

SUPREME COURT OF INDIA**Bench: Justices B.R. Gavai and Sanjay Karol****Date of Decision: 14th February 2024**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.....2024

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

CRIMINAL APPEAL NO.....2024

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

RAJESH VIREN SHAH ...APPELLANT(S)**VERSUS****REDINGTON (INDIA) LIMITED ...RESPONDENT(S)****Legislation:**

Sections 138, 141 of the Negotiable Instruments Act, 1881

Sections 200, 191A, 482 of the Code of Criminal Procedure, 1973

Sections 303(2), 264(2), 266(1)(a), 266(1)(b)(iii) of the Companies Act, 1956

Subject: Determination of the liability of a resigned director in cases involving dishonoured cheques under the Negotiable Instruments Act.**Headnotes:**

Criminal Appeal – Director's Liability in Negotiable Instruments Act Case – Appeals against High Court's order regarding liability of resigned directors for cheque dishonour under Section 138 of the Negotiable Instruments Act. Issues concerning the applicability of Section 141 of the N.I. Act to directors who have resigned at the time of the offence. Appeals allowed, and criminal proceedings quashed. [Para 2, 4, 11]

Resignation of Directors – Impact on Liability – Examination of the impact of directors' resignation, as recorded in Form 32 as per the Companies Act, on their liability for cheques issued after their resignation. Determination of no

liability for appellants due to resignation prior to the date of cheque issuance. [Para 3(b), 3(c), 10]

Judicial Precedents – Requirement of Necessary Averments in Complaint – Reference to judgments in *Monaben Ketanbhai Shah v. State of Gujarat* and *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, emphasizing the need for specific averments in a complaint to establish vicarious liability of directors. [Para 5, 6]

Inherent Powers Under Section 482 CrPC – Non-interference in Negotiable Instrument Cases – Guidelines for exercising inherent powers under Section 482 of CrPC in cases involving negotiable instruments, emphasizing the need for unimpeachable evidence or circumstances to quash proceedings at the initial stage. [Para 7]

High Court's Analysis – Lack of Discussion on Factual Matrix – Critique of High Court's approach in not addressing the specific factual circumstances of the appellants' case, leading to the setting aside of the High Court's judgments. [Para 8]

Dismissal of Criminal Proceedings – Resigned Directors Not Liable – Concluding that the appellants, having resigned before the issuance of the cheques, are not liable and thereby quashing all criminal proceedings against them related to the said cheques. [Para 10, 11]

Appeal Outcome – Appeals Allowed – Conclusion with the allowance of the appeals and the disposal of any pending applications. [Para 12]

Referred Cases:

- *Monaben Ketanbhai Shah v. State of Gujarat* (2004) 7 SCC 15
- *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* (2005) 8 SCC 89
- *Ashutosh Ashok Parasrampuriya v. Gharrkul Industries Pvt. Ltd.* 2021 SCC OnLine SC 915

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 6th April, 2022 in CRLOP No.34923 of 2019; and 8th 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 9th December, 2013¹ and 12th March, 2014² 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 9th December, 2013 and 20th 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, 1881³ 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 22nd March, 2014, by the Company respondent herein against M/s MIEL e-Security Private Limited and its Directors, with one Mr. Narayanan Kutty Nair, 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 11th April, 2014 preferred a complaint under Sections 200 and 191A Code of Criminal Procedure, 1973⁴ 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.

¹ Annexure P-1, Page 45 of Paperbook

² Annexure P-1, Page 43 of Paperbook

³ 'the N.I.Act'

⁴ 'Cr.PC'

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 advertng 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 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***⁵ 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.***⁶ 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 unimpeachable, incontrovertible evidence which is beyond suspicion or*

⁵ (2004) 7 SCC 15

⁶ (2005) 8 SCC 89

*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** 2021 SCC OnLine SC 915.*

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 9th December 2013 and 12th March 2014. Equally, we find the cheques regarding which the dispute has travelled up the courts to have been issued on 22nd 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.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.