



October 2022

## **Supreme Court clarifies the law on liability of persons in charge of company/firm in cases of cheque dishonour**

Recently, the Supreme Court of India (“**Supreme Court**”) in *S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan*<sup>1</sup> held that vicarious liability can be imposed on the partners of a firm when specific averments are made in the complaint as to the status of the partner qua the firm. The Supreme Court also clarified that a complaint filed under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (“**NI Act**”)<sup>2</sup> can be quashed if the accused produces unimpeachable and incontrovertible evidence to show that the person could not have been concerned with issuance of the dishonored cheque.

### **Brief Facts**

1. S.P Mani and Mohan Dairy (“**SP Dairy**”) is engaged in business of milk and milk products. It supplied its products to a partnership firm (“**Firm**”) having Dr. Snehalatha Elangovan (“**Snehalatha**”) as one of its partners. The Firm issued a cheque signed by a partner, other than Snehalatha. The cheque was dishonoured due to insufficient funds.
2. SP Dairy issued a statutory notice to the Firm and its 2 (two) partners. It also filed a complaint with the Judicial Magistrate, Erode under Section 138 of the NI Act.<sup>3</sup>
3. Snehalatha filed an application under Section 482 of the Code of Criminal Procedure, 1973 (“**CrPC**”) before the Madras High Court (“**High Court**”)<sup>4</sup> for quashing of the complaint on the ground that the Firm had been dissolved much prior to issuing of the cheque and the accounts had also been settled between the parties. Furthermore, she was not in charge of the affairs of the Firm when the cheque was issued.
4. The High Court quashed the proceedings principally on 2 (two) grounds – (a) There was nothing to indicate that Snehalatha was in charge and responsible for conduct of the business of the firm; (b) Complaint can only be prosecuted if allegations made in the complaint fulfil the requirements of Section 141 of the NI Act. Mere reproduction of the words used under Section 141 of the NI Act could not fasten liability of partner of a firm.
5. SP Dairy filed an appeal before the Supreme Court challenging the High Court’s order. The Supreme Court set aside the High Court’s order on the following grounds:

<sup>1</sup> Criminal Appeal No.1586 of 2022.

<sup>2</sup> Section 138 - Dishonour of cheque for insufficiency, etc., of funds in the account.

<sup>3</sup> STC No. 583 of 2017.

<sup>4</sup> Criminal Original Petition No.1063 of 2021.

- (a) There were clear and specific averments not only in the complaint but also in the statutory notice issued to Snehalatha that the cheque was issued with Snehalatha's consent and knowledge, which were sufficient to put her into trial for the alleged offence.
- (b) A mere bald assertion by Snehalatha that she was not in charge of or responsible for the day-to-day affairs of the Firm was not sufficient to quash the proceedings against her. She was expected to lead unimpeachable and incontrovertible evidence before the High Court, which was not done.

## Issue

The question of law which was decided by the Supreme Court in this matter has wide ramifications for determining under what circumstances a person would be liable under Section 141(1) of the NI Act for being in charge of or responsible to the company at the time the offence was committed.

## Supreme Court: Findings and Rationale

The Supreme Court, after consideration of various judgments and facts above, held the following in respect of Sections, 138 and 141 of the NI Act vis-à-vis vicarious liability:

1. For the purpose of Section 141 of the NI Act, a firm comes within the ambit of a company. vicarious liability can be fastened on the persons in charge of or responsible for conduct of the business of a firm.
2. A person who signs the cheque or who has authority to sign the cheque on behalf of the company can prima facie be assumed to be in charge and responsible for the conduct of the company.
3. The primary responsibility of the complainant is only to add specific averments in the complaint to make the accused vicariously liable. To place criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware of each and every transaction.
4. Vicarious liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm.
5. Every person who was in charge of and responsible for conduct of business at the time of commission of offence, may be 'proceeded against' but not 'punished' if such person succeeds in proving that the offence has occurred without his knowledge or that the person exercised due diligence to prevent commission of the offence. The onus to prove that the offence occurred without his knowledge or there was due diligence is upon such person and can only be discharged at the stage of evidence.
6. If any director files a petition under Section 482 of the CrPC on the ground that only a bald averment is made in the complaint and he/she is not concerned with issuance of the cheque, then such director must furnish some sterling incontrovertible material or acceptable circumstances to substantiate such contention. The director must make out a case that making him stand trial would be an abuse of process of court.
7. The Courts have to exercise the power of quashing a complaint very sparingly and the complaint ought not to be quashed if the factual foundation for the offence has been laid in the complaint. In construing a complaint, a hyper-technical approach should not be adopted so as to quash the same.
8. The Courts should discharge the accused if the ingredients of offence are altogether lacking in the complaint.
9. The object of issuing a notice before filing of the complaint is not just to give a chance to the drawer of the cheque to rectify his omission but also to make his stand clear as far as liability under Section 138 of the NI Act is concerned.

## JSA Comment

This judgment substantially reduces the onus on the complainant as it is only required to lay down the factual foundation of the offence in the complaint.

Further, it brings required clarity in law relating to liability of directors / persons in charge under Section 141 of the NI Act. It casts a higher onus of proof on person who seeks discharge to produce some impeachable and incontrovertible evidence demonstrating that such person could not have been concerned with the issuance of cheques in order to rebut the presumption under Section 141 of the NI Act.

It is ordinarily found that the company or the directors, who are recipients of the statutory notice of dishonour of cheque, do not give much importance to issuing a reply to the same, which becomes fatal to their defence in case they choose to file a quashing petition under Section 482 of CrPC. The Supreme Court has emphasized on the importance of issuing a reply to the statutory notice under Section 138 of the NI Act. It has further emphasized that recipient of the notice must take all necessary defences including unimpeachable or incontrovertible documents, to demonstrate that they were not in the management of the firm and therefore, are not liable to be proceeded against.

Another key takeaway from the decision is that an accused, who wants to pursue a quashing petition qua Section 138 of the NI Act, must produce incontrovertible evidence that the court proceedings are an abuse of process of law.

## Disputes Practice

With domain experts and strong team of dedicated litigators across the country, JSA has perhaps the widest and deepest commercial and regulatory disputes capacity in the field of complex multi-jurisdictional, multi-disciplinary dispute resolution. Availing of the wide network of JSA offices, affiliates and associates in major cities across the country and abroad, the team is uniquely placed to handle work seamlessly both nationally and worldwide.

The Firm has a wide domestic and international client base with a mix of companies, international and national development agencies, governments and individuals, and acts and appears in diverse forums including regulatory authorities, tribunals, the High Courts, and the Supreme Court of India. The Firm has immense experience in international as well as domestic arbitration. The Firm acts in numerous arbitration proceedings in diverse areas of infrastructure development, corporate disputes, and contracts in the area of construction and engineering, information technology, and domestic and cross-border investments.

The Firm has significant experience in national and international institutional arbitrations under numerous rules such as UNCITRAL, ICC, LCIA, SIAC and other specialist institutions. The Firm regularly advises and acts in international law disputes concerning, amongst others, Bilateral Investor Treaty (BIT) issues and proceedings.

The other areas and categories of dispute resolution expertise include; banking litigation, white collar criminal investigations, constitutional and administrative, construction and engineering, corporate commercial, healthcare, international trade defence, etc.

**This Prism has been prepared by:**



**Dheeraj Nair**  
Partner



**Manish Jha**  
Partner



**Shruti Dass**  
Senior Associate



**Ridhima Sharma**  
Junior Associate



14 Practices and  
23 Ranked Lawyers



15 Practices and  
18 Ranked Lawyers



7 Practices and  
2 Ranked Lawyers



11 Practices and  
39 Ranked Partners  
**IFLR1000 APAC Rankings 2022**

-----  
Banking & Finance Team  
of the Year

-----  
Fintech Team of the Year

-----  
Restructuring & Insolvency  
Team of the Year



Among Top 7 Best Overall  
Law Firms in India and  
10 Ranked Practices

-----  
13 winning Deals in  
IBLJ Deals of the Year

-----  
6 A List Lawyers in  
IBLJ Top 100 Lawyer List



Banking & Financial Services  
Law Firm of the Year 2022

-----  
Dispute Resolution Law  
Firm of the Year 2022

-----  
Equity Market Deal of the  
Year (Premium) 2022

-----  
Energy Law Firm of the Year 2021



**Ranked #1**  
**The Vahura Best Law Firms to**  
**Work Report, 2022**

-----  
Top 10 Best Law Firms for  
Women in 2022

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

---

[www.jsalaw.com](http://www.jsalaw.com)



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.