where the basic averments in terms of Section 141 were absent and the two-Judge Bench followed **SMS Pharma-(1)**

¹⁷ (2006) 10 SCC 581

and confirmed the quashing of the complaint. The relevant paragraph of this judgment needs to be quoted.

“8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.”

17. In **N. Rangachari** a two-Judge Bench of this Court was again dealing with the same question. Averments made in the complaint before the two-Judge Bench were similar in nature as the averments made in the complaint in the present case. The complainant therein was Bharat Sanchar Nigam Limited (BSNL). Its case was that the cheques issued by the Data Access (India) Limited in discharge of their pre-existing liabilities were dishonoured for insufficiency of funds. A petition was filed for quashing the complaint by the appellant-Data Access (India) Limited stating that he was nominated as

a honorary chairman of the company without any remuneration and was holding an honorary post in the company. He was never assigned with the financial and business activities. The complaint did not contain adequate averments to justify initiation of criminal proceedings against him. The High Court dismissed the petition on the ground that the court cannot decide the pleas raised by the appellant in a petition filed under Section 482 of the Code. Those pleas will have to be established in trial. This Court referred to the relevant extracts from **Palmer's Company Law**¹⁸, **Guide to the Companies Act by A. Ramaiya**¹⁹ and **Principles of Modern Company Law by Gower and Davies**²⁰ and expressed that in the commercial world, a person having a transaction with a company is entitled to presume that the Directors of the company are in charge of the affairs of the company and it is for the Directors to prove to the contrary at the trial. This Court also observed that a person having business dealings with the company may not be aware of the

¹⁸ 20th Edition

¹⁹ 16th Edition

²⁰ 17th Edition

arrangement within the company in regard to its management. Pertinently, this Court expressed that the decision of the three-Judge Bench in **SMS Pharma-(1)** was binding on it. The two-Judge Bench understood **SMS Pharma-(1)** as laying down the law that what is to be looked into is whether in the complaint, in addition to asserting that accused are the Directors of the company, it is further alleged that they are in charge of and responsible to the company for the conduct of the business of the company. This Court observed that reading the complaint, as a whole, it was clear that the allegations in the complaint were that at the time when two dishonoured cheques were issued by the company, the appellants therein were the Directors of the company and were in charge of the affairs of the company, and, therefore, the High Court had rightly dismissed the petition.

18. In **Paresh P. Rajda v. State of Maharashtra and anr.**²¹, similar question arose before a two-Judge Bench of this Court. The High Court had refused to quash the

²¹ (2008) 7 SCC 442

complaint on the ground that an overall reading of the complaint showed that specific allegations had been levelled against the appellant that he being a responsible officer of the company was equally liable and that if it is ultimately found that he had, in fact, no role to play, he would be entitled to an acquittal. It appears that thereafter accused 2 and 4, the Chairman and a Director respectively of the company approached this Court. This Court referred to **SMS Pharma-(1)** and **N. Rangachari** and noted a slight departure in **N. Rangachari** in favour of the complainant from the view taken in **SMS Pharma-(1)** and further noted that ultimately the entire matter would boil down to an examination of the nature of averments made in the complaint. The two-Judge Bench quoted the relevant paragraphs of the complaint in which it was stated that accused 2 was the Chairman of the company and was responsible for the day-to-day affairs of the company and was, therefore, liable to repay the amounts of dishonoured cheques. It was further stated in the complaint that accused 3 being Joint Managing Director and accused 4, 5 and 6 being Directors of the company are responsible officers of the

company and, therefore, they are liable to repay the amounts of the dishonoured cheques. This Court observed that from the High Court judgment, it appears that the question as to whether accused 2 was responsible for the business of the company had not been seriously challenged. This Court observed that there were clear allegations against both the appellants-accused; that they were officers of the company and were responsible for the affairs of the company and that at a stage where the trial had not yet started, it is inappropriate to quash the proceedings against them.

19. In **Malwa Cotton & Spinning Mills Ltd.**, the High Court had accepted the prayer of respondent 1 for quashing the proceedings initiated against him under Section 138 of the NI Act on the ground that he had resigned from the Directorship before the cheques were issued. This Court was of the view that whether respondent 1 had resigned before the cheques were issued involves factual dispute. Referring to **N. Rangachari**, where it is observed that a person in the commercial world having a transaction with a company is

entitled to presume that the Directors of the company are in charge of the affairs of the company and if any restriction on their powers is placed by the Memorandum of Articles of the Company, it is for the Directors to establish that in the trial this Court allowed the appeal filed by the complainant holding that the High Court was not justified in quashing the proceedings against respondent 1.

20. In **K.K. Ahuja**, where this Court was considering a similar question after referring to **SMS Pharma-(1)**, **SMS Pharma-(2)**, **Saroj Kumar Poddar** and **N.K. Wahi** and other relevant judgments and after referring to the relevant provisions of the Companies Act, this Court summarized the position under Section 141 of the NI Act as under:

“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 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.”

21. In **National Small Industries Corporation Limited,** this Court was dealing with the same question. After referring to **SMS Pharma-(1), SMS Pharma-(2), Saroj Kumar Poddar, N.K. Wahi, N. Rangachari, Paresh P. Rajda, K.K. Ahuja** and other relevant judgments, this Court laid down the following principles:

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

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

(iii) *Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence*

committed by the company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

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

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

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

(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”

22. In **Rallis India Limited**, this Court was dealing with a similar issue. The High Court had allowed application filed under Section 482 of the Code and discharged the applicants therein. While setting aside the High Court's order, this Court found that there were averments in the complaint that the respondents were partners of the firm at the relevant point of

time and were looking after the day-to-day affairs of the partnership firm. This averment had been specifically mentioned by the appellant in the complaint even though denied by the respondents but the burden of proof that at the relevant point of time, the respondents were not the partners, lies specifically on them and this onus is required to be discharged by them by leading evidence. This Court observed that where there are several disputed facts involved for instance when the partnership came into being and when the respondents had actually retired from the partnership, etc. the ratio of **SMS Pharma-(1)** can be followed only, after the factum that the accused were the Directors or partners of a company or a firm respectively at the relevant point of time stands fully established. In cases, where there are allegations and counter-allegations between the parties regarding the very composition of the firm, the rule of 'specific averment' laid down in **SMS Pharma-(1)** must be broadly construed.

23. In **Anita Malhotra**, the High Court had dismissed the petition filed praying for quashing of the criminal complaint

instituted against the appellant under Section 138 of the NI Act. The appellant claimed to be a non-executive Director of the company which had issued the cheques. The appellant claimed that she had resigned from the company on 20/11/1998 while the cheques were issued in the year 2004. A two-Judge Bench of this Court held that though it is not proper for the High Court to make a roving enquiry and consider the defence of the accused at the stage of a petition filed for quashing the complaint, if any documents, which are beyond suspicion or doubt, are placed, it can take them into account. This Court looked into the certified copy of the annual return, which was a public document as per the Companies Act read with Section 74(2) of the Evidence Act and held that the appellant had resigned from the Directorship of the company much prior to the issuance of the cheques. While setting aside the High Court's order, this Court reiterated that in case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the company for conduct of its business and mere bald statement that he or she was in

charge of and was responsible to the company for conduct of its business is not sufficient. This Court observed that in the case before it except the mere bald and cursory statement with regard to the appellant, the complainant had not specified her role in the day-to-day affairs of the company and on this ground alone, the appellant was entitled to succeed.

24. In **A.K. Singhania**, while dealing with the same issue a two-Judge Bench of this Court observed that it is necessary for a complainant to state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company. Although, no particular form for making such an allegation is prescribed, and it may not be necessary to reproduce the language of Section 138 of the NI Act, but a reading of the complaint should show that the substance of the accusation discloses that the accused person was in charge of and responsible for the conduct of the business of the company at the relevant time.

25. In **Mannalal Chamaria**, this Court reiterated the above observations and observed that in the averments made before

it there was no specific or even a general allegation made against the appellants. This Court, therefore, dismissed the complaint filed against the appellants under Section 138 of the NI Act.

26. It is clear from a perusal of the above decisions that **SMS Pharma-(1)**, which is a three-Judge Bench decision, still holds the field. In all subsequent decisions, two-Judge Benches of this Court have followed **SMS Pharma-(1)**. No doubt that there is a slight deviation in **N. Rangachari** in favour of the complainant, but, even in that decision, the two-Judge Bench accepts that **SMS Pharma-(1)** has a binding force. In **SMS Pharma-(1)**, **KK Ahuja** and **National Small Industries Ltd.** this Court summarized its conclusions. We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the conclusions drawn in the above-mentioned cases that it is necessary to aver in the complaint filed under Section 138 read with Section 141 of

the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company. This is a basic requirement. There is no deemed liability of such Directors.

27. This averment assumes importance because it is the basic and essential averment which persuades the Magistrate to issue process against the Director. That is why this Court in **SMS Pharma-(1)** observed that the question of requirement of averments in a complaint has to be considered on the basis of provisions contained in Sections 138 and 141 of the NI Act read in the light of the powers of a Magistrate referred to in Sections 200 to 204 of the Code which recognize the Magistrate's discretion to reject the complaint at the threshold if he finds that there is no sufficient ground for proceeding. Thus, if this basic averment is missing the Magistrate is legally justified in not issuing process. But here we are concerned with the question as to what should be the approach of a High Court when it is dealing with a petition filed under Section 482

of the Code for quashing such a complaint against a Director. If this averment is there, must the High Court dismiss the petition as a rule observing that the trial must go on? Is the High Court precluded from looking into other circumstances if any? Inherent power under Section 482 of the Code is to be invoked to prevent abuse of the process of any court or otherwise to secure ends of justice. Can such fetters be put on the High Court's inherent powers? We do not think so.

28. **SMS Pharma-(1)**, undoubtedly, says that it is necessary to specifically aver in the complaint that the Director was in charge of and responsible for the conduct of the company's business at the relevant time when the offence was committed. It says that this is a basic requirement. And as we have already noted, this averment is for the purpose of persuading the Magistrate to issue process. If we revisit **SMS Pharma-(1)**, we find that after referring to the various provisions of the Companies Act it is observed that those provisions show that what a Board of Directors is empowered to do in relation to a particular company depends upon the roles and functions

assigned to Directors as per the memorandum and articles of association of the company. There is nothing which suggests that simply by being a Director in a company, one is supposed to discharge particular functions on behalf of a company. As a Director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two Directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. This Court further observed that what emerges from this is that the role of a Director in a company is a question of fact depending on the peculiar facts in each case and that there is no universal rule that a Director of a company is in charge of its everyday affairs. What follows from this is that it cannot be concluded from **SMS Pharma-(1)** that the basic requirement stated therein is sufficient in all cases and whenever such an averment is there, the High Court must dismiss the petition filed praying for quashing the process. It must be remembered that the core of a criminal

case are its facts and in factual matters there are no fixed formulae required to be followed by a court unless it is dealing with an entirely procedural matter. We do not want to discuss 'the doctrine of Indoor Management' on which submissions have been advanced. Suffice it to say, that just as the complainant is entitled to presume in view of provisions of the Companies Act that the Director was concerned with the issuance of the cheque, the Director is entitled to contend that he was not concerned with the issuance of cheque for a variety of reasons. It is for the High Court to consider these submissions. The High Court may in a given case on an overall reading of a complaint and having come across some unimpeachable evidence or glaring circumstances come to a conclusion that the petition deserves to be allowed despite the presence of the basic averment. That is the reason why in some cases, after referring to **SMS Pharma-(1)**, but considering overall circumstances of the case, this Court has found that the basic averment was insufficient, that something more was needed and has quashed the complaint.

29. When a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, the High Court may find that the basic averment is sufficient, that it makes out a case against the Director; that there is nothing to suggest that the substratum of the allegation against the Director is destroyed rendering the basic averment insufficient and that since offence is made out against him, his further role can be brought out in the trial. In another case, the High Court may quash the complaint despite the basic averment. It may come across some unimpeachable evidence or acceptable circumstances which may in its opinion lead to a conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time and therefore making him stand the trial would be abuse of the process of court as no offence is made out against him.

30. When in view of the basic averment process is issued the complaint must proceed against the Directors. But, 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 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 uncontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be abuse of the 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.

31. In this connection, it would be advantageous to refer to **Harshendra Kumar D v. Rebatilata Koley & Ors.**,²² where process was issued by the Magistrate on a complaint

²² (2011) 3 SCC 351

filed under Section 138 read with Section 141 of the NI Act. The appellant therein challenged the proceeding by filing revision application under Section 397 read with Section 401 of the Code. The case of the appellant-Director was that he had resigned from Directorship. His resignation was accepted and notified to the Registrar of Companies. It was averred in the complaint that the appellant was responsible for the day-to-day affairs of the company and it was on his and other Directors assurance those demand drafts were issued. Despite this averment, this Court quashed the complaint taking into account resolution passed by the company, wherein it was reflected that the appellant had resigned from the post of Director much prior to the issuance of cheque and the fact that the company had submitted Form-32. It was argued before this Court that the documents furnished by the accused could not have been taken into account. Repelling this submission this Court observed as under:

“24. *In Awadh Kishore Gupta³ this Court while dealing with the scope of power under Section 482 of the Code observed: (SCC p. 701, para 13)*

“13. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the court to act as if it was a trial Judge.”

25. *In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents — which are beyond suspicion or doubt — placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.*

26. *Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company."*

32. As already noted in **Anita Malhotra**, relying on **Harshendra Kumar**, this Court quashed the complaint filed under Section 138 read with Section 141 of the NI Act relying on the certified copy of the annual return which was a public document as per the Companies Act read with Section 74(2) of the Evidence Act, which established that the appellant/Director therein had resigned from the Directorship much prior to the issuance of cheques. This was done despite the fact that the complaint contained the necessary averments. In our opinion, therefore, there could be a case where the High Court may feel that filing of the complaint against all Directors is abuse of the process of court. The High Court would be justified in such cases in quashing the

complaint after looking into the material furnished by the accused. At that stage there cannot be a mini trial or a roving inquiry. The material on the face of it must be convincing or uncontrovered or there must be some totally acceptable circumstances requiring no trial to establish the innocence of the Directors.

33. We may summarize our conclusions as follows:

- a) 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;
- b) 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.

- c) 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 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 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 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 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 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;

- d) 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.

34. We will examine the facts of the present case in light of the above discussion. In this case, the High Court answered the first question raised before it in favour of the respondents.

The High Court held that *“in the complaint except the averments that the Directors were in charge of and responsible to the company at the relevant time, nothing has been stated as to what part was played by them and how they were responsible regarding the finances of the company, issuance of cheque and control over the funds of the company”*. After so observing, the High Court quashed the proceedings as against the respondents. In view of this conclusion, the High Court did not go into the second question raised before it as to whether the Director, who has resigned can be prosecuted after his resignation has been accepted by the Board of Directors of the company. Pertinently, in the application filed by the respondents, no clear case was made out that at the material time, the Directors were not in charge of and were not responsible for the conduct of the business of the company by referring to or producing any uncontrovertible or unimpeachable evidence which is beyond suspicion or doubt or any totally acceptable circumstances. It is merely stated that Sidharth Mehta had resigned from the Directorship of the company on 30/9/2010 but no uncontrovertible or

unimpeachable evidence was produced before the High Court as was done in **Anita Malhotra** to show that he had, in fact, resigned long before the cheques in question were issued. Similar is the case with Kanhaiya Lal Mehta and Anu Mehta. Nothing was produced to substantiate the contention that they were not in charge of and not responsible for the conduct of the business of the company at the relevant time. In the circumstances, we are of the opinion that the matter deserves to be remitted to the High Court for fresh hearing. However, we are inclined to confirm the order passed by the High Court quashing the process as against Shobha Mehta. Shobha Mehta is stated to be an old lady who is over 70 years of age. Considering this fact and on an overall reading of the complaint in the peculiar facts and circumstances of the case, we feel that making her stand the trial would be an abuse of process of the court. It is however, necessary for the High Court to consider the cases of other Directors in light of the decisions considered by us and the conclusions drawn by us in this judgment. In the circumstances, we confirm the impugned order to the extent it quashes the process issued

against Shobha Mehta, an accused in C.C. No.24035 of 2011.

We set aside the impugned order to the extent it quashes the process issued against other Directors viz. Kanhaiya Lal Mehta, Anu Mehta and Siddharth Mehta. We remit the matter to the High Court. We request the High Court to hear the parties and consider the matter afresh. We are making it clear that we have not expressed any opinion on the merits of the case and nothing said by us in this order should be interpreted as our expression of opinion on the merits of the case. The High Court is requested to consider the matter independently. Considering the fact that the complaints are of 2011, we request the High Court to dispose of the matter as expeditiously as possible and preferably within six months.

35. The criminal appeals are disposed of in the afore-stated terms.

.....J.
[Ranjana Prakash Desai]

.....J.
[N.V. Ramana]

New Delhi
October 17, 2014.