

**Rajesh Kumar JaIn Vs. Swaroop Chand JaIn and anr.**

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**Court :** Madhya Pradesh

**Decided On :** Dec-03-2001

**Reported in :** 2002CriLJ2462; 2002(2)MPLJ322

**Judge :** R.B. Dixit, J.

**Acts :** [Negotiable Instruments Act, 1881](#) - Sections 138

**Appeal No. :** Cri. Rev. No. 104 of 2001

**Appellant :** Rajesh Kumar Jain

**Respondent :** Swaroop Chand JaIn and anr.

**Advocate for Def. :** R.D. Jain, Sr. Adv. and ;Sangam Jain, Adv. for the Respondent No. 1 and ;Mukund Bhardwaj, Panel Lawyer for the Respondent No. 2

**Advocate for Pet/Ap. :** A.K. Shrivastava, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

R.B. Dixit, J.

1. This order shall also govern disposal of Cr. Revision Nos. 105/01, 106/ 01, 107/01, 108/01 and 110/2001 as all the revisions have been preferred against same order and also on common question of facts and law.

2. Various complaints leading to aforesaid revisions were filed against respondent Swaroop Chand Jain and others under Sections 138 and 141 of Negotiable Instruments Act stating therein that M/s. S.K.G. Selvex is a company registered under Companies Act and Swaroop Chand Jain is its Director, who is responsible for its act. This company had purchased yellow Soyabean from the complainant, for which certain amount of cheque was issued in favour of complainant by another co-accused Jitendera Kumar Jain. However, these cheques were dishonoured, for which statutory notices as required under Sub-clause (c) of Section 138 of the Negotiable Instruments Act were served and then the complaints were filed.

3. The respondent Swaroop Chand moved two applications under Sections 245(2) and 204 of the Code of Criminal Procedure praying therein for his discharge on the ground that he has resigned from the directorship of the said company on 28.3.1996 and further that he is not a signatory to the cheques in question, therefore, prima-facie, not responsible for any of the affairs of the company. The applications were contested on the ground that the resignation letter was ante-dated and manipulated to have been registered in the office of Registrar of the Companies. A search report to this effect has been filed with the petition, which shows that the intimation of the resignation in Form No. 32 dated 11.10.1996 was received in the office of the Registrar on 20.3.1997.

4. The learned Trial Court by order dated 7.7.2000 rejected both the applications of the respondent. However, in revision bearing Criminal Revision No. 165/2000 before First Additional Judge to Sessions Judge, Guna the learned Revisional Court by the impugned order allowed the applications and discharged the respondent. The learned Revisional Court came to the conclusion that there is no evidence on record suggesting that the respondent was incharge of and responsible for the affairs of the company on the date when the alleged cheques were issued. It is further held that there is no reason to disbelieve the plea of resignation by the respondent before issuance of the aforesaid cheques.

5. The learned Counsel of the petitioners has submitted that the search report from the office of Registrar of the Companies goes to indicate that the resignation was dated 11.10.1996 and was received subsequently on 20.3.1997 in the office of the Registrar, which prima facie goes to prove that the resignation was ante dated and manipulated for registration in the office of the Registrar. Even otherwise it is a disputed question of facts, which can be gone into after recording the evidence of the parties and discussion of the evidence on merits. Reliance is placed on a decision of Andhra Pradesh High Court in case of Bharat Kumar Modi v. Pennar Peterson Securities Ltd., 1999 Cri. L.J. 3803 and of Delhi High Court in case of K.P.G. Nair v. Jindal Menthol India Ltd., I (2001) BC 243=2000 CrL. LJ 1213, wherein it has been observed that where averment in complaint prima facie showing that petitioner at relevant time being a Director was also incharge of and responsible for business of accused company the question whether or not petitioner had resigned as Director before issuance of offending cheques is a disputed question of facts. In the circumstances order taking cognizance of offence against the petitioner is not illegal.

6. The learned Senior Counsel of the respondent on the other hand has argued that there is no averment either in the complaint or in the evidence of the witnesses recorded under Section 202 of Criminal Procedure Code to indicate that respondent was incharge of and was responsible to the company for the conduct of the business of the company or that the cheques in dispute were issued at his instance. Reliance is placed in a decision of this Court in case of Bhiwani Denim and Apparels Ltd. v. Bhaskar Industries Ltd., reported in 2000(4) MPHT 33 (NOC).

7. I am of the opinion that in aforesaid case it was held that in absence of any allegations or averments in the complaint that the applicants/accused Nos. 3 to 15 were incharge of, or responsible for the conduct of the business of the accused company, the complainant was not entitled to initiate prosecution against them. However, insofar as the present case is concerned there are clear averments in the complaint that Swaroop Chand Jain is the Chairman and Director of the Company and was incharge of its business. Similar allegations were made in the statement of complainant as recorded under Section 202 of Criminal Procedure Code. In the circumstances prima facie there is evidence against the respondent suggesting that he was Chairman and Director of the Company and was responsible for its business.

8. The learned Revisional Court merely relying upon on the plea and the documents of the respondent had discussed the various provisions of the Companies Act for making out a case of discharge in favour of the respondent without taking into consideration the law on this point that the question of resignation was a disputed question of facts and its date was also suspicious. Similarly where if it is found that the resignation was manipulated and was not in operation at the time of issuance of cheques then a Chairman/Director the respondent prima facie was deemed to be incharge of and responsible for the conduct and business of the company. The Revisional Court is not expected to sit as a Court of Appeal and to discuss the evidence on merits at this preliminary stage of the trial.

9. For the reasons stated hereinabove, the revision succeeds and is allowed and the impugned order is set aside.