[2025] 5 S.C.R. 2162 : 2025 INSC 759

HDFC Bank Limited
v.
State of Maharashtra and Anr.

(Criminal Appeal No. 2843 of 2025)

22 May 2025

[Manoj Misra and K.V. Viswanathan,* JJ.]

Issue for Consideration

Issue arose whether the High Court was justified in quashing the complaint insofar as respondent no.2-director of the company on the ground that necessary averments to invoke the vicarious liability against the respondent no.2 u/s.141 NI Act were lacking.

Headnotes†

Negotiable Instruments Act, 1881 – ss.141, 138 – Offence by companies – Vicarious liability – Necessary averments – Accused no.1 company along with respondent no.2 and other two directors approached the appellant-complainant for grant of credit facility for the working capital requirements – However, the accused failed to repay the outstanding dues – Cheque was issued but was dishonored – Criminal proceedings u/s.138 against the company and its directors – High Court quashed the same on the ground that there were no sufficient averments in the complaint filed by the appellant to invoke the vicarious liability against the respondent no.2 u/s.141 – Justification:

Held: High Court completely unjustified in quashing the proceedings against respondent No.2 – Repetition of the exact words of the Section in the same order, like a *mantra* or a magic incantation is not the mandate of the law – What is mandated is that the complaint should spell out that the accused sought to be arrayed falls within the parameters of s.141(1) – Only then could vicarious liability be inferred against the said accused, so as to proceed to trial – Substance will prevail over form – Administrative role of each director would be within the special knowledge of the company or the director of the firm and it is for them to establish that they were not in charge of the affairs of the company – Submission for the respondent No.2 that the specific role attributed to the directors

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should be set out in the complaint does not merit acceptance – Complainant is supposed to know only generally as to who are in charge of the affairs of the company – There is no obligation on the complainant to plead in the complaint as to matters within the special knowledge of the company or the directors or firm about the specific role attributed to them in the company – Averments in the complaint set out against the respondent No.2 fulfill the requirement of s.141(1), and this is not a case where trial against her can be aborted by quashment of proceedings – Judgment of the High Court set aside. [Paras 34, 38, 39]

Case Law Cited

S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another **[2005] Supp. 3 SCR 371 : (2005) 8 SCC 89 – relied on.**

Siby Thomas v. Somany Ceramics Limited **[2023] 13 SCR 821 : (2024) 1 SCC 348 – distinguised.**

Monaben Ketanbhai Shah and Another v. State of Gujarat and Others **[2004] Supp. 3 SCR 411 : (2004) 7 SCC 15;** *Sabitha Ramamurthy and Another v. R.B.S. Channabasavaradhya* **[2006] Supp. 6 SCR 126 : (2006) 10 SCC 581;** *A.K. Singhania v. Gujarat State Fertilizer Company Limited and Another* **[2013] 9 SCR 1069 : (2013) 16 SCC 630;** *Ashok Shewakramani and Others v. State of Andhra Pradesh and Another* **(2023) 8 SCC 473;** *Ashutosh Ashok Parasrampuriya and Another v. Gharrkul Industries Private Limited and Others* **(2023) 14 SCC 770;** *S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan* **[2022] 9 SCR 634 : (2023) 10 SCC 685;** *K.K. Ahuja v. V.K. Vora and Another* **[2009] 9 SCR 1144 : (2009) 10 SCC 48;** *National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another* **[2010] 2 SCR 805 : (2010) 3 SCC 330 – referred to.**

Books and Periodicals Cited

P. Ramanatha Aiyar's Advanced Law Lexicon **– referred to.**

List of Acts

Negotiable Instruments Act, 1881.

List of Keywords

Quashing the complaint; Director of the company; Necessary averments; Vicarious liability; Grant of credit facility for the working

capital requirements; Repay the outstanding dues; Cheque dishonored; Criminal proceedings; Administrative role of each director; Special knowledge of the company.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2843 of 2025

From the Judgment and Order dated 10.01.2024 of the High Court of Judicature at Bombay in CRLWP NO. 275 of 2022

Appearances for Parties

Advs. for the Appellant:
Arvind Nayar, Sr. Adv., Asav Rajan, Palash Singhai, Akash Saxena, Devang Shrotriya, Kashish Chadha, Akshay Joshi.

Advs. for the Respondents:
Omkar Deshpande, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Karansingh Rajput, Ravindra Sadanand Chingale, Ms. Sumbul Ausaf, Dr. Rakesh Kumar, Desam Sudhakara Reddy.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the judgment dated 10.01.2024 passed by the High Court of Judicature at Bombay in Criminal Writ Petition No. 275 of 2022. By the said judgment, the High Court has quashed the criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') insofar as it was against Respondent No. 2-Mrs. Ranjana Sharma was concerned. The proceedings have been quashed on the ground that there were no sufficient averments in the complaint filed by the appellant to invoke the vicarious liability against the respondent No. 2 under Section 141 of the NI Act. Aggrieved, the appellant is before us.

BRIEF FACTS: -

3. The facts lie in a narrow compass. The respondent no. 2 - Mrs. Ranjana Sharma along with her daughter Ms. Rachana Sharma and one Mr. Rakesh Rajpal were directors of a company named M/s R Square Shri Sai Baba Abhikaran Pvt. Ltd. According to the complaint filed by the appellant, the accused no. 1 - company along with respondent no. 2 (accused no.2) and other two directors approached the appellant/ complainant for grant of credit facility in the form of Revolving Loan Facility as Inventory Funding for the working capital requirements. According to the appellant, loan amounts were extended and on account of the failure of the accused to repay the outstanding dues, the account of the company was classified as a Non-Performing Asset on 27.03.2018 in accordance with the guidelines issued by the Reserve Bank of India. It is the case of the appellant that a cheque issued by the accused for a sum of Rs. 6,02,04,217/- on deposit was dishonored for the reason "account blocked". According to the appellant, a legal notice was issued to all the accused. However, the said notice was returned back as "unclaimed". The appellant thus prosecuted the company and the three directors and prayed for appropriate punishment of imprisonment as well as direction to pay fine up to double the amount of the dishonored cheque. On 16.12.2018, the Trial Court issued process to the respondents in the complaint.

4. Since the complaint has been quashed on the ground of lack of adequate averments, it will be necessary to extract the crucial averments that are made in the complaint:-

> "2. That, Accused No 1 is a Company registered and incorporated under the provisions of Indian Companies Act, 2013 [existing within the purview of Companies Act, 1956] and having it registered and corporate office at the address mentioned aforesaid and engaged in the business of sale of cars and spare parts manufactured by Hyundai Motors (I) Ltd **Accused Nos 2 to 4 are the Directors of Accused No 1 Company and is responsible for its day to day affairs, management and working of the Accused No 1 Company furthermore the Accused No 3 is the signatory of the dishonored cheque.**

3. That, Accused No 1, through **Accused Nos 2 to 4, had approached the complainant above named for grant of credit facility in the form of Revolving Loan Facility as Inventory Funding for the working capital requirements That after due deliberation and negotiations with Accused Nos 2 to 4 the complainant granted the Revolving Loan facility initially to the extent of Rs 5,00,00,000/ (Rupees Five Crores only) [Inventory funding Rs 3.00 Crores + Inventory Funding Adhoc: Rs 2.00 Crores vide sanction letter dated 09.08.2014 Hereto annexed and marked as Exhibit B is the copy of said Sanction letter dated 09. 08.2014 for Revolving Loan Facility granted to Accused No. 1.**

4. That, upon further request made by Accused No. 1, complainant had enhanced the said facility from Rs 5.00 Crore to Rs. 6.00 Crores vide sanction letter dated 27.10.2015 The said facilities were further enhanced from Ra 6.00 Crores to Rs 6.50 Crores vide sanction letter dated 22.02.2016 and lastly the said facility was enhanced from Rs 6.50 Crores to Rs 8.00 Crores vide sanction letter dated 12.09.2016. Hereto annexed and marked as Exhibit C-1 to Exhibit C-3 are the copies of sanction letter dated 27.10.2015, 22.02.2016 and 12.09.2016 respectively

5. The Loan account of Accused No. 1 maintained by complainant was numbered as loan account No 02400450029354. That in consideration of grant of the **said facilities, accused(s) had executed various loan and security documents in favor of Complainant from time-to time inter alia accepting the terms and conditions of respective documents** It is submitted that the Accused No. 1 lastly, amongst other, entered into Loan agreement with Complainant on 17.09.2016 and executed Demand Promissory Note for a sum of Rs. 8,00,00,000/- on 20.09.2016 Hereto annexed and marked as Exhibit 'D-1 IS the copy of Supplemental and Amendatory Loan Agreement dated 17.09.2016 and Exhibit' D 2" is the Demand Promissory Note dated 20 09 2016.

> 6. Be that as it may, the Complainant states that the sanctioned/renewed credit facilities were duly availed and utilized by the Accused without any demur. The Complainant further states that after availing the aforementioned credit facilities, Accused No. 1 failed to maintain the account with Complainant Bank in the manner agreed to and defaulted in making timely repayments.
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> 7. Thus, owing to the failure on the part of Accused(s) to repay the outstanding dues on time, thereby willfully defaulting in the same, Complainant was constrained to classify the account of the Accused No. 1 as a Non-Performing Asset on 27.03.2018 in accordance with the guidelines issued by the Reserve Bank of India from time to time.
>
> 8. That, complainant states that despite various oral and written requests, the Accused failed to regularize and maintain the account. It is submitted that Accused Company did not pay any heed to the requests and reminders of the Complainant and willfully neglected discharging their obligations thereby depriving the Complainant its legitimate dues."
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> (Emphasis supplied)

5. It will be noticed that in Para 2 of the complaint quoted above, it has been categorically averred as under:

> "Accused Nos. 2 to 4 are the directors of the accused no. 1 - **company and is responsible for its day-to-day affairs, management and working of the accused no. 1 – company. Furthermore, the accused no. 3** is the signatory of the dishonored cheque".
>
> (Emphasis supplied)

6. Not only this, it is further averred in Para 3 that accused no. 1 (the company) through accused nos. 2 to 4 had approached the complainant above named for grant of credit facility in the form of Revolving Loan Facility as inventory funding for the working capital requirements. It has been stated : -

> "That, after, due deliberation and negotiations with Accused nos. 2 to 4, the Complainant granted the Revolving Loan facility initially to the extent of……".

7. In the Board resolution of the accused no. 1 - company dated 28.09.2018 annexed to the complaint the following statement occurs: -

> "RESOLVED FURTHER THAT Ms. Rachana Sharma and/ or Mrs. Ranjana Sharma be and are hereby authorized jointly and/or severally to further negotiate with HDFC Bank and accept the revised terms and conditions the securities on behalf of the company."

It is further resolved as under: -

> "RESOLVED FURTHER THAT the property(s) (belonging to the Company, stipulated as security 'owe' me Additional Credit Facility(ies) sanctioned by HDFC Bank shall be mortgaged in favor of the Bank, by way of Equitable or Registered Mortgage as may be required by HDFC Bank and Ms. Rachana Sharma and/or **Mrs. Ranjana Sharma be to and are hereby authorized, jointly and/or severally to be present in HDFC Bank and deposit /redeposit the original tittle deeds of the Company's immovable properties with an intention to create security thereof and to make necessary declarations on behalf of the Company**."
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> (Emphasis supplied)

8. It will be seen that apart from negotiations, Mrs. Ranjana Sharma - respondent no. 2, was also authorized to deposit the original title deeds of the company's immovable property. Further the board resolution provides as under: -

> "RESOLVED FURTHER THAT the draft of the document received from HDFC Bank (a) respect credit facility (ies) be and is/are hereby approved and Ms. Rachana Sharma and/or **Mrs. Ranjana Sharma and/or hereby authorized, jointly and/or to execute, sign and issue all/any such Demand Promissory notes Hypothecation Agreements, mortgages (in such form as HDFC bank may require), guarantees, indemnities all/any other documents,**

writings and instruments and all renewals and/or amendments there to including after Acknowledgement of Debt/balance confirmations HDFC Banks(s) may require from time to time in this regard,

RESOLVED FURTHER THAT Ms. Rachana Sharma and/or Mrs. Ranjana Sharma be and are hereby authorized jointly and/or severally on behalf of the company to file the requisite particulars of charge created in favor of HDFC Bank with the Registrar of Companies or any other regulatory body within the time frame prescribed therefor,

RESOLVED FURTHER THAT **Ms. Rachana Sharma and/or Mrs. Ranjana Sharma be and are hereby authorized jointly and/or severally to be present at the office of Sub-Registrar for effecting the regulation of various documents on behalf of the Company whenever required and to do all such acts, deeds and things as may be necessary or expedient to implement/give effect to this resolution**.

RESOLVED FURTHER THAT Ms. Rachana Sharma and/or Mrs. Ranjana Sharma be and are thereby authorized jointly and/or severally to affix the Common Seal of the company on all the agreement documents writing and instruments and all renewals/amendments after Acknowledgement of debt/barar (sic.) conditions there of mentioned above as may be required by HDFC Bank in conformity with provisions of the Articles of Association, the Companies Act, 1956 and the Companies Act, 2013 of the Companies (sic.)"

(Emphasis supplied)

9. Under the resolution, the respondent no. 2-Ranjana Sharma was authorized to sign demand promissory notes, hypothecation agreements, mortgages, guarantees and indemnities and any other documents, writings and instruments, as may be required, from time to time. Further, respondent no. 2 was also authorized to file the requisite particulars of charge created in favor of the bank with the Registrar of Companies. The respondent no. 2 was also authorized

to be present at the office of Sub-Registrar for registration of various documents and also authorized to affix the common seal on all the relevant documents.

10. In the sanction letter dated 22.02.2016 which was also annexed to the complaint, under the head "Security for Inventory Funding (AUIF)", the performance guarantee of the directors - Ms. Rachana Sharma and respondent no. 2 - Mrs. Ranjana Sharma were required to be given. This clause occurs in the further sanction letter dated 12.09.2016 also.

11. It is in this background that the correctness of the judgment of the High Court needs to be appreciated.

12. We have heard learned Senior Counsel/Counsel for the parties and perused the records. Learned Senior Counsel for the appellant contends that a perusal of the averments in the complaint read with the documents filed leave no manner of doubt that the respondent no. 2 - Ranjana Sharma was in charge of, and was responsible for the conduct of the business of the company inasmuch as she had participated in the negotiations and was authorized to sign all the relevant documents and her performance guarantee was also taken. In view of this, learned Senior Counsel contends that the High Court was not justified in quashing the complaint insofar as the respondent no. 2 - Ranjana Sharma was concerned.

13. Learned Senior Counsel for the appellant contends that respondent No.2-Mrs.Ranjana Sharma is the Director of the Accused No.1-Company and she submitted a personal guarantee and also signed a supplemental continuing guarantee dated 17.09.2016 for the loan transaction. It is submitted that the Company is a family-run private entity. Learned Senior Counsel for the appellant relied upon certain judgments of this Court in support of his submission.

14. In response, learned counsel for the respondent No.2 submitted that the averments in the complaint fell short of the requirement mandated in ***S.M.S. Pharmaceuticals Ltd.*** vs. ***Neeta Bhalla and Another***, (2005) 8 SCC 89; that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and the same ought to be read conjunctively; that as held in ***Siby Thomas*** vs. ***Somany Ceramics Limited***, (2024) 1 SCC 348 if it is not averred in the

complaint that the accused was "in charge of the conduct of the business" at the relevant time, the prosecution must fail; and that not only the basic averment as enshrined in Section 141 of the NI Act has to be incorporated in the complaint but also the specific role should be attributed to the persons who are directors or employees of the company. Learned counsel for the respondent also relied on certain other judgments which will be dealt with in the course of the discussion herein below.

QUESTION FOR CONSIDERATION: -

15. In the above background, the question that arises for consideration is whether the High Court was justified in quashing the complaint insofar as respondent no. 2 – Mrs. Ranjana Sharma was concerned on the ground that necessary averments were lacking?

ANALYSIS AND REASONING: -

16. Section 141(1) of the NI Act along with its provisos 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."

17. It will be noticed that Section 141 of the NI Act employs the phrase "*was in charge of, and was responsible to the company for the conduct of the business of the company*". Insofar as the aspect of vicarious liability is concerned, in the present case, the averments made are to the following effect:-

> "Accused Nos. 2 to 4 are the Directors of Accused No.1 Company" and
>
> "Is responsible for its day-to-day affairs, management and working of the Accused No.1-Company"

18. The real question is, is the above averment along with the other averments in the complaint sufficient to meet the tests laid down by this Court in the leading judgment of ***S.M.S. Pharmaceuticals-I (supra)***.

19. Before we advert to ***S.M.S. Pharmaceuticals-I (supra),*** it will be useful to refer to the meaning of the word "*in charge of*". P. Ramanatha Aiyar's Advanced Law Lexicon defines the word "in charge of" as follows:-

> "A person "in charge of" and responsible to the company for the conduct of the business of the company must be a person in overall control of the day-to-day business of the company or firm".

20. It will be seen that the averment made in the complaint, in the present case, clearly uses the phrase "responsible for its day-to-day affairs, management and working of the Accused No.1 Company", which going by the dictionary meaning set out hereinabove in substance is the same as "in charge of and was responsible to the Company for the conduct of the business of the Company".

21. Read in the background of the other averments, the above averment clearly fulfils the requirement of Section 141. The contention of the learned counsel for the respondent no. 2, however, is that actual words mentioned in Section 141 in the same form be employed in the complaint, for the complaint to be sustained. Learned Counsel placed strong reliance on ***S.M.S. Pharmaceuticals-I (supra).***

22. To answer this issue, a closer look at the judgment in ***S.M.S. Pharmaceuticals-I (supra)*** needs to be undertaken. ***S.M.S.***

Pharmaceuticals -I (supra) arose out of a reference by a two-Judge Bench of this Court. This Court, in the said judgment, set out for determination the following questions: -

> "(*a*) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.
>
> (*b*) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.
>
> (*c*) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

23. The following principles are deducible from the said judgment.

(i) "Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable". [See Para 4]

(ii) "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 upon the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs**". [See Para 8]

(Emphasis supplied)

(iii) "Mere use of a particular designation of an officer without more, may not be enough by way of an averment in a complaint. When the requirement in Section 141, which extends the liability to officers of the company, is that such a person should be in charge of and responsible to the company for conduct of business of the company, how can a person be subjected to liability of criminal prosecution without it being averred in the complaint that satisfies those requirements. **Not every person connected with a company is made liable under Section 141. Liability is cast on persons who may have something to do with the transaction complained of. A person who is in charge of and responsible for conduct of business of a company would naturally know why the cheque in question was issued and why it got dishonoured**". [See Para 8]

(Emphasis supplied)

(iv) "What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and 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. It is only**

> **those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action**. It follows from this 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 under the provision". [See Para 10]
>
> (Emphasis supplied)

(v) "Therefore, in order to bring a case within Section 141 of the Act, the complaint must disclose the necessary facts which make a person liable". [See Para 12]

24. After setting out the above principles, this Court in ***S.M.S. Pharmaceuticals-I (supra)***, cited a whole host of judgments of various High Courts and this Court, including the judgment of this Court which was then the latest in line, namely, ***Monaben Ketanbhai Shah and Another*** vs. ***State of Gujarat and Others***, (2004) 7 SCC 15. This Court in ***S.M.S. Pharmaceuticals-I (supra)*** cited ***Monaben Ketanbhai Shah (supra)*** which had held that it was not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint was required to be read as a whole. ***Monaben Ketanbhai Shah (supra)*** had held that if the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed and is required to be tried with. It was further held in ***Monaben Ketanbhai Shah (supra)*** that in construing a complaint, a hypertechnical approach should not be adopted and the laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions had to be borne-in-mind.

25. After setting out the holding in ***Monaben Ketanbhai Shah (supra)***, this Court in ***S.M.S. Pharmaceuticals-I (supra)*** in para 18 held as follows:-

> **"**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 liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself.

It is a departure from the rule in criminal law against vicarious liability. **A clear case should be spelled out in the complaint 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.** A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. **If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial**."

(Emphasis supplied)

26. Thereafter, in para 19, the conclusion was recorded in the following terms:-

"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. 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."

(Emphasis supplied)

27. Hence, it is very clear that the conclusion in para 19(a) in ***S.M.S. Pharmaceuticals-I (supra)*** has to be read with the other holdings in judgment especially the ratio extracted hereinabove culminating in para 18. Merely reading para 19(a) to contend that what is required is parroting of the words of the section for a complaint to be sustained is completely unjustified. Para 19(a) does not mention that the words of the Section 141 has to be mechanically parroted. In fact, the cases that we discuss hereinbelow have expressly rejected the said contention.

28. After the reference in ***S.M.S. Pharmaceuticals-I (supra)*** was answered by the three-Judge Bench and before the case of the said parties could be taken up for disposal by the two judge Bench, came the judgment in ***Sabitha Ramamurthy and Another*** vs. ***R.B.S.Channabasavaradhya***, (2006) 10 SCC 581. This Court, after noticing ***S.M.S. Pharmaceuticals-I (supra),*** held that it was not

necessary for the complainant to specifically reproduce the wordings of the section but what was required was a clear statement of fact so as to enable the Court to arrive at a prima facie opinion that the accused are vicariously liable. Such vicarious liability can be inferred 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. It was also held that before a person can be made vicariously liable, strict compliance with the statutory requirements should be insisted. On facts, the Court found that the averments did not meet the requirements in the said case.

29. Thereafter, came the judgment in ***S.M.S. Pharmaceuticals Ltd.*** *vs.* ***Neeta Bhalla and Another,*** (2007) 4 SCC 70 (hereinafter referred to as ***S.M.S. Pharmaceuticals-II (supra)***. Referring to para 18 and 19 of the order in the three-Judge Bench reference in ***S.M.S. Pharmaceuticals-I (supra)*** and following the judgment in ***Sabitha Ramamurthy (Supra)***, the averments in the complaint were tested and it was found that the complaint petition when read in its entirety, the averments therein fell short of the requirements to implicate the respondent-accused in that case.

30. To the same effect is the judgment of this Court in ***A.K. Singhania*** vs. ***Gujarat State Fertilizer Company Limited and Another***, (2013) 16 SCC 630, wherein this Court categorically ruled as under:-

> "14. From a plain reading of the aforesaid provision it is evident that every person who at the time the offence was committed was in charge of and responsible to the company shall be deemed to be guilty of the offence under Section 138 of the Act. In the face of it, will it be necessary to specifically state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company? **In our opinion, in the case of offence by the company, to bring its Directors within the mischief of Section 138 of the Act, it shall be necessary to allege that they were in charge of and responsible to the conduct of the business of the company. It is a necessary ingredient which would be sufficient to proceed against such Directors. However, we may add that as no particular form is prescribed, it may not be**

> **necessary to reproduce the words of the section. If reading of the complaint shows and the substance of accusation discloses necessary averments, that would be sufficient to proceed against such of the Directors and no particular form is necessary.** However, it may not be necessary to allege and prove that, in fact, such of the Directors have any specific role in respect of the transaction leading to issuance of cheque. Section 141 of the Act makes the Directors in charge of and responsible to the company "for the conduct of the business of the company" within the mischief of Section 138 of the Act and not particular business for which the cheque was issued. We cannot read more than what has been mandated in Section 141 of the Act."
>
> (Emphasis supplied)

31. In ***Ashok Shewakramani and Others*** vs. ***State of Andhra Pradesh and Another***, (2023) 8 SCC 473, a judgment relied upon by Respondent No.2, the averments did not satisfy the ingredients of Section 141 and this Court observed that all that was averred in that case (the first set of appeal therein) was that the accused were liable for the transactions of the company and they were fully aware of the issuance of the cheque and dishonor of the cheque. This Court held that even taking a broad and liberal view of the pleadings in the complaint, there was no compliance with the requirements of Section 141 (1). In the second set of appeals therein the accused directors were not even described as directors of the first accused company therein. On that simple ground proceedings were quashed. In the third set of appeals therein, insofar as the directors were concerned who were accused nos. 4 to 7 an omnibus averment was made in the following terms.

> "(1) It is submitted that the complainant is the proprietor of Chakra Cotton Traders, doing business in cotton, resident of bearing Door No. 3/917-1, Sri Chackra Nilayam, YMR Colony, Proddatur Town-516 360, Kadapa District, A.P.
>
> Accused 1 is the private limited Company concerned and registered under the Companies Act. Accused 2 is Chairman of Accused 1. Accused 3 is the Managing Director of Accused 2 and Accused 4 to 7 are the Directors

> of Accused 1 Company and Accused 2 to 7 are managing the Company and busy with day-to-day affairs of the Company and all are managing the Company and also in charge of the Company and all are jointly and severally liable for the acts of Accused 1 Company."

Considering these averments the Court while quashing the proceedings held that merely because somebody is managing the affairs of company, per se they do not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. It was further held that the averment that the accused were busy with the day-to-day affairs was also insufficient to attract the ingredients of Section 141(1). Proceeding further, the Court held that merely averring that the accused were in-charge of the company was neither here nor there as such averment was insufficient to conclude that the accused were responsible to the company for the conduct of the business. This is vastly different from the averments in the present case wherein it is clearly averred that the respondent no. 2 was responsible for the day-to-day affairs, management and working of the accused no. 1 company.

32. ***Ashok Shewakramani (supra)*** turned on the special facts of that case. This is more so since the averments in the complaint therein extracted hereinabove lumping the role of the directors with others and making omnibus averments, was found to be insufficient to attract the vicarious liability under Section 141(1) of the NI Act.

33. In ***Ashutosh Ashok Parasrampuriya and Another*** vs. ***Gharrkul Industries Private Limited and Others***, (2023) 14 SCC 770, after noticing that the averments in the complaint were to the effect that the directors of the accused company were responsible for its business and all the appellant-accused therein were involved in the business of the company and are responsible for all the affairs of the company, this Court held that reading the complaint as a whole, the ingredients of Section 141 were satisfied.

34. What is important to note is that the repetition of the exact words of the Section in the same order, like a mantra or a magic incantation is not the mandate of the law. What is mandated is that the complaint should spell out that the accused sought to be arrayed falls within the parameters of Section 141(1) of the NI Act. Only then could vicarious

liability be inferred against the said accused, so as to proceed to trial. Substance will prevail over form.

35. Strong reliance is placed on ***Siby Thomas (supra)*** by learned counsel for the respondent No.2 to contend that in the absence of the words "was in charge of", the present case against respondent No.2 cannot be proceeded. We are unable to countenance the said submission. This Court, in ***Siby Thomas (supra),*** on facts, found that on an overall reading of the complaint it did not disclose any clear and specific role to the appellant-accused therein. It was further held that what was averred was only that the accused being partners are responsible for the day-to-day conduct of business of the company. This is vastly different from the averments in the present case as discussed hereinabove. In this case, it is clearly averred that the respondent No.2 along with the accused Nos. 3 and 4 being directors were responsible for its day-to-day affairs, management and working of accused No.1 - Company. Hence, the judgment in ***Siby Thomas (supra)*** can be of no help to the respondent No.2 as the case turned on its own facts.

36. The other aspect of the matter canvassed by the learned counsel for the respondent No.2 is that not only are the basic averments as enshrined in Section141 to be mandatorily incorporated but also the specific role be attributed to the persons who are mere directors or employees of the company. We are unable to agree with the submission of the learned counsel.

37. Recently, this Court in ***S.P. Mani and Mohan Dairy*** vs. ***Dr. Snehalatha Elangovan***, (2023) 10 SCC 685, after reiterating the principle that it was not necessary to reproduce the language of Section 141 verbatim in the complaint further reiterated the holding in ***K.K.Ahuja*** vs. ***V.K. Vora and Another***, (2009) 10 SCC 48. In ***K.K. Ahuja (supra)***, it was held that insofar as the director was concerned, 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 was enough and no further averment was necessary though some particulars will be desirable. Thereafter, this Court in ***S.P. Mani (supra)***, in para 58.2 of the judgment concluded as under:-

> "58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the

company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the Court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141, respectively, of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm."

38. As was rightly held therein, the administrative role of each director would be within the special knowledge of the company or the director of the firm and it is for them to establish that they were not in charge of the affairs of the company. In view of this, the contention of the learned counsel for the respondent No.2 that the specific role attributed to the directors should be set out in the complaint does not merit acceptance. Reliance has been placed on ***National Small Industries Corporation Limited*** vs. ***Harmeet Singh Paintal and Another***, (2010) 3 SCC 330 by the learned counsel for the respondent No.2 in support of the proposition canvassed. We are unable to countenance the said submission. If the learned counsel by the said submission seeks to contend that the complainant in a Section 138 complaint is obliged to plead administrative matters which are especially within the knowledge of the company and the directors, then he is completely wrong in the understanding of the ingredients of Section 141. As held in ***K.K. Ahuja (supra)*** and reiterated in ***S.P. Mani (supra),*** the complainant is supposed to know only generally as to who are in charge of the affairs of the company. ***Harmeet Singh Paintal (supra)*** when it holds in para 22 that

> "further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as how the Directors concerned were alleged to be in charge of and were responsible for the conduct of the affairs of the company"

should be understood to only mean vis-à-vis the transaction concerning the issue of the cheque, in question, which are within the knowledge of the complainant. ***K.K. Ahuja (supra)*** where it holds that

> "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"

sets out the correct legal position. A harmonious reading of the judgments in ***K.K. Ahuja (supra)***, ***Harmeet Singh Paintal (supra)*** and ***S.P. Mani (supra)*** brings out the position that there is no obligation on the complainant to plead in the complaint as to matters within the special knowledge of the company or the directors or firm about the specific role attributed to them in the company.

39. Applying the said legal position to the facts of the present case, it is found that the averments in the complaint set out hereinabove against the respondent No.2 – Mrs. Ranjana Sharma fulfill the requirement of Section 141(1) of the NI Act, and this is not a case where trial against her can be aborted by quashment of proceedings. The High Court was completely unjustified in quashing the proceedings against her.

40. The appeal is, accordingly, allowed and the judgment of the High Court of Judicature at Bombay dated 10.01.2024 in Criminal Writ

Petition No. 275 of 2022 is set aside. Consequently, the order dated 16.12.2019 issuing process to respondent No.2 in proceeding in C.C. No. 2486/SS/2019 is restored to the file of the Metropolitan Magistrate, 7th Court, Bhiwandi, Dadar, Mumbai to be proceeded with in accordance with law.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain