
(2011) 12 CHH CK 0040

In the Chhattisgarh High Court

Case No : M. Cr. C. No. 2775 of 2004 with M. Cr. C. No. 137 of 2005

M/s. Anil Rice Mills and Others

APPELLANT

Vs

State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 203, 245(2), 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 138(C), 141, 141(1), 141(2)

Citation : (2012) 1 CGBCLJ 292 : (2012) 1 Crimes 672

Hon'ble Judges : Manindra Mohan Shrivastava, J

Bench : Division Bench

Judgement

Manindra Mohan Shrivastava, J.—The aforesaid two petitions u/s 482 of the Cr.P.C. are being disposed of by a common order as most of the grounds raised in both the cases between the same parties in respect of dishonour of two different cheques, are common on facts as well as on law.

M.Cr.C.No.2775 of 2004

The respondent No.2 filed a complaint against the petitioner alleging commission of offence u/s 138 of the Negotiable Instruments Act, 1881 {In short "the Act of 1881") that Ramlal, Sharad and Anil had taken an amount of Rs.2 Lakh stating it to be needed for petitioner No. 1 Firm on 19.7.2001 on an assurance to return the same by 18.8.2001. It was further averred in the complaint that towards discharge of liability of repayment of loan. Ramlal gave a cheque signed by him bearing seal of petitioner No. 1 firm on 18.8.2001 for an amount of Rs.2 Lakh at Raipur. which was submitted for encashment of the amount under the cheque by the complainant in its account maintained in the District Co-operative Central Bank, Raipur. Vide memo dated 22.8.2001 of the Bank, the complainant came to know on 23.8.2011 that the cheque issued by the petitioner No.1 Firm and Ramlal was dishonoured due to insufficient fund. Thereafter, the complainant sent a registered notice of demand on 27.8.2001 to the Firm and Ramlal demanding payment of the amount under the cheque within a period of 15 days.

Further averment in the complaint is that the information with regard to envelop containing notice was given by the Postman on 28.8.2001 to the accused persons, but they did not accept the notice, upon which, the Postman endorsed on 5.9.2001 that the notice was not taken, and the same was returned. It was alleged that even after giving demand notice, no payment was made within a period of 15 days, and thereby, offence u/s 138 of the Act of 1881 was committed. Preliminary statement of the complainant was recorded and the learned Magistrate registered offence against the petitioners. An application u/s 245(2) of the Cr.P.C. was filed claiming discharge on the submission that the petitioner No.4 Anil Kumar Agrawal was not the Partner of the Firm. The application was however rejected on 12.9.2002. Aggrieved by the rejection order, revision petition was filed, which too has been dismissed vide impugned order dated 24.8.2004.

M.Cr.C.No.137 of 2005

2. The respondent No.2 filed a complaint against the petitioners No. 1 to 3 alleging commission of offence u/s 138 of the Act of 1881. In the complaint, it has been averred that Ramlal. Sharad and Anil Kumar Agrawal obtained a loan of Rs.3 Lakh for the need of the petitioner No. 1 Firm on 18.7.2001. It has been averred that towards discharge of the aforesaid loan, Sharad Agrawal issued a cheque under signature and seal of the Firm for an amount of Rs.3 lakh on 8.8.2001 and gave it to the complainant on that day at Raipur, and when the cheque was submitted for encashment of the amount under the cheque in the complainant's account with his banker, vide memo dated 9.8.2001, the complainant was informed that the said cheque is dishonoured due to insufficient fund. Thereafter, counsel of the complainant sent a demand notice through registered post to the petitioners No. 1 to 3 and informing dishonour of the cheque and demand for payment of the amount under the cheque within 15 days. On 13.8.2001, the Postman informed regarding the envelop containing notice to the petitioners/accused, but they did not take the notice, whereafter the Postman returned the same on 20.8.2001. It is averred in the complaint that the petitioners/accused deliberately did not take the notice nor paid the amount within a period of 15 days, despite demand made, and thereby committed offence u/s 138 of the Act of 1881. After recording preliminary statement of the complainant, the learned Magistrate registered the offence u/s 138 of the Act of 1881. An application u/s 203 of the Cr.P.C. was filed on 29.1.2002 stating that the petitioner No.4 Anil Kumar Agrawal was not the partner of the Firm and further that no demand notice was sent to them, and therefore, they are liable to be discharged. It was further advanced in support of the application that the Petitioner No.4 Anil Kumar Agrawal was not the Partner of the Firm. It was also submitted that the cheque, in respect of which, the complaint has been lodged, a missing report has also been lodged in the police Station. Further ground was taken in the application that as the complaint itself was filed before expiry of stipulated period of 15 days, as specified in Section 138 (C) of the Act of 1881, the petitioners were liable to be discharged. The application was rejected by the

learned trial Court vide order dated 28-08-2002. Aggrieved by the said order, revision was preferred, which too, has been dismissed by the impugned order dated 12.10.2004.

3. In both the cases (M.Cr.C. Nos. 2775/2004 & 137/2005), common submission made by learned counsel for the petitioners is that as the complainant has impleaded all the petitioners, even though, there is no specific averment that the alleged partners, other than one, who issued the cheque, are in-charge and responsible for the conduct of the business of the Firm. According to learned counsel for the petitioners, this is an essential requirement of Section 141 of the Act of 1881 before a Partner of a Firm could be proceeded against only because of his capacity as partner of the Firm. Further submission is that in both the complaints as well as in the preliminary statements of the complainant in support of the complaints, there are no other specific allegation, which is accepted, would establish that alleged partners except the one, who is alleged to have issued the cheque, were in-charge and responsible for the conduct of the business of the Firm. It has also been contended that as far as the petitioner No.4 Anil Kumar Agrawal is concerned, he was not even the partner of the Firm, and therefore, his impleadment is clearly an abuse of the process of law, particularly when, it is not even alleged that he had issued the cheque in any of the two cases.

4. In M.Cr.C.No.2775 of 2004, it has also been contended that even according to the complaint, demand notice was given only to the petitioner No. 1 Firm and Ramlal and there is no allegation that any demand notice was given to the petitioners Sharad and Anil, and therefore, for this reason also, no cognizance could have been taken against the petitioners-Sharad and Anil. It has also been contended that even according to the complaint, demand notice was returned back with an endorsement dated 5.9.2001 that it was not claimed, therefore, the complaint on the face of it, does not specify the essential ingredients for commission of offence in view of the provisions contained in Section 138(C) of the Act of 1881.

5. In addition to the common grounds, in M.Cr.C.No.137 of 2005. it has been also submitted that even according to the complaint, demand notice was given only to the petitioner No. 1 Firm, Ramlal and Sharad and there is no averment that any demand notice was given to Anil, and therefore, no case for registering offence against the petitioner Anil is made out. It has been further contended that according to the averments made in the complaint, the demand notice alleged to be sent was returned back with an endorsement that the accused did not receive on 20.8.2001. Therefore, essential ingredients for commission of offence u/s 138 of the Act of 1881 is not made out, in the absence of there being any case of nonpayment within a period of 15 days, after receipt of demand notice. It was further contended that the petitioners have lodged a report in the Police Station that the cheque has been lost and therefore, in view of such ground taken, the complaint ought to have been dismissed. It has been lastly contended that the complaint itself is pre-mature, because even before expiry of

15 days from the alleged date of receipt of notice i.e. on 20.8.2001, the complaint was filed on 31.8.2001. Learned counsel for the petitioners has relied upon a decision in the case of State of U.P. v. Raja Ram and Others 2007(12) SCC 748; Smt. Katta Sujatha Vs. Fertilizers and Chem. Travancore Ltd. and Another, N.K. Wahi Vs. Shekhar Singh and Others, ; K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, ; Saroj Kumar Poddar Vs. State (NCT of Delhi) and Another, ; S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, Sabitha Ramamurthy and Another Vs. R.B.S. Channabasavaradhya, and Harshendra Kumar D. Vs. Rebatilata Koley Etc.,

6. On the other hand, learned counsel for the respondent/complainant has contended that from the complaint, a prima facie case for registration of offence against the petitioners is made out.

7. Referring to the averments and preliminary statements recorded in the complaint case (M.Cr.C. No. 2775 of 2004), it has been submitted that the complainant has made specific averment that the loan was taken by the petitioners Ramlal, Anil and Sharad for the business of the Firm i.e. the petitioner No. 1. It has also been averred that all the petitioners had assured to return the amount on 18.8.2001. Therefore, the averments prima facie make out essential ingredients of Section 141 of the Act of 1881 that the petitioners No.2 to 4 were incharge and responsible for the conduct and business of the Firm. Learned counsel submitted that in order to make out a prima facie case against all partners of the Firm, no specific statutory words are required to be stated and even from the overall reading of the complaint in its totality, it is prima facie revealed that the petitioners No.2 to 4, who were in-charge and responsible for the conduct of the business of the firm, a case for registration of offence is made out. It is submitted that in such a case, petitioners No.3 & 4 are also liable to be prosecuted in view of the provisions contained in Section 141 of the Act of 1881, even if cheque was issued only by the petitioner No.2 and even if notice was given only to the petitioners No. 1 & 2. It is further contended that in the complaint, it has been specifically alleged that the petitioners deliberately did not receive the envelop containing notice and neither paid the amount under the notice of the date, within 15 days nor gave any reply.

8. In so far as M.Cr.C.No.137 of 2005 is concerned, it has been submitted by learned counsel for the respondent/complainant that in the complaint, it has been specifically averred that the petitioners No.2 to 4 had taken loan for the need of the business of the firm and that the cheque was issued by the petitioner No.3 bearing seal of the firm. He submits that the act of all the partners in approaching the complainant for loan, prima facie shows that all were incharge of day to day affairs and responsible for the conduct of the business of the firm. Therefore, every partner of the firm is liable to be prosecuted in view of the provision contained in Section 141 of the Act of 1881, even if cheque was issued by the petitioner No.3. It is also submitted that though demand notice was not given to petitioner No.4, but, he being the partner, he is liable to be prosecuted,

in view of the provisions contained in Section 141 of the Act of 1881. It is sufficient compliance of the provisions contained in Section 141 of the Act of 1881 that the notice was given in the name of the firm. It has also been contended that the notice, which was sent, was not taken and returned as also no payment was made within a period of 15 days from 13.8.2001 nor any reply was sent. It has also been contended by learned counsel for the respondent-complainant that the complaint is not pre-mature, because, according to the averments made in the complaint, the petitioners had come to know about the notice on 13.8.2001 and even then, payment was not made within a period of 15 days, i.e. till 29.8.2001. The complaint was filed on 31.8.2001, and therefore, it cannot be said to be pre-mature.

9. Learned counsel for the respondent/complainant submitted that the petitioner Anil Kumar Agrawal is not liable to be discharged on the ground that he was not the partner of the firm, because whether Anil Kumar Agrawal was the partner of the Firm or not, is a matter of evidence and his case that he was not the partner of the Firm by placing on record the photocopy of the deed of the Partnership, is merely a defence. Learned counsel for the respondent-complainant relied upon the judgment in the case of *Inder Sehgal v. M/s Thakur Petrol Chemical Ltd.* 2004(1) Bankmann 222 (P&H)

10. Section 141 of the Act of 1881 makes provision with regard to offence by companies. By virtue of the explanation appended to the aforesaid provision, the provisions are applicable in respect of the firm also.

11. The legal position with regard to the vicarious liability of the Directors of the Company in case of allegation of offence u/s 138 of the Act of 1881 by a Company came up for consideration before the Supreme Court in large number of decisions. In the matter of *S.M.S. Pharmaceuticals Ltd.* (supra), a larger Bench (three Judges Bench) of the Supreme Court examined provision contained in Section 138 and 141 of the Act of 1881 in the matter of vicarious liability of the Directors of the Company, while answering a reference made by a smaller Bench and it was finally concluded as under:

19. 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 u/s 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 the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable u/s 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the 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 the 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 the conduct of its business. When that is so, holders of such positions in a company become liable u/s 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 u/s 141. So far as the 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.

In a subsequent decision in the case *N.K. Wahi v. Shekhar Singh and Ors.*, the aspect with regard to vicarious liability of the Directors, again came up for consideration. Relying upon the judgment in the case of *S.M.S. Pharmaceuticals Ltd.* (supra) as also judgment in the case of *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya*, it was held:

7. This provision clearly shows that so far as the companies are concerned if any offence is committed by it then every person who is a Director or employee of the company is not liable. Only such person would be held liable if at the time when offence is committed he was in charge and was responsible to the company for the conduct of the business of the company as well as the company. Merely being a Director of the company in the absence of above factors will not make him liable.

8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction-There should be clear and unambiguous allegation as to how the Directors are incharge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.

Again a larger Bench of the Supreme Court (three Judges Bench) in the case of *Ramrajsingh Vs. State of M.P. and Another*, considered similar aspect with regard to liability of the Directors, relying upon the decision in the case of *S.M.S. Pharmaceuticals Ltd.* (supra), *Sabitha Ramamurthy* (supra) and *N.K. Wahi* (supra). The Supreme Court also noted its earlier decision in the case of *Saroj Kumar Poddar* (supra). The aforesaid legal position was again affirmed by the Supreme Court in the case of *National Small Industries Corp. Ltd. Vs. Harmeet*

Singh Paintal and Another, The ratio of law laid down in the case of S.M.S. Pharmaceuticals Ltd. (supra), Sabitha Ramamurthy (supra), N.K. Wahi (supra) and Saroj Kumar Poddar (supra) was reiterated and affirmed by observing thus:

27. The said issue again came up for consideration before a three Judge Bench of this Court recently in Ramrajsingh v. State of M.P. In this case, the earlier decisions were also considered in detail. Following the decisions of S.M.S. Pharmaceuticals Ltd. case, Sabitha Ramamurthy case, Saroj Kumar Poddar case and N.K. Wahi case this Court held that it is necessary to specifically aver in a complaint u/s 141 that at the time when the offence was committed, the person accused was incharge of, and responsible for the conduct of the business of the company. Furthermore, it held that vicarious liability can be attributed only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused/Director therein vicariously liable for the offence committed by the company. It was further held that before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted. Thus, the issue in the present case is no more *res Integra* and has been squarely covered by the decisions of this Court referred above. It is submitted that the aforesaid decisions of this Court have become binding precedents.

The judgment in the case of N. Kangachari (supra) was also discussed and it was also held that the said decision does not and could not have overruled the decision in the case of S.M.S. Pharmaceuticals Ltd (supra), Ramrajsingh (supra) Saroj Kumar Poddar (supra), and N.K. Wahi (supra), in following words

31... Furthermore, this decision does not and could not case (a three Judge Bench). Ramrajsingh case (a three Judge Bench), Saroj Kumar Poddar case and N.K. Wahi case wherein it is clearly held that specific averments have to be made against the accused Director.

The aforesaid settled legal position was noted in yet another decision of larger Bench (three Judges Bench) in the case Pepsico India Holdings Pvt. Ltd. (supra), wherein the law laid down of SMS Pharmaceuticals Ltd was restated, distinguishing judgment in the case of N. Rangachari (supra).

12. The legal position, therefore, which emerges from the aforesaid decisions is that in the case of allegation of commission of offence by a Firm, the partners could not be proceeded against by impleading as accused merely because of they being the partners of the firm unless there are specific averments made in the complaint to specify the requirement of Section 141 of the Act of 1881. as examined in the aforesaid decisions.

The averments made in the complaint hardly fulfills the primary requirement and pre-requisite of a complaint before the partners of the Firm in the present case could be proceeded against, by registering offence against them. Both in the complaint as well as in the preliminary statement, in both the cases before this Court, the averments are that all the partners obtained loan by stating need of

the Firm and one of them has issued the cheque, which was dishonoured. It is interesting to note that in the complaint, it has nowhere been stated that the partners other than, one who is alleged to have issued the cheque, at the time of commission of offence, were in-charge of day to day affairs and responsible for the conduct of the business of the Firm.

13. The statutory provision adumbrated in Section 141(1) is required to be strictly construed for the reason that it is a penal statute. In the case of Sabitha Ramamurthy (supra) while restating the requirement of Section 141 of the N.I. Act in the context of a petition for quashing the process u/s 482 of the Code, it was held:

7. A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted. Not only the averments made in para 7 of the complaint petitions do not meet the said statutory requirements, the sworn statement of the witness made by the son of the respondent herein, does not contain any statement that the appellants were in charge of the business of the Company. In a case where the court is required to issue summons which would put the accused to some sort of harassment, the court should insist strict compliance with the statutory requirements. In terms of Section 200 of the Code of Criminal Procedure, the complainant is bound to make statements on oath as to how the offence has been committed and how the accused persons are responsible therefor. In the event, ultimately, the prosecution is found to be frivolous or otherwise mala fide, the court may direct registration of case against the complainant for mala fide prosecution of the accused. The accused would also be entitled to file a suit for damages. The relevant provisions of the Code of Criminal Procedure are required to be construed from the aforementioned point of view.

Therefore, before the partners of the firm are made liable to be proceeded against by subjecting them to a criminal trial, the complaint must necessarily aver that each of the partners impleaded was not only in charge but was also responsible for the conduct of the firm. This statutory requirement of Section 141 of the Act of 1881 was noted by the Supreme Court in its decision in the case of K. K. Ahuja (supra) by-observing as below:

17. The criminal liability for the offence by a company u/s 138, is fastened vicariously on the persons referred to in sub-section (1) of Section 141 by virtue of a legal fiction. Penal statutes are to be construed strictly. Penal statutes providing constructive vicarious liability 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. Therefore, a specific averment complying with the requirements of Section 141 is imperative. As pointed out in *K. Srikanth Singh v. North East Securities Ltd.* the mere fact that at some point of time, an officer of a company had played some role in the financial affairs of the company, will not be sufficient to attract the constructive liability u/s 141 of the Act.

This aspect was further clarified by observing as below:

22. Section 141 uses the words "was in charge of, and was responsible to the company for the conduct of the business of the company", (emphasis supplied) It is evident that a person who can be made vicariously liable under sub-section (1) of Section 141 is a person who is responsible to the company for the conduct of the business of the company and in addition is also in charge of the business of the company. There may be many Directors and secretaries who are not in charge of the business of the company at all. The meaning of the words "person in-charge of the business of the company" was considered by this Court in *Girdhari Lal Gupta v. D.H. Mehta* followed in *State of Karnataka v. Pratap Chand and Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd.* This Court held that the words refer to a person who is in overall control of the day-to-day business of the company. This Court pointed out that a person may be a Director and thus belongs to the group of persons making the policy followed by the company, but 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.

Relying upon the decision in the case of *SMS Pharmaceuticals Ltd.* (supra) and *N.K. Wahi* (supra) in yet another decision rendered by the Supreme Court in the case of *Central Bank of India* (supra), it was held:

14. The law as laid down in *S.M.S. Pharmaceuticals Ltd.* case has been consistently followed and as late as in 2007, this Court in *N.K. Wahi* case, while considering the question of vicarious liability of a Director of a company, reiterated the sentiments expressed in *S. M. S. Pharmaceuticals Ltd.* case that merely being a Director would not make a person liable for an offence that may have been committed by the company. For launching a prosecution against the Directors of a company u/s 138 read with Section 141 of the 1881 Act, there had to be a specific allegation in the complaint in regard to the part played by them in the transaction in question. It was also laid down that the allegations had to be clear and unambiguous showing that the Directors were incharge of and responsible for the business of the company. This was done to discourage

frivolous litigation and to prevent abuse of the process of court and from embarking on a fishing expedition to try and unearth material against the Director concerned.

The Supreme Court further observed that in that case save and except for the statement that the accused persons were Directors of the Company and were responsible and liable for the act of the Company no specific allegation was made against any of them and therefore the question of proving a fact which had not been mentioned in the complaint did not, therefore, arise in the facts of the case. In that case, quashing of the complaint by the High Court in exercise of powers u/s 482 of the Code was upheld.

In yet another decision in the case of Rajiv Khurana (supra), relying upon the decision in the case of SMS Pharmaceuticals Ltd (supra) and other decisions in on that line in the case of Sabitha Ramamurthy (supra) as also in the case of K.K. Ahuja (supra), it was held as under:

17. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of the company's business. Every Director need not be and is not incharge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-Director officers, it is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.

14. In the case of K Srikanth Singh v. North East Securities Ltd. and Another (2007) 12 SCC 788, it was found that the allegations contained in the complaint against the directors were to the effect that the directors of the Company had participated in negotiation for obtaining financial assistance for the Company and after executing the comprehensive loan, documentation, loan was taken from the Complainant's firm. It was held that mere allegations of negotiation for obtaining financial assistance on behalf of the Company by its directors would not constitute ingredients for the purpose of constituting offence u/s 138 of the Act of 1881, as there was no allegation made in the complaint that the directors were responsible for the conduct of the business of the Company. It was held that mere allegation regarding director's participation in the negotiation for financial assistance would not give rise to inference that the concerned director was responsible for day-to-day affairs of the company. The aforesaid decision is squarely applicable in the present case, because partners other than the one, who has issued the cheque, are sought to be impleaded as an accused only on the allegation that all the partners had obtained loan and assured repayment.

15. In yet another decision of Katta Sujatha (Smt) (supra), it has been held that in the absence of allegation that the concerned partner was in-charge and responsible for the conduct of the business of the Firm and the allegation that the offence was committed with his consent or connivance or that the same was

attributable to any neglect on his part in the matter of issuance of the cheque, no case is made out against the said partner and the complaint would not be maintainable. The aforesaid decision also applies with full force in the present case because none of the averments of the above nature have been made in any of the two complaints against those partners who are not alleged to have issued the cheque.

16 Additional grounds raised in M.Cr.C.No.2775 of 2004 are that there is no averment in the complaint regarding refusal to pay within a period of 15 days of receipt of notice, therefore, the entire complaint is liable to be quashed, is not made out from the bare reading of the complaint.

17. In para 8 of the complaint, it has been stated that the envelop containing notice was not received deliberately by the petitioners-accused and no payment was made within a period of 15 days nor any reply was given.

18. Therefore, it would be a matter of evidence and at this stage, it cannot be said that there is no specific and necessary averment in that regard. Similarly, in M.Cr.C.No.137 of 2005, similar ground has been taken, but after going through the complaint and the preliminary statements, it is found that the envelop containing notice was deliberately not received and further that no payment was made within a period of 15 days nor any reply was given, therefore, on that ground, the complaint would be quashed and it would be a matter of evidence. One more additional ground raised is that the complaint is pre-mature. The complaint allegations are that the envelop containing notice was taken to the petitioners on 13.8.2001, but it was not received and deliberately returned and payment was not made. In the complaint, further allegation is that the demand notice was received on 13.8.2001, but no payment was made within a period of 15 days. The complaint has been filed on 31.8.2001. Therefore, on that ground, the complaint is not liable to be quashed.

19. From the above discussion, this Court comes to the conclusion that except the firm and one who had actually issued the cheque, initiation of criminal proceedings against other persons, who were alleged to be partners would be abuse of the process of law. In the complaint (M.Cr.C.No.2775 of 2004), it has been alleged that the cheque was issued by Ramlal bearing seal of the firm and demand notice was also given to the petitioner No. 1 Firm and Ramlal. In M.Cr.C.No.137 of 2005, it has been averred that cheque was issued by Sharad Kumar Agrawal. It has also been alleged that the notice was given to the Firm and the petitioner- Sharad Kumar Agrawal.

20. Consequently. M.Cr.C.No.2775 of 2004 is partly allowed. The complaint insofar as petitioner Sharad Kumar Agrawal and Anil Kumar Agrawal is concerned, is found untenable in law. Therefore, order taking cognizance as well as the order passed by the Revisional Court against Sharad Kumar Agrawal and Anil Kumar Agrawal to the extent of their impleadment and registration of case is hereby set aside. The complaint shall proceed only against the Firm and Ramlal

Agrawal.

21. Insofar as M.Cr.C. No. 137 of 2005 is concerned, the same is also partly allowed and the complaint as also registration of case against Ramlal and Anil Kumar Agrawal are concerned, are found untenable in law. Accordingly, the order taking cognizance against Ramlal Agrawal and Anil Kumar Agrawal and the order of the revisional Court to the extent of their impleadment and registration of case are declared illegal and set aside. The complaint against Ramlal Agrawal and Anil Kumar Agrawal is quashed, but the complaint shall continue against the Firm and Sharad Kumar Agrawal. In the result, both the petitions are accordingly partly allowed to the extent indicated above.