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LIABILITY OF DIRECTORS ON DISHONOUR OF CHEQUES

A. Introduction

The Supreme Court (“SC”) in the *Asbok Shewakramani* case¹ held on August 3, 2023 that under Section 141 of the Negotiable Instruments Act, 1881 (“NIA”), a person will become vicariously liable when a company is accused of the offence of dishonour of cheques only if such a person was “in charge of” and was “responsible to the company for the conduct of the business of the company” at the time the offence was committed.

B. Brief Facts

1. The complainant, when the cheques of a company were dishonoured, alleged that the directors of the company (“Directors”) were fully aware of the lack of funds in the company’s accounts, the issuance and dishonour of the cheques.
2. The complainant alleged that the Directors were fully aware of the business transaction and were all jointly and severally liable for the transactions of the company.
3. The High Court dismissed the petition by the Directors under the Code of Criminal Procedure, 1973² for quashing of the complaints filed against them.
4. The present appeal was filed before the SC by the Directors seeking to quash the complaint.

C. SC’s Judgment & Analysis

The SC:

1. Observed that merely because a person is managing the company and is involved in the daily affairs, they do not automatically come under the ambit of Section 141 of the NIA³.
2. Observed that: “Every person who is sought to be roped in by virtue of sub-section 1 of Section 141 NIA must be a 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. Merely because somebody is managing the affairs of the company, per se, he does 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. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of Section 141 of the NIA.”⁴

¹ *Asbok Shewakramani and Ors. v. State of A.P and Anr.*, (2023) 8 SCC 473 and available [here](#).

² Section 482 of the Code of Criminal Procedure.

³ Section 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.”

⁴ Paragraph 19 of the Judgement.

3. Further observed: “Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section 1 of Section 141 are satisfied.”⁵
4. The words “*was in charge of*” and “*was responsible to the company for the conduct of the business of the company*” under Section 141 of the NIA must be read in conjunction.⁶
5. Held that there was non-compliance by the complainant as the most important averment which is required by sub-section (1) of Section 141 of the NIA is that the Directors were in charge, and responsible for the conduct of the company. They are neither the signatories to the cheques nor are whole-time directors.
6. Rejected the *S.P.Mani case*,⁷ observing that: “*The said decision will have no application as in the present case, the statutory notice was admittedly not served to the accused. Obviously, the High Court has not adverted to aforesaid two glaring deficiencies in the complaint.*”⁸
7. Concluded that: “*The allegation that they are in charge of the company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the Directors were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act.*”⁹
8. Allowed the appeals.

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⁵ Paragraph 19 of the Judgement.

⁶ Paragraph 20 of the Judgement.

⁷ *S.P. Mani & Moban Dairy v. Snehalatha Elangovan*, 2022 SCC OnLine SC 1238.

⁸ Paragraph 10 of the Judgement.

⁹ Paragraph 19 of the Judgement.