



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Case Comment: KK Ahuja v VK Vohra - The Concept of Employee Liability in the Case of Dishonor of Cheque under Section 138 of the Negotiable Instruments Act, 1881

Shardul Sanglikar^a

^aMIT WPU School of Law, Pune, India

Received 12 August 2023; *Accepted* 02 September 2023; *Published* 05 September 2023

INTRODUCTION

Managing a company is an extremely difficult job to do. Many factors such as Accounts, HR, Sales, Marketing, Management, Production etc. must be taken care of. To ensure the smooth functioning of the company, various levels of Hierarchy are set in place, which yields maximum results. However, an important question always comes up, as to who oversees the day-to-day activities of a company. A similar question was raised in this case, as the Deputy General Manager of a company was also made liable for its wrongdoings.

Section 141(1) of the Negotiable Instruments Act 1881¹ states that if a company commits an offense under Section 138², the individuals who were said to oversee the Company, along with the company itself, shall be deemed to be guilty of the offense. Section 141(2)³ mentions that

¹ Negotiable Instruments Act 1881, s 141(1)

² Negotiable Instruments Act 1881, s 138

³ Negotiable Instruments Act 1881, s 141(2)

even Directors, Managers, and Secretaries, who are not in charge of the day-to-day activities of a business, can be held liable if there is sufficient evidence that proves that they were either consenting to, a part of or just negligent towards the crime committed under Section 138⁴

The Supreme Court, in this landmark judgment, gave a clear answer to this question and made concrete observations on the same.

FACTS OF THE CASE

The Appellant, KK Ahuja filed a couple of complaints against M/S Motorola Speciality Pvt Ltd, in the Metropolitan Magistrate Court of Delhi. The accused was charged under Section 138⁵, for the dishonour of a total of 8 Cheques in total. However, adhering to the provisions under Section 141(1) of the NI Act⁶, 8 other members, who were believed to be a part of the day-to-day operations of the company, were also made a party to the complaint. 1 Chairman, 4 Directors, 1 Vice President, 1 General Manager, and 1 Deputy General Manager were the people who were said to be involved. The appellant pleaded that Accused No 2-9 (Members of the company) oversaw the day-to-day conduct of business, and therefore shall be held guilty under Section 141 of the NI Act 1881 and Section 420 of the Indian Penal Code,1860⁷.

Accused No. 9, the Deputy General Manager decided to file a petition in the High Court, under Section 482⁸, as they believed that he was not in charge of the company during the ongoing frauds, being Deputy Manager that he was. He used the defense of the Complaint, and statement of oath, and pleaded that the mention of him being responsible for the conduct of the company was nowhere to be found.

The High Court, by an order dated 10th October 2002 quashed the order which summoned the Deputy General Manager based on the following grounds:

⁴ Negotiable Instruments Act 1881, s 138

⁵ Negotiable Instruments Act 1881, s 138

⁶ Negotiable Instruments Act 1881, s 141(1)

⁷ Indian Penal Code 1860, s 420

⁸ Code of Criminal Procedure 1973, s 482

1. He was not a Signatory to the cheques that were Dishonoured .
2. He was not a party to the decision to allow the cheques to be dishonoured.

The following order was challenged by the Appellant in the Supreme Court, where the observations and Orders of the HC judge were under scrutiny.

ISSUES

1. Whether the Deputy General Manager of the Company, be made liable under Section 141(1)⁹ and 141(2)¹⁰ of the Negotiable Instruments Act, 1881.
2. Whether the Order passed by the High Court was made on reasonable grounds.
3. Whether necessary Averment must be made in the complaint filed under Section 141 of the Negotiable Instruments Act, 1881¹¹.

OBSERVATIONS OF THE SUPREME COURT

The accused placed heavy reliance on the case of *S.M.S Pharmaceuticals v Neeta Bhalla*¹², where the nature and scope of Section 141¹³ were decoded quite successfully. The key question that arose was whether averments of everyone is required to be present in the complaint, and what relevance it contains in judicial proceedings. The court made certain key observations related to Section 141¹⁴. Referring to Sub Clause (1) of the section, which clearly says that if a person is in charge and responsible for the conduct of the business of the company, he should be considered guilty. However, it is essential to note that the Liability does not arise from the fact of holding a certain designation, it arises from being in charge and responsible for the conduct of the Business of the company. The Judges also stressed the importance of averments, which is necessary to impose Liability on the members of the company. Averments, in simple words, are allegations

⁹ Negotiable Instruments Act 1881, s 141(1)

¹⁰ Negotiable Instruments Act 1881, s 141(2)

¹¹ Negotiable Instruments Act 1881, s 141

¹² *S.M.S Pharmaceuticals v Neeta Bhalla & Ors* AIR 2005 SC 3512

¹³ Negotiable Instruments Act 1881, s 141

¹⁴ *Ibid*

made against the members of the company and are explained with relevant proof to support the allegations made.

The importance of Magistrates was also reiterated in this Judgement, as the complaint must be thoroughly examined by the Local Magistrate, by analyzing the averments made carefully and cautiously, to Judge the case in a better way.

The court also defined the Nature of Allegations required to initiate criminal proceedings against individuals. They are stated below:

1. **Managing Director/ Joint Managing Director** - Since the meaning of 'Managing Director' can be interpreted as someone who manages the day-to-day operations of a company, he is said to be liable under Section 141, without making any specific averments.
2. **Director** - There are many Directors, who are not responsible for the day-to-day conduct of business of a company. Hence it is necessary to make Averments that are specific in nature.
3. **The person signing the cheque** - He will be liable as the cheques that have bounced back, have the approval of the signatory authority.

Similar Judgements were given in the cases of Saroj Kumar Poddar v State¹⁵, NK Wahi v Shekhar Singh¹⁶, DCM Financial Services v JN Sareen¹⁷, and Ramraj Singh v State of Madhya Pradesh.¹⁸

The court observed that language like Section 141¹⁹ was used in many other sections of other acts as well. Section 278B of the Income Tax Act 1961²⁰, Section 22C of the Minimum Wages Act 1948²¹, Section 86A of Employee State Insurance Act 1948²², Section 14A of the Employee

¹⁵ *Saroj Kumar Poddar v State of Delhi & Anr* AIR 2007 SC 656

¹⁶ *NK Wahi v Shekhar Singh & Ors* AIR 2007 SC 1454

¹⁷ *DCM Financial Services v JN Sareen* AIR 2008 SC 4034

¹⁸ *Ramraj Singh v State of Madhya Pradesh & Anr* CrI App No 1103/2003

¹⁹ Negotiable Instruments Act 1881, s 141

²⁰ Income Tax Act 1961, s 278B

²¹ Minimum Wages Act 1948, s 22C

²² Employee State Insurance Act 1948, s 86A

Provident Fund Act, 1952²³, Section 29 of the Payment of Bonus Act, 1965²⁴, Section 40 of the Air (Prevention and Control of Pollution) Act 1981²⁵ and Section 47 of the Water (Prevention and Control of Pollution) Act, 1974.²⁶

However, while going through these Sections the Court observed that none of them talk in detail as to who should oversee the company, and manage its operations. The Negotiable Instruments Act 1881 also did not have adequate provisions for the same. The Court then had to rely upon the provision of the Companies Act, 1956²⁷, specifically Section 291²⁸ and Section 5²⁹, along with various sub-clauses of Section 2³⁰. After carefully interpreting the Sections, the court came up with the following observations regarding who will be responsible for the operations of the company:

1. Managing Director/ Joint Managing Director;
2. Whole Time Director;
3. Manager;
4. Secretary;
5. Any Person under whose Directions or instructions the Board of Directors function;
6. Any person charged by the board with the Responsibility of complying with that provision;
7. Where any company does not have any officers specified.

The court also dissected Section 141 of the NI Act based on its 2 Sub-clauses. Subclause (1), according to the court has been constructed based on Legal Fiction, which means the concept of Vicarious Liability is directly applicable to this Sub Clause. Subclause (2), however, is based on actions. Actions such as Consent given, Negligence, or connivance on the part of any member

²³ Employee Provident Fund Act 1952, s 14A

²⁴ Payment of Bonus Act 1965, s 29

²⁵ Air (Prevention and control of pollution) Act 1981, s 40

²⁶ Water (Prevention and Control of Pollution) Act 1974, s 47

²⁷ Companies Act 1956

²⁸ Companies Act 1956, s 291

²⁹ Companies Act 1956, s 5

³⁰ Companies Act 1956, s 2

of the company. Cases such as *K. Srikanth v North East Securities*³¹ have reiterated this fact before.

JUDGEMENT

The Court, while concluding the case, said that if the accused of any case under Section 144³² does not fall under the list of people who can be responsible for the day-to-day conduct of business activities, during the offense was committed, he cannot be made Vicariously Liable under Section 141(1)³³. He can, however, be penalized under Section 141(2)³⁴ if he has been Negligent, or has given Consent or Connivance to the offense.

Judges also interpreted that if Section 141(1)³⁵ is read word to word, without any exceptions, a lot of innocent people might have to face the wrath of Criminal proceedings against them. Citing the example of Branches, the Judges said that if the crime of Dishonour of Cheque has been committed in one branch, the individuals of another branch will face the consequences, if they are responsible for the day-to-day conduct of business activities.

The Supreme Court, in its concluding observation, quashed the order summoning the Deputy General Manager of M/S Motorola Speciality Pvt Ltd, as he cannot be arrested under Section 141(1)³⁶, as he does not fall under the list which was put forward by the Court, after going through the provisions of the Companies Act, 1956³⁷. Although he can be penalized under Section 141(2) of the Negotiable Instruments Act, 1881³⁸, no specific or direct averment had been made by the Respondent regarding the same. As both the sub-clauses were eliminated, the question of the Appellant being part of the trial was irrelevant.

³¹ *K. Srikanth v North East Securities Ltd. & Anr* DCR 2007 SC 2463

³² Negotiable Instruments Act 1881, s 144

³³ Negotiable Instruments Act 1881, s 141(1)

³⁴ Negotiable Instruments Act 1881, s 141(2)

³⁵ Negotiable Instruments Act 1881, s 141(1)

³⁶ *Ibid*

³⁷ Companies Act, 1956

³⁸ Negotiable Instruments Act 1881, s 141(1)

ANALYSIS

To give a fair Judgement, the court had to dive deep and investigate the appropriate Sections of the Companies Act 1956, as no statute gave a direct picture of this problem. The court also heavily relied on the Judgement of *S.M.S Pharmaceuticals v Neeta Bhalla*³⁹, and *Saroj Kumar Poddar v State*⁴⁰, as the cases were quite similar in nature, and the Judgements were also given on similar lines.

The court has clearly stated the importance of Averments through the medium of this Judgement, as it is difficult to determine the fact as to who can be responsible for conducting the day-to-day activities of the Company in question. The Complainants must, with adequate proof and research, put averments on the members of the company. However, in certain cases, such as in the case of Managing Directors and the Person who is signing the cheque, it is not deemed to be necessary, to initiate proceedings against them.

CONCLUSION

To conclude, it can be observed that the court took a more research-oriented approach while giving the Judgement, analyzing the provisions of various acts by themselves and ensuring that the order was quashed. It has largely impacted the Nature of Liabilities that are imposed on the Employees of a company, laying down a proper structure for the same. This is a classic case, wherein a Judicial Precedent has played the role of a Statute and laid down principles and nature of liabilities for company employees.

³⁹ *S.M.S Pharmaceuticals v Neeta Bhalla & Anr* AIR 2005 SC 4740

⁴⁰ *Saroj Kumar Poddar v State of Delhi* AIR 2007 SC 656