



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SANJEEV S. KALGAONKAR

ON THE 17th OF OCTOBER, 2024

MISC. CRIMINAL CASE No. 23108 of 2024

PRABHJOT SINGH MANGAT

Versus

***SKM STEELS LTD. THROUGH ITS BUSINESS MANAGER AND
AUTHORIZED SIGNATORY MR. BHUVNESH MEHTA AND
OTHERS***

WITH

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Versus

***SKM STEELS LTD. THROUGH ITS BUSINESS MANAGER AND
AUTHORIZED SIGNATORY MR. BHUVNESH MEHTA AND
OTHERS***

Appearance:

*Shri Vivek Tankha - Sr. Advocate with Shri Jerry Lopez - Advocate
for the petitioner.*

Shri Vijay Kumar Assudani – Advocate for the respondent no.1.

Reserved on : 23.09.2024

Pronounced on : 17.10.2024

ORDER



These petitions having been heard and reserved for orders, coming on for pronouncement this day, Justice Sanjeev S. Kalgaonkar pronounced the following:

M.Cr.C. No. 23108/2024 u/S 482 of Cr.P.C has been filed by the petitioner for quashing the proceedings/order dated 14.09.2015 and 04.09.2017 passed by the learned Judicial Magistrate First Class, Indore in S.C. NIA No. 6727258/2015 and all subsequent proceedings in the case.

2. The exposition of facts, in brief, giving rise to present petition is as under:

- a. M/s SKM Steels Limited filed a written complaint on 27.07.2015 for offence punishable u/S 138 r/W Sections 141 and 142 of the Negotiable Instrument Act, 1881 [referred to as 'the Act 1881' hereinafter] against the following- (1) OMAX Infrastructure and Construction Limited, (2) Shubhobjit Dutta, (3) Avishek Roy and (5) Shish Pal Singh – Directors of OMAX Infrastructure and Construction Limited, (4) Pinaki Roy – Managing Director, Omax Infrastructure and Construction Limited and (6) Col. P.S. Mangat – Project Director, Married Accommodation Project(MAP) Mhow, Indore.
- b. It is alleged in the complaint that the accused company placed purchase order for Thermo Mechanically Treated (TMT) steel to the complainant company in December, 2013. The complainant company supplied TMT steel on credit to accused no. 1 to 5 in January, 2014 pursuant to purchase order. Accused No. 6 – Col. P.S. Mangat (Petitioner) *vide* his correspondence dated 28.01.2014 has assured timely payment. The accused No.1 handed over post-dated cheques to the complainant. The cheques



in question were presented for payment with Bank of India, Palasia Branch, Indore, but the cheques were returned with objection 'payment stopped by drawer'. After correspondence between the complainant and the accused, new cheques were issued. When the complainant presented the cheques with the bank, the cheques were dishonoured for the reason of "insufficient funds". Despite service of statutory notice dated 10.06.2015, the accused failed to make payment of cheque amount, therefore, the complaint for offence punishable u/S 138 r/W 141 and 142 of the Act was filed before the learned Judicial Magistrate First Class, Indore.

- c. The learned JMFC *vide* impugned order dated 14.09.2015, took cognizance against all the accused for offence punishable u/S 138 of the Act and directed issuance of process against them. The order reads as under:

“पंजीयन पर तर्क श्रवण किये गये ।

परिवादी की ओर से प्रस्तुत परिवाद पत्र एवं उसके साथ संलग्न दस्तावेजों का अवलोकन किया गया।

आरोपी क्रमांक 1 कंपनी है एवं आरोपी क्रमांक 2 लगायत 5 उक्तज कंपनी के डायरेक्टर एवं आरोपी क्रमांक 6 कंपनी का प्रोजेक्ट मैनेजर है जिसके द्वारा परिवादी कंपनी को पत्र दिनांक 28 .01.14 प्रोजेक्ट डायरेक्टर की हैसियत से लिखा गया है तथा यह आश्वासन दिया गया है कि आरोपी कंपनी राशि का भुगतान करेगी और यदि किसी प्रकार का विलंब कारित होता है तो 18 प्रतिशत की दर से ब्याज देय होगा। अतः अभिलेख में इस संबंध में पर्याप्त साक्ष्य मौजूद है कि आरोपीगण ने प्रदाय किये गये चेक का अनादरण किया है तथा अभियोगी ने अधिनियम में उल्लेखित अवधि के अंदर संपूर्ण कार्यवाही की है। प्रथम दृष्टया उक्ति आधार पर आरोपीगण के विरुद्ध धारा 138 परक्राम्यम लिखित अधिनियम के अधीन कार्यवाही हेतु पर्याप्त आधार विद्यमान प्रतीत होते हैं। अतः आरोपीगण के विरुद्ध धारा 138 परक्राम्यम लिखित अधिनियम के अपराध के तहत संज्ञान लिया जाता है।”



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d. The ordersheets of proceedings before the learned JMFC, Indore show that Advocate –Mr. Abhinav Dhanodkar and Advocate –Mr. N.L. Tiwari submitted appearance memo on behalf of all the accused and requested for grant of adjournment for personal presence of all the accused. On the next date of hearing i.e. 16.03.2016, Vakalatnama on behalf of accused no.1 – 4 was submitted by Advocate – Mr. Abhinav Dhanodkar. Since accused no. 5 and 6 were absent, warrant of arrest were issued against them. The warrant of arrest could not be served despite repeated attempts, therefore, learned JMFC, Indore declared accused no.2 - Shubojit Dutta and accused no. 6 – Col. P.S. Mangat as absconder *vide* order dated 04.09.2017 and directed issuance of permanent warrant of arrest against them.

3. Feeling aggrieved by the aforestated orders dated 14.09.2015 and 04.09.2017, this petition u/S 482 of Cr.P.C. is filed on the following grounds:

1. Learned trial Court has committed error in mechanically taking cognizance against the petitioner u/S 138 of the Act as he is not a signatory to the impugned cheques nor an employee of the accused company or responsible for the conduct of the business of the company. He had no relations with the impugned cheques in any manner.
2. The statutory notice dated 10.06.2015 was not addressed to present petitioner. It was never served on the petitioner. Further, no summon or warrant was ever served on the petitioner.
3. The petitioner has never authorized Advocates to appear.



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4. There is no averment against the petitioner to rope him u/S 141 of the Act.
5. The impugned orders passed by the trial Court are illegal, improper and against the law.

4. On these grounds, it is prayed that the proceedings pending before the learned JMFC, Indore in SC.NIA No. 6727258/2015 against the petitioner and the impugned orders be quashed.

5. M.Cr.C. No. 23109/2024 has been filed by the petitioner for quashing the proceedings/order dated 18.01.2016 and 19.12.2023 passed by the learned Judicial Magistrate First Class, Indore in S.C. NIA No. 1165/2016 and all subsequent proceedings in the case.

6. The exposition of facts, in brief, giving rise to present petition is as under:

- a. M/s SKM Steels Limited filed a written complaint on 30.11.2015 for offence punishable u/S 138 r/W Sections 141 and 142 of the Negotiable Instrument Act, 1881 [referred to as 'the Act, 1881' hereinafter] against the following- (1) OMAX Infrastructure and Construction Limited, (2) Shubhobjit Dutta, (3) Avishek Roy and (5) Shish Pal Singh – Directors of OMAX Infrastructure and Construction Limited, (4) Pinaki Roy – Managing Director, Omax Infrastructure and Construction Limited and (6) Col. P.S. Mangat – Project Director, Married Accomodation Project(MAP) Mhow, Indore.
- b. It is alleged in the complaint that the accused company placed purchase order for Thermo Mechanically Treated (TMT) steel to the complainant company in December, 2013. The complainant company supplied TMT steel on credit to accused no. 1 to 5 in January, 2014 pursuant to



purchase order. Accused No. 6 – Col. P.S. Mangat (Petitioner) *vide* correspondence dated 28.01.2014 assured timely payment. The accused No.1 handed over post-dated cheques to the complainant. The cheques in question were presented for payment with Bank of India, Palasia Branch, Indore, but the cheques were returned with objection ‘payment stopped by drawer’. After correspondence between the complainant and the accused, new cheques were issued. When the complainant presented the cheques with the bank, the cheques were dishonoured for the reason of insufficient funds. Despite service of statutory notice dated 15.10.2015, the accused failed to make payment of due amount, therefore, the complaint for offence punishable u/S 138 r/W 141 and 142 of the Act was filed before the learned Judicial Magistrate First Class, Indore.

- c. The learned JMFC *vide* impugned order dated 18.01.2016, took cognizance against all the accused for offence punishable u/S 138 of the Act and directed issuance of process against them. The order reads as under:

“पंजीयन पर तर्क श्रवण किये गये ।

परिवादी की ओर से प्रस्तुत परिवाद पत्र एवं उसके साथ संलग्न दस्तावेजों का अवलोकन किया गया।

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7. The ordersheets of proceeding before the learned JMFC, Indore show that initially summons and later warrant of arrest was issued against accused no. 6 (petitioner). The warrant of arrest could not be served despite repeated attempts, therefore, learned JMFC, Indore declared accused no. 6 – Col. P.S. Mangat an absconder *vide* order dated 19.12.2023 and directed issuance of permanent warrant of arrest against him.

8. Feeling aggrieved by the aforestated orders dated 18.01.2016 and 19.12.2023, this petition u/S 482 of Cr.P.C. is filed on the following grounds:

1. Learned trial Court has committed error in mechanically taking cognizance against the petitioner u/S 138 of the Act as neither he is a signatory to the impugned cheques nor an employee of the accused company or responsible for the conduct of the business of the company. He had no relations with the impugned cheques in any manner.

2. The statutory notice was never addressed to present petitioner. It was not served on the petitioner. Further, no summon or warrant was ever served on the petitioner. No order was passed in this case for declaring the petitioner as absconder.

3. There is no averment against the petitioner to rope him u/S 141 of the Act.

4. The impugned orders passed by the trial Court are illegal, improper and against the law.

9. On these grounds, it is prayed that the proceedings pending before the learned JMFC, Indore in SC.NIA No. 1165/2016 against the petitioner and the impugned orders be quashed.



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10. Since the contentions raised in both the petitions are identical in nature, therefore, both the petitions are heard together.

11. Learned counsel for the petitioner, in addition to the grounds mentioned in the petition, contended that the petitioner was stationed as Project Director of Married Accommodation Project (MAP), Mhow, Indore for the period commencing 10/10/2011 to 24/07/2014. Thereafter, he was transferred to Chief Engineer, Western Command, Chandmandir (Haryana) as Director MAP w.e.f 25/07/2014. He demitted his office on superannuation in the year 2017. The cheques in question were issued on 25/04/2015, 25/05/2015, 25/6/2015 and 25/07/2015 by the officials of OMAX Infrastructure and Construction Company Ltd. The petitioner is not the signatory of the cheques. The cheques in question were issued in the year 2015, whereas, the petitioner had already left his headquarters at Mhow in July, 2014. He was not working as Project Director, MAP, Mhow, Indore at the time of issuance of cheques by OMAX Infrastructure and Construction Company Ltd. The learned JMFC committed error in taking cognizance against the petitioner *vide* impugned orders dated 14/09/2015 and 18.01.2016 .

12. Learned counsel further referring to the judgment of Hon'ble Supreme Court delivered in the case of **K.K. Ahuja Vs. V.K. Vora and another (CRA no. 1130-31 of 2003 decided on 6th July, 2009), Harshendra Kumar D. Vs. Rebatilata Koley Etc (CRA nos. 360-377 of 2011 decided on 6th February, 2011) and National Small Industries Corporation Ltd Vs. Harmeet Singh Paintal and another (CRA no. 320-336 of 2010 decided on 15th February, 2011)** contended that the petitioner was not in-charge or responsible to the Company (accused no. 1). Further, no consent or connivance or negligence can be attributed to the petitioner with regard to dishonour of the cheques, therefore, the proceedings before learned JMFC are an abuse of process of Court.



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13. Learned counsel referring to the proceedings before the trial Court in SC.NIA No. 6727258/2015 submitted that the petitioner had never authorized Shri Abhinav Dhanodkar, Advocate to appear on his behalf before the trial Court. The petitioner was not aware of the proceedings against him as he was never served any statutory notice, summons or warrant. Learned JMFC committed error in declaring the petitioner as absconder without serving any summon or warrant. Therefore, the complaint and consequential proceedings deserve to be quashed with regard to the petitioner.

14. *Per-contra*, learned counsel for the respondent opposed the petitions and submitted that the petitioner was declared absconder *vide* orders dated 04.09.2017 and 19.12.2023 respectively. The petitioner did not assail the order. Learned counsel further referring to the judgments in the case of **Prem Shankar Prasad Vs. State of Bihar and another** reported in (2022) 14 SCC 516; **State of M.P. Vs. Pradeep Sharma** reported in (2014) 2 SCC 171; **Lavesh Vs. State (NCT of Delhi)** reported in (2012) 8 SCC 730; **Srikant Upadhyay Vs. State of Bihar** reported in 2024 SCC Online SC 282 contended that the interim anticipatory bail is not permissible to the accused, who is absconding the process of law. Hence, the relief of quashment of the complaint cannot be granted to such absconder.

15. Learned counsel further referring to Annexure 'B' and 'C' filed alongwith the reply submitted that the statutory notices were issued to respondent no. 6 (the petitioner). Learned counsel also contended that whether the accused was represented by counsel before the trial Court, would be a question of fact, which needs determination at the trial, therefore, in view of the law laid down by Hon'ble Supreme Court in the case of **S.V. Mazumdar and others Vs. Gujarat State Fertilizer Co. Ltd** reported in (2005) 4 SCC 173, the proceedings cannot be quashed at preliminary stage.



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16. Learned counsel for respondent, referring to para 7.2, 7.8 and 7.10 of the impugned complaint, submitted that sufficient averments have been made in the complaint with regard to assurance given by respondent no. 6 (petitioner) for timely payment, in furtherance of which, the cheques in question were issued, therefore, the liability of the petitioner for the alleged offence is made out.

17. Learned counsel for the respondent referring to the judgments in the case of **N. K. Wahi Vs. Shekhar Singh and another** reported in **(2007) 9 SCC 481** and **Saroj Kumar Patidar Vs. State (NCT of Delhi)** reported in **(2007) 3 SCC 693** contended that every person associated with the conduct of business of the Company would also be vicariously liable under section 138 of N.I. Act, in view of the provision contained in Sec. 141 of the Act. No case is made for quashment of the complaint with all consequential proceedings, hence, the present petitions deserve to be dismissed.

18. Heard both the parties and perused the record.

19. In case of **State of Haryana v. BhajanLal** reported in **1992 Supp (1) SCC 335**, the Supreme Court laid down the principles for the exercise of the jurisdiction by the High Court in exercise of its powers under Section 482 CrPC to quash the proceedings, as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 CrPC which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their



entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) CrPC except under an order of a Magistrate within the purview of Section 155(2) CrPC.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) CrPC.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

20. In the case of **Madhavrao Jiwajirao Scindia Vs Sambhajirao Chanrojirao Angre** reported in **1988 (1) SCC 692**, the Supreme Court has held as under:

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into considerations any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

21. In the case of **Rajiv Thapar v. Madan Lal Kapoor** reported in **(2013) 3 SCC 330**, Hon'ble Supreme Court held as under:

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the



initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges leveled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1.Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2.Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges leveled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3.Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and / or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4.Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding



such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused. In light of aforementioned propositions of law, the fact scenario revealed by the material on record is examined.

22. In the case of **Lalankumar Singh v. State of Maharashtra** reported in **2022 SCC OnLine SC 1383**, it was held that:

38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

“51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

23. In the light of aforementioned propositions of law, the fact scenario reflected by the material on record is examined. The complaints filed by M/s SKM Steels Ltd., statutory notices Annexure ‘B’ and the assurance letter dated 28.01.2014 Annexure ‘A’ (mentioned in the complaint), makes it clear that the petitioner - Col. P.S. Mangat has been arrayed as an accused for the



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reason that he was working as Project Director(MAP), Mhow Distt. Indore. He was not working as a Director, Managing Director or officer of Omax Infrastructure and Construction Ltd.

24. Learned counsel referring to the appointment letter and honors conferred on the petitioner submitted that the petitioner was working as Colonel in Indian Army. Learned counsel referring to movement order and posting orders of the petitioner submitted that the petitioner was posted as Director of (MAP), Mhow from 10.10.2011 to 24.07.2014. Later, he was transferred and stationed at Headquarter, Chief Engineer Western Command Chandimandir, Haryana as Director (MAP) w.e.f. 25.08.2014. Learned counsel further contends these documents are official communication of Indian Army, therefore, their veracity cannot be doubted. Learned counsel for the respondent did not raise any objection with regard to veracity of the aforementioned documents.

25. Thus, the learned Magistrate committed an apparent error in treating him “Project Manager” of the OMAX Infrastructure and Construction Limited. (The underlined statement in the impugned summoning orders).

26. The cheques in question in both the complaints were issued on 25.04.2015, 25.05.2015, 25.06.2015 and 25.07.2015. Thus, the cheques were issued by and on behalf of Omax Infrastructure and Construction Limited, after the petitioner has demitted the office of Project Director (MAP), Mhow, Indore.

27. Section 141 of the Act, 1881 postulates constructive liability of the Directors of the Company and other persons responsible for its conduct of the business. It provides 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



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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 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.”

28. Thus, every person, who was in charge of and was responsible to the company for the conduct of the business of the company, shall be liable to be proceeded against. The petitioner was not in charge of the accused company. He was also not responsible to the company for conduct of business. Mere assurance of timely payment for supply, as alleged, would not make the petitioner responsible to the accused company for conduct of its business. Therefore, the petitioner cannot be prosecuted with the help of sub-section 1 of Section 141 of the Act, 1881.

29. So far as, sub-section (2) of Section 141 of the Act, 1881 is concerned, specific averments are required that the offence was committed with the consent of or in connivance with, is attributable to the Director, Manager, Secretary or ‘other officer of the company’. The petitioner was not the Director, Manager, Secretary or Officer of the company, therefore, the petitioner cannot be prosecuted with the help of sub-section (2) of Section 141 of the Act, 1881.



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30. Learned counsel for the respondent relying on the judgment of Supreme Court in the cases of *N. K. Wahi (supra)* and *Saroj Kumar Poddar (supra)* contended that the provisions contained in Section 141 of the Act makes all the functionaries and the company liable for the offence punishable u/S 138 of the Act. Section 141(2) of the Act provides for vicarious liability of other officers also. The petitioner had given written assurance dated 18.01.2014 for timely payment towards supply of TMT Steel bars, therefore, the petitioner is liable u/S 141(2) of the Act for the alleged offence.

31. The Supreme Court in the case of *Saroj Kumar Podar (supra)* held that:

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

32. In the case of *N.K. Wahi (supra)*, the Supreme Court relied on the law laid down in case of **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla (2005) 8 SCC 89**, wherein it was laid down that-:

19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company.



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Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.”

33. In the case of **K.K. Ahuja v. V.K. Vora & Another** reported in **2009(10) SCC 48**, it was held that mere fact that at some point of time an officer of a company had played some role in the financial affairs of the company, that will not be sufficient to attract the constructive liability under Section 141 of the NI Act. The Supreme Court summarized the legal position as follows:

“(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix ‘Managing’ to the word ‘Director’ makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager as defined in Section 2(24) of the Companies Act or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

34. It was further observed that if a mere reproduction of the wording of Section 141(1) in the complaint was sufficient to make a person liable to face prosecution, virtually, every officer/employee of a company without exception could be impleaded as accused by merely making an averment



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that at the time, when the offence was committed, they were in charge of and were responsible to the company for the conduct of business of the company.

35. In the case of **Harshendra Kumar D. Vs. Rebilata Koley** reported in **(2011) 3 SCC 351**, it was held that:

21. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents, which are beyond suspicion or doubt, placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

22. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company. As noticed above, the appellant resigned from the post of Director on 2-3-2004. The dishonoured cheques were issued by the Company on 30-4-2004 i.e. much after the appellant had resigned from the post of Director of the Company. The acceptance of the appellant's resignation is duly reflected in the Resolution dated 2-3-2004. Then in the prescribed form (Form 32), the Company informed to the Registrar of Companies on 4-3-2004 about the appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court.

36. In view of the above discussion, it is concluded that the learned Judicial Magistrate First Class, Indore committed manifest error in taking cognizance against the petitioner (respondent no.6) – Col. P.S. Mangat for



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offence punishable u/S 138 of the Act, 1881. The impugned summoning orders dated 18.01.2016 and 14.09.2015, in SCNIA No. 1165/2016 and SCNIA No. 6727258/2015 respectively, were improper as well as illegal, therefore, subsequent proceedings with regard to issuance of warrant of arrest against the petitioner and declaring him an absconder were also bad in law.

37. In such a scenario, continuation of criminal prosecution against the petitioner in aforementioned matters would be an abuse of process of law and grave injustice to the petitioner. Accordingly, M.Cr.C. No. 23108/2024 and M.Cr.C. No. 23109/2024 filed u/S 482 of Cr.P.C. stand allowed. It is directed that the order dated 14.09.2015 and all the subsequent proceedings in SC.NIA No. 6727258/2015 and the order dated 18.01.2016 and all the subsequent proceedings in SC.NIA No. 1165/2016 are quashed, so far as, they relate to the petitioner.

(SANJEEV S KALGAONKAR)
JUDGE

sh/-