IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT: SECTION 482 CR.P.C

Crl.M.C.Nos. 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021 of 2007

Judgment reserved on: 13th November, 2007

Judgment delivered on: 04th January, 2008

Shri Rajesh Kumar Gulati
s/o Late Shri Surajbhan Gulati
R/o B-158, Jagat Puri,
Mandoli Road, Shahdra,
Delhi-110032. ... Petitioner

Through: Mr.M.Dutta, Adv.

Vs.

1.National Agricultural Co-operative
Marketing Federation of India Ltd.
(NAFED), NAFED House,
Ashram Chowk, Ring Road,
New Delhi-110014.

2.M/s Earthtech Enterprises Ltd.,
39, 2nd Floor, Sadhna Enclave,
New Delhi-110017.

3.Shri Mahavir Prasad Mishra,
39, Gate No.2, Sadhna Enclave,
New Delhi-110017.

Also at:
B-16, Shanti Kunj,
J-4/40, Khirki Village,
Malviya Nagar,
New Delhi.

4.Shri Avdesh Kumar Singh,
39, Gate No.2, Sadhna Enclave,
New Delhi-110017.

Also at:
F-242, Pandav Nagar,
Delhi-110092. ... Respondents

Through: Nemo.

V.B. GUPTA, J.

1. Since common question of law and facts are involved in all these above mentioned petitions, all these petitions are being disposed of by this common judgment.

2. Present petitions have been filed under Section 482 Cr.P.C. read with Article 226 and 227 of the Constitution of India seeking quashing of the criminal complaint cases filed under Section 138 and 141 of the Negotiable Instrument Act (for short as Act) as well as summoning order, pending in the court of Metropolitan Magistrate, Karkardooma Court, Delhi.

3. Respondent No.1, herein, has filed complaints under Section 138 read with Section 141 of the Act against the present petitioner and others including M/s Earthtech Enterprises Ltd., accused company, on the allegations that respondent No.1 is a cooperative society duly registered under the Multi State Co-operative Societies Act, 2002 and is engaged in the business of marketing of agricultural products and Nafed financial activities is the consonance of co-operative motto.

4. The accused company represented by Mr.Avdesh Kumar Singh, one of the Director, approached respondent No.1 to avail credit facilities for import of various agricultural and non-agricultural commodities. In this regard, Memorandum of Understanding dated 16th October, 2003 was executed between the complainant society and the accused company represented by Sh.Avdesh Kumar Singh. By virtue of this Memorandum of Understanding, respondent No.1 was provided with foreign and inland letter of credit facilities for importing various agricultural and non-agricultural commodities on their account. In addition, respondent No.1 also associated Merchanting Trade Transaction with the accused company to facilitate the import of commodities from one country and its subsequent sale to other country without touching Indian territory/ports on account of the accused No.1 as per guidelines issued by RBI. The accused company kept on promising to pay the outstanding amount from time to time without any intention to pay. During the course of transaction, the accused company under went financial liabilities of Rs.202.60 crores vis-a-vis Inland, Foreign LCs and Rs.235.15 crores vis a vis Merchanting Trade towards the respondent No.1 society.

5. Towards the discharge of above mentioned financial liabilities, the accused company provided the respondent No.1 with post dates cheques worth Rs.180 crores of different values payable on different dates. Out of these cheques, one cheque for Rs.5 crores was deposited by respondent No.1 with its bankers for encashment but the said cheque was unpaid with the remarks funds insufficient. Respondent No.1 informed the accused regarding the dishonour of the cheque and asked them to pay the amount. However, the accused did not pay any heed to the request of the respondent No.1. Thereafter legal notice was sent and despite that accused failed to make the payment against the said cheque.

6. It is further alleged in the complaint that accused No.2 to 4 at the time of the commission of the offence were in charge of and were responsible to the company for the conduct of the business of the company and, therefore, the accused No.2 to 4 as well as accused No.1(company) are liable for offence committed by accused No.1 under Section 138 of the Act. The present petitioner, is accused No.3 in this case. With these allegations, respondent No.1 has filed these complaint cases against petitioner and other accused persons.

7. Vide impugned order, the learned Magistrate summoned the accused persons to face trial under Section 138 of the Act. 8. It has been contended by learned counsel for the petitioner that a

bare reading of the complaint goes on to show that there are no allegations whatsoever against the petitioner alleging that he was incharge of and/or was responsible, for the conduct of the business of the company, in accordance with the settled law. Further, a perusal of the complaint emphatically establishes, that no allegation exits, whatsoever against the petitioner, that would define or implicate the petitioner in any manner, by way of an offence under Sections 138 and 141 of the Act. The petitioner is not the signatory of the dishonoured cheques, nor he is the Chairman or Managing Director of the company. The petitioner admittedly was neither incharge nor responsible, either directly or indirectly in the day-to-day affairs of the company. The petitioner has been arrayed as an accused only being a Director, and for no other reasons/purpose. In the absence of any offence either pleaded or made out in accordance with Section 138 of the Act, no process/summons could be issued against the petitioner. It is clear from the record that the learned Magistrate did not apply his mind to the material allegations in the complaint as required under the Code of Criminal Procedure. No offence whatsoever, has either been made out or alleged in the criminal complaint, warranting the issuance of the summons/process and as such the present complaint is an abuse of process of law.

9. Learned counsel for the petitioner in support of his contentions has cited various decisions of this Court as well as Apex Court contending that since no offence is made out against the present petitioner, the complaint is an abuse of the process of law and is liable to be quashed. Learned counsel for the petitioner has cited following judgments:- 1.S.M.S.Pharmaceuticals Ltd. vs. Neeta Bhalla (2005) 8 SCC 89 2.N.K.Wahi vs. Shekhar Singh and Ors (2007) DLT 783 (SC) 3.S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr. (2007) 4 SCC 70 4. Saroj Kumar Poddar v. State (NCT of Delhi) (2007) 3 SCC 693 5.J.N.Bhatia and Ors vx. State and Anr. 139 (2007) DLT 361 6.Ashok Newatia vs. State and Anr. 142 (2007) DLT 148 7.Anuj Aggarwal and Anr. vs. Aman Fincap Ltd. 143 (2007) DLT 594

10. Present petitions have been filed under Section 482 Cr.P.C. which reads as under:- 482. Saving of inherent power of High Court Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

11. This provision of law envisages three circumstances under which the inherent jurisdiction may be exercised, namely - i)to give effect to an order under the code, ii)to prevent abuse of the process of court, and iii)to otherwise secure the ends of justice. Further to seek interference under this Section, three conditions are to be fulfilled, namely - i)the injustice which comes to light should be of a grave and not of a trivial character; ii) it should be pulpable and clear and not doubtful; and iii) there exists no other provision of law by which the party aggrieved could have sought relief.

12. Keeping in view these principles in mind, it is to be seen as to whether the present petitions under Section 482 CrPC are maintainable or not.

13. In N.K. Wahi vs. Shekhar Singh and Ors.(Supra), it has been laid down that as per Section 141 of the Act, only such person is held liable if at the time when the offence was committed, he was in charge and responsible to the company for conduct of the business of the company. Held:- In certain contingencies referred to under Section 138 of the Act on the cheques being dishonoured a new offence as such had been created. But to take care of the offences purported to have been committed provisions of Sub-section (1) to Section 141 of the Act come into play. It reads as under: 141. Offence 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 dilignece to prevent the commission of such offence.

14. This provision clearly shows that so far as the companies are concerned if any offence is committed by it then every person who is a Director or employee of the company is not liable. Only such person would be held liable if at the time when offence is committed he was in-charge and was responsible to the company for the conduct of the business of the company as well as the company. Merely being a Director of the company in the absence of above factors will not make him liable.

15. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the Court can always come to a conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not be entertanable.

16. Section 138 of the Act reads as under: 138. Dishonour of cheque for insufficiency, etc., of funds in the accounts - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another persons from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an arrangement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. In order to bring application of Section 138 the complaint must show: (1) That 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. Section 141 of the Act in terms postulates constructive liability of the Directors of the company, or other persons responsible for its conduct or the business of the company.

17. The averments made against the present petitioner in the complaint read as under:- That the accused No.2 to 4 at the time of commission of offence were in charge of, and were responsible to the company for the conduct of the business of the company and therefore, the accused No.2 to 4 as well as accused No.1 (company) and liable for the offence committed by the accused No.1 under Section 138 of Negotiable Instrument act.

18. So the complainant has made specific allegations in the complaint that the present petitioner at the time of the commission of offence was incharge of, and was responsible to the company for the conduct of the business of the company and, therefore, was liable for the offence committed by the company under the Act.

19. Before filing the present petitions, admittedly respondent No.1 has given a legal notice. This notice has been dully received on behalf of the petitioner and the copy of the same has been placed on record. In its reply, it has been admitted by the petitioner that he is the whole time Director of M/s Earthtech Enterprises Ltd., the accused company, in this case. In para 4 of this reply, the petitioner has admitted his liability but according to him the cheque in question was only a collateral security. The relevant portion of the reply to the legal notice sent by the petitioner reads as under:- That it is stated that during course of business transactions between our client company and your client, certain material were procured by our client company under High Sea Sale from your client, from time to time, for which due payments had been made on a regular basis. However recently, vide letter dated 19.5.2006, our client company offered to your client to transfer all available materials, at cost price, in adjustment of good and subsisting debtors. However, your client specifically refused to accept such arrangement for reasons best known to your client. Vide stated letter dated 19.5.2006 our client duly put your client to notice and stated that under the subject cheque on presentation since the cheque in question was only a collateral security, which could not be involved in view of the fact that the primary security, in goods/debtors, had been refused by our client. In spite of being put to notice not to deposit the subject cheque is violation of accepted norm of business and commence, your client wrongly chose to deposit the subject cheque entirely to pressurize our client company to wrongly submit to its nefarious designs and intents.

20. So, according to this reply sent by the petitioner, execution of the cheques in question has nowhere been disputed and as per the reply of the petitioner, the cheques in question were issued being a collateral security. This question as to whether the cheques in question were only a collateral security or not, is a matter of evidence to be decided later on during the course of the trial. Moreover, petitioner has no where taken up this plea in his reply that he was neither incharge of or responsible to the company for the conduct of the business of accused company.

21. So, in view of the averments made in the complaint and in view of the reply sent by the petitioner in response to the legal notice, it is to be seen in this case as to whether, prima facie, an offence under Section 138 of the Act is made out in this case or not.

22. In SMS Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. (2005) 8 SCC 89, it was, inter alia, held as follows:- To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non-director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.

23. 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 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.'`

24. The matter was again considered in Sabitha Ramamurthy and Anr. vs. R.B.S. Channabasavaradhys and Anr. 2006 (9) SCALE 212 and Saroj Kumar Poddar vs. Sate (NCT of Delhi) and Anr., JT 2007 (2) SC 233. It was, inter alia, held as follows: ..... Section 141 raised a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefore. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted.....

25. So, according to these judgments, there has to be an averment that the accused was in charge of or responsible to the company for conduct of the business of the company.

26. As already stated above, these averments have been made by the complainant in the cases in hand and the Apex Court had the occasion to deal with the provisions of Section 138 and 141 of the Act very recently in N. Rangachari vs. Bharat Sanchar Nigam Limited AIR 2007 SC 1682.

27. In this case, the decision of S.M.S. Pharmaceutical (Supra) has also been referred to. The Apex Court held: By the fall in moral standards, even these negotiable instruments like cheques issued, started losing their creditability by not being honoured on presentment. It was found that an action in the civil court for collection of the proceeds of a negotiable instrument like a cheque tarried, thus defeating the very purpose of recognizing a negotiable instrument as a speedy vehicle of commerce. It was in that context that Chapter VII was inserted in the Negotiable Instruments Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (Act 66 of 1988) with effect from 1.4.1989. The said Act inserted Sections 138 and 142 in the Negotiable Instruments Act. The objects and reasons for inserting the Chapter was: ``to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the

accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers'` While Section 138 made a person criminally liable on dishonour of a cheque for insufficiency of funds or the circumstances referred to in the Section and on the conditions mentioned therein. Section 141 laid down a special provision in respect of issuance of cheques by companies and commission of offences by companies under Section 138 of the Negotiable Instruments Act. Therein, it was provided that if the person committing an offence under Section 138 of the Act was 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. The scope of Section 141 has been authoritatively discussed in the decision in S.M.S. Pharmaceuticals Ltd. (supra) binding on us and there is no scope for redefining it in this case. Suffice it to say, that a prosecution could be launched not only against the company on behalf of which the cheque issued has been dishonoured, but it could also be initiated against every person who at the time the offence was committed, was in charge of and was responsible for the conduct of the business of the company. In fact, Section 141 deems such persons to be guilty of such offence, liable to be proceeded against and punished for the offence, leaving it to the person concerned, to prove that the offence was committed by the company without his knowledge or that he has exercised due diligence to prevent the commission of the offence. Sub-section (2) of Section 141 also roped in Directors, Managers, Secretaries or other officers of the company, if it was proved that the offence was committed with their consent or connivance. A Company, though a legal entity, cannot act by itself but can only act through its directors. Normally, the Board of Directors act for and on behalf of the company. This is clear from Section 291 of the Companies Act which provides that subject to the provisions of that Act, the Board of Directors of a Company shall be entitled to exercise all such powers and to do all such acts and things as the Company is authorized to exercise and do. Palmer described the position thus:'`A company can only act by agents, and usually the persons by whom it acts and by whom the business of the company is carried on or superintended are termed directors.....'` It is further stated in Palmer that: ``Directors are, in the eye of the law, agents of the company for which they act, and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors.'` The above two passages were quoted with approval in R.K. Dalmia and ors. Vs. The Delhi Administration [(1963) 1 S.C.R. 253 at page 300]. In Guide to the Companies Act by A. Ramaiya (Sixteenth Edition) this position is summed up thus: ``All the powers of management of the affairs of the company are vested in the Board of Directors. The Board thus becomes the working organ of the company. In their domain of power, there can be no interference, not even by shareholders. The directors as a board are exclusively empowered to manage and are exclusively responsible for that management.'` Therefore, a person in the commercial world having a transaction with a company is entitled to presume that the directors of the company are in charge of the affairs of the company. If any restrictions on their powers are placed by the memorandum or articles of the company, it is for the directors to establish it at the trial. It is in that context that Section 141 of the Negotiable Instruments Act provides that when the offender is a company, every person, who at the time when the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty of the offence along with the company. It appears to us that an allegation in the complaint that the named accused are directors of the company itself would usher in the element of their acting for and on behalf of the company and of their being in charge of the company. In Gower and Davies' Principles of Modern Company Law (Seventh Edition), the theory behind the idea of identification is traced as follows: ``It is possible to find in the cases varying formulations of the under-lying principle, and the most recent definitions suggest that the courts are prepared today to give the rule of

attribution based on identification a somewhat broader scope. In the original formulation in the Lennard's Carrying Company case Lord Haldane based identification on a person ``who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation''. Recently, however, such an approach has been castigated by the Privy Council through Lord Hoffmann in the Meridian Global case as a misleading ``general metaphysic of companies''. The true question in each case was who as a matter of construction of the statute in question, or presumably other rule of law, is to be regarded as the controller of the company for the purpose of the identification rule.'' But as has already been noticed, the decision in S.M.S. Pharmaceuticals Ltd. (supra) binding on us, has postulated that a director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of his business in the context of Section 141 of the Act. Bound as we are by that decision, no further discussion on this aspect appears to be warranted. A person normally having business or commercial dealings with a company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its Memorandum or Articles of Association. Other than that, he may not be aware of the arrangements within the company in regard to its management, daily routine, etc. Therefore, when a cheque issued to him by the company is dishonoured, he is expected only to be aware generally of who are in charge of the affairs of the company. It is not reasonable to expect him to know whether the person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the company and those in charge of it. So, all that a payee of a cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in charge of its affairs. The Directors are prima facie in that position. In fact, in an earlier decision in Monaben Ketanbhai Shah and Anr. Vs. State of Gujarat and Ors. [(2004) 7 S.C.C. 15], two learned judges of this Court noticed that: ``The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in enactment of Sections 138 and 141 has to be borne in mind.'' In the light of the ratio in S.M.S. Pharmaceuticals Ltd. (supra) what is to be looked into is whether in the complaint, in addition to asserting that the appellant and another are the directors of the company, it is further alleged that they are in charge of and responsible to the company for the conduct of the business of the company. We find that such an allegation is clearly made in the complaint which we have quoted above. Learned Senior Counsel for the appellant argued that in Saroj Kumar Poddar case (supra), this Court had found the complaint unsustainable only for the reason that there was no specific averment that at the time of issuance of the cheque that was dishonoured, the persons named in the complaint were in charge of the affairs of the company. With great respect, we see no warrant for assuming such a position in the context of the binding ratio in S.M.S. Pharmaceuticals Ltd. (supra) and in view of the position of the Directors in a company as explained above. In Rajesh Bajaj Vs. State of NCT of Delhi and Ors. [A.I.R. 1999 S.C. 1216], two learned judges of this Court stated: ``For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence.'' In M/s Bilakchand Gyanchand Co. Vs. A Chinnaswami [A.I.R. 1999 S.C. 2182], this Court held that a complaint under Section 138 of the Act was not liable to be quashed on the ground that the notice as contemplated by Section 138 of the Act was addressed to the Director of the Company at its office address and not to the Company itself. The view was reiterated in Rajneesh Aggarwal Vs. Amit J. Bhalla [A.I.R. 2001 S.C. 518]. These decisions indicate that too technical an approach on the sufficiency of notice and the contents of the complaint is not warranted in the context of the purpose sought to be achieved by the introduction of Sections 138 and 141 of the Act. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the company and were in charge of the

affairs of the company. It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons in charge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant. We think that, in the circumstances, the High Court has rightly come to the conclusion that it is not a fit case for exercise of jurisdiction under Section 482 of the Code of Criminal procedure for quashing the complaint. In fact, an advertence to Sections 138 and 141 of the Negotiable Instruments Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the Officers in charge of the affairs of the company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not in charge of the affairs of the company. Reading the complaint as a whole, we are satisfied that it is a case where the contentions sought to be raised by the appellant can only be dealt with after the conclusion of the trial.

28. So, the question whether a person is a Director incharge of the affairs of the company at the relevant time, can only be judged during the course of trial and the complaint cannot be quashed under Section 482 CrPC.

29. As already stated above, in the present case, specific averments have been made against the petitioner that petitioner was incharge of, and/or was responsible for the company for the conduct of the business of the company and admittedly as per petitioner's own reply he was whole time Director of the accused company.

30. So, in view of the decision of the Apex Court in N.Rangachari (supra) when specific averments have been made against the petitioner and since it can be adjudged only during the course of trial whether the present petitioner was in charge of or responsible to the affairs of the company or not, the present petitions are wholly mis-conceived and are not maintainable.

31. Under these circumstance, in view of the discussion held above, the present petitions are not maintainable and the same are, hereby, dismissed.

Sd./-

January 04, 2008 V.B.GUPTA, J.