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**(2004) 03 MP CK 0071**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Cr. Case No. 14 of 2004**

Smt. Gulshan Choudhary

APPELLANT

Vs

Vinay

RESPONDENT

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**Date of Decision : 29-03-2004**

**Acts Referred:**

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

**Citation : (2004) 3 BC 453**

**Hon'ble Judges : A.K. Awasthy, J**

**Bench : Single Bench**

**Advocate : R. Saxena and G.S. Parmar, for the Appellant; Sajonia, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

A.K. Awasthy, J.—The applicant has filed this Misc. Cr. Case No. 14 of 2004, along with Misc. Cr. Case No. 15 of 04 and Misc. Cr. Case No. 16 of 04 u/s 482 Cr. P.C. against the order dated 3.12.03 passed by learned 11th Additional Sessions Judge, Indore in a revision confirming the order dated 12.11.03 passed by learned Judicial Magistrate First Class, Indore in Cr. Case No. 1042 of 02, 1227 of 02 and 1045 of 02.

2. These complaints by the respondent Vinay s/o Ramdayal Biyani were filed u/s 138 of the Negotiable Instrument Act, against the applicant on the allegation that the applicant Gulshan w/o Amar Singh, is a director of Shaktiman Auto Fabricators Pvt. Ltd. and the cheques given by the husband of applicant Gulshan, namely Amar Choudhary, were dishonoured and even after the notices given by the complainant the amount was not paid by the applicant of the dishonoured cheques. The learned trial Court recorded the statement of the complaint to all the three complaints and registered the case against the accused No. 1 Shaktiman Auto Fabricators, accused No. 2 Amar Singh, Managing Director and accused No. 3/applicant the Director.

3. The learned Counsel for the applicant has filed an application before the trial Court that she should be exonerated because she is the sleeping Director of the private company. The learned trial Court has rejected the application of the applicant by order dated 12.11.03 in all the three complaint cases.

4. The learned revisional Court has held that the applicant was the sleeping Director will be decided during the trial and the revision was dismissed.

5. Learned Counsel for the applicant vehemently argued that there is no allegation in the complaint that the applicant (accused No. 3) was the Director of the Company and in absence of any averment against the applicant in the complaints, the proceedings against the applicant be quashed. Learned Counsel for the applicant has relied on the case of KPG Nair v. Indal Menthol India Limited 7 (2000) SLT 189:I (2001) BC 243 (SC):4 (2000) CCR 100 , Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, ; Nakoda Laminators and Others Vs. State of Rajasthan and Another, and M. Chockalingam Vs. Sundaram Finance Service Ltd.,

6. In the case of KPJ Nair v. Indal Menthol India Limited (supra) it is held that in case of a dishonoured cheque a Director of Company, who is neither in-charge nor responsible to a company for the conduct of the business of the company will not be proceeded by virtue of Section 141 of the Negotiable Instruments Act. It is further held that in view of Section 141 of the Negotiable Instruments Act only the person who is in-charge of and responsible to the Company for the conduct of business will be proceeded against.

7. It is settled law that in case of the quashment of the complaint it has to be seen that whether there is allegation against the applicant for the alleged offence or not and if there is a prima facie case against the applicant, then the complaint will not be quashed. The applicant has also filed the citation Jenson and Nicholson (India) Ltd. and Ors. v. Seacem Paints (India) Pvt. Ltd., 2004(1) Bankmann 72, wherein it is observed that if there is no specific averment in the petition of a complaint against the applicant, the complaint should be quashed against the applicant.

8. From the perusal of the complaint it is clear that in para 8(B) the complainant has clearly stated that the applicant is the Director of the Company and she is doing all the business of the Company, including the money transactions of the company. It is further stated in para 8(B) of the complaint that the applicant used to receive the payment on behalf of the Company and she used to repay the amount to the complainant. Consequently the prayer of the applicant that the complaint should be quashed against the applicant for want of specific allegation against the applicant is not proper. The specific averment in the complaint clearly makes out a case against the applicant. Thus, the inherent power u/s 482, Cr.P.C. for the quashment of the complaint will not be invoked and the grievance of the applicant will be looked into and decided during the trial.

9. All the petitions are without merit, and are hereby dismissed.