
(2006) 08 MAD CK 0189

In the Madras High Court

Case No : Criminal O.P. No. 5108 of 2002

Mr. B. Raman, Mr. B. Ramesh and Mr. B. Raghu

APPELLANT

Vs

Shasun Chemicals and Drugs Ltd.

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Constitution of India, 1950 — Article 21

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142, 7

Citation : (2007) 2 ALD(Cri) 2 : (2007) 2 BC 499 : (2007) 3 CivCC 37 : (2006) CriLJ 4552 : (2007) 2 KLJ 53 : (2007) 1 KLT 106 : (2006) 2 LW(Cri) 775 : (2007) 1 RCR(Civil) 37 : (2007) 1 RCR(Criminal) 119

Hon'ble Judges : M. Karpagavinayagam, J;A.C. Arumugaperumal Adityan, J

Bench : Division Bench

Advocate : B. Kumar for M. Aravind Subramaniam, for the Appellant; K. Ravi Anantha Padmanabhan and E. Raja, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The question posed before this Division Bench is as follows : In the absence of individual notice u/s 138(b) of the Negotiable Instruments Act, to be served on the director of a company, can the said director be prosecuted for the offence, committed by the company, u/s 138 of the Act ?

2. When this question was posed before a learned single Judge, Justice T.V. Masilamani, as he then was, it was brought to the notice of the learned single Judge, that, in Harish C. Chadda, Director, Nubal (India) Ltd. v. XS Financial Services Ltd. 2001 (2) L.W. 625, Justice D. Murugesan held that the prosecution against the director, who has not been served with a statutory notice, is not maintainable. In another decision, rendered by Justice Malai Subramanian, as he then was, in Sarvaraya Textiles Ltd. v. Integrated Finance Ltd. 2001 (1) CTC 725, it is held that prosecution is maintainable, even though notice has not been served on the director, who is sought to be prosecuted, since the notice issued to company amounts to service of notice on all the directors, arrayed as accused,

along with the company, which was also brought to the notice of the learned single Judge.

3. On noticing that there are two divergent views taken by the learned single Judges with regard to the issue, Justice T.V. Masilamani, thought it fit to refer the matter to Hon''ble Chief Justice, for posting the same before a Larger Bench, for deciding the issue and setting at rest the controversy. Accordingly, this matter has been posted before this Division Bench, on the orders of Hon''ble Chief Justice.

4. We have heard Mr. B. Kumar, learned Senior Counsel for the petitioners, and Mr. K. Ravi Anantha Padmanabhan, learned Counsel for the respondent. We appointed Mr. E. Raja, as Amicus Curiae, to assist this Court, and he is also heard, besides Mr. V.R. Balasubramaniam, Government Advocate, on the question posed before this Court.

5. All the counsel made their submissions at length, with thorough preparation. They also filed written submissions, as well as the typed sets, containing various decisions.

6. The following citations are referred to by Mr. B. Kumar, learned Senior Counsel, for the petitioner:

- (i) W.H. King Vs. Republic of India and Another, ;
- (ii) AIR 1998 S C 366 Tomy Jacob Kattikkaran v. Thomas Manjaly;
- (iii) 2000 (2) Cri 354 K. Pannir Selvam v. M.M.T.C. Ltd.;
- (iv) 2000 (2) Cri 374 Jain Associates v. Deepak Chaudhary and Co.;
- (v) 2001 (1) CTC 94 : 2000 (1) L.W. 422 Anil Hada v. Indian Acrylic Ltd.;
- (vi) 2001 (1) CTC 538 Dalmia Cement (Bharat) Ltd. v. Galaxy Traders and Agencies Ltd.;
- (vii) 2001 (1) CTC 725 Sarvaraya Textiles Limited v. Integrated Finance Ltd.;
- (viii) 2001 (2) LW 625 Harish C. Chadda v. XS Financial Services;
- (ix) Amery Pharmaceuticals and Another Vs. State of Rajasthan, ;
- (x) 2005 (2) Bankmann 42 Target Overseas Exports Pvt. Ltd. v. A.M. Iqbal; and
- (xi) S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, .

7. The following decisions are cited by Mr. E. Raja, Amicus Curiae:

- (i) Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ;
- (ii) 1998 Supreme Court Cases (CRI) 1471 Sadanandan Bhadrn v. Madhavan Sunil Kumar;
- (iii) 1998 2 L.W. 611 K.S. Subbaraman v. Iyyammal ;

- (iv) 1999 (1) MWN 1 Santhanapandi v. State by Inspector of Police;
- (v) 1999 (1) MWN 126 I. Jairaj v. C. Aravanda;
- (vi) 1999 S C C 1411 Central Bank of India v. Saxons Farms;
- (vii) 2000 1 L.W. 299 K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr.;
- (viii) 2000 (1) L.W. 422 Anil Hada v. Indian Acrylic Ltd. ;
- (ix) 2001 (2) L.W. 611 Natesha Singh Etc. and Ors. v. Klen and Marshals of Manufacturers and Exporters Pvt. Ltd.;
- (x) 2001 S C C 955 Uniplas India Ltd. v. State (Govt. of NCT of Delhi;
- (xi) 2003 S C C 1217 Sakthi Travel and Tours v. State of Bihar;
- (xii) 2003 (2) Sup 793 Canara Bank v. Shri Debasis Das;
- (xiii) 2004 S C C 1927 Adalat Prasad v. Roopal Jindal;
- (xiv) 2005 S C C 242 Subramaniam Sethuraman v. State of Maharashtra;
- (xv) 2005 S C C 415 State of Orissa v. Debendra Nath Padhi;
- (xvi) 2005 SC C 1020 S.V. Muzumdar v. Gujarat State Fertilizer Co. Ltd.; and
- (xvii) 2005 SCC 1975 S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla.

8. On hearing the learned Counsel for the parties and also going through the judgments referred to, in the arguments advanced by the respective counsel, it is clear that the point in issue has not yet been decided by the Supreme Court, even though various High Courts gave different views. Therefore, it would be better to analyse the question, on the basis of first principles.

9. The relevant provisions would be Sections 138 and 142 of the Negotiable Instruments Act. Let us first see Section 138:

138. Dishonour of cheque for insufficiency, etc., of funds in the accounts:

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 sufficient 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 provisions 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.

10. A reading of Section 138 of the Act would make it clear that in order to prosecute a person for the offence u/s 138, the following factors have to be proved:

(i) the cheque should be presented within a period of six months from the date on which it is drawn ;

(ii) the cheque drawn for payment of an amount of money for discharge of a debt or liability shall be dishonoured, on account of non-availability of sufficient amount ;

(iii) the payee or complainant, after receipt of intimation about the dishonour of the cheque, shall make a demand for payment of the cheque amount, by giving a statutory notice in writing to the drawer of the cheque within thirty days of the said intimation ; and

(iv) the drawer of such cheque fails to make payment to the payee within fifteen days of the receipt of the said notice.

11. Section 142 reads as follows:

142. Cognisance of offences Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) no Court shall take cognisance of any offence punishable u/s 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque ;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

PROVIDED that the cognisance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable u/s 138.

12. The proviso to Section 142 would refer to the power of a Metropolitan Magistrate or a Judicial Magistrate of first class, to take cognisance of the offence u/s 138. The following factors are required, to request the Court, to take cognisance:

(i) payee or the holder in due course must file a complaint in writing ; and

(ii) cognisance can be taken by the Court only within one month on the date on which the cause of action arises under clause (c) of the proviso to Section 138.

13. A reading of Section 138 and 142 would make it clear that the complainant or payee can approach the Court to make a complaint against drawer only when the drawer fails to make the payment, after receipt of statutory notice, within fifteen days. That means, the cause of action would arise only when the drawer, who received statutory notice, fails to comply with the demand, through notice sent by the payee, within fifteen days of the receipt of notice. Only thereafter, the complainant can approach the Court within one month of the date on which the said cause of action arises i.e., the complainant can report to the Court about the cause of action that an opportunity has been given to the drawer and, despite that, the drawer has failed to make payment within fifteen days of the receipt of notice and, as such, he is liable to be punished. In other words, the cause of action is not mere presentation of cheque nor mere dishonour of cheque, whereas the real cause of action is the non-payment of the cheque amount or non-compliance of the demand through the notice by the drawer within the statutory period. This would indicate, that even though Section 138 would provide that the drawer shall be deemed to have committed an offence when the cheque drawn by the drawer has been dishonoured on account of insufficiency of amount, he cannot, straight-a-way, be prosecuted. That means, the legislature mandates the payee or the complainant to give an opportunity to the drawer to rectify the mistake or to remedy the situation, to avoid the filing of the complaint. Section 138 indicates a person, who is deemed to have committed an offence. Section 138(b) refers to issuance of a statutory notice, in writing, to the drawer of the cheque.

14. Let us now see the definition of the words 'person' and 'drawer':

(i) As indicated above, as per Section 138, when a cheque, drawn by a person, is dishonoured because of the amount in the bank is insufficient to honour the cheque, such a person shall be deemed to have committed the offence. (emphasis supplied)

(ii) u/s 138(b), the payee/complainant, before making a complaint, shall issue a notice in writing to the drawer of the cheque.

(iii) The expression "drawer" of the cheque is defined in Section 7 of the Act in the following words:

7."Drawer" : The maker of a bill of exchange or cheque is called the "drawer". (iv) u/s 138, a person, who has drawn the cheque, must be deemed

to be the drawer of the cheque

(v) The expression "person" is not defined in the Negotiable Instruments Act, but is defined u/s 11 of IPC, in the following words : "11."Person".- The word "person" includes any company or association or body of persons, whether incorporated or not.

15. It is, thus, evident that a natural person, an incorporated person or even an unincorporated association or body of persons like a partnership can be a person u/s 11 of IPC. Consequently, such an entity can be a person under the body of Section 138 of the Negotiable Instruments Act. The "drawer", u/s 7 of the Negotiable Instruments Act, can, therefore, be undoubtedly a natural person or an incorporated person or a body of persons, whether incorporated or not.

16. Now, let us see the provision relating to the offence, committed by the company:

141. Offences by companies:

(i) If the person committing an offence u/s 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:

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 financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he 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 purpose of this section

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relating to a firm, means a partner in the firm.

17. Section 141, which relates to the offences by companies, operates in cases where the offence u/s 138 is committed by the company. The key words, which are employed in the Section are, "if the person committing an offence u/s 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." Under this Section, when an offence is committed by a company, the directors of the company as well as the company shall be liable to be proceeded and punished. As discussed earlier, the cause of action would not arise on mere dishonour of cheque or even after a notice issued u/s 138, but it would arise only when there is no payment of cheque amount by the drawer, after service of notice. (emphasis supplied)

18. As indicated above, the word "person" is defined u/s 11 of IPC, as the person, which includes any company or association or body of persons, whether incorporated or not. So, the word "person" connotes not only singular but also plural. Therefore, the word "person" employed in Section 141 means that every person, who was in charge of and was responsible for the conduct of the business of the company, shall be deemed to be guilty, along with the company. Hence, the word "person" includes not only the company but also other persons, who are in charge of and are responsible for the conduct of the business of the company.

19. It is to be noticed in this context that Section 138 would refer to a person, who has drawn the cheque, and when the said cheque was dishonoured, such a person, namely, the drawer, shall be deemed to have committed the offence. When we look at Section 141, the legislature purposely employed the words "if the person committing an offence u/s 138 is a company" is not only the company, but also every person, who, at the time the offence was committed was in charge of and was responsible for the conduct of the business of the company, shall be deemed to be guilty of the offence. So, deeming provision would apply to the company as well as the person, who was in charge of and responsible for the conduct of the business of the company.

20. The object of Section 138(b) is, to afford an opportunity to the person, who is the drawer, which includes the company, represented by directors before being proceeded against them under the Penal enactment, to make a demand from them the amount of the cheque, in order to avoid the complaint of the offence or to remedy it.

21. As held by the Supreme Court in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* 2005 S C C 1975, by a deeming provision contained in Section 141 of the Act, relating to the offences committed by the company, such of those persons are also vicariously liable to be held guilty, when the main ingredients for creating criminal liability have been established. The said ingredients are : (i) issuance of a cheque; (ii) presentation of the cheque; (iii) dishonour of the cheque; (iv) service of statutory notice on the person sought to be made liable and (v) non-

compliance or non-payment in pursuance of the notice within 15 days of the receipt of the notice. 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. In other words, the persons, who had nothing to do with the matter, need not be roped in. A company, being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of the company or directors of the company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the acts, which result in criminal action being taken against the company. It makes 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, liable for the offence. The proviso to the sub-section contains an escape route for persons, who are liable to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence.

22. In the light of the above observation made by the Supreme Court, out of five ingredients, which have to be established for creating criminal liability against the persons concerned, fourth and fifth ingredients, viz., service of statutory notice on the person sought to be made liable and non-compliance or non-payment in pursuance of the notice within 15 days of the receipt of the notice, play an important role. In other words, 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 the conduct of the business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that 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. Conversely, a person not holding any office or designation may be liable if the complainant satisfies that that person was in charge of and responsible for the conduct of business of the company at the relevant time. To put it differently, liability depends on the role one plays in the affairs of a company and not on designation or status. Merely mentioning that he is a director or manager or secretary would not be enough, to cause criminal liability. 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 can be subjected to action. (emphasis supplied)

23. There are three categories of persons, covered by Section 141, which are as follows:

(i) the company who committed the offence ;

(ii) everyone who was in charge of and responsible for the business of the company ; and

(iii) any other person who is a director or a manager or a secretary or an officer of the company with whose connivance or due to whose neglect the company has committed the offence.

24. When the drawer of a cheque, who falls within the ambit of Section 138, is a human being or a body corporate or even firm, prosecution proceedings can be initiated against such a drawer. In this context, the phrase "as well as", used in Sub-section (1) of Section 141 of the Act has some importance. The said phrase would embroil the persons mentioned in the first category within the tentacles of the offence on a par with the offending company. Similarly, the words "shall also" in Sub-section (2) are capable of bringing the third category persons additionally within the dragnet of the offence on an equal bar. The effect of reading Section 141 is that when the company is the drawer of the cheque, such a company is the principal offender u/s 138 of the Act and the remaining persons are made offenders, by virtue of the legal fiction created by the legislature as per the Section.

25. u/s 141(1), the persons in charge of and responsible to the company shall be deemed to have committed the offence. Under Sub-section (2), even the persons, who are not stated to be in charge of and responsible to the company, can be prosecuted, if it is alleged and proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any of those persons prosecuted. So, these Sections would provide that when there are directors, who are responsible for the conduct of the business of the company, and when there are other officers, with whose consent the offence has been committed, the complainant shall make averments to the said effect. In that context, the complainant has to start the process of getting back the cheque amount from those persons, who represent the company, in order to avoid the filing of the complaint against them. In the said process, he has to necessarily make a demand from those persons, who are part and parcel of the drawer. Only when that process fails, the cause of action, as envisaged in Section 138, would arise against them, to enable the complainant to approach the Court, within the stipulated time. So, the starting of the process is, the service of notice on the persons, who represent the company, the drawer of the cheque.

26. The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. Service of notice of demand in clause (b) of the proviso to Section 138 is a condition precedent for filing a complaint u/s 138. By sending a notice to the company as well as the persons in charge of and responsible for the conduct of the business of the company, he can make a demand, asking them to pay the amount. Some may reply that they are not in charge of and responsible for the conduct of the business of the company; some may reply that they are not connected with the company in any way and

some may rectify the omission, by making efforts to pay the amount to the payee, in the name of the company. In that event, the complainant may either drop the action of filing the complaint or, in the event of non-payment of the cheque amount, he may choose the persons, who are really responsible for the commission of offence and, then, initiate prosecution against them.

27. When it is a settled law, as laid down by the Supreme Court, that there must be a specific averment in the complaint against the accused persons to the effect that they are in charge of and responsible for the conduct of the business of the company, during the relevant time the offence has been committed, with their connivance, i.e., all the more reason, the complainant shall give an opportunity to those persons to explain the complainant about their position in the company. In other words, the complainant can prosecute the company as well as the other directors, only when he is satisfied that the persons, sought to be prosecuted, are in charge of and responsible for the conduct of the business of the company and also, in spite of the demand of the cheque amount through service of notice, they have not chosen to pay the amount within time.

28. As a matter of fact, the proviso of Sub-section (1) of Section 141 contains an escape route for persons, who are able to explain their innocence to the complainant, that the act was committed without their knowledge or that they had exercised due diligence to prevent the commission of the said act. This can be done only after service of notice to the persons concerned, who are sought to be prosecuted. To put it differently, since a combined reading of Sections 138(b) and 141(1) make it clear that the company as well as the director, manager, secretary or other officer of the company is deemed to have committed the offence in the contingencies referred to above, the complainant must give an opportunity, by serving a notice to those persons, prior to the lodging of the complaint. Of course, it is the choice of the complainant as to who are all the persons that are to be included in the complaint as the accused. However, those persons must be served with notice in writing. After receipt of reply from the persons concerned, he may decide whom to be prosecuted and whom to be left out. All the more reason, in order to exercise the choice of the complainant in a proper manner, it is his duty to serve notice on all persons, who are concerned with the commission of the act, by giving an opportunity to those persons, in order to enable them to rectify the mistake and avoid the cause of action or explain the situation to the complainant.

29. When it is a settled law that even the persons, who are not said to be responsible to the company, also can be prosecuted and, in the said prosecution, there must be a proof that the offence has been committed with the consent and connivance or neglect on the part of any of those persons, the complainant must give an opportunity to such persons, to allow them to explain the situation and decide the course of action. In the light of the wording contained in Section 141(1) and (2), it is for the complainant to establish that the persons concerned are in charge of and responsible for the conduct of the business of the company

and that the offence is committed with their knowledge and connivance.

30. Legislature discourages issuance of cheques in a hurried manner, to honour the commitment, without keeping sufficient amount in the account. In the same way, the legislature does not allow the prosecution to be launched in a hurried manner, without due process of law and without crossing various stages. The stages are, presentation of cheque; dishonour of cheque; issuance of notice; receipt of notice by the persons, sought to be prosecuted; default to pay and lodging of complaint. The procedure, contemplated under the Act, would indicate that the legislature envisages sufficient time to be given for settlement between the parties, before launching prosecution.

31. As stated supra, the proviso to Section 141(1) enables such directors to get themselves exonerated, if they show that the offence was committed without their knowledge or that they exercised all due diligence to prevent the commission of the offence. This can very well be explained by the said directors to the complainant so that the complainant may not go to the Court, by filing a complaint, or even if a complaint is filed against a company, he may not proceed against those directors, who have explained the real situation. Hence, unless an opportunity is given to such directors before being prosecuted, by serving notice on them by the complainant, it may not be possible for them to establish their innocence, during the pre-trial stage, that they were not in charge of and responsible for the act committed by the company and that the offence was committed without their knowledge and they exercised due diligence to prevent the commission of offence.

32. It is not the intention of the legislature that these persons, namely, directors and others could be permitted to establish their innocence only before the Court. 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 u/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.

33. Section 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 Section 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 Section 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 Section 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 Article 21 of the Constitution of India.

34. Even the learned Counsel for the respondent /complainant would concede through the written submissions that statutory notice is a must to the directors also, who are sought to be prosecuted. However, he requests this Court to direct the petitioners/accused, to raise the point before the trial Court.

35. The above request of the learned Counsel for the respondent cannot be accepted, for the reason that there are divergent views expressed by two different learned single Judges of this Court. Therefore, it may not be proper for the trial Court to consider the question. This Court, being a Division Bench, alone is competent to deal with the matter.

36. Under the circumstances, the prosecution against the petitioners/directors is not maintainable and, as such, the proceedings against them are liable to be quashed.

37. In the light of what is stated above, the answer to the question is, statutory notice to every person, including the director, who is sought to be prosecuted, is mandatory.

38. We record our appreciation for the services rendered by Mr. E. Raja, Amicus Curiae, and also direct Tamil Nadu State Legal Services Authority to pay a remuneration of Rs. 5,000/- to him.

39. Criminal Original Petition is allowed. As such, the proceedings as against the petitioners, pending in C.C. No. 3582 of 2001 on the file of XVII Metropolitan Magistrate, Saidapet, Chennai, are quashed. Consequently, the connected Criminal M.P. No. 2606 of 2002 is closed.