

(2018) 11 DEL CK 0088

Delhi High Court

Case No: Crimina Miscellaneous Case No.4227 Of 2014 & Crl.M.A.14611 Of 2014

DSC Ltd

APPELLANT

Vs

Dada Jeetu Buildcon
Pvt LtdRESPONDENT

Date of Decision: Nov. 16, 2018**Acts Referred:**

- Negotiable Instruments Act, 1881 - Section 138, 141, 141(2), 142(b)
- Companies Act, 2013 - Section 2(54)

Citation: (2018) 11 DEL CK 0088**Hon'ble Judges:** Sanjeev Sachdeva, J**Bench:** Single Bench**Advocate:** Rajnish Kumar, Priya Hingorani, Parveen Kumar**Final Decision:** Dismissed

Judgement

SANJEEV SACHDEVA, J.

1. The petitioner seeks quashing of summoning order dated 06.03.2013 and seeks quashing of complaint filed under Section 138 of the Negotiable

Instruments Act (hereinafter referred to as the N.I. Act).

2. The respondent had filed a complaint under Section 138 N.I. Act contending that two cheques in the sum of Rs. 75 lakhs issued by the petitioner

were dishonoured for the reasons "insufficient funds".

3. Apart from the raising defence on merits, the petitioner has raised a technical defence to the complaint and contends that the same goes to the very root of the matter and submits that the complaint is not maintainable.

4. Subject cheques were issued on a bank account maintained by DSC Ltd., the petitioner herein. Cheques were admittedly signed by Mr. M.S.

Narula, who is stated to be the Managing Director of the petitioner company.

5. It is an admitted position that statutory notice under Section 138 of the N.I. Act dated 19.01.2013 was addressed only to "Mr. M.S. Narula,

Director, DSC Ltd. No notice was sent in the name of "DSC Ltd. Subject complaint has been filed only against "DSC Ltd. Through its

Director " M.S. Narula.

6. Learned counsel for the petitioner contends that since statutory notice was only addressed to Mr. M.S. Narula and not to DSC Ltd., the complaint

filed only against DSC Ltd. through Mr. M.S. Narula is not maintainable. He contends that the holder of the account on which the cheque was drawn

was not put to notice and the noticee to whom the statutory notice was issued has not been arrayed as an accused, thus the proceedings are not

maintainable and are liable to be quashed.

7. Per contra, the contention of learned counsel for the respondent is that DSC Ltd. being a legal entity and the cheque having been signed by Mr.

M.S. Narula who is admittedly the Manager Director, as is evident from the affidavit filed in support of the petition, the notice was to the company

and the complaint in the name of the company through its Director Mr. M.S. Narula is maintainable.

8. The factual position that emerges is that the alleged debt is that of the Petitioner Company. Subject cheque has been issued and signed by Mr. M.S.

Narula its Managing Director. Statutory notice under section 138 Negotiable Instruments Act has been issued only to the Managing Director. It is an

admitted position that statutory notice has not been addressed to the company and was addressed only to its Managing Director. Subject complaint has

been filed only against the company and not against the Managing Director. The company has been arrayed through Mr. M.S. Narula, its Managing

Director.

9. The question that arises for consideration is as to whether a complaint under section 138 Negotiable Instruments Act would be maintainable, against

the company, if the statutory notice under section 138 Negotiable Instruments Act, is issued only to its Managing Director and is not issued to the

company which is maintaining the account from which the subject cheque is issued.

10. To answer the question, we will have to examine the legal position.

11. The Supreme Court of India in Krishna Texport & Capital Markets Ltd. V. Ila A. Agrawal, (2015) 8 SCC 28 has held as under:

“14. In Nathi Devi v. Radha Devi Gupta [(2005) 2 SCC 271] a Constitution Bench of this Court was called upon to consider, inter alia, whether the

expression, “where the landlord is a widow and the premises let out by her, or by her husband, are required by her for her own residence”

appearing in Section 14-D of the Delhi Rent Control Act would include every widow so as to entitle her to obtain immediate possession of the

premises owned by her. While holding that the benefit under Section 14-D is available only to a widow where premises are let out by her or by her

husband, this Court repelled the contention that a widow who had acquired tenanted premises by sale or transfer could also invoke the provisions of

Section 14-D. During the course of its decision this Court observed: (SCC pp. 276-77, para 13)

“13. The interpretative function of the court is to discover the true legislative intent. It is trite that in interpreting a statute the court must, if the

words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences.

Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no

question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are

injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would

not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object

and policy of the Act. In considering whether there is ambiguity, the court must look at the statute as a whole and consider the appropriateness of the

meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

15. With these principles in mind, we now consider the provisions in question. According to Section 138, where any cheque drawn by a person on an

account maintained by him is returned by the bank unpaid for reasons mentioned in the said section such person shall be deemed to have committed an

offence. The proviso to the section stipulates three conditions on the satisfaction of which the offence is said to be completed. The proviso inter alia

obliges the payee to make a demand for the payment of the said amount of money by giving a notice in writing to "the drawer of the cheque" and

if "the drawer of the cheque" fails to make the payment of the said amount within 15 days of the receipt of the said notice, the stages stipulated in

the proviso stand fulfilled. The notice under Section 138 is required to be given to "the drawer" of the cheque so as to give the drawer an

opportunity to make the payment and escape the penal consequences. No other person is contemplated by Section 138 as being entitled to be issued

such notice. The plain language of Section 138 is very clear and leaves no room for any doubt or ambiguity. There is nothing in Section 138 which may

even remotely suggest issuance of notice to anyone other than the drawer.

16. Section 141 states that if the person committing an offence under Section 138 is a company, every Director of such company who was in charge

of and responsible to that company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that

a juristic entity i.e. a company would be run by living persons who are in charge of its affairs and who guide the actions of that company and that if

such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and

ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the Directors must individually be issued

separate notices under Section 138. The persons who are in charge of the affairs of the company and running its affairs must naturally be aware of

the notice of demand under Section 138 of the Act issued to such company. It is precisely for this reason that no notice is additionally contemplated to

be given to such Directors. The opportunity to the "drawer" company is considered good enough for those who are in charge of the affairs of

such company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such

commission, it would be a matter of defence to be considered at the appropriate stage in the trial and certainly not at the stage of notice under Section

138.

17. If the requirement that such individual notices to the Directors must additionally be given is read into the provisions concerned, it will not only be

against the plain meaning and construction of the provision but will make the remedy under Section 138 wholly cumbersome. In a given case the

ordinary lapse or negligence on part of the company could easily be rectified and amends could be made upon receipt of a notice under Section 138 by

the company. It would be unnecessary at that point to issue notices to all the Directors, whose names the payee may not even be aware of at that

stage. Under second proviso to Section 138, the notice of demand has to be made within 30 days of the dishonour of cheque and the third proviso

gives 15 days time to the drawer to make the payment of the amount and escape the penal consequences. Under clause (b) of Section 142, the

complaint must be filed within one month of the date on which the cause of action arises under the third proviso to Section 138. Thus, a complaint can

be filed within the aggregate period of seventy-five days from the dishonour, by which time a complainant can gather requisite information as regards

names and other details as to who were in charge of and how they were responsible for the affairs of the Company. But if we accept the logic that

has weighed with the High Court in the present case, such period gets reduced to 30 days only. Furthermore, unlike proviso to clause (b) of Section

142 of the Act, such period is non-extendable. The summary remedy created for the benefit of a drawee of a dishonoured cheque will thus be

rendered completely cumbersome and capable of getting frustrated.

18. In our view, Section 138 of the Act does not admit of any necessity or scope for reading into it the requirement that the Directors of the Company

in question must also be issued individual notices under Section 138 of the Act. Such Directors who are in charge of affairs of the Company and

responsible for the affairs of the Company would be aware of the receipt of notice by the Company under Section 138. Therefore, neither on literal

construction nor on the touchstone of purposive construction such requirement could or ought to be read into Section 138 of the Act.

12. The Supreme Court of India in Krishna Texport & Capital Markets Ltd. (supra) has held that the proviso to section 138 stipulates three conditions,

on the satisfaction of which the offence is said to be completed. The proviso inter alia obliges the payee to make a demand for the payment of the said

amount of money by giving a notice in writing to “the drawer of the cheque” and if “the drawer of the cheque” fails to make the payment of

the said amount within 15 days of the receipt of the said notice, the stages stipulated in the proviso stand fulfilled. The notice under Section 138 is

required to be given to “the drawer” of the cheque so as to give the drawer an opportunity to make the payment and escape the penal

consequences.

13. Vicarious liability is created by section 141 as the company being a juristic entity, is run by living persons who are in charge of its affairs and who

guide the actions of that company and that if such company is guilty, those who were so responsible for its affairs and who guided actions of such

juristic entity must be held responsible and ought to be proceeded against. Persons who are in charge of the affairs of the company and running its

affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such company. That is the reason that no notice is

additionally contemplated to be given to such Directors.

14. The opportunity to the “drawer” company is considered good enough for those who are in charge of the affairs of such company. Lapse or

negligence on part of the company could easily be rectified and amends could be made upon receipt of a notice under Section 138 by the company.

There is no requirement that the Directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such

Directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the

Company under Section 138 and would be liable without even being issued individual notices.

15. Applying the principles as laid down in Krishna Texport (supra) to the facts of the present case we see that a similar situation arises in the present

case. The accused is a company which is run by its directors. Admittedly Mr M.S. Narula is the Managing Director of the company. He is also the

signatory on the subject cheque which has been issued by the company. Though it is disputed by counsel for the petitioner that Mr M.S. Narula is the

Managing Director of the company, the present petition has been filed by the company and signed by Mr M.S. Narula. In support of the petition Mr

M.S. Narula has filed his affidavit. In the affidavit it is specifically stated that Mr M.S. Narula is the Managing Director of the company. The

petitioner company is a juristic entity and it acts through its directors and Managing Directors.

16. In the present case subject cheque was issued by the company under the signatures of Mr. M.S. Narula, its Managing Director. The statutory

notice is addressed and served on Mr M.S. Narula. Since the company is a legal entity and functioning only through its directors and Managing

Director, service of notice on the Managing Director would be sufficient service of notice on the company.

17. There could be no better way of serving a legal entity like a company than by serving a notice on the person who is in charge and in control of the

company. The Managing Director is the key person who is in control of the affairs of the company. Statutory notice in the present case has been

served on the Managing Director. It cannot lie in the mouth of the company to contend that it was not aware that the cheque issued by the company

had dishonoured and that demand under section 138 N.I. Act had been made on the company. Since the company which acts through its Managing

Director is aware that its cheque has dishonoured and the statutory notice has been received, it was obligatory on the company to have complied with

the same. Since the company has failed to comply with the statutory notice, it became liable for prosecution under section 138 N.I. Act.

18. Even in a case where no statutory notice is served on a director but is only served on the company which is run by its directors, the Supreme

Court in Krishna Texport (supra) has held that notice to the company is sufficient notice to its directors and they would be attributed deemed

knowledge of service of a notice of demand under section 138 N.I. Act and failure to comply with the same would make them liable for prosecution

under section 138 Negotiable Instruments Act.

19. The Supreme Court of India in N. Rangachari v. BSNL, (2007) 5 SCC 108 relying upon S.M.S. Pharmaceuticals Ltd. (2005) 8 SCC 8 9 held that a

prosecution could be launched not only against the company on behalf of which the cheque issued has been dishonoured, but it could also be initiated

against every person who at the time the offence was committed, was in charge of and was responsible for the conduct of the business of the

company. It further held that Section 141 deems such persons to be guilty of such offence, liable to be proceeded against and punished for the

offence, leaving it to the person concerned, to prove that the offence was committed by the company without his knowledge or that he has exercised

due diligence to prevent the commission of the offence. Sub-section (2) of Section 141 also ropes in Directors, Managers, Secretaries or other officers

of the company, if it was proved that the offence was committed with their consent or connivance.

20. In *N. Rangachari* (supra) the Supreme Court further held as under:

“17. A company, though a legal entity, cannot act by itself but can only act through its Directors. Normally, the Board of Directors act for and on

behalf of the company. This is clear from Section 291 of the Companies Act which provides that subject to the provisions of that Act, the Board of

Directors of a company shall be entitled to exercise all such powers and to do all such acts and things as the company is authorised to exercise and

do. Palmer described the position thus [Ed.: *Palmer's Company Law*, 20th Edn., p. 513.]:

“A company can only act by agents, and usually the persons by whom it acts and by whom the business of the company is carried on or

superintended are termed directors.”

It is further stated in Palmer that [Ibid., p. 515.]:

“Directors are, in the eye of the law, agents of the company for which they act, and the general principles of the law of principal and agent

regulate in most respects the relationship of the company and its directors.”

18. The above two passages were quoted with approval in *R.K. Dalmia v. Delhi Admn.* [AIR 1962 SC 1821: (1963) 1 SCR 253] (SCR at p. 300). In

Guide to the Companies Act by A. Ramaiya (16th Edn.) this position is summed up thus:

“All the powers of management of the affairs of the company are vested in the Board of Directors. The Board thus becomes the working organ of

the company. In their domain of power, there can be no interference, not even by shareholders. The Directors as a Board are exclusively empowered

to manage and are exclusively responsible for that management.”

19. Therefore, 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. If any restrictions on their powers are placed by the memorandum or articles of the company, it is for the

Directors to establish it at the trial. It is in that context that Section 141 of the Negotiable Instruments Act provides that when the offender is a

company, every person, who at the time when the offence was committed was in charge of and was responsible to the company for the conduct of

the business of the company, shall also be deemed to be guilty of the offence along with the company. It appears to us that an allegation in the

complaint that the named accused are Directors of the company itself would usher in the element of their acting for and on behalf of the company and

of their being in charge of the company. In Gower and Davies' Principles of Modern Company Law (17th Edn.), the theory behind the idea of

identification is traced as follows:

“It is possible to find in the cases varying formulations of the underlying principle, and the most recent definitions suggest that the courts are

prepared today to give the rule of attribution based on identification a somewhat broader scope. In the original formulation in Lennard's Carrying

Company case [Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd., [1915] AC 705 (HL)] Lord Haldane based identification on a person

“who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation”. Recently, however,

such an approach has been castigated by the Privy Council through Lord Hoffmann in Meridian Global case [Meridian Global Funds Management

Asia Ltd. v. Securities Commission, (1995) 2 AC 500 (PC)] as a misleading

“general metaphysic of companies”. The true question in each case

was who as a matter of construction of the statute in question, or presumably other rule of law, is to be regarded as the controller of the company for

the purpose of the identification rule.

25. In Bilakchand Gyanchand Co. v. A. Chinnaswami [(1999) 5 SCC 693 : 1999 SCC (Cri) 1034 : AIR 1999 SC 218 2] this Court held that a

complaint under Section 138 of the Act was not liable to be quashed on the ground that the notice as contemplated by Section 138 of the Act was

addressed to the Director of the company at its office address and not to the company itself. The view was reiterated in *Rajneesh Aggarwal v. Amit*

J. Bhalla [(2001) 1 SCC 631 : 2001 SCC (Cri) 229 : AIR 2001 SC 51 8.] These decisions indicate that too technical an approach on the sufficiency of

notice and the contents of the complaint is not warranted in the context of the purpose sought to be achieved by the introduction of Sections 138 and

141 of the Act.

21. Applying the analogy of the law laid down by the Supreme Court in *N. Ragnachari* (supra), it can be safely held that if knowledge of the company

is deemed to be knowledge of the directors in control, sufficient to fasten liability on them under section 138 Negotiable Instruments Act, without

service of a statutory notice, then knowledge of the Managing Director is to be deemed to be the knowledge of the Company.

22. Company being an unnatural juristic entity functions through its directors. It cannot acquire knowledge as a human being can. Knowledge of a

company actually means knowledge of the people who control the company. Knowledge of the working Director or Managing Director of a company

would tantamount to knowledge of the company. Notice to a company is actually to bring it to the notice of its directors.

23. Purpose of section 138 Negotiable Instruments Act is to bring dishonour of cheque to the notice of the drawer and requiring the drawer to make

the payment. Managing Director is the person who is in control of the business and is a person who is entrusted with the management of the

company.

24. Section 2(54) of the Companies Act, 2013 defines Managing Director as

“(54) “Managing Director means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed

in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a

director occupying the position of Managing Director, by whatever name called.

Explanation. "For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the

power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to

draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to

be included within the substantial powers of management;

25. As defined by the Companies act the Managing Director is a person who is entrusted with substantial powers of management of the affairs of the

company. Notice served on the Managing Director would thus imply that the Company is made aware of the dishonour of the cheque and of the

demand for payment of the dishonoured cheque.

26. In the present case subject cheque was signed by Mr. M.S. Narula as the Managing Director of the company. Subject cheque belongs to an

account maintained by the Company. Statutory notice was served on Mr. M.S. Narula in the capacity of the Managing Director of the Petitioner

Company. The complaint was filed against the company through its Managing Director Mr. M.S. Narula. Present petition has been filed in the name

of the company but has been signed by Mr. M.S. Narula as the Managing Director of the Company.

27. Accordingly, applying the ratio of the above referred judgments to the facts of the present case, it is thus to be seen that there is sufficient

compliance of the statutory requirements of section 138 Negotiable Instruments Act. The irregularity in filing the present complaint against the

company without service of a notice in the name of the company and by serving the statutory notice on the Managing Director is a mere irregularity

and is not fatal to the prosecution launched against the petitioner company.

28. In view of the above, I find that there is no ground to quash the proceedings initiated under Section 138 Negotiable Instruments Act. The Petition

is accordingly dismissed. There shall be no orders as to costs.

29. Order Dasti under the signatures of the Court Master.