



IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.....2024**

(Arising out of Special Leave Petition(Crl.) No.6905 of 2022)

RAJESH VIREN SHAH

...

APPELLANT(S)

VERSUS

REDINGTON (INDIA) LIMITED

...

RESPONDENT(S)

WITH

**CRIMINAL APPEAL NO.....2024**

(Arising out of Special Leave Petition(Crl.) No.7050 of 2022)

**J U D G M E N T**

**SANJAY KAROL, J.**

Leave granted.

2. Whether a Director who has resigned from such position and which fact stands recorded in the books as per the relevant rules and statutory provisions, can be held liable for certain negotiable instruments, failing realization, is the sole short and common question that this Court must consider in these appeals arising

out of the judgment and order dated 6<sup>th</sup> April, 2022 in CRLOP No.34923 of 2019; and 8<sup>th</sup> April, 2022 in CRLOP No.34248 of 2019.

**3.** A brief conspectus of facts for adjudication of the present *lis* is:-

- (a) The appellants in both the appeals were Directors in the Respondent-Company and had resigned from such Directorship on 9<sup>th</sup> December, 2013<sup>1</sup> and 12<sup>th</sup> March, 2014<sup>2</sup> respectively;
- (b) Form 32 in accordance with Sections 303(2), 264(2), 266(1)(a), and 266(1)(b)(iii) of the Companies Act, 1956, in respect thereof stood accepted on 9<sup>th</sup> December, 2013 and 20<sup>th</sup> March, 2014 respectively. The relevant records stood rectified, incorporating these changes;
- (c) The appellants, namely, Rajesh Viren Shah and Sanjay Babulal Bhutada in CrI.Appeal Nos.....@ SLP(CrI)No.6905 and SLP(CrI)No.7050 of 2022, respectively, were arrayed as accused in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881<sup>3</sup> in relation to three cheques bearing nos. 002535 for Rs.7,10,085/-; 002777 for Rs.1,85,09,054; and 002791 for Rs.10,00,000/-, all dated 22<sup>nd</sup> March, 2014, by the Company respondent herein against M/s MIEL e-Security Private Limited and its Directors, with one Mr. Narayanan Kutty Nair,

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<sup>1</sup> Annexure P-1, Page 45 of Paperbook

<sup>2</sup> Annexure P-1, Page 43 of Paperbook

<sup>3</sup> 'the N.I.Act'

Managing Director, being arrayed as A-2, and A-3 to A-7 being its Directors, including the appellants who were arrayed as A-4 and A-6 respectively.

(d) With the dishonouring of the cheque on presentation on account of insufficient funds the complainant-respondent after serving statutory notice dated 11<sup>th</sup> April, 2014 preferred a complaint under Sections 200 and 191A Code of Criminal Procedure, 1973<sup>4</sup> read with Section 144 of the N.I. Act, seeking quashing of such an action initiated by the respondent herein, the appellant(s) preferred a petition under Section 482 of the Cr.PC which stands dismissed by the impugned order.

4. The position of law as to the liability that can be fastened upon a Director for non-realisation of a cheque is no longer *res integra*. Before adverting to the judicial position, we must also take note of the statutory provision - Section 141 of the N.I. Act, which states that every person who at the time of the offence was responsible for the affairs/conduct of the business of the company, shall be held liable and proceeded against under Section 138 of the N.I. Act, with exception thereto being that such an act, if done without his knowledge or after him having taken all necessary precautions, would not be held liable. However, if it is proved that any act of a company is proved to have been done with the connivance or

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<sup>4</sup> 'Cr.PC'

consent or may be attributable to (i) a director; (ii) a manager; (iii) a secretary; or (iv) any other officer – they shall be deemed to be guilty of that offence and shall be proceeded against accordingly.

5. Coming to the judicial position, we notice a judgment of this Court in ***Monaben Ketanbhai Shah v. State of Gujarat***<sup>5</sup> wherein it was observed that:-

“...The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when the complainant makes necessary averments in the complaint and establishes that fact...”

6. A Bench of three learned Judges in ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.***<sup>6</sup> observed:-

“18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. ...A clear case should be spelled out in the complaint made 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 the respondent falls within the parameters of Section 141 has to be spelled out...”

7. We also notice this Court to have observed, in regards to the exercise of the inherent powers under Section 482, CrPC, in cases involving negotiable instruments that interference would not be called for, in the absence of “some

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<sup>5</sup> (2004) 7 SCC 15

<sup>6</sup> (2005) 8 SCC 89

*unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court.”* This principle as held in ***S.M.S Pharmaceuticals*** (supra) was followed in ***Ashutosh Ashok Parasrampuriya and Anr. v. Gharrkul Industries Pvt. Ltd. and Others***<sup>7</sup>.

8. We find the High Court, in the impugned order to have elaborately discussed the principles of law in regard to the quashing of such proceedings but, however, not dealt with the factual matrix. *Ex facie*, we find that the complainant has not placed any materials on record indicating complicity of the present appellant(s) in the alleged crime. Particularly, when the appellant(s) had no role in the issuance of the instrument, which is evident from Form 32 (Exh.P.59) issued much prior to the date on which the cheque was drawn and presented for realisation.

9. The veracity of Form-32 has neither been disputed by the Respondent nor has the act of resignation simpliciter been questioned. As such, the basis on which liability is sought to be fastened upon the instant appellant(s) is rendered questionable.

10. The record reveals the resignations to have taken place on 9<sup>th</sup> December 2013 and 12<sup>th</sup> March 2014. Equally, we find the cheques regarding which the

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<sup>7</sup> 2021 SCC OnLine SC 915

dispute has travelled up the courts to have been issued on 22<sup>nd</sup> March 2014. The latter is clearly, after the appellant(s) have severed their ties with the Respondent-Company and, therefore, can in no way be responsible for the conduct of business at the relevant time. Therefore, we have no hesitation in holding that they ought to be then entitled to be discharged from prosecution.

**11.** In this view of the matter, the judgments captioned above of the High Court of Judicature at Madras, deserve to be set aside. Accordingly, all criminal proceedings pertaining to the instant appellant(s) arising out of the complaints filed by the respondent herein are quashed.

**12.** The appeal(s) are therefore allowed in the above terms. Pending application(s) if any, shall stand disposed of.

.....**J.**  
**(B.R. GAVAI)**

.....**J.**  
**(SANJAY KAROL)**

**New Delhi;**  
**February 14, 2024.**