

(2015) 02 KAR CK 0360

In the Karnataka High Court

Case No : Criminal Appeal No. 369/2010

Ramesh Santhanam

APPELLANT

Vs

Sadashiva Rao and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Companies Act, 1956 — Section 10-E, 10-F, 2(10-A), 2(24), 291
Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 10
Criminal Procedure Code, 1973 (CrPC) — Section 200
Evidence Act, 1872 — Section 114
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(1), 142

Citation : (2015) 4 AKR 78 : (2015) 2 BC 637 : (2015) 2 KarLJ 559

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : Kashinath, for the Appellant; H. Mujtaba, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Budihal R.B., J.—This is the appeal preferred by appellant-complainant being aggrieved by the part of the judgment dated 22.1.2010 passed by the 13th Additional Chief Metropolitan Magistrate, Bengaluru passed in CrI. Case No. 25484/2005 acquitting respondent Nos. 1 to 3—accused Nos. 3 to 5 of the offence punishable under Section 138 r/w. Section 141 of the Negotiable Instruments Act (for short "the Act").

2. The case of the complainant in brief is that M/s. Interactive Infonet Limited, accused No. 1, is a company registered under the Companies Act having its office at No. 13, Krishna Reddy Layout, Domlur, Bengaluru, while accused No. 2 Rajaram Khandige along with Sadashiva Rao, V.T. Vijaya Krishna and Ananth Bhat, are its directors. The appellant was informed that M/s. Interactive Infonet Limited was started with an object to set up call centres. In that connection, the company borrowed Rs. 5.00 lakh on 21.1.2002 from the appellant and in token

thereof, executed an on demand promissory note signed by Rajaram Khandige (2nd accused), an authorised signatory of M/s. Interactive Infonet Limited, on its behalf, agreeing to repay the same with interest at 20% p.a. on the said amount and the same is acknowledged by a letter dated 22.1.2002 signed by him. The company gave 15 cheques towards the interest due payable in respect of the said borrowing along with a post dated cheque for Rs. 5.00 lakh towards the principal amount. By a letter date 8.4.2002, a request was made for return of the cheques issued earlier and in replacement thereof, issued cheques bearing Nos. 814923 to 814935, each for Rs. 8,333/- towards interest for the period 22.4.2002 to 22.4.2003 and a cheque bearing No. 782730 dated 22.4.2003 for Rs. 5.00 lakh towards principal amount vide letter dated 22.4.2003. All the respondents assured the complainant that the cheques as and when presented would be honoured and encashed. All the above cheques were signed by Rajaram Khandige as a director of the company being its authorised signatory by its board of directors consisting of respondent Nos. 1 to 3. Appellant was made to believe that Rajaram Khandige was authorised to make payment on behalf of the company by all its directors. All the cheques when presented returned with an endorsement "exceeds arrangements". The same was intimated to the company and also to all the respondents by the appellant. But the respondents held out promises that they will pay the money within reasonable time and make good the loss. When the appellant-complainant approached the company and the directors for repayment of the amounts due to him and also interest on their borrowing, he was given another consolidated cheque on behalf of the company and signed by Rajaram Khandige, bearing No. 151294 for Rs. 6,28,000/- dated 12.1.2004 drawn on the Karnataka Bank, Koramangala Extension, Bengaluru. When the appellant tendered the said cheque for encashment, it was bounced and the Karnataka Bank, Koramangala branch, issued an endorsement dated 12.2.2004 stating "funds insufficient". Immediately, thereupon, the appellant informed the company and the authorised signatory and the respondents. Rajaram Khandige, one of the directors, altered the date of the cheque from January 12, 2004 to August 12, 2004 and affixed his signature below the corrected date with a request to present the cheque for encashment. He was authorised by the board of directors which consists of the respondents to sign the cheques on behalf of the company and its directors. He also assured the appellant on behalf of the company and the other directors that the cheque when presented would be encashed. Having regard to his past experience with the respondents, the complainant initially hesitated and refused to act on the false assurances and promises given by the respondents about genuineness of their action. But however, he presented the cheque dated 12.8.2004 for encashment, since it was still valid for payment by bankers of the company. To his astonishment, the cheque found its way back on 6.1.2005 having been refused and rejected to be encashed by the bankers of the company with an endorsement "funds insufficient". Immediately, thereafter, the appellant telephoned to the authorised signatory and the respondents, but without any result. The appellant got issued notice dated 13.1.2005 calling upon the

respondents and the company and its authorised signatory to pay the amount covered by the cheque and also to compensate him for the financial injury suffered by him equal to the amount due and payable to him under the cheque in question. The company and its authorised signatory and the respondents were requested to pay Rs. 6,28,000/- towards liability of the respondents and also pay interest at 20% p.a. on Rs. 5.00 lakh from January 2004 up to the date of payment within 15 days from the date of the notice reached to them. The company and the authorised signatory having received the notice on 17.1.2005 did not send any reply. While the respondents, after having received the notice sent to their residences/offices, have got sent the reply through their counsel on 31.1.2005 denying the liability and the responsibility to make the payment. Then the appellant approached the trial court by filing a complaint under Section 200 Cr.P.C. After the cognizance was taken and process was issued, the respondents appeared before the Trial Court. After conclusion of the trial and considering the materials placed on record, both oral and documentary, the trial court convicted accused No. 2 being director of accused No. 1-company and held him guilty for the offence punishable under Section 138 of the Act. However, the trial court acquitted accused Nos. 3 to 5, who are the respondents herein. Being aggrieved by the judgment and order passed by the trial court acquitting the respondents herein and also challenging the legality and correctness of the said judgment and order, the appellant complainant has preferred the present appeal on the grounds mentioned at Sl. Nos. 17 to 38 in the appeal memorandum.

3. Heard the arguments of the learned counsel appearing for the appellant complainant and the learned counsel appearing for the respondents accused.

4. Learned counsel appearing for the appellant submitted that the receipt of money by the accused company and issuing of promissory note is not in dispute. He has also submitted that all the respondents are responsible for payment of amount to the complainant which was borrowed for the business of the company and the respondents-accused are also conducting the business of the company. In this connection, the learned counsel drew the attention of this Court to Section 141 of the Act. Accused No. 2, who issued the cheque is an authorized person from the other accused. The learned counsel further submitted that 18 documents were produced before the trial court to show that there was authorization to accused No. 2 by the other accused. But the trial Court has not considered these materials and has wrongly dismissed the complaint as against the respondents herein. The learned counsel further submitted that the respondents-accused have not proved with satisfactory materials before the trial Court that they never participated in the conduct of the business of the company. Looking to the statement of officers of the company produced as per Exs. P.44 and P.45, it clearly goes to show that the respondents accused were participating in the conduct of business of the company. He further submitted that the complainant has produced many documents to show the authorization given to accused No. 2 by the other accused persons. All these materials were not properly appreciated and the trial Court has illegally held that accused Nos. 3 to

5 are not responsible for the day today affairs of the business and administration of the company. The learned counsel also submitted that looking to section 141 of the Act, the words used are "in the conduct of the business of the company" and not the words "in the day today affairs of the company." Hence, accused Nos. 3 to 5, who are the respondents herein were wrongly acquitted by the trial Court and to that extent, the judgment and order passed by the trial Court is illegal and not sustainable in law. Hence, the learned counsel submitted to allow the appeal and to set aside the judgment and order passed by the trial Court and to convict the respondents-accused Nos. 3 to 5 for the offences under section 138 of the Act. In support of his contentions, learned counsel appearing for the appellant has relied upon the decision of the Hon''ble Supreme Court reported in case of E. Bapanaiah Vs. K.S. Raju, and he has also relied upon Black''s Law dictionary to show the meaning of "authorized."

5. Per contra, learned counsel appearing for the respondents, during the course of his arguments, submitted that looking to para No. 10 of the complaint, it is simply mentioned that accused Nos. 2, 3 and 5, being the directors of M/s. IIL, at the time of issuance of the cheques referred to above, were in charge of and were responsible to the company in the conduct of its business. Hence, the learned counsel submitted that there is no specific averment in the complaint that accused No. 2 was authorized by accused Nos. 3 to 5 herein to enter into the transaction and with regard to issuance of the cheque. Hence, the learned counsel submitted that the averments made in the complaint are not sufficient to come to the conclusion that accused Nos. 3 to 5 are also responsible for issuance of the cheques and for dishonour of the cheques. This has been made clear by accused Nos. 3 to 5 in their reply notice. The learned counsel further submitted that during the course of cross examination of defence witnesses, there is no specific suggestion that accused Nos. 3 to 5 were involved in the day today affairs of the company. The learned counsel drew the attention of this Court to para No. 20 on page No. 17 of the judgment of the trial Court and submitted that perusing the materials, the trial court has rightly dismissed the complaint as against the respondents herein. Hence, he submitted that there is no illegality committed by the trial court, there is no merit in the appeal and submitted to dismiss the appeal. In support of his contentions, learned counsel for respondents, has relied upon the following judgments filed along with list of authorities dated 4.2.2015:

- "1. N.K. Wahi Vs. Shekhar Singh and Others,
2. (2010) 3 Supreme Court Cases 330 (National Small Industries Corporation Limited Vs. Armeet Singh Paintal and Another)
3. The decision of the Hon''ble Supreme Court in Crl.A. Nos. 1130-31/2003 in case of (K.K. Ahuja Vs. V.K. Vora and Another) decided on 6.7.2009.
4. The decision of the Hon''ble Supreme Court in Crl.A. Nos. 2604-2610/2014 in case of (Pooja Ravinder Devidasani Vs. State of Maharashtra and Another)

decided on 17.12.2014

5. The decision of the Hon"ble High Court of Karnataka in Crl.P. No. 339/2006 C/ W 340/2006 and 1404/2007 in case of (Sadashiva Rao and Others Vs. K. Narayana Bhat and Others) decided on 5.1.2009."

6. I have perused the pleadings of the parties presented before the trial court, oral evidence of P.W.1 and D.Ws.1 to 4, the documents at Exs. P.1 to P.43 and Exs. D.1 to D.7, judgment and order passed by the trial court and also the grounds urged in the appeal memorandum and the decisions relied upon by both sides, which are referred above.

7. It is an undisputed fact that accused No. 1 is the company and accused Nos. 2 to 5 are its directors. Even according to the complainant, the cheques as alleged in the complaint are issued by accused No. 2. But it is the contention of the complainant that the other accused persons being, the directors of the company have authorised accused No. 2 for entering into the transaction with him and also for issuance of the cheques. The respondents-accused No. 3 to 5 have denied the allegation of the complainant and it is their specific contention that they never authorized accused No. 2 to enter into the said transaction with the complainant even on their behalf also and hence, they are not responsible for the transaction between the complainant and accused No. 2.

8. Let me refer to section 141 of the Negotiable Instruments Act with regard to the offences by companies which provisions read as under:

"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.

[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 a financier 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."

9. Looking to the oral evidence of the parties, P.W.1, who is the complainant of this case, has deposed in his evidence in the examination in chief by way of affidavit and further examination in chief for the purpose of marking of the documents Exs. P.1 to P.23. During the course of the cross examination, at para No. 20 of his deposition, P.W.1 has deposed that people including the directors of accused No. 1 informed him about the objects of accused No. 1. Accused No. 1 company approached him in December 2001 and he gave the amount on 21.1.2002. In his individual capacity, he has lent the said amount. After accused No. 1 company approached him in December 2001, he has analysed the offer and lent the amount in January 2002. The offer met by accused No. 1 company is over loss. He intimated accused No. 1 company orally that he is prepared to lend the loan. The amount given to accused No. 1 company is as a hand loan and not as an investment. Before the offer came, he knew accused No. 2 Rajaram Khandige and the marketing manager Vaidyanathan. He did not pursue the call of anybody of accused No. 1 company informing them that he is prepared to lend the loan. He gave the hand loan of Rs. 5.00 lakh to accused No. 1 by way of the cheque. He has not intimated any directors of accused No. 1 company or accused Nos. 2 to 5 in writing that he will be visiting their company on 21.1.2002 to lend the hand loan. On 21.1.2002, he has visited accused No. 1 company along with the cheque of Rs. 5.00 lakh. When he has visited accused No. 1 company on 21.1.2002, accused Nos. 2 to 5 were present in the company and one of them, prepared the on demand promissory note to him after he gave the cheque to them. He has stated that he does not know as to who has prepared the on demand promissory note. It is true that the on demand promissory note is only signed by accused No. 2. It is true that nobody has signed as witnesses to the said on demand promissory note. He did not insist accused Nos. 3 to 5 to affix their signatures to the on demand promissory note. Accused No. 1 company borrowed loan of Rs. 5.00 lakh from the complainant and it has agreed to repay the said amount to him with interest at 20% p.a. after one year and further, it was agreed to issue cheques to him in respect of interest accruing every month by way of the post dated cheques. Accused No. 2 had shown him a letter stating that he was authorized by the board of directors to have dealings with him. He did not receive copy of resolution from accused No. 2 and he did not verify with accused Nos. 3 to 5 about the said resolution. PW-1 has further deposed that it is true that he did not intimate personally accused Nos. 3 to 5 regarding non encashment of the cheque. All interactions and approach is with accused Nos. 1

and 2 only. It is true that at no point of time, he has interacted with accused Nos. 3 to 5 or corresponded with them. It is true that neither himself nor his representatives consulted accused Nos. 3 to 5 before replacing the cheques. He denied the suggestion that the approach by accused No. 1 company and acceptance by him to lend loan of Rs. 5.00 lakh and also lending of Rs. 5.00 lakh by way of cheque to the complainant and the on demand promissory note executed by accused No. 1 company is not within the knowledge of accused Nos. 3 to 5. PW-1 has further deposed that it is true that Exs. P.11 and 12 are not signed by accused No. 3 to 5. It is true that copy of Ex. P.13 is not marked to accused No. 2 to 5. Before the transaction took place, accused Nos. 3 to 5 did not correspond to him or interact him regarding the said loan transaction. It is true that prior to issue of legal notice, he has not interacted with accused Nos. 2 to 5 nor they have assured payment of the amount. The averments in the complaint that accused have assured him that the cheque will be honoured is referring to accused No. 2. It is true that accused Nos. 3 to 5 were not the signatories to the cheques involved in this case.

10. Looking to the evidence of D.W.1, who is accused No. 2 had deposed his evidence in the examination in chief by way of affidavit, wherein he has totally denied the case of the complainant. During the course of cross examination, D.W.1 has deposed that it is true that accused No. 1 company and Karnataka Financial Services Limited both were having common director and Karnataka Financial Services Limited were situated in the ground floor. He is aware of the monetary transaction between accused No. 1 company and the complainant company. But he denied that he is the authorized signatory to Exs. P.1 to P. 10 and he was not aware that accused No. 1 company issued Exs. P.1 to P. 10 cheques. He denied the suggestion that accused Nos. 3 to 5 were knowing the day today administration of accused No. 1 company as directors. He denied the further suggestion that Exs. P.1 to P. 10 were issued to discharge the liability of accused No. 1 company as an authorised signatory of accused No. 1 company.

11. D.W.2 K.T. Vijaya Krishna, who is accused No. 4 had deposed in his evidence in the examination in chief by way of affidavit, wherein he has stated that he is a practicing company secretary having his office at Bengaluru. To avail the benefit of his vast experience, accused No. 2 Sri. Rajaram Khandige, who is one of the directors of accused No. 1 company prevailed upon him to be on the board of directors of accused No. 1 company without any responsibility whatsoever. He has further deposed that he was a professional director and he was not in any way connected in the business and affairs of accused No. 1 company or responsible to the day today affairs and administration of the said company. He does not have a single share in accused No. 1 company. Even in the cross examination, by learned counsel appearing for the complainant, he denied the suggestion that accused No. 2 introduced the complainant. He further deposed that he is not aware of the day to day administration of accused No. 1 company. He has also deposed that no sitting fee was paid to him for attending the meeting. He denied the suggestion that he is aware of the loan availed by

accused No. 1 company from complainant and issued cheques for repayment and the said cheques were bounced.

12. D.W.3 Sri Anant Bhat, who is accused No. 5, filed his affidavit evidence by way of examination in chief, wherein he has stated that he is the managing director of M/s. Agrahar Securities Private Limited, a respectable company of stock brokers, having its office in Bengaluru, Mysuru and the other parts of Karnataka. To avail the benefit of his vast experience, accused No. 2 Sri. Rajaram Khandige, who is one of the directors of accused No. 1 company prevailed upon him to be on the board of directors of accused No. 1 company without any responsibility whatsoever. He was a namesake director and not connected in any way with the day today affairs of accused No. 1 company. He is not having a single share in the accused No. 1 company. During the course of cross examination, DW-3 denied the suggestion that he is aware that accused No. 1 company issued cheque to the complainant for discharging the liability.

13. D.W.4 Sadashivrao who is accused No. 3 had filed his affidavit evidence by way of examination in chief wherein he has stated that he is partner in M/s. K.P. Rao and company, a leading firm of chartered accountants, having his offices in Mangaluru and Mysuru in other cases. To avail the benefit of his vast experience, accused No. 2 Rajaram Khandige, who is one of the directors of accused No. 1 company prevailed upon him to be on the board of directors of accused No. 1 company without any responsibility whatsoever. He was a namesake director and he was not in any way connected with the business and affairs of the said company or responsible to the day today affairs and administration of the company. He is not having a single share in accused No. 1 company. In the cross examination by learned counsel for complainant, D.W.4 has deposed that he is not aware that accused No. 1 company issued cheques for repayment in favour of the complainant. He denied the suggestion that he is actively participating in accused No. 1 company's day today transaction. He has denied the suggestion that himself and the other accused are responsible to pay the cheque amount.

14. Let me refer to the decisions relied upon by learned counsel on both sides.

15. In the decision relied upon by the learned counsel appearing for the appellant, in case of E. Bapanaiah Vs. K.S. Raju, , their Lordships of the Hon"ble Supreme Court have laid down the proposition as under:

"A. Contempt of Court - Civil Contempt - General principles Contempt by company - Vicarious liability of Directors - When arises - Willful disobedience of Company Law Board (CLB) order by company - Director in control of affairs of such company shall suffer consequences of such willful disobedience

B. Contempt of Courts Act, 1971 - S. 10 - Contempt of subordinate courts - Power of High Court to punish such contempt - Subordinate Court - Company Law Board established under provisions of Companies Act, 1956, held, is a court subordinate to High Court - Hence, High Court has powers under S. 10 of 1971 Act to punish for contempt of Company Law Board - Corporate Laws - Companies

Act, 1956 - Ss. 2(10-A), 10-E and 10-F - Constitution of India - Art. 215 - Words and Phrases - "Court"

16. In the following decisions relied upon by learned counsel appearing for respondent Nos. 1 to 3, their Lordships of the Hon'ble Supreme Court have laid down the proposition as under :

"1. N.K. Wahi Vs. Shekhar Singh and Others, :

A. Negotiable Instruments Act, 1881 - Ss. 138 and 141 - Dishonour of cheque - Offence by company - Vicarious liability of the Director/employee of the company - Conditions required for establishing liability - Held, under S. 141, if any offence is committed by a company, then every person who is a Director/employee is not liable - Liability lies only on such person(s) who at the time of commission of offence were in charge and were responsible to the company for conduct of the business of the company as well as the company - Merely being a Director of the company would not make such person liable.

B. Negotiable Instruments Act, 1881 - Ss. 138 and 141 - Dishonour of cheque - Offence by company - Vicarious liability of the Director/employee of the company - Requirements for launching prosecution - Requisite averments in complaint - Held, for launching a prosecution against the alleged Directors, there must be a specific allegation in the complaint as to the part played by them in the transaction - Allegation should be clear and unambiguous as to how the Directors were in charge and responsible for the conduct of the business of the company - Description should be clear.

C. Negotiable Instruments Act, 1881 - Ss. 138 and 141 - Dishonour of cheque - Offence by company - Vicarious liability of the Director/employee of the company - Requisite averments in complaint - Requirement of - Held, the precise words form S. 141 need not be reproduced in the complaint and the court can always come to a conclusion on facts in each case - However, the absence of any averment or specific evidence would result in the complaint becoming not entertainable (Para 8)

D. Negotiable Instruments Act, 1881 - S. 138 - Applicability - Dishonour of cheque - Requisite averments in complaint - Held, for bringing application of S. 138 the complaint must show that (1) cheque was issued; (2) the same was presented; (3) it was dishonoured on presentation; (4) a notice in terms of the provisions was served on the person sought to be made liable; (5) despite service of notice, neither any payment was made nor other obligations, if any, were complied with within fifteen days from the date of receipt of the notice.

E. Negotiable Instruments Act, 1881 - S. 141 - Constructive liability - Held, S. 141 postulates constructive liability of the Directors of the company or other persons responsible for its conduct or the business of the company.

2. National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and Another, :

A. Negotiable Instruments Act, 1881 - Ss. 141, 138 and 142 - Dishonour of cheque - Offence by company - Provision of vicarious liability in S. 141 - Scope - Not every person connected with the company but only those in charge of and responsible for conduct of business of the company at the time of commission of offence, held, vicariously liable - Hence, Director of accused company who was not in charge of or responsible for the conduct of its business at the time of commission of offence, held, not so liable.

B. Negotiable Instruments Act, 1881 - Ss. 141, 138 and 142 - Dishonour of cheque - Offence by company - Vicarious liability of Director - When arises

C. Negotiable Instruments Act, 1881 - Ss. 141, 138 and 142 - Dishonour of cheque - Offence by company - Vicarious liability of Director/ Managing Director/ Joint Director - Averments required to be made in complaint - In case of a Director, held, complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused company for conduct of its business not sufficient - There is no presumption that every Director knows about the transaction - In the absence of specific averment as to the role of co-accused Director, trial court's order summoning him, rightly quashed by High Court - However, where the accused is the Managing Director or a Joint/Managing Director or a Director who had signed the cheque on behalf of the accused company, making of such specific averment, held, not necessary.

D. Negotiable Instruments Act, 1881 - Ss. 141(1) and (2) - Provision in, creation vicarious liability - Nature of, and mode of its interpretation - Held, it is penal provision and has to be strictly construed

E. Negotiable Instruments Act, 1881 - Ss. 141, 138 and 142 - Dishonour of cheque - Offence by company - Vicarious liability of Director - Pleadings and proof - Vicarious liability on the part of accused, held, must be pleaded and proved and not interfered - Evidence Act, 1872 - S. 114 - Criminal Law - Vicarious liability

F. Negotiable Instruments Act, 1881 - Ss. 141, 138 and 142 - Dishonour of the cheque - Offence by company - Vicarious liability for - Persons considered to be responsible to the company for conduct of its business in terms of Companies Act, 1956, held are persons specified in S. 5 of the 1956 Act - Companies Act, 1956, Ss. 5, 291 and 2(24), (26), (30), (31) and (45)"

17. Perusing the oral evidence of the parties, which I have referred above, it is no doubt true that the complainant has produced the oral and documentary evidence to show that the accused-respondents herein were also the directors of the accused No. 1 company. But that itself is not sufficient to hold them guilty for the alleged offence under section 138 of the Act. The appellant complainant has to establish that when the alleged transaction took place, the accused-respondents were participating in the day today affairs of the company and conduct of the business of accused No. 1 company. The responsibility or the liability of the directors of the company for the offence committed by the company will arise not by their position or status as directors, but by their

participation in the conduct of the business of the company or participating in the day today affairs of the company. Looking to the materials on record, both oral and documentary, it clearly shows that the transaction is said to be between the complainant and accused No. 2 Rajaram Khandige and even it has come on record by way of cross examination of the complainant himself that even the respondents herein were not at all knowing about the transaction took place between the complainant and accused No. 2 Rajaram Khandige. Therefore, looking to the oral evidence of the parties as well as the legal position in the decisions relied upon by the learned counsel appearing for respondents accused Nos. 3 to 5, the trial court has correctly considered and appreciated the materials and rightly came to the conclusion in holding that the complainant has not proved the case as against respondents/accused Nos. 3 to 5 and has rightly dismissed the complaint. Perusing the facts and circumstances in the decision relied upon by learned counsel for the appellant, it is not coming to aid and assistance of complainant's case. No illegality has been committed by the trial court nor there is any perverse or capricious view taken by the trial court in coming to such conclusion. There are no grounds to interfere into the judgment and order of the trial court. There is no merit in the appeal and it is accordingly dismissed.