

1. Supreme Court in Pawan Kumar Goel¹ - No Vicarious Liability on Director of Company in Cheque Bounce issue, if the Company is not arraigned as accused:

The Supreme Court in the case of Pawan Kumar Goel has reiterated that the director of a company is not vicarious liable, if the company is not arraigned as accused. The facts of the case are that Pawan Kumar Goel has supplied certain products to M/s Ravi Organics Limited. For settling the payment, Ravi Organics Limited has given a cheque, which when presented, got dishonored. Pawan Kumar Goel has filed a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 ('NI Act') against the director of the Ravi Organics Limited. The Magistrate Court and Sessions Courts have upheld the complaints. The Director has approached the High Court against the orders of lower courts and High Court cancelled all the previous orders stating that the complaint was lodged against the director of the company instead on the company by placing reliance on Aneeta Hada vs Godfather Travels & Tours Private Limited² and SMS Pharmaceuticals Limited vs Neeta Bhalla & Another³.

Aggrieved by the above order of High Court, Pawan Kumar Goel has approached the Supreme Court seeking the cancellation of order of High Court. The Supreme Court has held that the High Court is right in holding that since the complaint was not made on the company but on the director of the company, the complaint is invalid and the defect cannot be cured. The Supreme Court also stated that the director of the company should be proven to be the person in charge when the offence was committed and was responsible for the conduct of business of company. Since, there were no averments in the complaint that the director was in charge and responsible for conduct of business, there cannot be any vicarious liability on the director. The Supreme Court referred to the judgments of SMS Pharmaceuticals Limited (supra) and other judgments to arrive at the said conclusion.

2. Karnataka High Court in Gajanan Kallappa Kadolkar vs. Appasaheb Siddamallappa Kaveri⁴ – Violation of Provisions of Section 269SS of Income Tax Act, 1961 does not make the debt illegal for the purposes of Section 138 of Negotiable Instruments Act:

A criminal revision petition was filed before the High Court seeking to set aside the order for conviction passed by Sessions Court for an offence punishable under Section 138 of NI Act. The facts of case are that the complainant has lent money to his close friend, the petitioner. The petitioner was running a business and approached the complainant seeking financial assistance of Rs 15 lakhs. The loan was advanced, and it was promised to pay within 6 months. Despite repeated requests, the petitioner has failed to make the payment and complainant has taken 15 cheques for Rs 1 lakh each. The complainant after certain time has presented the cheque, which was dishonored for lack of funds. The complainant has lodged a complaint under Section 200 of Criminal Procedure Code (CrPC). An order for conviction was passed, which was subsequently challenged in the High Court, wherein the High Court upheld the order. Further, vide the subject revision petition, the petitioner argued that the amount which was said to be loaned by the complainant was not shown in his income tax returns and in view of Section 269SS, if the amount is more

¹ [2022] 145 taxmann.com 57 (SC)

² (2012) 5 SCC 661

³ (2005) 8 SCC 89

⁴ 2022 LiveLaw (Kar) 483

than Rs 20,000, then the loan has to be given only through bank and not in cash. After brushing all the other arguments canvassed by petitioner, the High Court stated that though the contravention of Section 269SS is stiffed with a penalty under Section 271D, the same is whittled down by Section 273B, if the bonafides can be proved. Therefore, the High Court stated that, it cannot be said that the nature of transaction by violation of Section 269SS cannot be declared illegal, void and unenforceable. The High Court further referring to the decision of Madras High Court in KTS Sarma, Seshasayee Brothers (P) Ltd vs Subramanian, Prop. Kumar Videos⁵, wherein it was held that the object of Section 269SS was to prevent evasion of tax and hence, in absence of any evasion of tax, the borrower cannot take shelter under Section 269SS. Further, it stated that if the object of parties at the time when the transaction entered into is not to circumvent or defeat the provisions of Income Tax Act, then the contract cannot be said to be void.

⁵ 2001 SCC Online Mad 520