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VICARIOUS LIABILITY OF DIRECTORS OF COMPANY IS NOT ATTRACTED UNLESS SPECIFIC ASSERTIONS ARE MADE

"NATIONAL HOUSING BANK V. BHERUDAN DUGAR HOUSING FINANCE LTD. & ORS"

Hon'ble Supreme Court in case of *National Housing Bank v. Bherudan Dugar Housing Finance Ltd. & Ors*¹. observed that vicarious liability of Directors of company is not attracted unless specific assertions are made, as provided under Section 50(1) of National Housing Bank Act, 1984 which is pari materia with Section 141 of Negotiable Instruments Act, 1881. In this instance case, Appellants filed a complaint under section 200 of Code of Criminal Procedure, 1973, alleging the commission of an offence of violating the provisions in Section 29A of the National Housing Bank Act, 1987, following which, cognizance was taken by Ld. Magistrate. The first accused is a company. Second accused was described in complaint as the Managing Director of the first accused company, and other five accused were described as the Directors. Later, High Court quashed the complaint in its entirety holding that requirements of sub-Section (1) of Section 50 of the 1987 Act are similar to the requirements incorporated in Section 141 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), which were not complied with by the complainant.

Hon'ble Supreme Court observed that specific averments are essential for establishing liability under Section 141 of the NI Act, and by extension, Section 50 of the 1987 Act. Furthermore, it reiterated that merely being a director is insufficient to attract liability under these provisions. It observed that there were no assertions made that the second to seventh accused, at the time of the commission of the offence, were in charge of, and responsible to the first accused company for the conduct of its business. Unless assertions, as required by sub-Section (1) of Section 50, are made, vicarious liability of the Directors of the first accused company is not attracted.

Hence, Hon'ble Supreme Court partly allowed appeal.

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¹ Criminal Appeal @ SLP(Cr.) 452-53 of 2018

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REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS. 3176-3177 OF 2024

(Arising out of Special Leave Petition (Crl.) Nos. 452-53 of 2018)

NATIONAL HOUSING BANK

...APPELLANT

VERSUS

**BHERUDAN DUGAR HOUSING
FINANCE LTD. & ORS. ETC.**

...RESPONDENTS

J U D G M E N T

ABHAY S. OKA, J.

FACTS

1. The appellant filed a complaint under Section 200 of the Code of Criminal Procedure, 1973, alleging the commission of an offence of violating the provisions in Section 29A of the National Housing Bank Act, 1987 (for short, the '1987 Act'). The learned Magistrate took cognizance of the complaint for the offence under Section 29A (i) read with Section 50 and punishable under Section 49 (2A) of the 1987 Act. Section 49(2A) provides for a minimum sentence of one year, which may extend to five years. For convenience, we will refer to the parties as per

their status before the Trial Court. The first accused is a company. The second accused was described in the complaint as the Managing Director of the first accused company, and the other five accused were described as the Directors. By the impugned judgment, the High Court has proceeded to quash the complaint in its entirety. The High Court held that the requirements of sub-Section (1) of Section 50 of the 1987 Act are similar to the requirements incorporated in Section 141 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), which were not complied with by the complainant.

SUBMISSIONS

2. The learned counsel appearing for the appellant has taken us through the averments made in the complaint and the provisions of the said Act of 1987. He submitted that on a plain reading of the complaint, a violation of the provisions in Section 29A (i) of the 1987 Act was made out. Therefore, there was no reason to quash the complaint. Inviting our attention to the complaint, he pointed out that the second accused was described as the Managing Director of the first respondent and, therefore, he was in charge of and was responsible to the first respondent company for the conduct of the company's business. He submitted that there were sufficient averments for implicating the other accused.

3. The learned counsel appearing for the accused supported the impugned judgment and submitted that averments as required by sub-Section (1) of Section 50 of the 1987 Act have not been incorporated in the complaint.

REASONS

4. Section 50 of the 1987 Act reads thus:

“50. Offences by Companies.—(1)

Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an 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.”

(emphasis added)

There is no dispute that sub-Section (1) of Section 50 is *pari materia* with Section 141 of the NI Act.

5. Paragraph 9 of the complaint contains relevant averments on which reliance was placed by the learned counsel for the complainant. Paragraph 9 reads thus:

“The complainant submits that the Accused No. 1 herein is a Limited Company, having its registered Office at Nos. 73/1A, Jermiah Road, Vepery, Chennai-600007. It was incorporated on 17-12-1996 as a Limited Company under the Companies Act, 1956 and obtained Certificate for commencement

of Business on 22.01.1997 from the Additional registrar of Companies, Tamilnadu. The Xerox Copy of the Memorandum and Articles of Association of the Accused Company is filed herewith. Accused No. 2 is the Managing Director and the Accused 3 to 7 are the Directors of the First Accused Company and they are conducting the business of the company and are associated with the common aspect of their said business and are also responsible for the Management of the First Accused Company. They are also looking after the day today affairs of the First Accused Company and they are jointly and severally responsible for the conduct or for omission regarding the conduct of the business of the First Accused Company.”

6. Hence, there were no assertions made that the second to seventh accused, at the time of the commission of the offence, were in charge of, and responsible to the first accused company for the conduct of its business. Unless assertions, as required by sub-Section (1) of Section 50, are made, vicarious liability of the Directors of the first accused company is not attracted.

7. A Bench of three Hon'ble Judges of this Court had an occasion to interpret Section 141 of NI Act in the case of ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and***

Anr.¹ In Paragraph 1, the points for determination were framed which read thus:

“This matter arises from a reference made by a two-Judge Bench of this Court for determination of the following questions by a larger Bench:

“(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

¹ (2005) 8 SCC 89

to the company for conduct of its business could be proceeded against.”

The conclusions are in paragraph 19, which reads thus:

“**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 added)

8. Hence, in the absence of the averments as contemplated by sub-section (1) of Section 50 of the 1984 Act in the complaint, the Trial Court could not have taken cognizance of the offence against the third to seventh accused, who are allegedly the directors of the first accused company. However, the second accused being the Managing Director, would be in charge of the company and responsible to the company for its business. Therefore, there was no justification for quashing the complaint against the second accused. The first

respondent is a company. No reasons have been assigned to quash the complaint against the first accused.

9. Hence, the appeals partly succeed, and we pass the following order:

(a) The impugned order is modified, and it is directed that complaint C.C. No. 4331 of 2010 filed in the Court of the Judicial Magistrate, Egmore at Chennai shall stand quashed as against the third to seventh accused shown therein. However, the complaint shall proceed according to the law against the first and second accused.

(b) The Appeals are partly allowed on the above terms.

.....J.
(Abhay S. Oka)

.....J.
(Augustine George Masih)

**New Delhi;
August 01, 2024.**