

A.F.R.

Judgment reserved on 02.03.2022

Judgment delivered on 08.03.2022

Court No. - 91

Case :- APPLICATION U/S 482 No. - 10245 of 2021

Applicant :- Jatinder Pal Singh

Opposite Party :- M/S Statcon Power Controls Ltd . And 2 Others

Counsel for Applicant :- Varun Singh

Counsel for Opposite Party :- G.A.,S.K. Mishra

Hon'ble Syed Aftab Husain Rizvi,J.

Heard Sri Varun Singh, learned counsel for the applicant, Sri S.K. Mishra, learned counsel for the O.P. No. 2 as well as learned A.G.A. for the State and perused the record.

This application U/s 482 Cr.P.C. has been filed for quashing the judgment and order dated 2.1.2021 passed by the Special Judge SC/ST (Prevention of Atrocities) Act, Gautam Budh Nagar in Criminal Revision No. 72 of 2019 and further to quash the summoning order dated 7.1.2014 passed by the learned A.C.J.M. IIIrd, Gautam Budh Nagar in Complaint Case No. 1927 of 2013 (M/s Statcon Power Controls Ltd. Vs. M/s G.E.T. Power Ltd. & others) pending before the Court of Judicial Magistrate Additional Court No. 3, Gautam Budh Nagar, under section 138 r/w 142 of the N.I. Act.

The O.P. No. 2 filed a complaint alleging therein that complainant is engaged in business of manufacturing and trading in signaling equipments, industrial batteries and other equipments. The accused no. 1 is also a public limited company incorporated under the Companies Act, 1956 having its registered address at "Techpro Towers" Plot No. 11-A 17, 5th Cross Road, SIPCOT IT Park, Siruseri, Chennai-603103, Tamil Nadu and the other accused are the Directors/Executive Directors of the company/accused no. 1 and are responsible for the acts and deeds of the company/accused no. 1. The accused no. 1 has placed a purchase order bearing no. GET/11-009/12-13/362 dated 4th July, 2012 on the complainant at Administrative Office of the complainant at A-34, Sector-59, Gautam Budh Nagar, Noida-201301 Uttar Pradesh for the supply of two sets of Battery Bank, Charger along with accessories and the total amount of the abovementioned purchase order

including taxes and duties was Rs. 4,58,42,880.00 (Rupees Four Crores Fifty Eight Lakhs Forty Two Thousand Eight Hundred Eighty only). The complainant supplied one set of battery bank along with its relevant accessories to the accused at their site on 25.4.2013 as per Purchase Order. The accused issued cheques bearing nos. 404847 and 404848 both dated 16.5.2013 for Rs. 1,00,00,000 each (Rupees One Crore each) drawn on Axis Bank Limited, Chennai in favour of the complainant towards the payment for goods supplied at their site. The complainant presented the said cheques with its Banker State Bank of India, Noida for realization of the amount of the said cheques. On 15th July, 2013 the cheque no. 404847 dated 16th May, 2013 for Rs. One Crore drawn on Axis Bank Ltd. Chennai has been deposited in bank by the complainant and the same has been presented on the banker of accused no. 1 through the complainant's banker namely State Bank of India, Noida and on presentation for payment the same has been dishonored on 16th July, 2013 with the remarks "Exceeds Arrangement". On 15th July, 2013 another cheque bearing no. 404848 dated 16th May, 2013 for Rs. One Crore drawn on Axis Bank Ltd. Chennai has been deposited in bank by the complainant and the same has been presented on banker of accused no. 1 through the complainant's banker namely State Bank of India, Noida and on presentation for payment the same has been dishonored on 16th July, 2013 with the remarks "Exceeds Arrangement". The complainant issued legal notice dated 24.7.2013 by Registered A.D. post demanding payment of the amount due under the said two cheques. The notices have been served on all the accused on 29.7.2013. Despite receipt of the legal notice they failed to pay the amount of the dishonored cheques within the stipulated time of 15 days. On the aforesaid complaint the learned Magistrate by the impugned order dated 7.1.2014 has summoned the applicant and other accused named in the complaint to face trial for the offence under section 138 N.I. Act. Aggrieved with the aforesaid summoning order the applicant filed a criminal revision no. 72 of 2019 which has been dismissed by Special Judge SC/ST Act vide judgment and order dated 2.1.2021.

The contentions of the learned counsel for the applicant are that the impugned order of summoning is a non speaking order. The learned Magistrate has not taken notice of the fact that there was no specific averment in the complaint against the applicant. He also contended that applicant was only a

nominee Director appointed on 24.4.2012 and the applicant resigned from the Board of Directors of O.P. No. 2 on 19.1.2014. The applicant is not involved in day to day affairs of the company, so he can not be held reliable for dishonour of any cheque issued by other Managing Directors. The applicant has not signed the dishonoured cheques on behalf of company nor he is authorized signatory of the company. The O.P. No. 1 has merely implicated the applicant without assigning any specific role to the applicant in the execution of dishonour of the cheques with intention of harassing the applicant. The O.P. No. 1 has not made any specific averment against the applicant as to the part played by him in the whole transaction. It is further contended that merely being a Director in a company it is not sufficient to make the applicant liable under section 141 of the N.I. Act. For imputing liability on the applicant the O.P. No. 1 ought to have brought incontrovertible material on record to show that the applicant is incharge of and responsible for the conduct of affairs of the company. In the absence of such material and in the light of general averments the applicant can not be prosecuted. Learned counsel placed reliance on the following rulings on the aforesaid points:

1. **K. Srikanth Singh V. North East Securities Limited (2007) 12 SCC 788**
2. **DMC Financial Services Limited V. J.N. Sareen reported as (2008) 8 SCC 1.**

Learned counsel also submitted that proceedings under section 138 N.I. Act can not be proceeded against non Executive Directors. On this point he relied the following citations:

1. **Chintalapati Srinivasa Raju V. Securities and Exchange Board of India, reported as (2018) 7 SCC 443.**
2. **Pooja Ravinder Devidasani Vs. State of Maharashtra & Anr., reported as (2014) 16 SCC 1.**

Per contra; learned counsel for the O.P. No. 2 opposed the application and submitted that applicant is a Director of company. Two cheques have been issued by the company in favour of O.P. No. 1. Both the cheques have dishonoured. Legal notices were issued to the applicant and other accused persons but they not complied with it, then a complaint was filed. Learned Magistrate being satisfied with the material on record has taken cognizance of the offence and has summoned the applicant and other accused. There is no illegality in the summoning order. The revision preferred by the applicant has also been dismissed on merits. The learned revisional court did not find any

merit in it. Learned counsel also contended that the complaint was filed in the year 2014 and is lingering before the trial court since then. Only the applicant has put his appearance before the trial court. None of the remaining accused has appeared. He submitted that a direction be issued to the trial court to ensure the presence of the other accused persons and decide the case expeditiously.

It transpires from the material on record that applicant has been arrayed as an accused in the complaint being a Director of the company. In para no. 4 of the complaint there are general allegations that the accused no. 1 is also public limited company incorporated under the Companies Act having its registered address at “Techpro Towers” Plot No. 11-A 17, 5th Cross Road, SIPCOT IT Park, Siruseri, Chennai and other accused are Directors/Executive Directors of the company/accused no. 1 and are responsible for the acts and deeds of the company/accused no. 1.

In **S.M.S. Pharmaceuticals Ltd. Vs. Neta Bhalla and another (2005) 8 Supreme Court Cases 89** the reference was made by a two judges bench for determination of the following questions by a larger bench.

“(a) (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 fulfil 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 of 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. ”

The Hon’ble Supreme Court in para 4 and 8 made the following observations:

“(4) In the present case, we are concerned with criminal liability on account of dishonour of cheque. It primarily falls on the drawer company and is extended to officers of the Company. The normal rule in the cases involving

criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence under Section 138 is committed by a Company, extends criminal liability for dishonour of cheque to officers of the Company. Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal 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. In other words, persons who had nothing to do with the matter need not be roped in. A company being a juristic person, all its deeds and functions are result of acts of others. Therefore, officers of a Company who are responsible for acts done in the name of the Company are sought to be made personally liable for acts which result in criminal action being taken against the Company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company, liable for the offence. The proviso to the sub-section contains an escape route for persons who are able to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence.

(8) The officers responsible for conducting affairs of companies are generally referred to as Directors, Managers, Secretaries, Managing Directors etc. What is required to be considered is: is it sufficient to simply state in a complaint that a particular person was a director of the Company at the time the offence was committed and nothing more is required to be said? For this, it may be worthwhile to notice the role of a director in a company. The word 'director' is defined in Section 2 (13) of the Companies Act, 1956 as under:

"director" includes any person occupying the position of director, by whatever name called" ;

There is a whole chapter in the Companies Act on directors, which is Chapter II. Sections 291 to 293 refer to powers of Board of Directors. A perusal of these provisions shows that what a Board of Directors is empowered to do in relation to a particular company depends upon the role 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. It happens that a person may be a director in a company but he may not know anything about day-to-day functioning of the 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 day-to-day functions of the Company. These are matters which form part of resolutions of Board of Directors of a Company. Nothing is oral. 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. There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a Director in a company in order to illustrate the point that there is no magic as such in a particular word, be it Director, Manager or Secretary. It all depends upon respective roles assigned to the officers in a company. A company may have Managers or Secretaries for different departments, which means, it may have more than one Manager or Secretary. These officers may also be authorised to issue cheques under their signatures with respect to affairs of their respective departments. Will it be possible to prosecute a Secretary of Department-B regarding a cheque issued by the Secretary of Department-A which is dishonoured? The Secretary of Department-B may not be knowing anything about issuance of the cheque in question. Therefore, mere use of a particular designation of an officer without more, may not be enough by way of an averment in a complaint. When the requirement in Section 141, which extends the liability to officers of a company, is that such a person should be in charge of and responsible to the company for conduct of business of the company, how can a person be subjected to liability of criminal prosecution without it being averred in the complaint that he satisfies those requirements? Not every person connected with a Company is made liable under Section 141. Liability is cast on persons who may have something to do with the transaction complained of. A person who is in charge of and responsible for conduct of business of a Company would naturally know why the cheque in question was issued and why it got dishonoured.”

Thereafter the Hon’ble Apex Court answered the questions in para 19 which is reproduced as below:

“In view of the above discussion, our answers to the questions posed in the Reference are 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 question posed in sub-para (b) has to be in 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 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 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 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 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.”

*In case of **Srikanth Singh Vs. North East Securities Limited (2007) 12 SCC 788** the Hon’ble Apex Court has held that for vicarious liability of Director of a company it must be pleaded and shown that the Director was responsible for the conduct of the business of the company at the time of commission of offence. Only being a Director is not enough to cast a criminal liability. Vicarious liability must be pleaded and proved and can not be merely inferred.*

It is clear from the perusal of the complaint that there is no specific averment that applicant is involved in day-to-day affairs of the company. There is only general allegation that applicant is a Director of the company. The documents filed by the applicant establishes that the applicant was a nominee Director and who has now resigned.

Considering the aforesaid facts and the law propounded on the point it is clear that in absence of specific allegations about the applicant he can not be prosecuted for any offence under section 138 N.I. Act. The learned Magistrate has failed to consider the matter properly. The order of summoning regarding applicant is unjust and illegal and can not be sustained.

Application U/s 482 Cr.P.C. is allowed and the order dated 2.1.2021 passed in Criminal Revision NO. 72 of 2019 and further the summoning order dated 7.1.2014 passed against the applicant-accused Jatinder Pal Singh are quashed.

Order Date :- 08.03.2022

Masarrat