

**SUPREME COURT OF INDIA**

**REPORTABLE**

**Bench: Justices B.R. Gavai and Sandeep Mehta**

**Date of Decision: 15th March 2024**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. \_\_\_\_\_ OF 2024

[Arising out of Special Leave Petition (Criminal) No.12390-12391 of 2022]

**SUSELA PADMAVATHY AMMA ...APPELLANT(S)**

**VERSUS**

**M/S BHARTI AIRTEL LIMITED ...RESPONDENT(S)**

**Legislation:**

Section 138 and Section 142 of the Negotiable Instruments Act, 1881

Section 34(1) of the Companies Act

Section 141 of the Negotiable Instruments Act, 1881

Section 190(i)(a) of the Code of Criminal Procedure, 1973

**Subject:** The appeal challenges the High Court's judgment regarding the quashing of criminal complaints under Section 138 of the N.I. Act against the appellant, who was a Director but not involved in the day-to-day affairs of the company.

**Headnotes:**

**Criminal Law – Dishonor of Cheque – Liability of Directors –** The Supreme Court deliberated on whether the appellant, a director of a company, could be held liable under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881, for cheques issued by the company. The appellant, a director but not the signatory or person in charge of day-to-day affairs of the company, sought quashing of criminal complaints against her. [Para 3-5, 18-21]

**Role of Director in Company Liability – held –** emphasized that mere position as a director does not automatically entail responsibility for day-to-day operations or the company's business conduct. Specific averments are required to establish how a director is responsible for the conduct of the

company's business. The Court observed that a director's role is a matter of fact depending on the specifics of each case. [Para 9-10, 19-20]

Applicability of Section 141 of N.I. Act – discussed – the Court noted that Section 141 of the N.I. Act invokes vicarious liability for directors only if they are in charge of and responsible for the conduct of the business at the time of the offence. The Court emphasized the necessity of specific averments in complaints to make directors liable under this section. [Para 11-12, 20-21]

Decision – Quashing of Criminal Complaints – The Supreme Court quashed the criminal complaints against the appellant under Section 138 read with Section 142 of the N.I. Act, finding the averments insufficient to establish her role in the conduct of the company's business or her responsibility for the offence. [Para 22]

#### **Referred Cases:**

- **N.K. Wahi vs. Shekhar Singh and others (2007) 9 SCC 481**
- **S.M.S. Pharmaceuticals Ltd. Vs Neeta Bhalla and another(2005) 8 SCC 89**
- **Ashoke Mal Bafna vs. Upper India Steel Manufacturing and Engineering Company Limited(2018) 14 SCC 202**
- **Krishi Utpadan Mandi Samiti and others vs Pilibhit Pantnagar Beej Ltd. And another(2004) 1 SCC 391**
- **Laxmi Dyechem vs. State of Gujarat and others(2012) 13 SCC 375**
- **State of Haryana vs. Brij Lal Mittal and others(1998) 5 SCC 343**
- **Pooja Ravinder Devidasani vs. State of Maharashtra and another (2014) 16 SCC 1**
- **K.K. Ahuja vs. V.K. Vora and another(2009) 10 SCC 48**
- **State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi vs. Rajiv Khurana(2010) 11 SCC 469**
- **Lalankumar Singh and others vs. State of Maharashtra**

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

**B.R. GAVAI, J.**

1. Leave granted.
2. The present appeals challenge the common judgment and order dated 26<sup>th</sup> April, 2022 passed by the High Court of Judicature at Madras (hereinafter referred to as “High Court”), in Crl. O.P. Nos. 3470 & 5767 of 2019 and Crl. M.P. Nos. 2224, 2225 & 3255 of 2019, whereby the High Court rejected the prayer for quashing of C.C. Nos. 3151 & 3150 of 2017, on the file of learned XVIII Metropolitan Magistrate, Saidapet, Chennai (now transferred to the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai), in connection with the offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the N.I. Act”).
3. The facts, in brief, giving rise to the present appeals are as follows:
  - 3.1 M/s. Bharti Airtel Limited (hereinafter referred to as, “complainant” or “respondent”), is a company engaged in the business of providing telecommunication services, under a license issued by the Government of India, in various telecom circles in India.
  - 3.2 One M/s. Fibtel Telecom Solutions (India) Private Limited (hereinafter referred to as, “Fibtel Telecom Solutions” or “Company”), a company registered with the Telecom Regulatory Authority of India (TRAI) as a *telemarketer*, had approached the respondent intending to obtain telecom resources for the purpose of transactional communication and requested the complainant for allotment of telecom resources for the said purpose. One Manju Sukumaran Lalitha is the Director & Authorized Signatory of Fibtel Telecom Solutions and one Susela Padmavathy Amma, the appellant herein, is the Director of Fibtel Telecom Solutions.
  - 3.3 Based on the representation made by Fibtel Telecom Solutions, the respondent had agreed to provide the required services, whereupon the parties entered into a Service Agreement, vide which Fibtel Telecom Solutions had to pay Rs. 14,00,000/- as fixed monthly recurring charges to the respondent. It is thus the case of the respondent that Fibtel Telecom Solutions owes a sum of Rs. 2,55,08,309/-, in lieu of the service provided to it by the respondent.
  - 3.4 However, the grievance of the respondent is that in-spite of regular follow-ups and reminders, Fibtel Telecom Solutions failed and neglected to clear the respondent’s dues. Only thereafter, upon repeated demands made by the respondent, Fibtel Telecom Solutions furnished five post-dated cheques to the complainant, on 17<sup>th</sup> June 2016, details of which are as given below:

| Sr. No. | Cheque No. | Cheque Dated | Cheque Amount   |
|---------|------------|--------------|-----------------|
| 1       | 414199     | 25.06.2016   | Rs. 25,00,000/- |

|   |        |            |                 |
|---|--------|------------|-----------------|
| 2 | 414196 | 31.08.2016 | Rs. 50,00,000/- |
| 3 | 414204 | 31.08.2016 | Rs. 80,00,000/- |
| 4 | 414195 | 31.07.2016 | Rs. 45,00,000/- |
| 5 | 414205 | 30.09.2016 | Rs. 80,00,000/- |

**3.5** On deposit of the cheque mentioned at Sr. No. 1 in the table, bearing cheque no. 414199 and dated 25<sup>th</sup> June 2016, by the respondent, the said cheque was returned to it unpaid with reason “payment stopped by drawer”. Aggrieved thereby, the respondent issued a legal notice to Fibtel Telecom Solutions, on receipt of which & following an oral agreement between them, a payment schedule was agreed to and a cheque for an amount of Rs. 25,00,000/- drawn by Fibtel Telecom Solutions was honoured by it. However, when the complainant deposited the remaining four cheques as mentioned at Sr. No. 2 to 5 in the table, the same were returned to it unpaid with reason “payment stopped by drawer”. Details of deposit & return of cheques are as given below:

| Cheque No. | Cheque Presented On | Cheque Returned On | Legal Notice | Reply      |
|------------|---------------------|--------------------|--------------|------------|
| 414196     | 23.09.2016          | 26.09.2016         | 13.10.2016   | 12.11.2016 |
| 414204     | 23.09.2016          | 26.09.2016         | 13.10.2016   | 12.11.2016 |
| 414195     | 25.10.2016          | 26.10.2016         | 09.11.2016   | No reply   |
| 414205     | 17.10.2016          | 18.10.2016         | 10.11.2016   | 29.11.2016 |

**3.6** Accordingly, the respondent filed two complaints under Section 190(i)(a) of the Code of Criminal Procedure, 1973 (“CrPC” for short) for offences punishable under Section 138 & 142 of the N.I. Act, being C.C. No. 3151 of 2017 dated 30<sup>th</sup> November, 2016 and C.C. No. 3150 of 2017 dated 23<sup>rd</sup> December, 2016, before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

**3.7** Both the complaints have been filed against three accused persons namely, Fibtel Telecom Solutions, arrayed as Accused No. 1; Manju Sukumaran Lalitha, arrayed as Accused No. 2 & Susela Padmavathy Amma, the appellant herein, arrayed as Accused No. 3.

**3.8** Accused No. 3, who is a female senior citizen and the Director of Fibtel Telecom Solutions, filed CrI. O.P. No. 3470 of 2019 against C.C. No. 3151 of

2017 & CrI. O.P. No. 5767 of 2019 against C.C. No. 3150 of 2017, before the High Court under Section 482 of the CrPC for quashing of the criminal complaints qua her.

- 3.9** Vide impugned judgment and order, dated 26<sup>th</sup> April, 2022, the High Court dismissed CrI. O.P. Nos. 3470 & 5767 of 2019 and CrI. M.P. Nos. 2224, 2225 & 3255 of 2019, but directed the concerned trial court to dispose of the case within a period of three months.
- 3.10** Aggrieved by the rejection of the petition for quashing of criminal complaints, the appellant herein filed the present appeal.
- 3.11** Vide order dated 12<sup>th</sup> December 2022, this Court had issued notice and stay of further proceedings qua the appellant was granted.

**4.** We have heard Shri Manoj V. George, learned counsel for the appellant and Shri Lakshmeesh S. Kamath, learned counsel appearing for the respondent.

**5.** Shri Manoj V. George, learned counsel for the appellant submitted that the appellant is an aged-lady and was not involved in the day-to-day affairs of the Company. It is submitted that even in the complaint there are no averments that the appellant was in-charge of day-to-day affairs of the Company. It is further submitted that the appellant was also not a signatory to the cheque in question. It was only the accused No.2 who was the signatory to the cheque. It is, therefore, submitted that the High Court has grossly erred in not allowing the petition for quashing of criminal complaints qua the appellant. Learned counsel relied on the judgments of this Court in the cases of *N.K. Wahi vs. Shekhar Singh and others*<sup>1</sup>, *S.M.S. Pharmaceuticals Ltd. vs Neeta Bhalla and another*<sup>2</sup> *Ashoke Mal Bafna vs. Upper India Steel Manufacturing and Engineering Company Limited*<sup>3</sup>, *Krishi Utpadan Mandi Samiti and others vs Pilibhit Pantnagar Beej Ltd. and another*<sup>4</sup> and *Laxmi Dyechem vs. State of Gujarat and others*<sup>5</sup> in support of his submissions.

**6.** Shri Lakshmeesh S. Kamath, learned counsel for the respondent, on the contrary, submitted that the learned judge of the High Court has rightly, after considering the material on record, dismissed the petition for quashing of criminal complaints qua the appellant. It is submitted that the grounds raised are the defense of the accused and it can only be raised at the stage of the trial. It is, therefore, submitted that no interference is warranted in the present appeal.

**7.** In the case of *State of Haryana vs. Brij Lal Mittal and others*<sup>6</sup>, this Court observed thus:

“**8.** Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason.

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<sup>1</sup> (2007) 9 SCC 481

<sup>2</sup> (2005) 8 SCC 89

<sup>3</sup> (2018) 14 SCC 202

<sup>4</sup> (2004) 1 SCC 391

<sup>5</sup> (2012) 13 SCC 375

<sup>6</sup> (1998) 5 SCC 343

Admittedly, the three respondents were being prosecuted as directors of the manufacturers with the aid of Section 34(1) of the Act which reads as under:

“34. *Offences by companies.*—(1) Where an offence under this Act has been 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, 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 such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.”

It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business.”

**8.** It could thus be seen that this Court had held that simply because a person is a director of the company, it does not necessarily mean that he fulfils the twin requirements of Section 34(1) of the said Act so as to make him liable. It has been held that a person cannot be made liable unless, at the material time, he was in-charge of and was also responsible to the company for the conduct of its business.

**9.** In the case of ***S.M.S. Pharmaceuticals Ltd.*** (supra), this Court was considering the question as to whether it was sufficient to make the person liable for being a director of a company under Section 141 of the Negotiable Instruments Act, 1881. This Court considered the definition of the word “director” as defined in Section 2(13) of the Companies Act, 1956. This Court observed thus:

“8. .... 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 the 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 the day-to-day functions of the company. These are matters which form part of resolutions of the 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 the respective roles assigned to the officers in a company. ....”

**10.** It was held that merely because a person is a director of a company, it is not necessary that he is aware about the day-to-day functioning of the company. This Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company. This Court, however, clarified that the position of a managing director or a joint managing director in a company may be different. This Court further held that these persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

**11.** In the case of *Pooja Ravinder Devidasani vs. State of Maharashtra and another*<sup>7</sup> this Court observed thus:

“**17.** ..... Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, 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 for an offence under Section 141 of the NI Act. In *National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113]* this Court observed: (SCC p. 336, paras 13-14)

“**13.** Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory

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<sup>7</sup> (2014) 16 SCC 1

statement in a complaint that the Director (arrayed as an accused) is in charge of and

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responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141.”

(emphasis in original)

**18.** In *Girdhari Lal Gupta v. D.H. Mehta* [*Girdhari Lal Gupta v. D.H. Mehta*, (1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162] , this Court observed that a person “in charge of a business” means that the person should be in overall control of the day-to-day business of the Company.

**19.** A Director of a company is liable to be convicted for an offence committed by the company if he/she was in charge of and was responsible to the company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned (see *State of Karnataka v. Pratap Chand* [*State of Karnataka v. Pratap Chand*, (1981) 2 SCC 335 : 1981 SCC (Cri) 453] ).

**20.** In other words, the law laid down by this Court is that for making a Director of a company liable for the offences committed by the company under Section 141 of the NI Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the company.

**21.** In *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* [*Sabitha Ramamurthy v. R.B.S. Channabasavaradhya*, (2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621] , it was held by this Court that: (SCC pp. 584-85, para 7)



“7. ... it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 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.”

(emphasis supplied)

By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act.”

12. It could thus clearly be seen that this Court has held that merely reproducing the words of the section without a clear statement of fact as to how and in what manner a director of the company was responsible for the conduct of the business of the company, would not *ipso facto* make the director vicariously liable.
13. A similar view has previously been taken by this Court in the case of ***K.K. Ahuja vs. V.K. Vora and another***<sup>8</sup>.
14. In the case of ***State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi vs. Rajiv Khurana***<sup>9</sup>, this Court reiterated the position thus:

“17. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of the company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of nonDirector officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.”

15. In the case of ***Ashoke Mal Bafna*** (supra), this Court observed thus:

“9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply

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<sup>8</sup> (2009) 10 SCC 48

<sup>9</sup> (2010) 11 SCC 469

because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business at the time of commission of an offence will be liable for criminal action. (See *Pooja Ravinder Devidasani v. State of Maharashtra* [*Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675] .)

**10.** In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.”

**16.** A similar view has been taken by this Court in the case of ***Lalankumar Singh and others vs. State of Maharashtra*** 2022 SCC OnLine SC 1383 to which one of us (B.R. Gavai, J.) was a party.

**17.** In the light of this settled legal position, let us examine the averments made in the complaints.

**18.** It will be relevant to refer to para 16 of the complaint bearing

No. CC 3151/2017 filed by the respondent before the Court of XVIII Metropolitan Magistrate, Saidapet, Chennai dated 30<sup>th</sup> November 2016, which reads thus:

“16. The Complainant states that the Accused has an intention of cheating the Complainant. The 2<sup>nd</sup> and 3<sup>rd</sup> Accused herein has no intention to pay the dues that they owe to the Complainant. Instead, making the complainant believe that the same would be paid and through which trying to push the liability to future. It is also pertinent to note that the 2<sup>nd</sup> and 3<sup>rd</sup> of the Accused herein are the Directors, promoters of the 1<sup>st</sup> Accused being the Company. The 2<sup>nd</sup> of the Accused herein is the authorized signatory, who is in-charge

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of and responsible for the day to day affairs of the Company, the 1<sup>st</sup> Accused.”

**19.** It can thus be seen that the only allegation against the present appellant is that the present appellant and the accused No.2 had no intention to pay the dues that they owe to the complainant. It is stated that the 2<sup>nd</sup> accused and the 3<sup>rd</sup> accused (appellant herein) are the Directors, promoters of the 1<sup>st</sup> accused being the Company. It is further averred that the 2<sup>nd</sup>

accused is the authorized signatory, who is in-charge of and responsible for the day-to-day affairs of the Company, i.e., the 1<sup>st</sup> accused.

**20.** It can thus be clearly seen that there is no averment to the effect that the present appellant is in-charge of and responsible for the day-to-day affairs of the Company. It is also not the case of the respondent that the appellant is either the Managing Director or the Joint Managing Director of the Company.

**21.** It can thus clearly be seen that the averments made are not sufficient to invoke the provisions of Section 141 of the N.I. Act qua the appellant.

**22.** In the result, we find that the present appeals deserve to be allowed. It is ordered accordingly. The judgment and order passed by the High Court dated 26<sup>th</sup> April, 2022 is quashed and set aside. The proceedings in CC Nos. 3151 and 3150 of 2017 on the file of learned XVIII Metropolitan Magistrate, Saidapet, Chennai (now transferred to the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai) in connection with the offence punishable under Section 138 read with Section 142 of the N.I. Act are quashed and set aside qua the present appellant.

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