

LIABILITY OF A DIRECTOR UNDER SECTION 138 READ WITH SECTION 141 OF NEGOTIABLE INSTRUMENTS ACT, 1881: AN ANALYSIS

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The paper deals with the concept of vicarious liability of officers of Company in terms of section 138 r/w 141 of Negotiable Instruments Act, 1881. It is trite that, there is no vicarious liability in criminal law unless the statute takes that also within its fold, as held in case of Sham Sunder¹.

Section 138 of the Act refers about penalty in case of dishonour of cheque for insufficiency of funds in the account. Section 141 dealing with the offences by Companies which reads as under:

"141. Offences by companies: (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 be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.-- For the purposes of this section:-

(a) 'company' means any body corporate and includes a firm or other association of individuals; and

(b) 'director', in relation to a firm, means a partner in the firm."

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¹ Sham Sunder v. State of Haryana, (1989) 4 SCC 630

Section 141 of Negotiable Instruments Act, 1988 does not say that a director of a company shall automatically be vicariously liable for the commission of an offence on behalf of the company.

Section 141 of the Negotiable Instruments Act, 1881 states the offences by companies. It deals with the dishonouring of cheques drawn by the company. This section extends the liability to every individual who when the offence was committed was responsible for the conduct of the business which also extends towards the key managerial positions like that of the Director. To attract the provisions contained or mentioned in Section 141 of the Negotiable Instruments Act, 1881 the offence of Section 138 shall have been committed as the principal offence. But it is also provided that no individual or person shall be held liable if that individual is able to prove the fact that the offence was committed without his knowledge on his part and all the reasonable and necessary steps were taken by him that a prudent man would have taken to prevent the happening of the offence. This legal position has been summarised, on reference, by the Bench of three Hon'ble Judges of Supreme Court in case of SMS Pharmaceuticals².

The Apex court in the case titled Aneeta Hada³ held that the company has to be prosecuted first and then only the person responsible can be vicariously liable.

It is very clear from the above provision that what is required is that the persons who are sought to be made vicariously liable for a criminal offence under section 141 should be, 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. Every person connected with the company shall not fall within the ambit of the provision. 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. It follows from the fact 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 for a criminal offence under the provisions. The liability arises from being in-charge of and responsible for the conduct of the 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.

In National Small Industries Corporation⁴, it was held that as per the provisions laid down in Section 141 of the Negotiable Instruments Act, 1881 the director of a company who is not in charge of the business and is not responsible for the conduct of the business of the company at the specified time shall not be held liable for a criminal offence.

Moreover, in a catena of decisions⁵, this Court has held that for making Directors liable for the offences committed by the company under section 141 of the Act, there must be specific

² SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla (2005) 8 SS 89.

³ Aneeta Hada v. Godfather Travels and Tours Private Limited (2012) 5 SCC 661.

⁴ National Small Industries Corporation v. Harmeet Singh Paintal (2010) 3 SCC 330

⁵ Gunmala Sales (P) Ltd Vs. Anu Mehta (2015) 1 SCC 103; Standard Chartered Bank Vs. State of Maharashtra (2016) 6 SCC 62; G Ramesh Vs. Kanike Harish Kumar Ujwal (2020) 17 SCC 239; A R Radha Krishna Vs. Dasari Deepthi (2019) 15 SCC 550 (3J).

averments against the Directors, showing as to how and in what manner the Directors were responsible for the conduct of the business of the company.

In short, the complainant has to make specific averments in the complaint that the accused persons were in-charge or were responsible to the company or conduct of the business of the company. And prosecution could be launched not only against the company on behalf of which the cheque issued has been dishonoured, but it could also be initiated against every person who at the time the offence was committed, was in charge of and was responsible for the conduct of the business of the company.”