

(2022) 08 BOM CK 0049

In the Bombay High Court

Case No : Criminal Application No.1353 Of 2019

Anil Kumar Singhal And Another

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 19-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Negotiable Instruments Act, 1881 — Section 138, 141, 141(2)

Citation : (2022) 08 BOM CK 0049

Hon'ble Judges : N. J. Jamadar, J

Bench : Single Bench

Advocate : Aadil Parsurampuria, Kejeshri Thakar, Aalam Parsurampuria,
Prashant Parsurampuria, Ansh Karnawat, Nikhil Rajani, Jyoti Sanap, V.
Deshpande, A.R. Patil

Final Decision : Dismissed

Judgement

N. J. Jamadar, J

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. This application under section 482 of the Code of Criminal Procedure, 1973 seeks to quash and set aside the order of issue of process dated 26th June, 2019 for an offence punishable under section 138 read with 141 of Negotiable Instruments Act, 1881 passed by the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai in CC No. 25/SS/2019, qua the applicants.

3. Shorn of superfluities, the background facts leading to this application, can be stated as under:-

a] Gupta Synthetics Limited (accused No.1) is a company incorporated under the Companies Act, 1956. The applicants herein, Anil Kumar Singhal (accused No.4) and Meenu Maheshwari (accused No.5) are the Directors of Gupta Synthetics Limited (accused No.1), apart from Mohan Gupta (accused No.2) and Prakash

Gupta (accused No.3). Avinash Shah (accused No.6) is the company secretary.

b] ING Vysya Bank Limited, which merged with Kotak Mahindra Bank Limited, the complainant herein ("the Bank") had extended various financial facilities to Gupta Synthetics Limited (accused No.1). A proceeding, Original Application No. 114 of 2012, was filed by ING Vysya Bank Limited before Debt Recovery Tribunal, Mumbai (DRT) for recovery certificate. Post merger of the ING Vysya Bank with Kotak Mahindra Bank, the complainant Bank instituted a Company Petition No. 184 of 2016 in this Court for winding up of Gupta Synthetics Limited (accused No.1).

c] In Original Application No. 114 of 2012 before the DRT consent terms were executed between the complainant and the defendants including accused Nos. 1 to 3. It was inter alia acknowledged that defendants were jointly and severely liable to pay to the complainant a sum of Rs. 45,01,52,126/-. The defendants No. 1 to 5 therein also agreed to pay a sum of Rs. 15,11,00,000/- to the complainant as per the schedule stipulated in paragraph No. 9 of the consent terms from 31st December, 2016 to 31st March, 2020. In accordance with the terms of settlement, post dated cheques were issued under a covering letter dated 21st December, 2016. DRT disposed of the proceedings in accordance with the aforesaid consent terms. Likewise, the Company Petition No. 184 of 2016 also came to be disposed of by the orders dated 10th January, 2017 and 18th January, 2017.

d] The accused No. 1 company committed default in payment of the amounts in accordance with the terms of the settlement. The complainant asserts as of 31st October, 2017 accused No. 1 and guarantors had paid the complainant a sum of Rs. 2,17,81,599/-only. Thereafter, the accused No. 1 made a further payment of Rs. 30 lakhs. Claiming that on account of the default on the part of the accused No. 1 in discharging the liability incurred under the consent terms, the entire claim amount became due and payable, the complainant deposited the cheques bearing No. 000821 drawn for Rs. 25 lakhs payable on 31st August, 2018; No.000841 drawn for Rs.1,40,00,000/- payable on 30th September, 2018; No.000823 drawn for Rs.39 lakhs payable on 31st October, 2018, with its banker, on 15th November, 2018, and No.000824 drawn for Rs. 39 lakhs, on 31st November, 2018. All the cheques were returned un-encashed on account of insufficiency of funds.

e] A demand notice was addressed on 11th December, 2018. It was duly served on accused Nos. 1 to 6 in between 12th October, 2018 to 17th December, 2018. Since the demands therein were not complied with, the complainant was constrained to lodge the complaint. By an order dated 26th June, 2019 the learned Metropolitan Magistrate was persuaded to issue the process against the applicants and the co-accused for an offence punishable under section 138 read with 141 of the Act, 1881.

4. The applicants have invoked the inherent jurisdiction of this Court asserting

that the applicants were neither in-charge of nor responsible to the company for the conduct of its business at the time of the commission of the alleged offences. A bare perusal of the complaint, according to the applicants, indicates that there are no averments to rope in the applicants by invoking the provisions contained in section 141 of the Act, 1881. Nor there is any other material to show that the applicants had played any part in the commission of the alleged offence or the underlying transactions. The applicants contend that the learned Magistrate has mechanically issued the process against the applicants without properly appreciating the facts that the applicants were independent Directors of the applicant No. 1 company and were not the signatories to either the consent terms or the cheques which were allegedly dishonored and, in fact, had resigned from the post of Directors of accused No. 1. Hence, the prosecution of the applicants is a sheer abuse of the process of the Court.

5. An affidavit in reply is filed on behalf of the respondent No. 2/ complainant to controvert the assertions in the application.

6. I have heard Mr. Aadil Parsurampur, learned counsel for the applicants, Mr. Ansh Karnawat, learned counsel for respondent No. 2 and Mr. A.R. Patil, learned APP for the State. With the assistance of the learned counsels for the parties, I have perused the averments in the application, contentions in the affidavit in reply and the material on record including the averments in the complaint.

7. Mr. Parsurampur, learned counsel for the applicants strenuously urged that the prosecution of the applicants is a classic example of the abuse of the process of the Court. It was urged with a degree of vehemence that the impugned order suffers from the vice of clear non-application of mind bordering on mechanical exercise of the power to issue the process. Mr. Parsurampur took pains to take the Court through the the complaint, to bolster up the submission that there are no averments to rope in the applicants by invoking the constructive criminality under section 141 of the Act, 1881. The learned counsel for the applicants took the Court through the record of the previous proceedings between the complainant and accused No. 1 company. Laying emphasis on the fact that the applicants were neither parties to O.A. No.114 of 2012 before DRT nor signatories to the consent terms, and the cheques, Mr. Parsurampur would further urge that, the bald averments in the complaint that the applicants were in-charge of and responsible to the conduct of the affairs of the company have no leg to stand on. To buttress the aforesaid submissions, the learned counsel for the applicants has placed reliance on the judgments of the Supreme Court and High Courts in the following cases:-

- 1] S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Others AIR 2005 SSC 3512
- 2] Saroj Kumar Poddar vs. State (NCT of Delhi) and Others AIR 2007 SC 912
- 3] N.K. Wahi vs. Shekhar Singh and Others AIR 2007 SC 1454
- 4] National Small Industries Corp. Ltd. vs. Harmeet Singh Paintal and

Others 2010 ALL MR (Cri) 921

5] Central Bank of India vs. Asian Global Ltd. and Others AIR 2010 SC 2835

6] Parag Bhikhalal Tejani vs. State of Maharashtra and Others 2012 (1) MhLJ 804

7] Pooja Ravinder Devidasani vs. State of Maharashtra AIR 2015 SC 675

8] Ashoke Mal Bafna vs. Upper India Steel Mfg. & Engg. Co. Ltd. AIR 2017 SC 2854

9] Rajeev Raj Kumar and Others vs. The State of Maharashtra and Others 2018 ALL MR (Cri) 4484

10] R.L. Steel and Energy Ltd. vs. Rajeev Raj Kumar and Others MANU/SCOR/78014/2019

11] Dayle De'Souza vs. Government of India through Dy. Chief Labour Commissioner (C) and Others AIR 2021 SC 5626

12] Pepsi Foods Ltd. And Others vs. Special Judicial Magistrate and Others AIR 1998 SC 128

13] Municipal Corporation of Delhi vs. Purshotam Dass Jhunjunwala and Others AIR 1983 SC 158

14] State of U.P. and Others vs. Synthetics and Chemicals Ltd. and Others (1991) 4 SCC 139

15] Jaydeo vs. State of Maharashtra and Others 2006(2) MhLj 497

16] State of Assam vs. Ripa Sarma AIR 2013 SC 3588

17] Hyder Consulting (UK) Ltd. vs. Governor, State of Orissa AIR 2015 SC 856

18] Ramrajsingh vs. State of M.P. and Others 2009 (2) ACR 1650 (SC).

19] Yogendra Pratap Singh vs. Savitri Pandey AIR 2015 SC 157.

8. Per contra, Mr. Ansh Karnawat, learned counsel for respondent No. 2 stoutly submitted that the instant application is itself an abuse of the process of the Court. It was urged that the applicants have resorted to the device of selective reading of the averments in the complaint and placing reliance on the documents which suit the case of the applicants and, in the process, deliberately suppressed vital facts and documents, which bear upon controversy. Mr. Karnawat would submit that there are more than adequate averments in the complaint which make out the complicity of the applicants. In the face of such averments, in exercise of the extra-ordinary jurisdiction under section 482 of the Code, the High Court may not be justified in embarking upon an inquiry into the factual aspect at this stage, urged Mr. Karnawat.

9. Controverting the submission on behalf of the applicants, Mr. Karnawat submitted that the claim of the applicants that they had resigned in October,

2018 is not substantiated by placing on record documents of unimpeachable character. Therefore, even the case that at the time of the commission of the offences, the applicants were not in-charge of and responsible to the conduct of the business of the applicant No. 1 company is not prima facie made out. Placing reliance on the very judgments on which the applicants banked upon, Mr. Karnawat would urge that the principles enunciated therein do not govern the facts of the case. In addition, the learned counsel for respondent No. 2 placed reliance on the judgment of the Supreme Court in the case of Gunmala Sales Private Limited vs. Anu Mehta AIR 2015 SC 1072 and the recent pronouncement in the case of Ashutosh Ashok Parasrampuriya and Others vs. Gharrkul Industries Private Limited and Others AIR 2021 SC 4898.

10. I have given anxious consideration to the rival submissions canvassed across the bar. To begin with, few un-controverted facts. The parties are not at issue over the fact that ING Vysya Bank Limited, the entity which merged with the complainant, had extended financial facilities to accused No. 1. Nor is it in dispute that ING Vysya Bank Limited had instituted a O.A. No. 114 of 2022 before DRT, Mumbai against defendant Nos. 1 to 5 thereto (including accused Nos. 1 to 3 herein) for recovery of its dues. Execution of the consent terms on 22nd December, 2016, in the said proceedings, is incontrovertible. Indisputably, the applicants were neither parties to the said O.A. No.114 of 2012 nor executed the consent terms. The delivery of the cheques under the covering letter dated 21st December, 2016 also appears rather incontestible.

11. The applicants do not profess to controvert the assertion of the complainant that accused No. 2 had signed the cheques on behalf of the accused No.1 company. Likewise, the compliance of all the statutory requirements, in the nature of the presentment of the cheques, dishonour of the cheques, issue and service of demand notice and non-payment of the amount covered by the cheques within the statutory period, are not much in contest.

12. What was sought to be put in contest on behalf of the applicants was the claim of the complainant that the applicants were in-charge of and responsible to the conduct of the business of accused No. 1 company at the time of commission of the alleged offences. Laying emphasis on the execution of the consent terms (to which the applicants were not parties), the learned counsel for the applicants urged with tenacity that the commission of the alleged offences in respect of the cheques which were issued pursuant to the said settlement cannot be attributed to the applicants even remotely.

13. The legal position as regards the nature of the liability of the persons who are sought to be prosecuted by invoking the provisions contained in section 141 of the Act, 1881 is fairly crystallized. Under section 141 of the Act, 1881 when an offence is committed by the company, apart from the company, every person who at the time of the commission of the offence was in-charge of and responsible to the conduct of the business of the company shall also be deemed to be guilty of the offence. There are a plethora of judgments governing the

aspect of the liability of the Directors and/ or officers of the company who are impleaded by invoking section 141 of the Act, 1881. It would be superfluous to make a reference to all the judgments relied upon by the learned counsel for the applicants as the field is substantially covered by two pronouncements of Supreme Court.

14. In the case of S.M.S. Pharmaceuticals (supra) a three Judge Bench of the Supreme court considered the following questions :-

"(a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company.

(b) whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors of Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

15. After an elaborate analysis, the Supreme Court answered the aforesaid questions in the following terms:-

16. In view of the above discussion, our answers to the questions posed in the Reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge

of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.

16. While arriving at the aforesaid conclusion the Supreme Court had observed in paragraph 10 as under:

10. The conclusion is inevitable that the liability arises on account of conduct , act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable.

(emphasis supplied)

17. The aforesaid pronouncement was further explained by a two Judge Bench of the Supreme Court in the case of Gunmala Sales Private Limited (supra). After advertng to the aforesaid pronouncement and the judgment preceding and subsequent thereto, the Supreme Court culled out the propositions as under:-

33. We may summarize our conclusions as follows:

a) Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness

who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

(emphasis supplied)

18. In the light of the aforesaid exposition of law, in exercise of inherent jurisdiction under section 482 of the Code, the High Court is required to approach the issue in two stages. First, whether there are basic averments in the complaint to demonstrate that the applicant was in-charge of and responsible for the conduct of the business of the company at the time of commission of the offences. If, at this first stage, the High Court is satisfied about the existence of adequate averments to make out the liability under section 141 of the Act, 1881, it would be within its right in refusing to embark upon further inquiry and exercise the discretion. Second, in a given case, the High Court may proceed to probe further and examine whether despite the existence of basic averments, the complaint qua the applicants/Director or other officers of the company deserves to be quashed on account of peculiar circumstances. In cases where the High Court is called upon to enter the second stage of inquiry if material of unimpeachable or incontrovertible character is brought on record which would indicate that in no case the applicants could have been in-charge of and responsible to the conduct of the business of the company at the time of commission of the offence, the High Court may quash the proceedings notwithstanding existence of the averments which prima facie satisfy the requirements of section 141 of the Act, 1881 in the complaint.

19. On the aforesaid touchstone, reverting to the facts of the case, I find it rather difficult to accede to the submission on behalf of the applicants that there are no averments in the complaint to show the nexus between the applicants and commission of the alleged offences. In paragraph 4 of the complaint, the complainant has averred, inter alia, as under:-

4] The complainant company had sanctioned and advanced various credit facilities to the accused No. 1 company. The said credit facilities extended to accused No. 1 company were inter alia, secured by way of guarantees of accused No. 2 and 3 who have guaranteed the due repayment of the amounts payable by the accused No.1 company. Accused Nos. 2 to 5 are the Directors and authorized representatives of the accused No. 1. Accused No. 2 has signed the cheques that form part of this complaint, on behalf of the accused No. 1.

.....

Accused Nos. 2 to 6 are all jointly and severally responsible and liable for the day-to-day operations and management of the accused No. 1 and were at all relevant times the persons involved in routine, business, taking all strategic decisions and were overall in charge of and responsible for conducting the day-to-day affairs and managing the activities and functioning of accused No. 1, thereby the acts, things, matters, business done by any of accused Nos. 2 to 6 for and on behalf of accused No. 1 is binding on all accused including accused No.1 and they are responsible, liable for the any acts, things, matters, business done by any of them, all of them for and on behalf of accused No. 1, at the relevant time.

20. In paragraph 11, the complainant asserts as under:-

11] The accused Nos. 2 to 6 were all actively involved in the entire transaction of settlement with the complainant company.

21. In the context of the consent terms, the complainant avers as under:-

14] I say that accused Nos. 1 to 6 were all aware of the said terms and conditions and in fact the accused No. 1 also made payments of part of the installments of the consent terms to the complainant company. The accused No. 1 has also disclosed the fact of the said consent terms in its annual report for the year 2016-17 with the balance sheet and profit and loss account. The said balance sheet and profit and loss account has been signed by the accused Nos. 2, 3 and 6. The complainant company craves leave to refer to and rely upon the annual report for the year 2016-17 of the accused No. 1 as and when produced.

22. Lastly, in paragraph 34, the complainant avers as under:-

34] I state that the accused Nos. 1 to 6 have knowingly entered into the consent terms dated 22nd December, 2016 and submitted the post dated cheques in compliance of the same. Even though the accused No. 1 had already defaulted earlier, the complainant company accepted by accused No. 1 under the consent terms on the assurance and understanding that the same would be honoured on presentment. The accused No. 1 has admitted the execution of the consent terms in its annual report which is a public document. The said annual report is signed by accused Nos. 2, 3 and 6. The accused Nos. 1 to 6 were aware that the said cheques would be presented on the due dates and they were bound to arrange for funds in the said account to ensure that the cheques were honoured but have failed to do so.

23. The aforesaid allegations in the complaint are prima facie sufficient to satisfy the requirement of basic averments in the complaint to make out the liability of the applicant Nos. 4 and 5. Moreover, the complainant has made categorical averments to the effect that the applicant Nos. 4 and 5 were also privy to the decision to settle the dispute with the complainant, execution of the consent terms and acknowledgment of the liability by defendant No. 1 company, which emanated from the execution of the consent terms. In the circumstances, I am unable to persuade myself to accede to the submission on behalf of the applicants that the complaint lacks basic averments. On the contrary, prima facie, the complainant has adverted to the alleged role of the applicants. In this view of the matter, the applicants cannot draw much mileage from the fact that they were neither the signatories to the consent terms nor to the dishonored cheques.

24. A profitable reference in this context can be made to the case of Ashutosh Parasrampuriya (supra). In the said case, these were averments in the complaint to the effect that all the Directors of the company were responsible to the business of the company and they were involved in the business of the company and responsible for all the affairs of the company. In the backdrop of such averments, the Supreme court declined to interfere with the order of High Court dismissing the application under section 482 of the Code. The Supreme Court adverted to the previous pronouncement in the case of S.M.S. Pharmaceuticals (supra) and the later judgments and reiterated the law as under:-

23. In the light of the ratio in S.M.S. Pharmaceuticals Ltd. (supra) and later judgments of which a reference has been made what is to be looked into is whether in the complaint, in addition to asserting that the appellants are the Directors of the Company and they are incharge of and responsible to the Company for the conduct of the business of the Company and if statutory compliance of Section 141 of the NI Act has been made, it may not open for the High Court to interfere under Section 482 CrPC unless it comes across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of Court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the particular Director for which there could be various reasons.

24. The issue for determination before us is whether the role of the appellants in the capacity of the Director of the defaulter company makes them vicariously liable for the activities of the defaulter Company as defined under Section 141 of the NI Act? In that perception, whether the appellant had committed the offence chargeable under Section 138 of the NI Act ?

25. We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not the signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear

from the conclusions drawn in the aforesaid judgment that it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the NI Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company.

26. This averment assumes importance because it is the basic and essential averment which persuades the Magistrate to issue process against the Director. That is why this Court in *S.M.S. Pharmaceuticals Ltd. (supra)* observed that the question of requirement of averments in a complaint has to be considered on the basis of provisions contained in Sections 138 and 141 of the NI Act read in the light of the powers of a Magistrate referred to in Sections 200 to 204 CrPC which recognise the Magistrate's discretion to take action in accordance with law. Thus, it is imperative that if this basic averment is missing, the Magistrate is legally justified in not issuing process.

27. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the cheques were issued by the Company and dishonoured by Bank, the appellants were the Directors of the Company and were responsible for its business and all appellants were involved in the business of the Company and were responsible for all the affairs of the Company. It may not be proper to split while reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to fulfill the requirement of Section 141 of NI Act. The complaint specifically refers to the point of time when the cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. In given circumstances, we have no hesitation in overruling the argument made by the learned counsel for the appellants.

25. The aforesaid pronouncement, in my view, governs the facts of the case at hand with full force as the averments in the complaint, in the case at hand, are far more categorical and elaborate.

26. I find substance in the submission on behalf of the respondent No. 2 that the claim of the applicants that they had resigned from the position of the Directors of the Gupta Synthetics Limited (accused No.1) was not sought to be substantiated by documents of unimpeachable character. On the contrary, the Court finds that in the reply dated 25th December, 2018 to the statutory notice addressed on behalf of the applicants as well, the said stand of resignation as of October, 2018 is conspicuous by its absence. In contrast, an effort was made to contest the enforceability of the liability on the merits of the matter. The applicants, it prima facie seems, chose not to raise the ground that they were not in-charge of and responsible to the conduct of the affairs of Gupta Synthetics Limited (accused No.1) though in paragraph Nos. 7 to 9 of the statutory notice, categorical averments to that effect were made by the complainant.

27. For the foregoing reasons, in my view, the applicants have not succeeded in making out a case that despite existence of the basic averments in the

complaint, there are peculiar circumstances, supported by material of unimpeachable character to demonstrate that they were not in-charge of or responsible to the conduct of the business of company at the time of the commission of the offences.

Thus, the application deserves to be dismissed.

Hence, the following order.

ORDER

- 1] The application stands dismissed.
- 2] No costs.
- 3] Rule discharged.