

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. M.C. No. 450/2010**

% **Judgment Reserved on 28th April, 2010**
Judgment delivered on 03rd May, 2010

MANISH PARWANI
.....PETITIONER

! Through: Mr. Rajiv Nayar, Sr. Adv. with Mr. Hrishikesh Baruah, Advocate .

VERSUS

\$ THE NATIONAL CAPITAL TERRITORY OF DELHI AND ANOTHER
.....RESPONDENTS

^ Through: Mr. R.N. Vats, Additional Public Prosecutor, for the State.
Mr. Ramesh Gupta, Sr. Adv. with Mr. B.P. Lathwal, Advocate for the respondent No. 2.

AND

+ **Crl. M.C. No. 501/2010**

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MANISH PARWANI & ANOTHER
.....PETITIONERS

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AND

+ **Crl. M.C. No. 503/2010**
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CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **YES**
2. To be referred to the reporter or not? **YES**
3. Whether the judgment should be reported in the Digest? **YES**

S.N.AGGARWAL, J

All these three petitions under Section 482 of the Code of Criminal Procedure, 1973 filed by the petitioners Mr. Manish Parwani & Mr. Shekhar Narasimhan for quashing of three criminal complaint cases under Section 138 of the Negotiable Instruments Act, 1881 bearing complaint case Nos.1439/1/08; 649/1/2009 & 573/2009 pending against them before Mr. Sandeep Yadav, Senior Civil Judge cum Rent Controller, District South, Patiala House Courts, New Delhi are proposed to be decided by this common judgment because the legal issue that arises for consideration in all these petitions is common.

2 The facts of the case giving rise to these petitions briefly stated are as follows:-

Respondent No. 2 M/s Appreciate Fincap Private Limited

(hereinafter to be referred as the 'complainant company') had filed three complaints under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 against the petitioners Mr. Manish Parwani & Mr. Shekhar Narasimhan, accused No. 1 company M/s HKK Buildwell Private Limited and its two other Directors namely Sanjay Gambhir and Reena Gambhir arrayed as accused Nos. 2 & 3 in the complaints. The case of the complainant company is that two persons namely Mr. Harvinder Singh & Smt. Kuldeep Kaur (both promoters and only shareholders of 5,000 shares each) had incorporated a company named and styled as M/s HKK Buildwell Private Limited (hereinafter to be referred as 'accused No. 1 company'). The said company had purchased eight acres and three marlas of land in Sonapat for a sale consideration of approximately Rs.6.85 crores. In pursuance thereof, accused No.1 company had borrowed a sum of Rs.7,43,57,000/- from various persons including the complainant company. As per the case of the complainant company, out of the said amount of Rs.7,43,57,000/- borrowed by accused No. 1 company, a sum of Rs.2,26,85,000/- was borrowed by the said company from the complainant company. After borrowing the said amount of money, accused No. 1 company had completed the sale transaction of the aforesaid land and executed a sale deed for the said land on 11.10.2006. It is further the complainant company's case that in the year 2007, the aforesaid shareholders of accused No. 1 company (i.e. Mr. Harvinder Singh & Smt. Kuldeep Kaur) entered into an agreement with one company M/s D.D. Townships Limited and by virtue of the said agreement, the entire shareholdings of accused No. 1 company was brought over by the said M/s D.D. Townships Limited. In terms of the said arrangement between the said shareholders of accused No. 1 company and M/s D.D. Townships Limited, the accused Nos. 2 & 3 namely Sanjay

Gambhir and Reena Gambhir were appointed as Directors of accused No. 1 company on 20.04.2007. In further terms of the aforesaid arrangement, Mr. Harvinder Singh & Smt. Kuldeep Kaur had resigned from the directorship of accused No. 1 company w.e.f. 26.04.2007.

3 It is the case of the complainant company that the entire shareholdings of accused No. 1 company vested in M/s D.D. Townships Limited on the basis of an agreement as mentioned hereinabove. The petitioners being accused Nos. 4 & 5 had become Directors of accused No. 1 company w.e.f. 20.06.2007.

4 The complainant company is stated to had given a loan of Rs.2,26,85,000/- to accused No. 1 company by means of six cheques of dates between 10.10.2006 and 24.04.2007 drawn on South Indian Bank Limited, Greater Kailash-II, New Delhi, details whereof are given in para 7 of the complaint at page 40 of file of CrI.M.C. No. 503/2010.

5 As per the complainant company, the accused Nos. 1 to 5 had given nine post dated cheques of dates between 25.10.2007 and 17.11.2007 for a total amount of Rs.2,26,85,000/- to the complainant company to clear their loan liability with an assurance that these cheques are good for payment and would be honoured on presentation. However, all the above nine cheques given by the accused persons including the petitioners were returned unpaid with the remarks 'funds insufficient' and these cheques were bounced between 26.10.2007 and 20.11.2007. The complainant company is stated to had given a statutory notice dated 22.12.2007 to all the accused persons informing them about the bouncing of the cheques and calling upon them to make the payment of the said cheques within 15 days. Since the payment was not made despite service of legal notice dated 22.12.2007, the complainant company filed two separate complaints being CC No. 573/2009 and CC CrI.M.C. Nos. 450, 501 & 503 of 2010

No.649/1/09 under Sections 138/142 of the Negotiable Instruments Act against the petitioners, accused No. 1 company and its two other Directors namely Sanjay Gambhir and Reena Gambhir.

6 The complainant company also filed a third complaint being CC No.1439/1/08 against the same accused persons against whom abovementioned two complaints were filed alleging that the complainant company had given an additional amount of Rs.1.10 crores to accused No. 1 company vide cheque No.137975 dated 20.04.2007 required by the said company for clearing the post dated cheques of Rs.2,17,87,196/- given by it to one Sh. Rajbir son of Sh. Ramsukh at the time of purchase of agricultural land measuring eight acres and three marlas in Sonapat. The accused No. 1 company is alleged to had given six cheques of total amount of Rs.1.10 crores to the complainant company of dates between 20.11.2007 and 30.11.2007 to clear its loan liability of Rs.1.10 crores given to it by the complainant company. Details of these six cheques are given in para 4 of the complaint (Annexure P-3) at page 34 of file of Crl.M.C. No. 450/2010. The complainant company has stated that it could not institute proceedings against the accused persons in respect of first cheque No. 367018 dated 20.11.2007 for Rs.25 lacs within the stipulated period as provided under the Negotiable Instruments Act. However, the complainant company is stated to had presented the remaining five cheques mentioned in para 4 of its complaint for encashment to its banker on 16.05.2008 but all these five cheques were returned as dishonoured by the bankers of the accused No. 1 company with the remarks 'Payment stopped by drawer' vide bank memo dated 16.05.2008. Immediately thereafter, the complainant is stated to had sent a legal notice dated 02.06.2008 to the accused persons through registered A.D. post and UPC post but the accused persons failed to make

payment despite service of the said notice. Hence, the complainant company filed the third complaint against the accused persons as stated above. It may be noted that in this third complaint, petitioner No. 2 Mr. Shekhar Narasimhan was not arrayed as an accused for reasons best known to the complainant company though the name of petitioner No. 2 finds mention as accused person in the remaining two complaints mentioned above.

7 The pre-summoning evidence was filed by the complainant company before the trial court by way of affidavits. The court below vide impugned orders dated 08.01.2008 and 04.09.2008 summoned all the accused persons including the petitioners in the abovementioned three complaint cases filed under Sections 138/142 of the Negotiable Instruments Act and it is aggrieved there from, the petitioners have filed these petitions seeking quashing of summoning orders/complaint cases pending against them.

8 The main ground on which the quashing is sought by the petitioners is that they were independent and non-executive Directors of accused No. 1 company and had nothing to do with its day-to-day management. Their further case is that they both were inducted as Directors of accused No. 1 company on 20.06.2007 and had resigned from the directorship of the said company on 24.10.2007 and that they were not the Directors of the company at the time of commission of the offence under Section 138 of the Negotiable Instruments Act. They have supported their plea that they were not the Directors of accused No. 1 company at the time of commission of the alleged offence by placing reliance on Forms No 32 filed by accused No. 1 company with the Registrar of Companies, Ministry of Company Affairs {Annexure P-2 (colly.)} at pages 30-31 and 35-36 of file of CrI.M.C. No. 503/2010. These

Forms No. 32 filed along with the petition are certified copies issued by Registrar of Companies and according to these documents, the petitioners are shown to have resigned from the directorship of accused No. 1 company w.e.f. 24.10.2007.

9 The three complaints in question under Sections 138/142 of the Negotiable Instruments Act were filed by the complainant company in respect of total 14 cheques allegedly given by accused No. 1 company which were returned unpaid. All these 14 cheques, as per complaints, were of dates after the resignation by the petitioners from the directorship of accused No. 1 company. Admittedly, these cheques were returned unpaid by the banker of the complainant company after 24.10.2007 i.e. date of resignation by the petitioners from the directorship of accused No. 1 company.

10 I have heard the argument of Mr. Rajiv Nayar, learned senior counsel who appeared on behalf of the petitioners and also of Mr. Ramesh Gupta, learned senior counsel who appeared on behalf of respondent No. 2 (complainant company). I have also perused the entire record of these cases and have given my anxious consideration to the rival arguments advanced by the counsel for the parties.

11 The main argument of the learned senior counsel appearing on behalf of the petitioners was that the petitioners could not have been summoned by the trial court for offences under Sections 138/142 of the Negotiable Instruments Act allegedly committed by accused No. 1 company as they had ceased to be the Directors of the said company on the date of commission of the offence. He has placed reliance on Form No. 32 at pages 31-36 of the paper book of Crl.M.C. No. 503/2010 to show that both the petitioners who seek quashing of summoning order and criminal complaint under Sections 138/142 of the Negotiable Instruments

Act had resigned from the directorship of accused No. 1 company on 24.10.2007, i.e., much before the date of the commission of the offences which admittedly were committed after the said date.

12. Per contra, Mr. Ramesh Gupta, learned senior counsel appearing on behalf of respondent No. 2 (complainant company) had argued that Forms No. 32, on which reliance is placed on behalf of the petitioners, were filed by accused No. 1 company with the Registrar of Companies, Ministry of Company Affairs on 09.01.2008 and 13.01.2008 respectively and, therefore, according to him, whether the petitioners had ceased to be the Directors of accused No. 1 company or not on the date of commission of offence is a disputed question of fact and cannot be gone into by this Court at this stage. He has also contended that the complainant company had specifically pleaded in its complaint that all the accused persons including the petitioners were responsible for day-to-day management of the affairs of the accused No. 1 company, and therefore, they, according to him, are jointly and vicariously liable for criminal liability arising out of bouncing of cheques in question. The learned senior counsel appearing on behalf of respondent No. 2 company had placed reliance on two judgments of this Court, viz., **Anurag Modi Vs. M.S.T.C. Limited, 2002 (1) JCC 206 (DHC)** and **K.P.G. Nair Vs. State, 2008 (III) AD (Cr.) (DHC) 214** in support of his contention that once the accused persons have been summoned to face trial under Section 138 of the Act, the question whether such persons had resigned from the accused company and had ceased to be responsible for day-to-day business of the accused company can be decided only after evidence is led by the parties at the appropriate stage.

13. From the above rival arguments advanced by the learned counsel for both the parties, the legal issue that arises for consideration in these

petitions is whether the summoning orders issued by the court below against the petitioners are sustainable or whether the petitioners can be held vicariously liable for the offence committed by accused No. 1 company after the petitioners had ceased to be the Directors of the said company.

14 Proper and smooth functioning of all business transactions, particularly of cheques as instruments primarily depends upon the integrity and honesty of the parties. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. A company being an artificial person created by law acts through its directors and officers who are responsible for the conduct of the business of the company. A criminal liability on account of dishonour of cheque primarily falls on the drawer company and is extended to officers of the Company. The normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. Section 141 of the Negotiable Instruments Act, 1881 ("NI Act") regulates offences by companies.

15 The Act has created a deemed offence under a legal fiction, whenever a cheque drawn by a person on an account maintained by him bounces either for insufficiency of the funds in the account or it exceeds the arrangements made. It is apparent that the person who has drawn the cheque on an account maintained by him alone is liable in the event of bouncing of the cheque later. When the company is the drawer of the cheque, such company is the principal offender, and the remaining

persons are made offenders by virtue of the legal fiction created by the legislature as per the said section. The actual offence should be committed by the company and then alone the other two categories would also become liable for the offence. Penal statutes provide constructive vicarious liability and should be construed much more strictly. When conditions are prescribed for extending such constructive criminal liability to others, the Courts will insist upon strict literal compliance. There is no question of inferential or implied compliance.

16 With the assistance of latest decisions of the Hon'ble Supreme Court of India, we shall be examining the provisions relating to Section 141(1) and shall attempt to determine who are the persons who shall be responsible and can be made liable for an offence done by a company? Who is responsible to the company for the conduct of its business, and who could be said to be in-charge thereof? How does one identify such persons? Is it that a person by virtue of being a director, manager or secretary of a Company automatically becomes liable under this section? Is it necessary to have an averment in the complaint that at the time when this offence was committed, such a person was in charge of and was responsible to the company for the conduct of business of the company?

17 Section 141 of the NI Act, 1881 regulates offences by Companies. It reads as follows:-

“(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.

(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 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."

18 When a cheque issued by a company is dishonoured, 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:

a. 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;

b. Any Director, Manager, Secretary or other officer of the company with whose consent and connivance, the offence under section 138 had been committed; and

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

19 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. The key words which occur in the Section are "every person". These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words "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 etc." 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.

20 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 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. The liability arises from being in charge of and responsible for conduct of 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. Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for conduct of business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company

and not on designation or status. If being a Director or Manager or Secretary was enough to cast criminal liability, the Section would have said so. Instead of "every person" the section would have said "every Director, Manager or Secretary in a Company is liable"....etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.

21 The Hon'ble Supreme Court has held in various cases that the words "was in-charge of, and was responsible to the company for the conduct of the business of the company" refer to a person who is in overall control of the day-to-day business of the company. The Court pointed out that, though a person may be a director and, thus, belongs to the group of persons making the policy followed by the company, yet may not be in-charge of the business of the company; that a person may be a manager who is in-charge of the business but may not be in overall charge of the business; and that a person may be an officer who may be in-charge of only some part of the business. It is, however, observed by the Hon'ble Supreme Court that the words in Section 141(1) of the Act need not be incorporated in a complaint as magic words. But, at the same time, the substance of the allegations read as a whole, should answer and fulfil the requirements of the ingredients of the said provision.

22 If a mere reproduction of the wording of Section 141 (1) in the complaint is sufficient to make a person liable to face prosecution, virtually every officer / employee of a company without exception could

be impleaded as an accused by merely making an averment that at the time when the offence was committed he was in-charge of and was responsible to the company for the conduct and business of the company. This would mean that if a company had 100 branches and the cheque issued from one branch was dishonored, the officers of all the 100 branches could be made accused by simply making an allegation that they were in-charge of and were responsible to the company for the conduct of the business of the company. That would be an absurd thing and not intended under the Act. As the trauma, harassment and hardship of a criminal proceedings in such cases, can be more serious than the ultimate punishment, it is not proper to subject all and sundry to be impleaded as accused in a complaint against a company, even when the requirements of Section 138, read with Section 141, are not fulfilled.

23 There is no universal rule that a director of a company is in charge of its everyday affairs. There is no magic as such in a particular word, be it Director, Manager or Secretary. It all depends upon respective roles assigned to the officers in a company. A company may have Managers or Secretaries for different departments, which means, it may have more than one Manager or Secretary. These officers may also be authorised to issue cheques under their signatures with respect to affairs of their respective departments. Will it be possible to prosecute a Secretary of Department-B regarding a cheque issued by the Secretary of Department-A which is dishonoured? The Secretary of Department-B may not be knowing anything about issuance of the cheque in question. Therefore, mere use of a particular designation of an officer without more, may not be enough by way of an averment in a complaint.

24 A provision similar to Section 141 of the NI Act can be found in

several enactments dealing with offences by companies i.e. Section 278 B of the Income-Tax Act, 1961; Section 22 C of the Minimum Wages Act, 1948; Section 86 A of the Employees State Insurance Act, 1948; Section 14 A of the Employees Provident Fund and the Miscellaneous Provisions Act, 1952; Section 29 of the Payment of Bonus Act, 1965; Section 40 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 47 of the Water (Prevention and Control of Pollution) Act, 1974; but neither Section 141 (1) nor the pari materia provisions in other enactments give any indication as to who are the persons responsible to the company, for the conduct of the business of the company.

25 To decipher and to understand the meaning of the “persons in charge’ as defined in Section 141(1) of the NI Act, we may have to examine the provisions of Companies Act, 1956, the law relating to and regulating the companies. A company, though a legal entity, yet can act only through its Board of Directors. Section 291 of the Companies Act, 1956 provides that subject to the provisions of this Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. A director 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 the 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 day-to-day functions of the Company. These are matters, which form part of resolutions of 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 on the peculiar facts in each case. There is no universal

rule that a director of a company is in charge of its everyday affairs.

26 A visit to some provisions of Companies Act,1956 shall enable us to appreciate the role and functions of certain key managerial personnel as engaged by companies.

a. "Director" includes any person occupying the position of director, by whatever name called. Section 2(13)

b. "Manager" means an individual (not being the managing agent) who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called and whether under a contract of service or not. Section 2(24)

c. "Managing Director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a Managing Director, by whatever name called. Section 2(26)

d. "Officer" includes any director, manager or secretary, or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act. Section 2 (30)

e. "Secretary" means a Company Secretary within the meaning of clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 (56 of 1980) and includes any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties. Section 2(45)

27 A combined reading of Sections 5 and 291 of the Companies Act read with the definitions in clauses (24), (26), (30), (31) and (45) of Section 2 of the same Act would show that the following persons are

considered to be the persons who are responsible to the company for the conduct of the business of the company:-

- a. *the managing director/s;*
- b. *the whole-time director/s;*
- c. *the manager*
- d. *the secretary;*
- e. *Any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;*
- f. *Any person charged by the board with the responsibility of complying with the provisions (and who has given his consent in that behalf to the board); and*
- g. *Where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors."*

28 In ***National Small Industries Corporation Limited Vs. Harmeet Singh Paintal & Another, JT 2010 (2) SC 161***, the Hon'ble Supreme Court had an occasion to review the entire case law on the subject regarding vicarious liability of the Directors of a company in regard to offence under Sections 138/141 of the Negotiable Instruments Act and after consideration of all the pros & cons has laid down the following principles:

"(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the

company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

(v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.

(vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.

(vii) The person sought to be made liable should be incharge 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."

29 In the case of **S.M.S. Pharmaceuticals Limited Vs. Neeta Bhalla And Another, (2005) 8 SCC 89**, the Hon'ble Supreme Court has categorically held that there may be a large number of Directors but some of them may not assign themselves in the management of the day-to-day affairs of the company and thus are not responsible for the conduct of the business of the company. Para 20 of the said judgment is relevant which is reproduced hereinunder:

"20. The liability of a Director must be determined on the date on which the offence is committed. Only because Respondent 1

herein was a party to a purported resolution dated 15-2-1995 by itself does not lead to an inference that she was actively associated with the management of the affairs of the Company. This Court in this case has categorically held that there may be a large number of Directors but some of them may not associate themselves in the management of the day-to-day affairs of the Company and, thus, are not responsible for the conduct of the business of the Company. The averments must state that the person who is vicariously liable for commission of the offence of the Company both was in charge of and was responsible for the conduct of the business of the Company. Requirements laid down therein must be read conjointly and not disjunctively. When a legal fiction is raised, the ingredients therefor must be satisfied."

30 In the present case, the petitioners claim that they had resigned from the Directorship of the accused No. 1 company on 24.10.2007 and all the 14 cheques, which are subject matter of the three complaints in question, were of dates after the said date and according to them, the offence under Section 138 of the Negotiable Instruments Act was committed after they had ceased to be the Directors of the said company. The complainant company had disputed the date of resignation by the petitioners from the directorship of the accused No. 1 company stating that Forms No. 32 in regard to their resignation was filed by the accused company in the Office of Registrar of Companies, Ministry of Company Affairs on 09.01.2008 & 13.01.2008 respectively and, therefore, according to the complainant company, the petitioners were the Directors of the said company till that date and are, therefore, jointly and vicariously liable for the offence in regard to which they have been summoned by the trial court. I do not find any merit in this argument urged on behalf of the complainant company. Forms No. 32 relied upon on behalf of the petitioners are at pages 31-36 of the paper

book of Crl.M.C. No. 503/2010. A perusal of these forms would show that they are certified copies issued from the Office of Registrar of Companies and according to these forms, the petitioners are shown to had resigned from the directorship of accused No. 1 company on 24.10.2007. On the face of these Forms No. 32, no dispute regarding date of resignation of the petitioners from the directorship of accused No. 1 company is tenable. Furthermore, even if it is assumed that the petitioners continue to remain Directors of accused No. 1 company on the date of commission of the offence still they cannot be held vicariously liable for the offence because there is nothing in the complaints filed by the complainant company to show that the petitioners were in any manner responsible for day-to-day management of the affairs of the said company. At this stage, it shall be relevant to refer to contents of paras 3, 4, 5 & 6 of the complaint of complaint case bearing No. 1439/1/08 (Annexure P-3 at page 34 of the paper book of Crl. M. C. No. 450/2010) and the same are extracted below:

“3 That previously Shri Harvinder Singh, son of Late Sh. Amrik Singh and Smt. Kuldeep Kaur, wife of Late Shri Amrik Singh, both residents of S-493, Greater Kailash, Part-II, New Delhi-110048 were the Directors of the accused No. 1, when the accused No. 1 had purchased agricultural land of 8 acres and 3 marlas at village Garh Shahjahanpur, Distt. Sonapat, Haryana for a total sale consideration of Rs.6,84,61,251/- vide sale deed No. 4662, dated 11.10.2006, duly registered in the office of the Sub-Registrar, Sonapat Haryana and gave current and post dated cheques to the vendors for sale consideration. One of the post dated cheques was in favour of Shri Rajbir son of Sh. Ramsukh for an amount of Rs.2,17,87,196/- vide cheque bearing No. 766092 dated 10.04.2007. Further the said Shri Harvinder Singh and Smt. Kuldeep Kaur intended to resign as Directors of the accused No. 1 company and the accused Nos. 2 & 3 were intending to join the accused No. 1 company as Directors thereof

for taking over management from Shri Harvinder Singh and Smt. Kuldeep Kaur. As such talks were going on between the accused Nos. 2 & 3 and the complainant for, inter-alia, providing a total loan of Rs.1,10,10,000/- which was required for clearance of the above cheque issued by the accused No. 1, in favour of Shri Rajbir. Thereafter, on 20.04.2007, the accused Nos. 2 & 3 were appointed as the Directors of the accused No. 1 which was confirmed on 22.09.2007 in the Annual General Meeting of the accused No. 1 and took over the entire management and day to day business of the accused No. 1 from Shri Harvinder Singh and Smt. Kuldeep Kaur, who both resigned as Directors of the accused No. 1 on 26.04.2007. Later on, the accused No. 4 also joined the accused No. 1 as its Director on 20.06.2007.

As such, for the reasons stated above, a sum of Rs.1,10,00,000/- was, inter-alia, required by the accused Nos. 1 to 3 from the complainant company, which request of theirs was acceded to by the complainant and the complainant gave a pay order for a sum of Rs.1,10,00,000/- bearing No. 037975 dated 20.04.2007 favouring the accused No. 1, issued from the complainant's current account with Union Bank of India, Lajpat Nagar Branch, New Delhi, which was cleared off and got encashed by the accused Nos. 1 to 3 on the same day i.e. 20.04.2007 itself.

Further, the accused No. 1 to 3 had assured the complainant that the entire loan amount shall be repaid to the complainant within six months from the date of payment of the loan and the complainant need not worry.

4 That as the talks for repayment of the said amount of loan were going, the complainant was requesting the accused Nos. 1 to 4 to make the repayment of the said amount of loan when the accused Nos. 2 to 4 were jointly and severally looking after and managing the day to day affairs of the accused No. 1. Accordingly, towards the discharge of the said liability, the accused Nos. 1 to 4 issued the following cheques in favour of the complainant from the Current Account of the accused No. 1, which were duly signed by the accused No. 2.

S. No.	Cheque No.	Date	Amount
1.	367018	20.11.2007	Rs. 25,00,000/-
2.	367019	23.11.2007	Rs. 25,00,000/-

3.	367021	26.11.2007	Rs. 20,00,000/-
4.	367022	28.11.2007	Rs. 20,00,000/-
5.	367033	30.11.2007	Rs. 15,00,000/-
6.	367034	30.11.2007	Rs. 15,00,000/-
	TOTAL		Rs. 1,10,00,000/-

(Rupees One Crore Ten Lacs Only)

-all drawn on Indian Overseas Bank, Rajeev Chowk, D-28, Connaught Place, New Delhi-110001.

At the time of issuing the abovesaid cheques, the accused Nos. 1 to 4 had assured the complainant that the same are good for payment and would be honoured on presentation.

5 *That when the complainant presented the cheque bearing No. 367018 for encashment with his bankers namely Union Bank of India, Lajpat Nagar Branch, New Delhi, the same was returned as dishonoured by the bankers of the accused with remarks 'Payment stopped by Drawer' vide bank memo dated 20.11.2007.*

6 *After the dishonor of the said cheque, the complainant contacted and apprised the accused Nos. 1 to 4 about the fate of the said cheque, but they assured the complainant that as there were not sufficient funds in their account, as such the accused persons got the payment of the said cheque stopped and further requested the complainant to wait for some time and assured him that as soon the accused Nos. 1 to 4 will have sufficient funds in their account, the same shall be encashed and further insisted upon the complainant not to present the other cheques.*

However, despite their assurances, the accused persons did not make the payment of the said cheque No. 367018 and kept the complainant in dark and the complainant could not institute proceedings against the accused persons in respect of the said cheque within the stipulated period as provided under Negotiable Instruments Act."

31 It may be seen that in the above mentioned complaint, the complainant company has impleaded only petitioner No. 1 as one of the

accused persons and chose not to implead petitioner No. 2 as an accused for reasons best known to it. Although as per the other two complaints in question, both the petitioners have been arrayed as accused persons in those complaints stating that they along with other Directors, being accused Nos. 2 & 3, had assured the complainant company that the cheques in question will be honoured as and when presented for encashment. Admittedly as per own case of the complainant in complaint case No. 1439/1/08, the entire shareholding of the said company was held by accused Nos. 2 & 3 namely Sanjay Gambhir & Reena Gambhir, who are husband & wife and this shows that the petitioners had neither any financial stake in the company nor any effective control over the said company till the time they remained its Directors, i.e., 24.10.2007. The judgments referred and relied upon by the learned senior counsel appearing on behalf of the complainant company are not applicable here since in the present case there does not seem to be any dispute regarding the date of resignation by the petitioners from the directorship of accused No. 1 company and, therefore, this, in the opinion of this Court, cannot be a question of trial. The complainant company has completely failed to show by reference to its complaints in question as to how and in what manner the petitioners were responsible for conducting the business on behalf of accused No. 1 company so long they remain its Directors. Hence, vicarious liability cannot be fastened on them.

32 For the foregoing reasons, I have no hesitation in holding that the impugned summoning orders passed by the trial court against the petitioners cannot be sustained either on facts or in law and the same are hereby set aside. Consequently, all the three criminal complaints bearing Nos. 573/2009; 64/1/09 & 1491/1/2008 in so far as the petitioners are

concerned, are hereby quashed making it clear that the said complaints shall continue against the remaining accused persons as per law. Subject to that all these petitions are allowed and stand disposed of accordingly with no orders as to costs.

A copy of this order be kept in the files of other two petitions which have also been disposed of by this common order.

MAY 03, 2010
'A/BSR'

S.N.AGGARWAL, J