HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

*****

CRIMINAL PETITION No.6973 of 2023

BETWEEN

Dr. Srinubabu Gedela and others

... Petitioners

And

The state of Telangana,
Rep. by Public Prosecutor
High Court for the State of Telangana at Hyderabad
and another.

... Respondents

Date of Judgment Pronounced: 30.10.2024

SUBMITTED FOR APPROVAL:

THE HONOURABLE SMT. JUSTICE K. SUJANA

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? (Yes/No)

2. Whether the copies of judgment may be marked to Law Reports/Journals? (Yes/No)

3. Whether their Lordship/ Ladyship wish to see the fair copy of the Judgment? (Yes/No)

_____

JUSTICE K. SUJANA

*** THE HON'BLE SMT. JUSTICE K. SUJANA**

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% Dated 30.10.2024

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… Respondents

! Counsel for Petitioners: G. Hemachalam

^ Counsel for respondents: S. Ganesh,
(Assistant Public Prosecutor)

<GIST:

> HEAD NOTE:

? Cases referred

1. 2022 LawSuit (SC) 1202
2. (2010) 3 Supreme Court Cases 330
3. AIR 1956 CALCUTTA 237
4. Criminal Appeal No.1239 of 1997 decided on 09.04.1997
5. (2002) 9 Supreme Court Cases 415
6. 2014 (11) SCC 759

THE HONOURABLE SMT. JUSTICE K.SUJANA

CRIMINAL PETITION No.6973 of 2023

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings against the petitioners/accused Nos.2 to 4 in C.C.NI.No.8105 of 2022 on the file of the learned XI Metropolitan Magistrate, Manoranjan Complex, Nampally, Hyderabad, registered for the offence punishable under Section 138 read with 141 and 142 of the Negotiable Instruments Act, 1881 (for short 'NI Act').

2. The brief facts of the case are that respondent No.2/*de facto* complainant lodged a private complaint under Section 200 of Cr.P.C before the learned XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, stating that accused No.1 is a Company i.e., M/s. Omics International Company, accused No.2 is the Ex-Managing Director and accused Nos.3 and 4 are the Directors of accused No.1-Company. The petitioners/accused Nos.2 to 4were responsible for the day to day affairs and the conduct of the

business of accused No.1-Company. It is further stated that accused No.1 entered into three separate lease deeds which came into effect on 08.10.2014, 01.08.2014 and 01.04.2017 in respect of 6th, 7th and 15th floors of Block 6-South Towner of Orion SEZ, Raidurgam Divya Sree NSL Special Economic Zone (SEZ) Campus, Hyderabad, respectively, for running the said company. It is further stated that the petitioners being the Directors of accused No.1-Company are responsible to pay the monthly rentand maintenance charges to respondent No.2.

3. It is further stated that the petitioners defaulted in making the payments pertaining to all leased premises from October 2018. Therefore, respondent No.2 sent legal notice to the petitioners to that effect. Though the petitioners sent reply to the aforesaid notice but as they failed to pay the dues, the lease deeds were terminated *vide* notice dated 24.04.2019. Admittedly, it is a fact that petitioner No.1/accused No.2 was actively involved in the day to day affairs of accused No.1 – Company and defaulted in paying the rents, petitioner Nos.2 and were aware about the same. As on 24.04.2019, the outstanding debt was Rs.5,96,94,279/-. After several requests, petitioner No.1 issued four post dated cheques on

27.04.2019 *vide* cheque bearing Nos.014604 and 014605 dated 15.05.2019 and Cheque bearing Nos.014607 and 014608 dated 30.05.2019respectively, each for an amount of Rs.1,25,34,994/-.

4. It is further stated that petitioner No.1 transferred an amount of Rs.1,22,91,738/- on 04.05.2019 and Rs.37,85,067/- on 09.05.2019 through online banking towards part-payment of the outstanding dues and later, on assurance of petitioner No.1, respondent No.2 did not present the cheques dated 15.05.2019 for encashment. Thereafter, the accused hood winked respondent No.2 and avoided payment of the balance due amount covered under Post dated cheques dated 15.05.2019.

5. It is further submitted that from May 2019 to July 2019, the accused have voluntarily handed over the possession of 6th and 7th floors to respondent No.2and requested it to adjust the security deposit pertaining to the said two floors towards the overdue lease payments. Despite adjusting the said deposit, the outstanding amount was Rs.4,60,03,072/- and the same was also communicated to the petitioners on 28.08.2019. Further, the petitioners continued

the business on the 15th floor of the subject building without making the payment and the outstanding debt in respect of the 15th floor as on 28.08.2019 was Rs.3,13,35,270/-.

6. It is stated that to claim the part payment of the total outstanding debt and liability, respondent No.2 presented the cheques dated 30.05.2019 for encashment in the Bank on 28.08.2019 and the same were returned with an endorsement "payment stopped by drawer". Thereafter, on 19.09.2019, respondent No.2 issued legal notice to the petitioners under Section 138 of the NI Act and the same was returned on 01.10.2019 with an endorsement 'Addressee cannot be located to serve post". Pursuant to the said legal notice, instead of making the payment, the petitioners sent a frivolous reply with false allegations to avoid the payment of outstanding debts. Basing on the said complaint, the learned XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, took cognizance of the offence and registered the case for the offence punishable under Section 138 read with 141 and 142 of NI Act.

7. Heard Sri G.Hemachalam, learned counsel appearing on behalf of the petitioners as well as Sri S. Ganesh, learned

Assistant Public Prosecutor appearing on behalf of respondent No.1-State and Sri A. Sanjay Kishore, learned counsel appearing on behalf of respondent No.2.

8. Learned counsel for the petitioners submitted that respondent No.2 has presented the cheques dated 30.05.2019 on 91st day, but the said cheques were valid only for 90 days and as such, they were invalid on the date of their presentation, therefore, the offence under Section 138 of NI Act does not attract. He further submitted that when petitioner No.1 is the Managing Director of the Company, he issued the cheques but at the time of filing of the complaint, he is the Ex-Managing Director of accused No.1-Company, but at present petitioner Nos.2 and 3 are the Managing Directors of accused No.1-Company Therefore, the allegations against the petitioners do not constitute of offence as alleged and prayed the Court to quash the proceedings against them.

9. In support of his submissions, learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in **Dashrathbhai Trikambhai Patel vs. Hitesh**

Mahendrabhai Patel and another[1], wherein in paragraph 30, it is held as follows:

> "30. In view of the discussion above, we summarize out findings below:
>
> (i) For the commission of an offence under Section 138, the cheque that is dishonored must represent a legally enforceable debt on the date of maturity or presentation.
>
> (ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is en-cashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;
>
> (iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encahsed upon maturity, then the offence under Section 138 will stand attracted;
>
> (iv) The first respondent has made part payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to

[1] 2022 LawSuit (SC) 1202

> have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and
>
> (v) The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisions to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."

10. Learned counsel for the petitioners further relied upon the judgment of the Hon'ble Supreme court in **National Small Industries Corporation Limited vs. Harmeet Singh Paintal and Another**[2], wherein in paragraph Nos.12 to 15, it is held as under:

> "12. It is very clear from the above provision that what is required is that the persons who are sought to be made vicariously liable for a criminal offence under Section 141 should be, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. Only those persons who were in charge of and responsible for the conduct of the business of the company at the time of commission

[2] (2010) 3 Supreme Court Cases 330

of an offence will be liable for criminal action. It follows from the fact that if a Director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for a criminal offence under the provisions. The liability arises from being in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company.

13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner respondent No.1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statues, especially, where such statutes create vicarious liability.

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

> 15. In a catena of decisions, this Court has held that for making Directors liable for the offences committed by the company under Section 141 of the Act, there must be specific averments against the Directors, showing as to how, and in what manner the Directors were responsible for the conduct of the business of the company."

11. Learned counsel for the petitioners further relied upon the Judgment of the Calcutta High Court in **Commissioner of South Dura Duni Municipality Complainant v. Om Khosl**[3], wherein it is held as follows:

> "In view of the terms of Section 69(3), Cr.P.C., showing that summons on a company may be served on the Secretary or the Local manager or other principal Officer it may be held by analogy that the Secretary or the Local Manager or the principal Officer of the company will represent the company in such a prosecution.
>
> Accordingly when summons is issued against a company some competent representative like the Secretary, Local Manager or other principal Officer must be described both by name and by designation as representing the company and there must be some evidence of his representative character. Only in such a case the conviction would be proper."

[3] AIR 1956 CALCUTTA 237

12. He further relied upon the judgment of the Madras High Court in B. Raman and Ors v. M/s. Shasun Chemicals and Drugs Ltd., wherein it is held as follows:

> "The wordings of Sections 138 and 141 would clearly indicate that the complainant can come to the Court only after cause of action. The cause of action, as indicated above, is only non-payment of the cheque amount, despite service of notice. When the directors, sought to be prosecuted, have not been given an opportunity either to rectify the mistake within the time or to explain the complainant that they were not responsible for the affairs of the company or to establish their defence, then, it is meaningless for the complainant to rush to the Court, by filing a complaint against all, whether they are really connected with the company or not, to make them to stand as accused before the criminal Court. It is a sheer waste of time for the parties as well as the Court. When the choice is given to the complainant to choose the persons sought to be prosecuted, naturally, a chance has to be given by the complainant to those persons concerned, by sending notice, at least, to get reply, to enable the complainant to find out the extent of their involvement in the commission of offence. There may be sleeping directors, who are not closely connected with the affairs of the company; there may be directors, who would have resigned from the company and there may be some directors, for namesake. Therefore, the meaning of the word 'drawer', as contemplated under S.138, has to be interpreted in the case of company as the

> company as well as the persons, who are responsible for the commission of offence. If such is the interpretation, then, the complainant has to send notice to the drawer, which means, the company and its directors and officers, responsible for the business of the company and for the commission of the offence. S.138(b) refers to issuance of notice to the drawer. Of course, while interpreting the said Section, a notice to the drawer shall mean notice to the drawer, who has drawn the cheque in individual cases. But, when the offence is committed by the company, by virtue of S.141, every person, who at the time the offence was committed, was in charge of and responsible for the conduct of the business of the company, is presumed to be guilty of the offence. The word 'drawer' as contained in S.138(b), cannot be restricted in the sense to the drawer of the cheque alone, but to those, who are presumed to be guilty of the offence, by virtue of S.141, more particularly when such individuals are liable to be imprisoned for such an offence and their personal liberty is infringed thereon. As such, it is a violation of Art.21 of the Constitution of India. Under the circumstances, the prosecution against the petitioners/directors is not maintainable and, as such, the proceedings against them are liable to be quashed. In the light of what is stated above, statutory notice to every person, including the director, who is sought to be prosecuted, is mandatory."

13. He further relied upon the Judgment of the Jammu and Kashmir High Court in **Associated Cement Co.Ltd. v.**

Keshvanand [4], wherein in paragraph No.23, it is held as under:

> "23. The above scheme of the new Code makes it clear that com-plainant must be a corporeal person who is capable of making physical presence in the Court. Its corollary is that even if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the Court and it is that natural personwho is looked upon, for all practical purposes, to be the complainant in the case. In other words, when the com-plainant is a body corporate it is the de jure complaint, and it must necessarily associate a human being as de facto complain-ant to represents the former in court proceedings."

14. He further relied upon the judgment of the Hon'ble Supreme Court in **Shakti Travel and Tours v. State of Bihar and Another** [5], wherein in paragraph No.2, it is held as follows:

> "The accused who is the appellant, assails the order of the High Court refusing to quash the complaint filed under Section 138 of the Negotiable Instruments Act. The only ground on which the learned counsel for the appellant prays for quashing of the complaint is that on the assertions

[4] Criminal Appeal No.1239 of 1997 decided on 09.04.1997
[5] (2002) 9 Supreme Court Cases 415

> made in para 8 of the complaint, it must be held that notice has not been served and, therefore, an application under Section 138 could not have been maintained. Undoubtedly, the accused has a right to pay the money within 15 days from the date of the service of notice and only when it fails to pay, is it open for the complainant to file a case under Section 138 of the Negotiable Instruments Act. That being the position and in the complaint itself having not been mentioned that the notice has been served, on the assertions made in para 8, the complaint itself is not maintainable. We accordingly quash the complaint."

15. On the other hand, learned counsel for respondent No.2 submitted that the Reserve Bank of India has clarified that the cheques to be presented within three (3) months and cannot be beyond three months. In support of his submission, he relied on the judgment of the Hon'ble Supreme Court in **Rameshchandra Ambalal Joshi vs. State of Gujarat and Another**[6], wherein it is observed that "month" does not mean just a period of 30 days as suggested by the accused, and the said period would commence from the day next when the cheque was drawn and will expire a day prior to the corresponding day of the corresponding month and in case no such day falls in the corresponding month, the said period

[6] 2014 (11) SCC 759

would expire at the end of the last day of the immediately previous month. In the said judgment, in paragraph No.22, it is held as under:

> "22. Drawing a conclusion from the aforementioned authorities, we are of the opinion that the use of word "from" in Section 138 (a) requires exclusion of the first day on which the cheque was drawn and inclusion of the last day within which such act needs to be done. In other words, six months would expire one day prior to the date in the corresponding month and in case no such day falls, the last day of the immediate previous month. Hence, for all purposes, the date on which the cheque was drawn i.e., 31.12.2005 will be excluded and the period of six months will be reckoned from the next day i.e., from 01.01.2009; meaning thereby that according t the British calendar, the period of six months will expire at the end of the 30th day of June, 2006. Since the cheque was presented on 30.06.2006, we are of the view that it was presented within the period prescribed."

16. In the light of the submissions made by both the learned counsel and a perusal of the material available on record, the main contention of the learned counsel for the petitioners is that respondent No.2 presented the cheques after 90 days from the date of the cheques. At this stage, it is imperative to note Section 12(1) and (2) of the Limitation Act,

1963 and Section 9 of the General Clauses Act, 1897, which reads as under:

> 12. **Exclusion of time in legal proceedings**.—(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.
>
> (2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
>
> (3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment 1*** shall also be excluded.
>
> (4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.
>
> **Explanation**.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.
>
> Section 9 of the General Clauses Act:- **Commencement and termination of time**.—(1) In any 1 [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for

> the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

17. A cursory reading of the above principles clearly says that Sections 12(1) and (2) of the Limitation Act, 1963 incorporate the idea of eliminating the date from which the time is to be calculated. Section 12(1) expressly states that the day from which the period is to be calculated shall be disregarded in determining the statute of limitations for any suit, appeal or application. Sub-Section (2) contains a similar provision for appeal, revision or review. Further, Section 9 of the General Clauses Act, 1897 incorporates the same principle. It states, among other things that in any Central Act made after the commencement of the General Clauses Act, it is sufficient to use the word 'from' to exclude the first days of a serious of days or any other period of time and to use the word 'to' to include the last days of a series of days or any other period of time.Therefore, there is no reason for not adopting the rule enunciated in the aforesaid acts which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act.

18. In the present case, based on the previously described criteria, this Court is of the view that the word 'from' in Section 138(a) requires the exclusion of the first day on which the cheque was drawn and the inclusion of the last day when the cheque was drawn. In other words, the duration of three months would end one day before the date of the corresponding month or if that day does not fall on the last of the month that came before. Therefore, the date of the cheque was 30.05.2019 and the three-month term will be started on 31.05.2019 i.e., the next day from the date of the cheque. This means, in accordance with the British calendar, the three-month period will end on 28.08.2019. Therefore, the cheque was presented within the allotted time. Further, the same was also observed by the Hon'ble Supreme Court in **Rameshchandra Ambalal Joshi** (supra).Hence, the question of presenting the cheques dated 30.05.2019 on 28.08.2019 being invalid does not arise.

19. The further claim of the learned counsel for the petitioner is that when petitioner No.1 was the Managing Director of the Company, he signed the cheques. At the time of filing of the complaint, petitioner No.1 is the Ex-Managing

Director of the Company. On going through the said contention, at this stage, it is pertinent to note Sections 138 and 141 of the NI Act, which reads as follows:

> "**138. Dishonour of cheque for insufficiency, etc., of funds in the account**.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:
>
> Provided that nothing contained in this section shall apply unless—
>
> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
>
> (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque,

[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

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 wasresponsible 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 financialhe 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 anybody corporate and includes a firm or other association of individuals; and
>
> (b) "Director", in relation to a firm, means a partner in the firm."

20. A cursory reading of the above language reveals that when a cheque issued by a company (incorporated under the Companies Act, 1956) is dishonored, in addition to the company, the following persons are deemed to be guilty of the offence and shall be liable to be proceeded against and punished:

i. 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;

ii. Any Director, Manager, Secretary or other officer of the company with whose consent and connivance, the offence under Section 138 has been committed; and

iii. Any Director, Manager, Secretary or other officer of the company whose negligence resulted in the offence under Section 138 of the Act, being committed by the company.

21. While the liability of persons in the first category arises under sub-section (i) of Section 141, the liability of persons mentioned in categories (ii) and (iii) arises under sub-section (2). The scheme of the NI Act, therefore, is that a person responsible to the company for the conduct of the business of the company and who is in charge of business of the company is vicariously liable by reason only of his fulfilling the requirements of sub-section (1). But if the person responsible to the company for the conduct of business of the company, was not in charge of the conduct of the business of the company, then he can be made liable only if the offence was committed with his consent or connivance or as a result of his negligence.

22. The criminal liability for the offence by a company under Section 138 is fastened vicariously on the persons referred to in sub-section (1) of Section 141 by virtue of a legal fiction. Penal statutes are to be construed strictly. Penal statutes providing constructive vicarious liability should be construed much more strictly when conditions are prescribed for extending such constructive criminal liability to others, Courts will insist upon strict literal compliance. There is no question of inferential or implied compliance. Therefore, a specific averment complying with the requirements of section 141 is imperative. Further, it is to be noted that at some point or time, an officer of a company had played some role in the financial affairs of the company, will not be sufficient to attract the constructive liability under Section 141 of the Act.

23. Sub-Section (2) of Section 141 of the NI Act provides that a Director, Manager, Secretary or other officer, though not in charge of the conduct of the business of the company, will be liable if the offence has been committed with the consent of connivance or if the offence was a result of any negligence on his part. The liability of persons mentioned in sub-section (2) is not on account of any legal fiction but on

account of the specific part played-consent and connivance or negligence. If a person is to be made liable under sub-section (2) of Section 141 of the NI Act, then it is necessary to aver consent and connivance or negligence on his part.

24. Coming to the facts of the present case on hand and a perusal of the complaint filed by respondent No.2, it is clear that when petitioner No.1 is the Managing Director of the Company, he issued post-dated cheques. Later, petitioner No.1 transferred an amount of Rs.1,22,91,738/- on 04.05.2019 and Rs.37,85,067/- on 09.05.2019 through online banking towards part payment of outstanding lease payments. Later, on assurance of petitioner No.1, the cheques dated 15.05.2019 were not presented to the bank for encashment. Thereafter, it is also clear that after 09.05.2019, Company did not pay the remaining balance amount and voluntarily handed over the possession of the 6th and 7th floors of leased premises to respondent No.2 and told him to adjust the outstanding debt. Petitioner No.1, subsequently resigned from the company on the date of issuance of the cheques, he is managing the affairs of the company and issued the cheques. So far as, petitioner No.1, he is the signatory of the

cheques which were dishonored, what is to be seen is that on the date of offence, he is managing the affairs of the Company. There is no information in the complaint when petitioner No.1 resigned from the Company except stating that he is the Ex-Managing Director of the said Company.

25. It is specifically contended by the learned counsel for the petitioners that petitioner No.1 is involved in many social service activities and he has to look after the company affairs on a different basis. Petitioner Nos.2 and 3/accused Nos.3 and 4 are the directors of accused No.1-Company and are not the signatories of the cheques, whereas they are the partners in the company. According to respondent No.2, they also know about the issuance of cheques by petitioner No.1 and they are also involved in the day-to-day affairs of the company. In the legal notice also, respondent No.2 mentioned the same.

26. The further claim of the learned counsel for the petitioners is that the names of the petitioners were not mentioned in the legal notice. A perusal of the said legal notice shows that the name of petitioner No.1 was mentioned. Respondent No.2 also mentioned in the legal notice that each person, who was in charge of and is responsible for the

conduct of business, shall be deemed to be guilty of the offence under the NI Act. There is no force in the said contention since there is no mention of the names of petitioner Nos.2 and 3. Therefore, as petitioner Nos.2 and 3 are the partners of the company, at this stage, it cannot be said that petitioner Nos.2 and 3 are not liable for the offence punishable under Section 138 read with 141 and 142 of the NI Act.

27. That apart, it is the contention of the learned counsel for the petitioners that a complaint must be filed by a physical person, not a company, and represented by an individual in the Court. However, citing the Judgment of the High Court of Jammu and Kashmir in **Associated Cement Co. Ltd.** (Supra), the court noted that a company can file a complaint through its representative, which in this case is the Managing Director. Additionally, under Section 138 of the Negotiable Instruments Act, a complainant must send a notice within 30 days of a bounced check and give the defendant 15 days to pay as per the Judgment of the Hon'ble Supreme Court in **Shakti Travels** (Supra). The petitioners claimed notice was not

served, but the record reveals a reply notice was given, rendering this contention inapplicable.

28. Given the undisputed facts of the present case in juxtaposition to the judicial pronouncements of the Hon'ble Supreme Court referred above, this Court does not find any merit in the criminal petition to quash the proceedings against the petitioners and the same is liable to be dismissed.

29. Accordingly, the criminal petition is dismissed. However, the appearance of the petitioners before the trial Court is dispensed with unless their presence is specifically required during the trial, subject to the condition that the petitioners are being represented by their counsel on every date of hearing.

Miscellaneous applications, if any are pending, shall also stand closed.

K. SUJANA

Date: 30.10.2024

Note: L.R. Copy to be marked

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