

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 2770/2013

(Arising out of impugned final judgment and order dated 14/12/2012  
in CRMC No. 4250/2012 passed by the High Court Of Delhi At N.  
Delhi)

NANDAKUMAR & ORS.

Petitioner(s)

VERSUS

M/S ECE INDUSTRIES LTD.  
(with appln. (s) for stay and office report)

Respondent(s)

WITH  
SLP(Crl) No. 2962/2013  
(With Office Report)

Date : 04/08/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA  
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s)

Mr. Krishan Kumar, Adv.  
Ms. Sunita Arora, Adv.  
Dr. (Mrs.) Vipin Gupta ,Adv.

For Respondent(s)

Mr. Vijay K. Verma ,Adv.  
Mr. Dil Raj Kumar, Adv.  
Mr. R.S. Negi, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeals stand allowed in terms of signed order.

Signature Not Verified

Digitally signed by  
Neeta Sapra  
Date: 2014.08.11  
17:18:45 IST  
Reason:

(Neeta) (Usha Sharma)  
Sr. P.A. COURT MASTER  
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1692 OF 2014  
(Arising out of SLP(Crl.) No. 2770 of 2013)

NANDAKUMAR & ORS.

Petitioner(s)

VERSUS

WITH

CRIMINAL APPEAL NO. 1693 OF 2014  
(Arising out of SLP(Crl.) No. 2962 of 2013)

O R D E R

Leave granted.

These appeals have been preferred by appellants against the order dated 14th December, 2012 passed by the High Court of Delhi at New Delhi in Crl. Misc. Case No. 4250 of 2012.

By the impugned order, the High Court refused to excise power under Section 482 Cr.P.C. to set aside the impugned order dated 3rd October, 2012 passed by the Metropolitan Magistrate as also for quashing of the criminal complaint being CC No. 422/1/12 and 423/1/12.

The respondent filed a complaint case under Section 138 of the Negotiable Instrument Act about the dishonour of two cheques bearing No. 001539 dated 12th August, 2012 and cheque no. 001541 dated 12th August, 2012. The trial court by impugned order dated 29th September, 2012 issued summons to the appellants who were accused nos. 7,8, and 10 and other accused persons mentioned in the complaint and the same was issued showing 3rd October, 2012

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the date for appearance. According to appellants, they are independent non-executive directors, appellant No. 1 - Nandakumar was appointed as Director on 30th September, 2009 in the category of Independent Non-executive Director by M/s Gammon Ltd. now known as M/s GEI Industrial Systems Ltd., Bhopal, appellant no. 2 - Vijay Kumar Khanna was appointed on 29th January, 2004 as Additional Director in the category of Independent Non-executive Director by the Board of Directors of M/s GEI Industrial Systems Ltd. The appellant no. 3- Sudershan Synghal was appointed on 20th September, 2005 as nominee Director of Director of M/s GEI Industrial Systems Ltd. Who represented the Madhya Pradesh State Government (Madhya Pradesh Financial Corporation) in the category of Independent Non-Executive Director of M/s GEI Industrial

Systems Ltd. Though they were not directly involved nor dealt with the matter of the company, they were impleaded as accused in the petition under Section 138 Negotiable Instrument Act. For the said reason, the appellants filed a petition under Section 482 Cr.P.C. challenging the summoning order dated 3rd October, 2012 passed by the Metropolitan Magistrate as also for quashing of the criminal complaint being CC No. 422/1/12 and 423/1/12.

The High Court by impugned order dated 14 th December, 2012 observed as follows:

"However, a perusal of the complaint reveals that the averment against the present petitioners is that they are "in full and effective controls of all the business affairs of the accused No. 1 company and are responsible for its day to day business.

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Keeping in view the said specific averment in the complaint, this Court is of the view that neither the present complaint can be quashed nor the summoning order can be set aside."

Notice was issued on complainant-respondents. In spite of service of notice respondents have not appeared. It has not been disputed that all the appellants were appointed as Independent Non-Executive Directors of the Board of Directors of the M/s GEI Industrial Systems Ltd.(earlier known as Gammon India Ltd.). This is also apparent from the certificate dated 10 th December, 2012 issued by Chairman and Managing Director of M/s GEI Industrial Systems Ltd.

In the case of S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Another (2007)4 SCC 70 this Court held as follows;

"10. Having regard to the importance of the questions, the matter was referred to a three-Judge Bench of this Court. Upon noticing the rival contentions of the parties as also the precedents operating in the field, the questions were answered by the larger bench in the following terms:

"19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time

the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment 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

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satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the 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 the 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.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

Therefore, it is clear that merely being a Director of a company is not sufficient to make the person liable under Section 141 of the Act, till it is shown that the said Director was in-

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charge of and responsible for the conduct of his business.

The Court below and the High Court erred in not appreciating the fact that the complainant in the mechanical way cited the

names of the appellants which alleged to have been obtained from the website of the Ministry of Corporate Affairs and unnecessary dragged the appellants in litigation who were not directly charged or responsible for the company for the conduct of business. The requirement of Section 141 of the Negotiable Instrument Act is against the persons responsible for the conduct or business of the company at the relevant time. In absence of such allegation against the appellants, we hold that the complainant misused the mandate of Section 138 of the Negotiable Instrument Act.

For the reasons aforesaid, we set aside the order dated 14th December, 2012 passed by the High Court of Delhi at New Delhi in Crl. Misc. Case No. 4250 of 2012 and order dated 3 rd October, 2012 passed by the Metropolitan Magistrate and quash the criminal complaint(s) being CC No. 422/1/12 and 423/1/12.

The appeals stand allowed.

.....J.  
(SUDHANSU JYOTI MUKHOPADHAYA )

.....J.  
(S.A. BOBDE )

NEW DELHI;  
AUGUST 04, 2014