

**(2006) 02 CAL CK 0025**  
**In the Calcutta High Court**  
**Case No : C.R.R. No. 917 of 2002**

Raghavan Sarathy

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

**Date of Decision :** 22-02-2006

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(1)

**Citation :** (2006) 4 BC 468 : (2006) 2 CALLT 198 : (2007) 139 CompCas 768

**Hon'ble Judges :** Arun Kumar Bhattacharya, J

**Bench :** Single Bench

**Advocate :** Biplab Mitra and Debabrata Acharya, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Arun Kumar Bhattachaiya, J.—The hearing stems from an application u/s 482 Cr. PC filed by the petitioner praying for setting aside the order dated 15.01.2002 passed by the learned Sessions Judge, 8th Bench, City Sessions Court, Calcutta in Criminal Motion No. 112 of 2001 affirming the order dated 07.04.2001 passed by the learned Metropolitan Magistrate, 17th Court, Calcutta in complaint case No. C-2607/99 under Sections 138/141 of the Negotiable Instruments Act, 1881.

2. The circumstances leading to the above application are that Mukesh Sharma, representative of O.P. No. 2 Company initiated the aforesaid complaint case being C-2607/99 inter alia alleging that on the presentation of the cheque dated 08.07.99 for Rs. 1.19.903/- drawn on ANZ Grindlays Bank, Shakespear Sarani Branch, Calcutta, its banker UTI Bank Ltd.. Calcutta it was returned unpaid with a remark "payment stopped by the drawer" on 12.07.99. Despite receipt of the demand notice issued on 14.07.99 the company M/s. Corporate Couriers Ltd. failed to make payment of the amount of the cheque.

3. The petitioner after his appearance before the Court filed a petition praying for discharge on the ground that his resignation from the post of Chairman and

Managing Director of M/s. Corporate Couriers & Cargo Ltd. on 10.01.99 was accepted in the meeting of the Board of Directors on 01.03.99 and he had no control over the affairs of bank transaction which was rejected by the learned Magistrate, and the revision against the said order was dismissed.

4. Being aggrieved by the said order of dismissal, the petitioner has come up before this Court.

5. As none appeared for the O.P., the matter was heard ex parte,

6. Mr. Mitra. learned Counsel for the petitioner, relying upon the cases of SMS Pharmacauticals Ltd. v. Neeta Bhalla reported in 2005 SCC (Cr) 1975 assailed the impugned order mainly on two fold grounds viz. (1) absence of specific averment in the complaint that at the time the offence was committed the petitioner was in charge of and was responsible to the company, as required u/s 141 of the N.I. Act and (2) as the petitioner was no longer associated in the company on account of his resignation on 10.01.99 which was accepted in the Board's meeting on 01.03.99 he cannot be saddled with the criminal liability.

7. Quashing of proceeding to prevent abuse of the process of the Court or otherwise to secure the ends of justice may be done where; (1) it appears that there is a legal bar against the institution or continuance of criminal proceeding in respect of the offence alleged e.g. absence of requisite sanction, or (2) the allegations in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged, or (3) the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. That apart, the power to quash a criminal proceeding by this Court can be exercised very sparingly and with circumspection and that too in the rarest of the rare cases. In this connection, reference may be made to the cases of R.P. Kapur Vs. The State of Punjab, , State of Haryana and others Vs. Ch. Bhajan Lal and others, & M. Narayandas v. State of Karnataka reported in 2004 SCC (Cr) 118.

8. Sub-section (1) of Section 141 of the Act which deals with "Offences by Companies" provides that 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.

9. As per first Proviso to the said Sub-section (1), nothing 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.

10. In the case on hand, as per averment made in paragraph 4 of the complaint, accused No. 1 is a company within the meaning of the Companies Act, 1956 and

accused No. 2 at the material time was in charge of and responsible to accused No. 1 for conduct of day to day business.

11. The main part of Section 138 of the Act creates an offence when a cheque is returned by the bank unpaid either because of the amount of money standing to the credit of the account of the drawer is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from the account of the drawer.

12. The expression "at the material time" as used in the above paragraph is significant and it should not be construed so narrowly so as to exclude O.P. No. 2 of his being in charge of and responsible to the company at the time of commission of the offence. In this connection, paragraph 10 of the case of Neeta Bhalla (supra) may be referred to where it has been observed that, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action. So. the said contention of Mr. Mitra is not sustainable,

13. As regards the second contention above, undisputedly accused No. 2 was the signatory of the cheque dated 08.07.99 which prima facie negatives the story of resignation by accused No. 2 on 10.01.99 and acceptance of the same in the Board's meeting on 01.03.99. Nevertheless, as observed in the case of Neeta Bhalla (supra), conversely a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of the business of a company at the relevant time. That apart, the above contention being the defence case is a matter for trial and cannot be expected to be decided here.

14. With the background discussion, the present application being devoid of any merit be dismissed ex parte.

15. Interim order of stay passed on 22.04.2002 stands vacated.

Let a copy of this order be sent down at once to the learned Court below.

Xerox certified copy of the order, if applied for, be supplied to the petitioner as expeditiously as possible.