

---

**(2014) 04 MAD CK 0170**

**In the Madras High Court**

**Case No :** Crl. O.P. No. 32425 of 2013 and M.P. Nos. 1 of 2013 and 1 of 2014

P. Rakesh

APPELLANT

Vs

SLO Industries Ltd.

RESPONDENT

---

**Date of Decision :** 29-04-2014

**Acts Referred:**

Negotiable Instruments Act, 1881 (NI) — Section 138, 141  
Penal Code, 1860 (IPC) — Section 11

**Citation :** (2014) 3 MLJ(Cri) 608

**Hon'ble Judges :** C.T. Selvam, J

**Bench :** Single Bench

---

## **Judgement**

C.T. Selvam, J.—Petitioner seeks to quash proceedings in C.C. No. 192 of 2011 on the file of Fast Track Court IV, George Town, Chennai. Such is an action in prosecution of offence under Section 138 of the Negotiable Instruments Act. The petitioner is arrayed as an accused in his capacity as the Director of Meghana Metallurgy Private Limited. Learned counsel for the petitioner raised two contentions. Relying on the judgment of the Division Bench of this Court in Mr. B. Raman, Mr. B. Ramesh and Mr. B. Raghu Vs. Shasun Chemicals and Drugs Ltd., , learned counsel submitted that in such decision, it has been informed that "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 and as such, individual notice to the Directors would be necessary. He submits that in the instant case, notice was issued to the first accused Company and only a copy thereof was marked to the petitioner. There has been no demand for payment by the petitioner. The second contention of learned counsel is that the complaint does not contain the necessary averment of the petitioner being in charge of and responsible to the first accused Company in the conduct of its affairs.

2. Learned counsel for respondent/complainant would seek to inform that in the proof affidavit filed by the respondent the position of the petitioner being in charge of and responsible for the company stands stated. He would place

reliance on the judgment of the Apex Court in *Mrs. Aparna A. Shah Vs. Sheth Developers Pvt. Ltd. and Another*, to submit that where the statute has made specific provision towards attaching criminal liability for an act of another, the same would attach also to officers of the Company such as the petitioner, a Director thereof.

3. This Court has considered the rival submissions.

4. This Court finds itself in disagreement with the first submission of learned counsel for the petitioner. The Division Bench of this Court in *B. Raman and 2 Others v. Shasun Chemicals and Drugs Ltd. (supra)* has proceeded to inform that individual notice to the Directors of a Company is necessary reasoning as follows:

"18. As indicated above, the word "person" is defined under Section 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 under section 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."

5. This Court would explain reasons for difference hereinunder. However, the second submission of learned counsel for the petitioner viz., that of necessary averments of the petitioner being in charge of and responsible to the first accused Company in the conduct of its affairs, not finding place in the complaint, calls for ready acceptance. The Supreme Court in *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another*, has held in paragraph 21 as follows:

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

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

6. This Criminal Original Petition shall stand allowed. The proceedings in C.C. No. 192 of 2011 on the file of Fast Track Court IV, George Town, Chennai, shall stand quashed insofar this petitioner is concerned. Consequently, connected miscellaneous petitions are closed.

7. This Court now proceeds to explain why this Court is unable to follow the decision of the Division Bench of this Court in B. Raman and 2 Others v. Shasun Chemicals and Drugs Ltd. (supra). The reasons informed by the Division Bench as to why individual notice to Directors is necessary stand above extracted.

8. Section 141 of the Negotiable Instruments Act reads thus:

"141. Offences by companies:

(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub section (1), where any offence under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance, 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."

9. The section starts with the words "If the person committing an offence under Section 138 is....." and thereafter informs when and who others would be liable for prosecution. In the view of this Court, the question of committing an offence under Section 138 of the Negotiable Instruments Act by a Company would arise only upon non-payment within the period stipulated pursuant to receipt of the statutory notice contemplated under Section 138 of the Negotiable Instruments Act. Once offence stands committed by the Company, then and then alone,

others who are in charge of and responsible "to the company in the conduct of its affairs", can be made liable. The provision for avoidance of an action pursuant to payment upon demand made upon a Director/Officer is one to be made by the Legislature. Therefore, this Court is of the view that the decision of the Division Bench in *B. Raman and 2 Others v. Shasun Chemicals and Drugs Ltd.* (supra) requires reconsideration.

Registry is directed to place the matter before the Hon"ble the Acting Chief Justice, towards obtaining instructions on reference of the matter to a larger Bench.