SUPREME COURT OF INDIA

Paresh P.Rajda

Vs.

State of Maharashtra

Crl.A.No............. of 2008

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

16.05.2008

JUDGMENT

Harjit Singh Bedi, J.

1. Leave granted.

2. This judgment will dispose off Criminal Appeals arising out of SLP (Crl.) Nos.3074 and 3075 of 2006. The facts have been taken from the record of SLP (Crl.) No. 3074 of 2006. They are as under:

3. Tata Finance Limited, which had commercial dealings with the accused, filed a complaint under Section 138 of the *Negotiable Instruments Act, 1881*(hereinafter called the "Act") alleging that the accused had issued two cheques dated 25th November 2001 and 18th December 2001, each for Rupees One Lakh, which had been dishonoured on 20th December 2001 with the remarks "Exceeds Arrangements". Notice was issued to accuse No.1 i.e. the Company, including accused No.2 Paresh P.Rajda, the Chairman and accused No.4 Vijay Shroff, a director of the Company and they appeared reluctantly before the court after bailable warrants had been issued. Accused Paresh Rajda thereupon moved an application that as per the averments made in the complaint itself, no case for summoning him had been made out as no overt act with regard to the issuance of the dishonoured cheques had been attributed to him. The High Court, however, vide its order dated 9th June 2004 directed that the application under Section 395 of the *Code of Criminal Procedure, 1974* which had already been made before the Metropolitan Magistrate be decided at the first instance. The Magistrate, however, he application on 18th October 2004 holding that he had no jurisdiction in the matter, as process under Section 395 of the Code had already been issued. It is in this circumstance that the accused once again moved the High Court. The High Court in its order dated 20th December 2005 held that the argument that the accused had been arrayed as such merely because he was a Director of the Company was wrong inasmuch as an over-all reading of the complaint showed that specific allegations had been levelled against him as being a responsible officer of the accused Company and therefore equally liable, and that if it was ultimately found that the accused had, in fact, no role to play, he would be entitled to an

acquittal. The petition was accordingly dismissed. It is in this background that the present appeal is before us.

4. The learned counsel for the appellant has argued that a perusal of the complaint would show that no allegation whatsoever had been made against the accused and he had been arrayed in a mechanical manner, merely because he happened to be a Director of the company. He has, in particular, referred us to the provisions of Section 141 of the Act that if an offence was committed by 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, would be deemed to be guilty of the offence and would be liable to be proceeded against and as no such allegations had been made in the complaint, the issuance of process against the accused was not justified. In support of this argument, he has placed reliance on *S.M.S.Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr.*[1] *and N.K.Wahi vs. Shekhar Singh & Ors.*[2]. The learned counsel for the respondents has, however, submitted that it was not possible at this stage and without evidence to reach a conclusion as to the liability of the appellant and it was, therefore, appropriate that the matter be left to trial, as had been observed by the High Court. The learned counsel has also drawn our attention to paragraphs 2 and 8 of the complaint to contend that the allegations that the accused were, in fact, responsible officers of the Company and were also conducting its day-to-day activities had been specifically made. It has also been pointed out that a great deal of material had been put on record to show that the accused company and its officers had issued several cheques to other organizations as well, which too had bounced, and that huge sums were due from the Company on that account and, they being habitual offenders, were not entitled to any relief. The learned counsel has relied upon *S.M.S.Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr.*[3]*, Everest Advertising (P) Ltd. vs. State, Govt of NCT of Delhi & Ors. and N.Rangachar vs. Bharat Sanchar Nigam Ltd.*[4] in support of his submissions.

5. We have gone through the judgments cited by the learned counsel. In *S.M.S Pharmaceuticals [Supra]*, a three Judge Bench of this Court examined the scope and ambit of Section 141 of the Act and the liability created with respect to the Directors and other persons responsible for the affairs of the company.

> "Three questions were posed:
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> "(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.
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> (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."

The above questions were answered in the following terms:

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

6. As this matter had come before the three-Judge Bench on a reference, the Bench reverted the matter for a discussion on facts to a Bench of two-Judges. It was this matter which was again examined by the Bench and reported as *S.M.S.Pharmaceuticals Ltd. (Supra)* and it was found that the necessary averments had been made in the complaint so as to attract the provisions of Section 141 of the Act. The appeal filed by the company was accordingly dismissed. This matter once again came up for consideration in Rangachari's case (supra) and in paragraph 21 it was observed:

"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 dishonoured, 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 He Company and those in charge of it. So, all that a payee of a cheque that is dishonoured 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."

7. A reading of this passage would reveal a slight departure vis-`-vis the other judgments in favour of the complainant. It will be noticed that this decision too was rendered on a consideration of both the judgments in S.M.S. Pharmaceuticals. The matter came up yet again for consideration in N.K. Wahi case (supra) which reiterated the earlier view and held that where there were no clear averment in the complaint or the evidence with regard to the role played by the Directors and as to whether and they were in charge and responsible for the conduct of the affairs of the company, it would not be possible to maintain the prosecution against them and they were entitled to acquittal. It may however be noticed that this was a case where an acquittal was recorded after trial.

8. It will be clear from the afore quoted judgments that the entire matter would boil down to an examination of the nature of averments made in the complaint though we observe a slight digression in the judgment in N. Rangachari case (supra). It is in this background, that the complaint needs to be examined. Paragraphs 2 and 8 are reproduced below:

"(2) I know the all the accused. The accused No.1 is company registered under the Companies Act, 1956. Accused No.2 is the Chairman of the accused No.1. Accused No.3 is the Joint Managing Director of the Accused No.1 and accused No.4, 5 and 6 are the Directors of the accused No.1.

(8) The accused No.2 is the Chairman of accused No.1 and is responsible for the day to day affairs of accused No.1 and therefore he is liable to repay amount of dishonoured cheques. Accused No.3 being Joint Managing Director and accused No.4,5 and 6 being the Director of the accused No.1 are responsible officer of accused No.1 and therefore they are liable to repay the amounts of the dishonoured cheques. As the accused have failed to make the payment within the stipulated period of 15 days after receipt of statutory notice they have committed and offence punishable under Section 138 r/w 141 of the *Negotiable Instruments Act 1881* (As amended). Hence this complaint is filed before this Hon'ble Court."

9. A perusal of the aforesaid paragraphs would show that accused No.2 is Paresh Rajda, the Chairman of the Company, and as per the impugned judgment of the High Court, the question of his responsibility for the business of the Company has not been seriously challenged. We, nonetheless, find clear allegations against both the accused/appellants to the effect that they were officers and responsible for the affairs of the company. We are of the opinion that at a stage where the trial has not yet started, it would be inappropriate to

quash the proceedings against them in the light of the observations of this Court quoted above. We, accordingly, find no merit in the appeals. They are dismissed.

[1] *(2005) 8 SCC 89*
[2] *(2007) 9 SCC 481*
[3] *(2007) 4 SCC 70*
[4] *(2007) 5 SCC 108*