CASE NO.:
Appeal (crl.) 70 of 2007

PETITIONER:
Saroj Kumar Poddar

RESPONDENT:
State (NCT of Delhi) & Anr

DATE OF JUDGMENT: 16/01/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
(Arising out of SLP(Crl.) No. 4645 of 2006)

S.B. Sinha, J.

Leave granted.

Appellant herein was a Director of a public limited company, incorporated and registered under the Indian Companies Act, known as VHEL Industries Limited (hereinafter referred to as "the Company"). The Company issued three cheques bearing Nos. 138015, 138016 and 138017 for a sum of Rs. 2,50,000/-, Rs. 2,50,000/- and Rs. 3,03,952.60, respectively in favour of Elkay International Private Limited, Respondent No. 2 herein.

The complainant \026 Respondent No. 2 is manufacturer and supplier of chemical compounds of different kinds. It supplied its product to the Company. Allegedly, a sum of Rs. 13,36,923/- was due and payable to the complainant by the Company. The Company issued three cheques, as noticed hereinbefore, in favour of the complainant. The said cheques were deposited in a bank but were dishonoured. A complaint petition came to be filed by the complainant in the Court of Chief Metropolitan Magistrate, Delhi against the appellant as also the said Company. The Managing Director of the said Company as also the other Directors were also arrayed as accused therein. It was alleged that Shri K.K. Pilania \026 Accused No. 3 and Shri N.K. Munjal \026 Accused No. 8 signed the said cheques for and on behalf of the Company.

Cognizance was taken against the appellant and other accused persons. Inter alia on the premise that the appellant had resigned from the Directorship of the Company before the date of issuance of the cheques and much before the deposit thereof by the drawee with its bank, and thus, he was not liable for the action of the Company, applications for quashing of the orders taking cognizance of the offence in the said complaint petitions were filed by the appellant before the High Court of Delhi which were marked as Crl. M.C. Nos. 4583, 4580 and 4575 of 2003. By reason of the impugned judgment, the said petitions have been dismissed by the High Court stating:

"The learned trial judge while dealing with the recalling order of the petitioner made specific mention of the fact that the cheque in question was post dated cheque issued through letter dated 10th May, 1997. If that be so the matter needs further probe by way of trial and the petitioner cannot claim complete innocence at this stage in view of the letter dated 10th May, 1997 prima facie

indicating that the cheque in question was issued on this date and the petitioner was the Director of the Company on 10th May, 1997 as he himself admitted that he resigned from the company with effect from 19th June, 1997."

The appellant is, thus, before us.

Ms. Vanita Bhargava, learned counsel appearing on behalf of the appellant, would contend that the averments made in complaint petitions even if given face value and taken to be correct in their entirety do not constitute an offence as against the appellant in terms of Section 141 of the Negotiable Instruments Act (for short "the Act").

It was further submitted that in any event, the appellant having resigned from the Directorship of the said Company, the complaint petitions as against him were not maintainable.

Mr. B.L. Wali, learned counsel appearing on behalf of the respondents, on the other hand, would submit that the appellant had not disclosed as to when the resignation purported to have been submitted by him was accepted by the Company and in that view of the matter the complaint petitions were maintainable.

Section 138 of the Act reads as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account -

Where any cheque drawn by a persons on an account maintained by him with a banker for payment of any amount of money to another persons from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:"

For creating a criminal liability in terms of the said Section, the complainant must show:

(i) that a cheque was issued;
(ii) the same was presented;
(iii) but, it was dishonoured;
(iv) a notice in terms of the said provision was served on the person sought to be made liable; and
(v) despite service of notice, neither any payment was made nor other obligations, if any, were complied with within fifteen days from the date of receipt of the notice.

Section 141 of the Act postulates constructive liability on the part of the Directors of the Company or other persons responsible for its conduct of the business of the company. It reads as under:

"141. Offences by companies.\027(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 sub-section 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 he deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

A person would be vicariously liable for commission of an offence on the part of a Company only in the event the conditions precedent laid down therefor in Section 141 of the Act stand satisfied. For the aforementioned purpose, a strict construction would be necessary.

The purported averments which have been made in the complaint petitions so as to make the appellant vicariously liable for the offence committed by the Company read as under:

"That the accused No. 1 is a public limited company incorporated and registered under the Companies Act, 1956, and the accused 2 to 8 are/ were its Directors at the relevant time and the said company is managed by the Board of Directors and they are responsible for the incharge of the conduct and business of the company \026 Accused No. 1. However, cheques referred to in the complaint have been signed by the Accused No. 3 & 8 i.e. Shri K.K. Pilania and Shri N.K. Munjal for and on behalf of the Accused Company No. 1."

Apart from the Company and the appellant, as noticed hereinbefore, the Managing Director and all other Directors were also made accused. 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 paragraph 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act.

Our attention, however, has been drawn to the averments made in paragraphs 7 and 10 of the complaint petition, but on a perusal thereof, it would appear that therein merely allegations have been made that the cheques in question were presented before the bank and they have been dishonoured. Allegations to satisfy the requirements of Section 138 of the Act might have been made in the complaint petition but the same principally relate to the purported offence made by the Company. With a view to make 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.

The question came up for consideration before a 3-Judge Bench of this Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another [(2005) 8 SCC 89] wherein upon consideration of a large number of decisions this Court opined:

"While analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. The key words which occur in the Section are "every person". These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words " 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 etc." What is required is that the persons who are sought to be made criminally liable under Section 141 should be at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a Company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for conduct of business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company and not on designation or status. If being a Director or Manager or Secretary was enough to cast criminal liability, the Section would have said so. Instead of "every person" the section would have said "every

Director, Manager or Secretary in a Company is liable"....etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.

A reference to Sub-section (2) of Section 141 fortifies the above reasoning because Sub-section (2) envisages direct involvement of any Director, Manager, Secretary or other officer of a company in commission of an offence. This section operates when in a trial it is proved that the offence has been committed with the consent or connivance or is attributable to neglect on the part of any of the holders of these offices in a company. In such a case, such persons are to be held liable. Provision has been made for Directors, Managers, Secretaries and other officers of a company to cover them in cases of their proved involvement."

It was further opined:

"To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That respondent tails within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial."

This aspect of the matter has also been considered recently by this Court in Sabitha Ramamurthy & Anr. v. R.B.S. Channabasavaradhya [2006 (9) SCALE 212] stating:

"\005Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an

offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned 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 the offence committed by the company. Before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted\005"

For the reasons aforementioned, we have no other option but to hold that the allegations made in the complaint petitions even if are taken to be correct in their entirety do not disclose any offence as against the appellant herein. The proceedings against him, thus, should have been quashed by the High Court. The impugned judgment, therefore, cannot be sustained which is set aside accordingly. The appeal is allowed.

JUDIS