

**(2008) 07 P&H CK 0128**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. 24709-M of 2005 (O and M)

Debi Prasad Mishra and Others

APPELLANT

Vs

M/s. Baluja Forex Private Limited

RESPONDENT

**Date of Decision:** July 1, 2008

**Acts Referred:**

- Negotiable Instruments Act, 1881 (NI) - Section 138, 141

**Citation:** (2008) 27 CriminalCC 912

**Hon'ble Judges:** Rajesh Bindal, J

**Bench:** Single Bench

**Advocate:** A.P.S. Deol and Mr. Davinder Bir Singh, for the Appellant; Kunal Dawar, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Rajesh Bindal, J.

The petitioners have approached this Court praying for quashing of complaint filed against them under Sections 138, 141, 142 of the Negotiable Instruments Act, 1881 (for short, "the Act") and the summoning order dated 29.10.2004 passed by the learned Judicial Magistrate First Class summoning the petitioners to face trial u/s 138 of the Act.

2. Briefly, the facts as stated in the petition are that the petitioners were directors in a Company, namely, M/s. Shrey Forex Limited and others (for short, "the Company"). The company was dealing with foreign currencies and traveler cheques under licence from Reserve Bank of India. The Company though was licensed to open and operate upto a maximum of eight branches but it opened only one office at New Delhi. The petitioners, who were known to late Mr. Bhairav Chandra Mahanti, father of Mr. Sabyasachi Mahanti, Chairman of the Company for many years and some being his close relatives joined as directors of the Company on the request by Mr. Sabyasachi Mahanti with clear understanding that they were not to be involved in

day-to-day affairs in the Company and their role would be limited to attend Board meetings. They were not to be paid any salary or remuneration as they were honorary, non-working directors. All the petitioners are based at different places in the State of Orissa. The complaint came to be filed on account of dishonour of two cheques drawn on Bank of Punjab Limited bearing No. 055444 dated 06.08.2004 for Rs. 3,71,600/- and bearing No. 032177 dated 09.08.2004 for Rs. 2,32,500/-. The cheques were signed by Chairman of the Company, namely, Sabyasachi Mahanti. The same were returned un-cleared with the remark "Insufficiency of Funds". The petitioners came to know about the dishonour of cheques only when they received legal notice dated 31.08.2004 from the counsel for the complainant. The same was duly replied to on 25.09.2004.

3. Learned Counsel for the petitioners submitted that the spirit of Section for which the amendment was made in the Act is not to prosecute the directors of a company, who did not have any role to play in the day-to-day affairs of the Company as it is only the person who is in-charge of the day-to-day affairs of the Company who can be held responsible for any offence committed for dishonour of cheque. He further submitted that there were no specific allegations in the notice issued to the petitioners that they were in charge or responsible for the affairs of the Company. Similar is the position with regard to the complaint. Petitioners No. 3 to 5 are ladies and also have no role to play in day-to-day working of the Company. Prosecution u/s 138/141 of the Act lies only against the Company and the director(s) who were in-charge or were responsible for the day-to-day running of the business of the Company and not against the directors who did not have any role to play in the day-to-day affairs whose involvement was only to the extent of attending the Board meetings.

4. Reliance has been placed upon S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, ; Smt. Katta Sujatha Vs. Fertilizers and Chem. Travancore Ltd. and Another, and Monaben Ketanbhai Shah and Another Vs. State of Gujarat and Others,

5. On the other hand, Learned Counsel for the respondent/complainant submitted that there are specific allegations in the para 3 of the complaint that all the accused were carrying on the business of Company and had been running its affairs. They are in-charge of and responsible to the Company for the conduct of the business jointly. As to whether a person is responsible for the affairs of the Company is to be considered by the learned Magistrate on appreciation of the evidence on record and the present proceedings should not be permitted to be used by the petitioners to scuttle the trial against them being accused for the offence committed by them. Reliance has been placed upon S.V. Muzumdar and Others Vs. Gujarat State Fertilizer Co. Ltd. and Another, ; Saroj Kumar Poddar v. State (NCT of Delhi) & Anr., 2007 (I) CCC 597 (S.C.) : 2007 (1) CCC 842 (S.C.) : 2007 (1) ACJ 243 (S.C.) : 2007 (1) RCR (Cri) 741, and N. Rangachari v. Bharat Sanchar Nigam Limited, 2007 (2) ACJ 540 (S.C.) : 2007(3) CCC 206 (S.C.) : 2007 (3) CCC 213 (S.C.): 2007(2) RCR (Cri) 875.

6. In Katta Sujatha's case (supra), Hon'ble the Supreme Court quashed the complaint against the petitioner therein being a lady on the ground that there was no specific allegation in the complaint that the petitioner was in-charge of the business and was responsible for the conduct of the business of the firm in terms of Section 141 of the Act. A similar view was expressed by Hon'ble the Supreme Court in S.M.S. Pharmaceuticals Limited's case (supra).

7. In S.V. Muzumdar's case (supra), Hon'ble the Supreme Court opined that as to whether a person is in-charge of or is responsible to the Company for conduct of business is to be adjudicated on the basis of material to be placed by the parties. Sub-section (2) of Section 141 of the Act is a deeming provision which operates in certain specified circumstances. Whether requirement for the application of the deeming provision exist or not is a matter for adjudication during trial. It is further opined therein that under the scheme of the Act for any offence committed u/s 138 of the Act, there is deeming provision u/s 141 of the Act that the person who is in-charge of and responsible for the conduct of the business of the Company as well as the Company shall be guilty of the offence. A person who proves that the offence was committed without his knowledge or that he had exercised due diligence will be exempted from liability by operation of proviso to sub-section (1) of Section 141 of the Act. The burden for this has to be discharged by the accused.

8. In N. Rangachari's case (supra), Hon'ble the Supreme Court considering earlier case law on the issue regarding the liability of the directors observed as under:-

14. A person normally having business or commercial dealings with a company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its Memorandum or Articles of Association. Other than that, he may not be aware of the arrangements within the company in regard to its management, daily routine, etc. Therefore, when a cheque issued to him by the company is dishonored, he is expected only to be aware generally of who are in-charge of the affairs of the company. It is not reasonable to expect him to know whether the person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the company and those in charge of it. So, all that a payee of a cheque that is dishonored can be expected to allege is that the persons named in the complaint are in charge of its affairs. The Directors are *prima-facie* in that position.

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18. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonored cheques were issued by the company, the-appellant and another were the Directors of the company and were in-charge of the affairs of the company. It is not proper to

split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons in-charge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant.

9. Delhi High Court in R.L. Verma & Ors. v. J.K. Verma & Ors., 2008 (2) CCC 764 (Del) : 2008 (3) CCC 084 (Del), rejected the prayer for quashing of complaint u/s 138 of the Act on the ground that the petitioners there being non-working directors were not liable for the offence committed u/s 138 of the Act. The relevant para therefrom is extracted below:-

In the case relied upon by the Learned Counsel for respondent No. 1 - complainant N. Rangachari Vs. Bharat Sanchar Nigam Ltd., the complainant had filed a complaint u/s 138 of the Act against a Company and its Directors and regarding the Directors the averments in the complaint were similar as have been made by the complainant in the present case in his complaint and which have already been reproduced above. In that case also the Directors had sought quashing of the complaint against them on the ground that they had nothing to do with the affairs of the Company and the averments in the complaint were not sufficient to make them liable for the offence u/s 138 of the Act with the aid of Section 141 of the Act. Hon"ble the Supreme Court, however, rejected the said contention raised on behalf of the Directors of the accused Company by observing that if in the complaint it had been averred that the accused Directors were in-charge of and responsible to the accused Company, of which they were Directors, for the conduct of business then that would satisfy the requirement of Section 141 of the Act and nothing more was required to be pleaded in the complaint and further that it was not reasonable to expect the complainant to spell out in the complaint the exact duties being performed by the Directors as those matters are within the knowledge of the Company and those in charge of it. Therefore, the complaint against the petitioners No. 1 and 2 in the present case cannot be quashed just because they have claimed that they had nothing to do with the affairs of the Company or the transaction with the complainant in respect of which their Company (respondent No. 2 herein) had issued the cheque in favour of the complainant which on presentment to the bank was dishonored. The judgments of this Court relied upon by the Learned Counsel for the petitioners were all rendered before the pronouncement of decision in Rangachari's case (supra) and so cannot be of any benefit to the petitioners and in the two judgments of Hon"ble Supreme Court cited by him it was held that it has to be pleaded in the complaint u/s 138 of the Act that the accused Directors were in-charge of the affairs of the accused Company. In those two judgments it was not pleaded in the complaint that the concerned Directors of the accused Company were responsible for the day to day affairs of the Company which had issued the dishonored cheques and so for that

reason the complaints qua those Directors were quashed. However, as noticed already, in the present case the complainant had specifically pleaded in his complaint that petitioners No. 1 and 2 herein were the Directors of respondent No. 2 herein and were also responsible to the said Company for the conduct of the business of the Company. So, the two decision of Hon'ble Supreme Court relied upon by the Learned Counsel for the petitioners also do not help the case of the petitioners No. 1 and 2.

10. Similar view was expressed in Bharat Poonam Chand Shah v. Dominors Prin-tech India Pvt. Ltd., 2008 (2) CCC 792 (Del) : 2008 (3) CCC 144 (Del) where also Delhi High Court, relying upon judgment of Hon'ble the Supreme Court in N. Rangachari's case (supra), dismissed the petition.

11. If the pleadings in the complaint against the petitioners is considered, para 3 thereof can very well be referred to for the purpose. The same is extracted below:-

That accused No. 1 company has also been carrying on business of purchase and sale of foreign currencies. Accused Nos.2 to 12 are Directors of accused No. 1 company while accused Nos.13 and 14 are authorized signatories thereof. All the said accused Nos.2 to 14 are carrying on business accused No. 1 company and have been running its affairs. Accused Nos.2 to 14 are in-charge of and responsible to accused No. 1 company for the conduct of its business. All the said accused have been running and looking after the business of the said company jointly.

12. A bare perusal thereof shows that clear averments have been made that the petitioners are in-charge and responsible to the Company for the conduct of its business. All of them were running and looking after the business of the Company jointly. Such type of averments have been held to be sufficient for proceeding against the directors as it is only during trial that they can prove their innocence on the basis of the material placed on record by them in evidence. A perusal of memo of parties show that petitioner No. 2 is brother of the Chairman of the Company whereas petitioner No. 4 is his wife.

13. Keeping in view my above observations, I do not find this to be a fit case for quashing of complaint at this stage. There are specific allegations against the petitioners of their being in charge of and responsible for the conduct of the business of the Company. The pre-requisites of Section 141 of the Act are complied with. Accordingly, the present petition is dismissed.

14. However, the fact that the petitioners herein are based in Orissa, their personal appearance during trial shall remain exempted subject to their filing affidavits and undertaking to appear before the Court as and when directed to do so and on such other terms and conditions as the trial Court may fix for the purpose.