
DIRECTORS NOT
AUTOMATICALLY LIABLE
FOR CHEQUE BOUNCE

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In this article I am dealing with the liability of directors on cheque bounce under section 138 of the Negotiable Instruments Act. Whether all directors of the Company are liable under section 138, and what happens to the innocent Directors, who are not part of the transactions. What about the Directors who no more work with the Company.

Section 138 of the Negotiable Instruments Act, 1881 casts criminal liability punishable with imprisonment or fine or with both on a person who issues a cheque towards discharge of a debt or liability as a whole or in part and the cheque is dishonoured by the Bank on presentation. Section 141 of the Negotiable Instruments Act, 1881 (the 'Act') extends such criminal liability in case of a Company to every person who at the time of the offence, was in-charge of, and was responsible for the conduct of the business of the Company. The person in-charge is vicariously liable to be held guilty for the offence under section 138 and punished accordingly. Section 138 is the charging section creating criminal liability in case of dishonor of a cheque and its main ingredients are: (i) Issuance of a cheque (ii) Presentation of the cheque (iii) Dishonour of the cheque (iv) service of statutory notice on the person sought to be made liable, and (v) Non-compliance or non-payment in pursuance of the notice within 15 days of the receipt of the notice.

The Apex Court in *S.M.S Pharmaceuticals Limited V Neeta Bhalla and Another*, had held if an offence is alleged against the Company, it is not automatically make all the persons who are in the Company liable for such offence, section 141 of the Act excludes the liability of the persons who are not in charge and responsible for the business of the Company. Legislature in order to make liable only persons in-charge and responsible for business of the Company, has not made reference either to the directors or any specific officer of the Company. Section 141 of the Act hold only such persons who are responsible and in-charge of the business of the Company. Hence, in case offence by Company under the provisions of the Act, the complainant must state, as to who is the person in-charge and responsible for business of the Company.

Though averment need not be elaborate or it need not be in the nature of evidence, but what is required is, a specific averment constituting offence against the director or a person showing that, he is in-charge and responsible for the business of the company at the time of the commission of the offence.

Apex Court in the matter of *National Small Industries Corporation Limited V Harmeet Singh Paintal and Another*, had provided the following principles:

1. The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.
2. Section 141 does not make all the Directors liable for the offence. The Criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the Company.
3. Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.
4. Vicarious liability on the part of a person must be pleaded and proved and not inferred.

5. If accused is Managing Director of Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.
6. If accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averments in complaint.
7. 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.

The Hon'ble High Court of Karnataka in *Smt.Sujatha Rana V Dilip Kumar* at paragraph 12 and 13 held:

“12. In case of the Director by virtue of his offence, if he is to be made liable, then there must be necessary averment as to his involvement in day-to-day affairs. Just reproducing the provision by itself will not amount to compliance of section 141 of the Act, unless there is averment stating as to involvement in the day-to-day business of the Company to make him vicariously liable.

13. In this case, the complaint discloses that, accused 4 approached the complainant for financial assistance. It also discloses that, accused 2 and 3 are the authorized signatories and accused 1 is a company. In so far as accused 5 is concerned, except reference, there is no specific averment, as to how she is in-charge and responsible for the affairs of the company. It can be said that, the Managing Director by virtue of his office, becomes responsible, if the other directors who have signed the instrument, may also become liable, but other directors, they will not automatically become liable. Only because they are directors, section 141 of the Act does not refer to the director, but refers to the persons, person may be director or not, but he must be in-charge and responsible of the

business of the company on the date of the commission of the offence. Complainant prima facie requires to mention in the complaint.”

In the above matter, the Hon’ble High Court quashed the proceedings in so far the petitioner was concerned.

The conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a Company. Therefore, in order to bring a case within section 141 of the Act the complaint must disclose the necessary facts, showing as to how and in what manner a person is responsible for the conduct of the business of the Company.

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