

(2001) 03 MAD CK 0058

In the Madras High Court

Case No : Criminal O.P. No. 24045 of 2000

M/s. Sarvaraya Textiles Limited and others

APPELLANT

Vs

M/s. Integrated Finance Limited

RESPONDENT

Date of Decision : 07-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473
Negotiable Instruments Act, 1881 (NI) — Section 133, 138, 141, 142

Citation : (2001) 107 CompCas 256

Hon'ble Judges : Malai Subramanian, J

Bench : Single Bench

Advocate : M/s. C.S. Dhanasekaran and G. Moorthi, for the Appellant; M/s. Mr. R. Ashokan, Senior Adv for Mr. G. Ravikumar, for the Respondent

Judgement

1. The petitioners are accused No. 1 to 3 in C.C.No.8417 of 1999 pending on the file of the learned XVII Metropolitan Magistrate, Saidapet,

Chennai. They seek to quash the proceedings pending against them for an offence u/s 138 of Negotiable Instruments Act.

2. The complainant/respondent is a public limited company and a non-banking financial institution and carrying on business in extending financial

facility to its customers. The first accused entered into a lease agreement with the complainant on 24.3.92 for Rs.66,61,267, but committed default

in payment of lease rentals. Later on, at the request of the first accused sarvaraya Textiles Limited, the said lease facility was converted into a bill

discounting facility and an agreement for bill discounting facility was entered into between the complainant and the first accused on 30.11.1994 for

Rs. 1,20,00,000 and adjusted the said amount towards the amount due under the lease agreement.

3. Since the first accused committed default in payment, an agreement dated 31.12.1996 was entered into among the complainants the first

accused and the third accused. In the said agreement, the first accused agreed to pay Rs.1,79, 22,192 to the complainant and to discharge part of

the amount due under the said agreement, the first accused issued a cheque dated 30.3.1997 drawn on Indian Bank, Commander-in-Chief Road,

Chennai for a sum of Rs.1,48,00,000. When the cheque was presented for collection, it was dishonoured with an endorsement ""Not arranged for"".

Thereafter, the complainant issued a notice dated 3.7.1997 to the first accused calling upon the accused to make the payment towards the

dishonoured cheque. Though the notice was received by the first accused on 5.7.1997, there was no payment and therefore, a complaint has been

filed against the first accused company as well as the second accused Managing Director and the third accused Director with an allegation that the

second and third accused are managing the day-to-day affairs of the first accused company and responsible for the conduct of the business of the

first accused company. The complaint is presently sought to be quashed on various grounds.

4. The first ground raised by the learned counsel appearing for the petitioners/accused is that though the complaint was said to have been filed on

14.8.1997, the same was taken cognizance of by the Court after recording the sworn statement of the complainant only on 10.12.1999.

Therefore, the complaint itself is barred by limitation as envisaged in Section 468 of Cr.P.C. In support of his contention, he relies on a ruling of the

Supreme Court reported in State of Punjab Vs. Sarwan Singh, rendered in the case of wherein the Apex Court has held that the object of Criminal

Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of

which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after

the date of the offence. Therefore, from this ruling, according to the learned counsel appearing for the petitioners, making of the complaint is

relatable to taking cognizance of the offence u/s 468 of Cr.P.C. and therefore, there was a delay of more than one year in taking the complaint on

file and hence the proceedings have to be quashed. But according to the learned senior counsel appearing for the respondent/complainant, taking

cognizance of an offence is different from making complaint and according to Section 142 of Negotiable Instruments Act, it has fixed period of one

month only for making complaint and not for taking cognizance of offence and merely because, the Court takes cognizance of the offence

belatedly, the complainant may not be made to suffer, though he lodged the complaint within one month as stipulated u/s 142 of Negotiable

Instruments Act. In support of his contention, he relies on a ruling of the supreme Court in the case of Narsingh Das Tapadia v. Goverdhan Das

Partani and another, 2000 (6) Supreme 205, wherein the Supreme Court has held that- taking cognizance of an offence by the court has to be

distinguished from the filing of the complaint by the complainant. Taking cognizance would mean the action taken by the Court for initiating judicial

proceedings against the offender in respect of the offence regarding which the complaint is filed. Before it can be said that any Magistrate or Court

has taken cognizance of an offence it must be shown, that he has applied his mind to the facts for the purpose of proceeding further in the matter at

the instance of the complainant." Learned counsel also argues that the provisions u/s 468 of Cr.P.C are not applicable to the offence u/s 138 of

N.I. Act especially because of the non obstante clause available in Section 142 of N.I. Act.

5. The learned counsel appearing for the petitioners relief on a ruling of the Supreme Court rendered in the case of P.P, Unnikrishman and another

v. Puttiyottil Alikutty and another, 2000 SCC 1460 wherein it has been said that the extension of period contemplated in Section 473, Cr.P.C. is

only by way of an exception to the period fixed as per the provisions of Chapter XXXVI of the Code and Section 473 of the Code therefore

cannot operate in respect of any period of limitation prescribed under any other enactment. This ruling was rendered while appreciating the

provisions found in Section 64 Clause (3) of Kerala Police Act. Section 64 (3) reads that no court shall take cognizance of any suit or complaint,

in respect of any offence or wrong alleged to be committed or done by a Magistrate, police officer or other person on account of any act done in

pursuance of any duty imposed or authority conferred on him by this Act or any other law for the time being in force or of any rule, order or

direction lawfully made or given thereunder unless the suit or complaint is filed within six months of the date on which the offence or wrong is

alleged to have been committed or done. While interpreting this provision, their Lordships have held that the extension of period contemplated in

Section 473, Cr.P.C. cannot operate in respect of any period of limitation prescribed under any other enactment. But what has been said in the

Kerala Police Act is that no court shall take cognizance unless the complaint is filed within six months. Likewise, u/s 142 also, it has been said that

(a) no court shall take cognizance 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 133. Therefore, making of a complaint within one month of the date on which the cause of action arises is an

essential precondition for taking cognizance of the offence u/s 138 of N.I. Act,

6. Another ruling of the Supreme Court rendered in the case of Pankajbhai Nagjibhai Patel v. State of Gujarat and another, 2001 (1) CTC 368

says that Under the Code a complaint could be made at any time subject to the provisions of Chapter XXXVI, but so far as the offence u/s 138 of

the NI Act is concerned such complaint shall be made within one month of the cause of action. The Supreme Court in the latter ruling does not

seem to have said that taking cognizance of an offence after one month after the cause of action arose, is illegal. While discussing the effect of

Section 142 of N.I. Act, according to the Supreme Court, the non obstante expression is intended to operate only in respect of three aspects, and

nothing more i.e. (i) Under the Code Magistrate can take cognizance of an offence either upon receiving a complaint, or upon a police report, or

upon receiving information from any person, or upon his own knowledge except in the cases differently indicated in Chapter XIV of the Code. But

Section 142 of the NI Act says that in so far as the offence u/s 138 is concerned no court shall take cognizance except upon a complaint made by

the payee or the holder in due course of the cheque, (ii) Under the Code a complaint could be made at any time subject to the provisions of

Chapter XXXVI, but so far as the offence u/s 138 of the NI Act is concerned such complaint shall be made within one month of the cause of

action, (iii) Under Article 511 of the First schedule of the Code, if the offence is punishable with imprisonment for less than 3 years or with fine only

under any enactment (other than Indian Penal Code) such offence can be tried by any Magistrate, whereas the offence u/s 138 of the NI Act

which is punishable with a maximum sentence of imprisonment for one year can be tried only by a Metropolitan Magistrate or Judicial Magistrate

of first class. Therefore, according to the Supreme Court the phrase taking cognizance of any offence occurring in Section 142(a) of N.I. Act is

relatable to only the complaint made by the payee or the holder of the cheque in due course and nothing more. Under such circumstances, treating

making of a complaint as taking cognizance of the offence"" so as to attract the bar of limitation found in section 142(b) is not only unfair but also

unjust, in a situation where the complaint was made and properly filed before the court within a month as contemplated u/s 142(b), but in view of

the absence of a presiding officer or for any other reason, the complaint could not be taken on file, and it was taken belatedly and on the day when

the complaint was taken cognizance of by the Court, some period beyond the period of limitation, has passed, by the act of the court in taking

cognizance of the complaint belatedly, can the complainant be made to suffer? That is why u/s 142(b), the parliament has chosen to put the phrase

making of the complaint"" instead of ""taking cognizance of the complaint"" as defined by the Hon''ble Supreme Court in Narsingh Das Tapadia v.

Goverdhan Das Partani and another, 2000 (6) Supreme 205.

7. Even in the earlier ruling reported in P.P. Unnikrishnan and another v. Puttiyottil AliKutty and another, 2000 SCC 1460 relied on by the learned

counsel appearing for the petitioners, the alleged occurrence in that case took place on the evening of 23.12.1994 when the complainant was

called to the police station, he was asked to remain therein till the arrival of the first appellant. But only on the next morning when both the appellant

police officers reached the police station, they put the complainant in the lock-up room and the first appellant questioned the complainant as to

whether he stole the articles from the next shop and then assaulted the complainant who was said to have been kept in lock-up from 24.12.1994

to 27.12.1994 and was released from the confinement only on 27th morning. While so, the complaint by the first respondent in that case was made

only on 1.9.1995, that is to say more or less 8 months after the alleged commission of offence by the police officers. u/s 64(3) of Kerala Police

Act, no court shall take cognizance of any complaint; against the police officers in respect of any offence on account of any act done in pursuance

of any duty imposed on them unless the complaint is filed within six months of the date on which the offence is alleged to have been committed.

While dealing with the said provision, their Lordships have held that there is a specific period of limitation for making a complaint within a period of

six months from the date of the alleged commission of the offence and in as much as the complaint was filed beyond the period of limitation.

Section 473, Cr.P.C. cannot be resorted to, to condone the period of limitation or to extend the period of limitation because insofar as Section

473 is concerned, the extension of the period contemplated therein is only by way of an exception to the period fixed as per the provisions of

Chapter XXXVI of the Code. Even in the above said rulings of the Supreme Court as relied on by the learned counsel appearing for the

petitioners, making of the complaint beyond the period of limitation alone was discussed and it was decided that as per the special law, the

complaint was barred by limitation. Here in this case, admittedly, the complaint has been made prior to the period stipulated u/s 142(B) of N.I,

Act. Therefore, the above said rulings are of no avail to the petitioners herein.

8. The learned senior counsel appearing for the respondent also drew support from the ruling of a Division Bench of this Court rendered in the

case of A. Vinayagam and 3 others Vs. Dr. Subash Chandran and another, . It was also a case of a complaint u/s 138 of N.I. Act. While

discussing the important features of various clauses found in Section 142 of N.I. Act, the Division Bench has held as follows:

The wording in clause (b) of S. 142 of N.I. Act is important and it suggests that the complaint has to be made within one month of the date on

which the cause of action arises under clause (c) of the proviso to Section 138. That section does not speak of either cognizance or issuance of

process. If clause (b) is read along with clause (a), it only suggests that a court shall not take cognizance of an offence punishable u/s 138 unless

the complaint in that behalf is made within one month of the date on which the cause of action arises. The thrust is only on ""making the complaint"" ,

meaning thereby ""presenting it to the Magistrate"". The concept of its cognizance or the concept of issuance of process on the basis of such

complaint are simply not to be found in the whole section. It is clear position of law that once the complaint is filed within time contemplated u/s

142(b), the cognizance could be taken later, in all Section 142(b) mandates only that the complaint should be made (filed) within one month of the

date on which the cause of action arises under clause (c) of proviso to Section 138. The limitation is undoubtedly provided only for filing the

complaint and not for taking its cognizance or even for issuing the process. There is nothing in that clause indicating or bringing fetters on the

powers of the Magistrate to take cognizance on a complaint which has been filed within limitation, i.e. within thirty days of the date on which the

cause of action arises under clause (c) of proviso to section 138. Such fetters may come by the general law of limitation contained in Section 468

of the Code of Criminal Procedure, but that is not the case here. We are not on the subject, of cognizance of the offences, but on the subject

making the complaint and that would be only when the complaint is presented to the Magistrate.

In view of the above said ailing, the main contention of the learned counsel appearing for the petitioners that the complaint is barred by limitation is

liable to be dismissed.

9. The next contention of the learned counsel appearing for the petitioners is, no notice was served on the second and third petitioners and if they

would have been served with statutory notice individually, they would have made arrangements to make the payment of the amount as demanded

in such notice. In support of his contention, the learned counsel relied on a ruling of the Supreme Court reported in Shakti Travel and Tours Vs.

State of Bihar and Another, . It is a short order and for better appreciation, the entire order is reproduced as follows:

Accused who is the Appellant, assails the order of the High Court refusing to quash the complaint filed u/s 138 of the Negotiable Instruments Act.

The only ground on which the learned counsel for the Appellant prays for quashing of the complaint is that on the assertions made in paragraph 8

of the complaint, it must be held that notice has not been served and, therefore, an application u/s 138 could not have been maintained.

Undoubtedly, the accused has a right to pay the money within 15 days from the date of the service of notice and only when it fails to pay, it is open

for the complainant to file a case u/s 138 of the Negotiable Instruments Act. That being the position and in the complaint itself having not been

mentioned that the notice has been served, on the assertions made in paragraph 8, the complaint itself is not maintainable. We accordingly quash

the complaint,

It is a case where there was a single accused, but there was no notice at all and the complaint also does not speak about serving of notice on the

accused. In that context, the Supreme Court has held that since the complaint itself does not mention that notice has been served on the accused,

the complaint is not maintainable and therefore it was quashed. That is not the position in this case. The complaint in this case reads in para-6 that a

notice dated 3.7.1997 was issued to the first accused u/s 138 of N.I. Act, calling upon them to make the payment towards the said dishonoured

cheque and the said notice was received by the first accused on 5.7.1997. But the accused failed to make the payment towards the said

dishonoured cheque. According to the complainant, the first accused is a company represented by its Managing Director, the second accused and

the third accused is the Director. Therefore, according to the learned senior counsel appearing for the respondent/complainant, notice served on

the company amounts to notice to the Managing Director as well as Director and individual notice is not necessary. In this context, the learned

counsel appearing for the accused petitioners relies on two rulings of this Court. The first one is that rendered in CrI.O.P, No.9530 of 1998. The

petitioner in that case was A3. This Court has held that in the absence of a statutory notice to the petitioner, which is mandatory under the

provisions of the Negotiable Instruments Act, the petitioner cannot be prosecuted for the offence alleged against him. So holding, the complaint as

against that petitioner was ordered to be quashed. In yet another ruling in CrI.O.P. No.12904 of 1999, this Court has held after elaborately

discussing the various aspects of Section 138 of N.I. Act that in the absence of statutory notice to the petitioner who was a Managing Director of

the company which is mandatory under the provisions of the negotiable Instruments Act, a complaint could be quashed. Learned Judge also relied

on a ruling of this Court rendered in Cri.O.P.No.9530 of 1998 which has been cited supra. While holding so, the learned Judge himself has said

that in the judgment reported in 1991 (2) MWN (Cr.) 117 referred to by the learned counsel for the respondent, of course it is decided that no

notice to all the individual partners is necessary and similarly in the judgments reported in Jain Associates and others, v. Deepak Chaudkary and

Co. 2000 (2) Crimes 374, K. Pannir Selvam v. M.M.T.C. Ltd. and another, 2000 (2) Crimes 354 and 1996 (1) Crimes 412, the Courts have

also taken the same view. The learned Judge distinguished the above said rulings on the ground that the points as to the cause of action for the

offence as well as the knowledge to the individual person about the commission of offence have not been either canvassed, argued, considered or

decided in the above said judgments and at one place, the learned Judge also says that no other judgments have been brought to his notice holding

contrary view taken in his order.

10. The learned senior counsel appearing for the respondent/complainant relied on two rulings referred to by the learned judge in CrI.O.P.No.

12904 of 1999 reported in K. Pannir Selvam v. M.M.T.C. Ltd, and another, 2000 (2) Crimes 354 and Jain Associates and others, v. Deepak

Chaudkary and Co., 2000 (2) Crimes 374. According to the rulings of the Andhra Pradesh High Court reported in K. Pannir Selvam v.

M.M.T.C. Ltd. and another, 2000 (2) Crimes 354 rendered in the case of requirement of section 138(b) of N.I. Act is that notice should be sent

to the drawer of the cheque and not to all the persons, who can be deemed to be liable apart from the drawer of the cheque by virtue of the

provision in Section 141 of the Act. In that case a notice was issued to the company and its Managing Director who were arrayed as accused No.1

and 2 respectively and no notice was issued separately to the petitioner, who was 6th accused and one of the directors of the first accused. In the

other case reported in Jain Associates and others, v. Deepak Chaudhary and Co., 2000 (2) Crimes 374 the Delhi High Court has held that in a

complaint for an offence u/s 138 of N.I, Act. when cheque was drawn by the partnership firm and notice was given to the firm no notice is

required to the individual partners.

11. At this juncture, this Court has to decide as to whether-non service of notice upon the accused No.2 and 3 entitles them to be absolved from

the alleged offence. Insofar as the second petitioner is concerned, he is described

as the Managing Director of M/s. Sarvaraya Textiles Limited and the first accused is M/s. Sarvaraya Textiles Limited represented by its Managing Director. It is the admitted case of both the parties that notice was sent and received by the first accused. It has to be reminded again that the first accused is M/s. Sarvaraya Textiles Limited represented by its Managing Director, S.B.P.S. Krishna Mohan. Whether this notice was received by the Managing Director himself or on his behalf by any other employee of the company, the fact remains that notice was received by the first accused. The first accused is inseparable from the second accused because the first accused has no separate function of its own leaving accused No.2, who is the Managing Director of the first accused company. Therefore, notice served on the first accused is notice served on the second accused, by virtue of his position as the Managing Director of the first accused company. Therefore, the second accused cannot come and agitate that no separate notice was issued to him. Insofar as the third accused is concerned, he is the director of the company. Section 138(b) only says that the payee or the holder in due course of the cheque must make a demand for the payment of money by giving a notice to the drawer of the cheque and not to anybody else. A reading of the complaint shows that the first accused agreed to pay Rs.1,79,22,192 to the complainant by way of dues under bill discounting facility and to discharge part of the amount due and the first accused issued a cheque dated 30.3.1997 bearing Sl.No. 900829. Therefore, the first accused company rep. by its Managing Director, S.B.P.S. Krishna Mohan is deemed to have issued the cheque. Therefore, the Managing Director is virtually the drawer of the cheque. Insofar as the cheque issued by the first accused company is concerned, some other employee of the company would have signed the cheque, but on whose account the amount remains is the only question to decide who is the drawer of the cheque. Therefore, the company being a body corporate cannot have any flesh and bone and it has to act through some human agency and by virtue of the position of the second accused as Managing Director of the first accused company, he is deemed to be the drawer of the cheque and he could have authorised some body to sign the cheque, but it is totally irrelevant. Therefore, as contemplated u/s 138(b), notice which has already been served on accused No.1 is a notice to

the second accused also. Under these circumstances, insofar as the second accused is concerned, requirements of Section 138(b) have been held to be promptly complied with.

12. With regard to the third accused, who is the director of the company, admittedly no separate notice has been served on him. Will it entitle him to be absolved of the offence alleged against him.? Section 141 creates the basis for liability upon the persons who were incharge of and were responsible to the company for the conduct of the business of the company. It is in the nature of vicarious liability. Section 141 is a deeming provision to enable the complainant to prosecute the persons who were incharge of the company and were responsible for the conduct of the business of the company along with the company. Nowhere Section 141 stipulates in such case, notice shall be issued to all such persons. But there is a proviso to Section 141 enabling those persons to prove that the offence was committed without that person's knowledge or that the said person exercised all due diligence to prevent the commission of such offence. This safeguard is available only to the persons who are prosecuted by virtue of section 141(1) and this safeguard is not available to the drawer of the cheque. Moreover, unless the company is made liable, the question of punishing the persons who are in charge of and are responsible for the conduct of the business of the company does not arise. The Supreme Court in the case of Anil Hada Vs. Indian Acrylic Limited, has held that though the company itself is not prosecuted, the persons mentioned in section 141(1) and (2) become liable if a finding is given that such company has infact committed the offence. But the only course open to the office bearers of the company is that they can adduce rebuttal evidence to establish that the company did not issue the cheque towards any antecedent liability. The Apex court in the very same ruling has held as follows:

The offender in Section 138 of N.L Act is the drawer of the cheque. He alone would have been the offender thereunder if the Act do not contain other provisions. It is because of Section 141 of the Act that penal liability u/s 138 is cast on other persons connected with the company. Further, the Apex Court has also held that normally an offence can be committed by human beings who are natural persons and such offence can

be tried according to the procedure established by law; but there are offences when can be attributed to juristic persons also and if the drawer of the cheque happens to be a juristic person like a body corporate, it can be prosecuted for the offence u/s 138 of the Act. The principal offender in each cases is only the body corporate and it is a juristic person and when the company is the drawer of the cheque, such company is the principal offender and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per Section 141. Therefore, actual offence should have been committed by the company and then alone the other two categories of persons as found in sub- Sections 1 and 2 of Section 141 can also become liable for the offence. Since according to Section 141(1), vicarious liability is attributed to the persons mentioned therein for the offence committed by the company, on the very same analogy notice served on the company amounts to serving of notice on all the persons as found in Section 141 of N.I. Act. Merely because, these persons also are punishable for the act of the company, no separate notice is essential. After all according to the very scheme of the Section, anybody who is not concerned with the conduct of the business cannot be prosecuted. But only a person who was in charge of the company and was responsible to the company for the conduct of the business of the company alone can be prosecuted, while so, such a person cannot deny knowledge about the service of notice to the company. Only in that view of the matter vicarious liability is cast upon those persons and that is why no notice to them is contemplated. Though the ruling cited by the learned counsel appearing for the accused/petitioners rendered in CrI.O.P.No.12094 of 1999 discusses about the individual liability of the persons coming u/s 141(1) of the Act and the consequential penalty that could be imposed on them by way of imprisonment as well as fine affecting their personal liberty and as such individual notice to them is essential, by virtue of their position in relationship to the company to whom these persons are responsible for the conduct of the business of the said company, no separate notice is necessary. Notice is said to be necessary in the above said ruling only because of the consequential penal suffering. When once it is held that they are responsible to the company for the conduct of the business of the company and they were incharge of the company, naturally they ought to have knowledge about the service of notice on the

company. Otherwise, if the intention of the legislature is such that anybody working in the company can be prosecuted u/s 138 of the Negotiable

Instruments Act for the default of payment on the part of the company, then so much of emphasis need have been made on the persons, who were

in-charge of the company and who were responsible to the company for the conduct of its business for being made liable under this provision.

Therefore, I hold that notice to the company, who is the principal offender and who is the drawer of the cheque, is notice to all the persons coming

under the purview of section 141(1) as well as Section 141(2) and in that view of the matter merely because individual notice has not been served

on the third accused director, the complainant cannot be said to be out of court. Thus, with great respect, I am unable to agree with the ruling cited

by the learned counsel appearing for the petitioners as rendered in Crl. O.P.No.12904 of 1999. The rulings cited by the learned counsel appearing

for the respondent/complainant as reported in K. Pannir Selvam v. M.M.T.C. Ltd. and another, 2000 (2) Crime 354 and Jain Associates and

others, v. Deepak Chaudkary and Co., 2000 (2) Crimes 374 and also supported by the rulings reported in Suraj Theatre and Others Vs. Kakarla

Bhorathe and Another, by various High Courts namely, the High Court of Delhi, the High Court of Andhra Pradesh, the High Court of Karnataka

and the High Court of Punjab and Haryana appear to be correct and appropriate in view of the wordings found in Section 141 of N.I. Act.

Therefore, the plea of the petitioners 1 and 2 that no notice was separately served on them and hence the proceedings have to be quashed is

rejected. It cannot be taken that notice need not be served on the directors of the company. It is purely a matter of knowledge on the part of the

so called directors and others regarding service of notice to the company. This is purely a question of evidence and on the premise of want of

notice to the individual directors, complaint cannot be quashed.

13. The last straw of argument by the learned counsel appearing for the petitioners is that there is no mention in the complaint as to how the

petitioner 2 and 3 were incharge and were responsible for the conduct of the business of the company and on that ground he seeks quashment of

the proceedings against these two petitioners.

14. The learned senior counsel appearing for the respondent/complainant drew

the attention of this Court to para-4 of the complaint wherein it has been said that as the first accused sought further time to settle the amount due to the complainant, a Triparte Agreement dated 31.12.1996 was entered into among the complainant, first accused and the third accused. From this it is clear that insofar as the transaction leading to the liability is concerned, there is a clear averment that the accused No.3 also took part and he cannot disown knowledge about the transaction and escape. In view of this specific averment in the complaint that the third accused also took part and signed the triparte agreement dated 31.12.1996, it cannot be said that there is no allegation against the third accused. If there is no such allegation which is subject to proof, merely because, the third accused is the director of the company, he cannot be prosecuted; but in view of the above allegations, prosecution against the third accused also cannot be quashed, with the result, the petition stands dismissed.