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Duration : 04Y. 01M. 15D.

Exh. No. :

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-2 AMRAVATI

(Presided over by Yashwant A. Goswami)

Criminal Appeal No.98/2022

1. Ameya Paper Mills Pvt. Ltd Thr. Directors
Through its Directors

1. Dilip Shrikrushna Andhare,
Age: 69, Occupation :Business

2: Lata Dilip Andhare
Age: 65, Occupation : Business

3: Shriniwas Dilip Andhare
Age: 39, Occupation : Business
Nos. 1 to 3 R/o Vihangam Plot No. 5
Ambazari Hill top Nagpur
Tq. Dist. Nagpur …. **Appellants**

VERSUS

1. Gharkul Industries Pvt. Ltd
Badnera Road, Amravati. Through Manager,
Tushar Arun Warangaonkar,
Age- 45 Yrs., Occu. Business,
R/o Sai Nagar, Amravati.

2. State of Maharashtra
Through DGP,
Amravati. …. **Respondents.**

APPEAL UNDER SECTION 374 OF CRIMINAL PROCEDURE CODE

Advocate for Appellant	**:**	**Shri. S.P.Dharmadhikari**
Advocate for respondent no.1	**:**	**Shri. P.V.Deshpande**
Advocate for respondent no.2	**:**	**Shri. P.S.Ganorkar**

J U D G M E N T

(Dated 31.07.2026)

These appeals are directed against the common Judgment and Order dated 19.05.2022 passed by the learned Judicial Magistrate First Class, Court No. 3, Amravati, in Summary Criminal Case Nos. 2500/2012, whereby the accused came to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and were sentenced accordingly. By the impugned Judgment, the learned Trial Magistrate held that the complainant had established all the essential ingredients constituting the offence punishable under Section 138 of the Negotiable Instruments Act and consequently convicted the accused and directed payment of compensation in terms of the operative order. Being aggrieved thereby, the accused have preferred the present appeals seeking setting aside of the impugned Judgment and Order of conviction and sentence.

2. For the sake of convenience and to avoid confusion, the parties shall hereinafter be referred to as the complainant and the accused, in accordance with their original status before the learned Trial Court.

COMPLAINT

3. The case of the complainant, in brief, is that the complainant is a Company duly incorporated under the provisions of the Companies Act and is carrying on its business through its authorised representative. According to the complainant, accused No.1 Company approached the complainant for financial assistance for its business activities. Pursuant to the negotiations between the parties, a Memorandum of Understanding came to be executed governing the terms and conditions of the financial arrangement. In pursuance thereof, the complainant advanced various amounts from time to time to accused No.1 Company, which, according to the complainant, constituted a legally recoverable liability of the accused.

4. It is the case of the complainant that despite repeated demands, the accused failed to repay the outstanding amount. In acknowledgment and discharge of a part of the said legally enforceable liability, accused No.1 Company, acting through accused Nos.2 and 3, who were in charge of and responsible for the conduct of its business, issued Cheque No.493018 dated 02.06.2012 for an amount of ₹10,00,000/-, drawn on State Bank of India, Industrial Finance Branch, Nagpur, in favour of the complainant.

5. According to the complainant, the said cheque was presented for encashment within its period of validity. However, the cheque came to be dishonoured and returned unpaid with the endorsement **"Funds Insufficient"**. Thereafter, the complainant caused a statutory demand notice to be issued to the accused within the prescribed period calling upon them to make payment of the cheque amount. Despite receipt of the statutory notice, the accused failed to comply with the demand within the stipulated period. Consequently, the

complainant instituted the present complaint under Sections 138 and 141 of the Negotiable Instruments Act, which culminated in the impugned judgment of conviction.

PROCEEDINGS BEFORE THE TRIAL COURT

6. After presentation of the complaint, the learned Trial Magistrate took cognizance of the offences punishable under Sections 138 and 141 of the Negotiable Instruments Act and issued process against the accused. During the pendency of the proceedings, pursuant to the directions of the Hon'ble Supreme Court, the present complaint came to be clubbed with Summary Criminal Case Nos.2500 of 2012 and 2600 of 2014 and was transferred to the Court trying the said matters. After the appearance of the accused, particulars of the offence were explained to them at Exh.35. The accused pleaded not guilty and claimed to be tried.

7. In support of the complaint, the complainant examined Tushar Arun Warangaonkar, Executive Director and authorised representative of the complainant Company, Amol Bhaurao Bharadwaj, a Bank Official, and Kavin Parmanand Khatri, Company Secretary. Through their oral evidence, the complainant proved the authority in favour of its authorised representative, the disputed cheque, the bank return memo, the statutory demand notice, the postal records, the correspondence exchanged between the parties regarding verification of accounts, the account extracts, the Memorandum of Understanding and the company records obtained from the office of the Registrar of Companies, including the Memorandum of Association, Form No.23, Form No.32 and the audit report.

8. After completion of the complainant's evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure were recorded. The accused denied the incriminating circumstances and contended that the complainant had invested money in accused No.1 Company pursuant to the Memorandum of Understanding; that the disputed cheque had been issued only as security; and that shares had subsequently been allotted to the complainant towards the said investment. In defence, accused No.2 Dilip Shrikrishna Andhare, accused No.3 Shrinivas Dilip Andhare and Ashutosh Parasrampuriya entered the witness box and relied upon the company records produced in support of their defence. Thereafter, both sides addressed elaborate oral arguments and also filed written notes of arguments before the learned Trial Magistrate.

EVIDENCE

9. In support of the complaint, the complainant examined Tushar Arun Warangaonkar (CW-1), Amol Bhaurao Bharadwaj (CW-2) and Kavin Parmanand Khatri (CW-3). The complainant relied upon the verified copy of authorization (Exh.43), cheque (Exh.44), cheque deposit receipt (Exh.45), cheque return memo (Exh.46), office copy of statutory notice (Exh.47), postal receipts (Exh.48 to 59), Memorandum of Understanding (Exh.60), letter regarding verification of account extracts (Exh.61), replies of the accused Company, verified copies of account extracts and the company records obtained from the office of the Registrar of Companies, including the challan, certificate, Memorandum of Association, Form No.23, Form No.32 and the audit report, exhibited during the trial.

10. n defence, Dilip Shrikrishna Andhare (DW-1), Shriniwas Dilip Andhare (DW-2) and Ashutosh Ashok Parasrampuriya (DW-3) entered the witness box. The accused relied upon copy of Form No.2 (Exh.106), copy of Form No. MGT-7 (Exh.107), copy of challan (Exh.109), notice of General Meeting (Exh.110), certificate (Exh.111) and notice reply (Exh.62).

11. The defence of the accused, as emerging from the cross-examination of the complainant's witnesses, the statements under Section 313 of the Code and the defence evidence, was that the complainant had invested money in the accused company pursuant to the Memorandum of Understanding, the cheques had been issued only as security, shares had thereafter been allotted to the complainant towards the investment, and therefore no legally enforceable debt or liability subsisted. The accused also questioned the competency of the complainant's authorised representative, the validity of the statutory notices and the applicability of Section 141 of the Negotiable Instruments Act to accused Nos.1 and 2.

IMPUGNED JUDGMENT

12. Upon appreciation of the oral and documentary evidence, the learned Trial Magistrate held that the complainant had succeeded in establishing the foundational facts necessary for raising the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act. The learned Trial Magistrate further held that the accused had failed to rebut the said presumptions on the touchstone of preponderance of probabilities. The learned Trial Magistrate also held that the complainant had duly proved the execution of the Memorandum of Understanding, advancement of financial assistance,

issuance and dishonour of Cheque No.493018 dated 02.06.2012 for ₹10,00,000/-, due service of the statutory demand notice and the liability of the present appellants under Section 141 of the Negotiable Instruments Act. Consequently, by the judgment and order dated 19.05.2022, the learned Trial Magistrate convicted the present appellants for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act. Being aggrieved thereby, the present appeal has been preferred.

GROUNDS OF APPEAL

13. The appellants have challenged the impugned judgment and order on various grounds. In substance, it is contended that the learned Trial Magistrate failed to properly appreciate the oral and documentary evidence and erroneously convicted the appellants. It is contended that the amount advanced by the complainant was an investment under the Memorandum of Understanding and not a loan or financial assistance; that the cheque in question was issued only as a security; that shares had already been allotted to the complainant towards the amount invested and, therefore, no legally enforceable debt or liability existed on the date of presentation of the cheque. The appellants further contend that the learned Trial Magistrate failed to properly appreciate the defence evidence and the statutory documents produced on record and erroneously invoked the presumptions under Sections 118 and 139 of the Negotiable Instruments Act. It is, therefore, prayed that the impugned judgment and order of conviction and sentence be set aside and that the appellants be acquitted. This substantially reflects the grounds urged in the memorandum of appeal.

SUBMISSIONS

Submissions on behalf of the accused

14. Learned Senior Counsel Shri Dharmadhikari submits that the impugned Judgment and Order of conviction suffers from serious errors of fact as well as law. According to him, the learned Trial Magistrate has failed to appreciate the oral and documentary evidence in its proper perspective and has returned findings which are contrary to the material available on record. It is submitted that the entire transaction between the parties has been misconstrued, resulting in an erroneous conviction of the accused.

15. Shri Dharmadhikari submits that the transaction in question is governed by the Memorandum of Understanding executed between the parties and the rights and obligations of the parties are required to be determined in the light of the terms and conditions contained therein. He submits that the learned Trial Magistrate has failed to appreciate the legal effect of the allotment of shares, the company records, the documents maintained by the Registrar of Companies, the balance confirmations and the surrounding circumstances. It is further submitted that the disputed cheques were not issued in discharge of any legally enforceable debt but were issued only as security and that the statutory presumptions stand effectively rebutted by the material brought on record.

16. Shri Dharmadhikari further submits that the complaints themselves are not maintainable as they were not instituted by a duly authorised representative of the complainant Company. He submits that the statutory demand notices also suffer from want of proper authority.

It is further submitted that the mandatory requirements of Section 141 of the Negotiable Instruments Act have not been satisfied so far as accused Nos.2 and 3 are concerned and that the learned Trial Magistrate has erroneously fastened vicarious liability upon them without the requisite pleadings and proof. According to Shri Dharmadhikari, the complainant has also suppressed material facts and documents which materially affect the prosecution case. He has placed reliance upon various decisions of the Hon'ble Supreme Court and different High Courts in support of the aforesaid submissions, which shall be referred to while dealing with the respective points for determination.

Submissions on behalf of the complainant

17. Shri Prashant Deshpande submits that the impugned Judgment and Order is well-reasoned, legal and based upon a proper appreciation of the evidence on record. He submits that the complainant has duly established the foundational facts necessary for raising the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act and that the accused have failed to rebut the said presumptions even on the touchstone of preponderance of probabilities. According to him, the learned Trial Magistrate has rightly appreciated the oral and documentary evidence and has recorded findings which call for no interference in appeal.

18. Shri Prashant Deshpande further submits that the Memorandum of Understanding, the subsequent conduct of the parties, the balance confirmations, the company records, the statutory notices and the other documentary evidence unequivocally establish the

subsisting liability of the accused. He submits that the objections regarding maintainability of the complaints, competency of the complainant's representative, validity of the statutory notices and the liability of accused Nos.2 and 3 under Section 141 of the Negotiable Instruments Act are wholly devoid of merit. Shri Prashant Deshpande has also relied upon various decisions of the Hon'ble Supreme Court and different High Courts, which shall likewise be considered while deciding the respective points for determination.

The points for determination along with my findings thereon with reasons therefor are as under:

POINTS FOR DETERMINATION

S	Points	Findings
1	Whether the complainant proves that the cheque in question was issued by the accused towards discharge, wholly or in part, of a legally enforceable debt or other liability and that all the essential ingredients constituting the offence punishable under Section 138 of the Negotiable Instruments Act stand established?	..Yes
2	Whether the accused has succeeded in rebutting the statutory presumptions available under Sections 118(a) and 139 of the Negotiable Instruments Act by establishing a probable defence?	..No
3	Whether the impugned judgment and order call for interference?	..No
3	What order.	The appeal is dismissed.

<u>REASONS</u>

<u>As to Point Nos. 1 and 3:</u>

<u>I. Nature of the Transaction</u>

19. Learned Senior Counsel Shri Dharmadhikari submitted that the entire case turns on the true nature of the transaction between the complainant Company and accused No.1 Company. According to him, the amount paid by the complainant was an investment under the Memorandum of Understanding (Exh.60) and not a loan or financial assistance. He submitted that the cheque in question was issued only as security till the agreed shares were allotted. He further argued that once the shares were allotted, no legally enforceable debt or liability survived and, therefore, the cheque could not form the basis of prosecution under Section 138 of the Negotiable Instruments Act.

20. Learned Advocate Shri Prashant Deshpande, on the other hand, submitted that the defence is contrary to the terms of the Memorandum of Understanding (Exh.60) and the subsequent conduct of the parties. According to him, the complainant established that the cheque was issued towards repayment of the amount due and payable. He submitted that the learned Trial Magistrate rightly rejected the defence that the cheque was issued only as security.

21. Since both sides have placed considerable reliance on the Memorandum of Understanding (Exh.60), it is necessary to examine its terms before considering the oral evidence. The true nature of the transaction has to be gathered primarily from the document itself, read along with the conduct of the parties and the surrounding circumstances.

22. It is also necessary to bear in mind that the present appeal arises from one of the several complaints filed on the basis of different cheques issued pursuant to the same transaction. Therefore, while examining the nature of the transaction, this Court will confine itself to

the evidence relevant to the cheque involved in the present appeal and the issues affecting appellant Nos.1 to 3.

23. The case of the complainant is that it advanced financial assistance to accused No.1 Company under the Memorandum of Understanding (Exh.60). In consideration thereof, accused No.1 Company agreed to repay the amount in the manner stated in the MOU. The cheque in question was issued towards discharge of that liability. Tushar Arun Warangaonkar (CW-1) has consistently deposed to this effect.

24. During cross-examination, Tushar (CW-1) admitted that the complainant intended to acquire shares of accused No.1 Company. Relying upon this admission and the documents produced by the defence, Learned Senior Counsel Shri Dharmadhikari argued that the amount was purely an investment and not a loan. According to him, once shares were allotted, no debt remained payable.

25. This submission cannot be accepted merely because the transaction contemplated allotment of shares. The real nature of the transaction has to be gathered from the terms of the MOU (Exh.60) as a whole. A commercial transaction may contain several reciprocal obligations. One part of the arrangement cannot be read in isolation by ignoring the remaining clauses.

26. The evidence of Tushar (CW-1) shows that the complainant treated the amount as recoverable in terms of the MOU. His evidence is supported by the cheques issued by the accused, the bank return memos and the statutory notice. These documents are consistent with the complainant's case that the amount had become payable.

27. On the other hand, the defence witnesses have stated that the cheques were issued only as security. However, a mere plea that a cheque was issued as security does not by itself rebut the statutory presumptions. The Court has to examine whether, on the date of presentation of the cheque, a legally enforceable liability existed. The Hon'ble Supreme Court in **Sunil Todi v. State of Gujarat, (2021) 11 SCC 486**, has held that even a cheque initially issued as security may attract Section 138 of the Negotiable Instruments Act if it is presented towards an existing and enforceable liability.

28. In the present case, the defence has not been able to show from the MOU (Exh.60) or any other contemporaneous document that the liability under the cheque had completely come to an end before its presentation. Mere allotment of shares, without proving that it satisfied the entire liability covered by the cheque, is not sufficient.

29. Therefore, this Court finds that the transaction cannot be described as a mere investment simpliciter. The material on record shows that the parties had also created enforceable financial obligations. The finding of the learned Trial Magistrate on the nature of the transaction, therefore, does not suffer from any illegality.

30. Learned Senior Counsel Shri Dharmadhikari further submitted that the complainant itself admitted that the amount was invested for acquiring shares of accused No.1 Company. He submitted that the accused had acted upon the arrangement by allotting shares to the complainant. Therefore, according to him, the complainant could not claim the amount under the cheques.

31. Learned Advocate Shri Prashant Deshpande submitted that this argument overlooks the terms of the MOU (Exh.60) and the subsequent conduct of the parties. He submitted that if the liability had come to an end, there was no reason for the accused to issue the cheques. He further submitted that the accused neither demanded return of the cheques nor issued any notice alleging misuse of the cheques before their presentation.

32. This submission deserves acceptance. The conduct of the parties after execution of the MOU (Exh.60) is also relevant. If the cheques were not meant to be presented under any circumstances, the accused would ordinarily have taken steps to recover them or objected to their presentation. No such evidence is available on record.

33. The evidence of Dilip Shrikrishna Andhare (DW-1) shows that the defence is based on the plea that the cheques were issued as security. However, neither Dilip (DW-1) nor the other defence witnesses have produced any document showing that the complainant accepted the allotment of shares in full and final satisfaction of the liability covered by the cheque.

34. The Hon'ble Supreme Court in **ICDS Ltd. v. Beena Shabeer, (2002) 6 SCC 426**, has held that the expression "debt or other liability" under Section 138 is of wide import. Therefore, merely describing a cheque as a security cheque does not take it outside the scope of Section 138. The Court has to examine whether an enforceable liability existed on the date when the cheque was presented.

35. The evidence on record does not show that the liability under the cheque had been discharged before its presentation. The

defence has relied upon the allotment of shares, but it has not established that such allotment completely satisfied the liability for which the cheque was issued. The statutory presumptions, therefore, continue to operate.

36. For these reasons, this Court agrees with the finding of the learned Trial Magistrate that the transaction between the parties was not a mere investment in shares. It also created enforceable financial obligations. The defence plea that the cheque was issued only as a security does not, by itself, change the nature of the transaction. The issue of statutory presumptions and their rebuttal will now be examined separately under the next heading.

II. Whether the Cheque was issued towards a Legally Enforceable Debt or Liability?

37. Learned Senior Counsel Shri Dharmadhikari submitted that even if the execution of the cheque is admitted, the complainant was still required to prove that, on the date of its presentation, a legally enforceable debt or liability existed. He submitted that the liability had already stood discharged by allotment of shares. According to him, the learned Trial Magistrate proceeded only on the basis of the statutory presumptions without properly appreciating the defence evidence.

38. Learned Advocate Shri Prashant Deshpande submitted that once the issuance and signatures on the cheque are admitted, Sections 118 and 139 of the Negotiable Instruments Act raise a presumption that the cheque was issued towards a legally enforceable debt or liability. He submitted that the burden thereafter shifted upon the accused and the accused failed to discharge that burden.

39. There is no dispute that the cheque bears the signatures of the authorised signatory of accused No.1 Company. The cheque was presented within its validity period. It was dishonoured. The statutory notice was duly issued and served. Payment was not made within the prescribed period. These foundational facts have been duly proved by Tushar Arun Warangaonkar (CW-1) through the cheque, bank return memo and statutory notice.

40. Once these foundational facts are established, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act come into operation. The Hon'ble Supreme Court in **Rangappa v. Sri Mohan, (2010) 11 SCC 441**, has held that the presumption under Section 139 includes the existence of a legally enforceable debt or liability. However, the presumption is rebuttable and the accused may rebut it on the touchstone of preponderance of probabilities.

41. The scope of rebuttal has been further explained by the Hon'ble Supreme Court in **Basalingappa v. Mudibasappa, (2019) 5 SCC 418**. It has been held that the accused need not prove his defence beyond reasonable doubt. He can rely upon the evidence led by the complainant, the circumstances appearing on record or the evidence adduced by the defence to probabilise his case. At the same time, a mere explanation or a plausible suggestion is not enough. The material brought on record must make the non-existence of the liability reasonably probable.

42. Keeping these principles in view, the defence raised by the appellants is required to be examined. Their principal defence is that the amount advanced under the MOU (Exh.60) was an investment and

that the cheque was issued only as a security. As discussed earlier, the mere description of a cheque as a security cheque does not by itself rebut the statutory presumption. The crucial question is whether the accused have established that no legally enforceable liability existed on the date when the cheque was presented.

43. The oral evidence of Dilip (DW-1), Shriniwas Dilip Andhare (DW-2) and Ashutosh Ashok Parasrampuriya (DW-3) has to be appreciated in that background. Their evidence undoubtedly supports the defence version. However, it has to be tested against the documentary evidence, particularly the MOU (Exh.60), the cheques, the correspondence exchanged between the parties and the subsequent conduct of the parties.

44. On an overall appreciation of the evidence, this Court finds that the defence has created certain doubts regarding the commercial arrangement between the parties. However, those doubts do not by themselves establish that the liability under the cheque had ceased to exist. None of the defence witnesses has pointed to any contemporaneous document recording that the complainant accepted the allotment of shares in complete satisfaction of the amount covered by the cheque.

45. Therefore, the statutory presumptions continue to operate. Whether the defence evidence is nevertheless sufficient to rebut those presumptions will now be examined while appreciating the defence evidence in detail under the next caption.

<u>III. Statutory Presumptions under Sections 118 and 139 of the Negotiable Instruments Act and Whether They Stand Rebutted?</u>

46. Learned Senior Counsel Shri Dharmadhikari submitted that the learned Trial Magistrate committed an error in holding that the appellants had failed to rebut the statutory presumptions. He submitted that the burden upon the accused is only to establish a probable defence. According to him, the evidence led by the defence, the company records and the admissions elicited from Tushar (CW-1) are sufficient to probabilise the defence that the cheque was not issued towards a legally enforceable debt.

47. Learned Advocate Shri Prashant Deshpande, on the other hand, submitted that the learned Trial Magistrate has correctly appreciated the legal position. He submitted that the appellants have merely taken a defence that the cheque was issued as security and that the amount represented an investment. According to him, such a plea, unsupported by convincing evidence, is insufficient to rebut the statutory presumptions.

48. The legal position is well settled. In **Rangappa v. Sri Mohan, (2010) 11 SCC 441**, the Hon'ble Supreme Court held that the presumption under Section 139 extends not only to the issuance of the cheque but also to the existence of a legally enforceable debt or liability. The presumption is rebuttable, and the accused may rebut it by establishing a probable defence.

49. In **Basalingappa v. Mudibasappa, (2019) 5 SCC 418**, the Hon'ble Supreme Court explained that the accused is not required to prove his defence beyond reasonable doubt. The burden is only to create a reasonable probability against the existence of the liability. Such rebuttal may emerge from the complainant's own evidence, the defence evidence or the surrounding circumstances. However, the

defence must be supported by acceptable material. Mere suggestions in cross-examination or a bare explanation are not enough.

50. Keeping these principles in view, the evidence led by the appellants is required to be examined. The defence has examined **Dilip Shrikrishna Andhare (DW-1)**, **Shriniwas Dilip Andhare (DW-2)** and **Ashutosh Ashok Parasrampuriya (DW-3)**. It has also relied upon the company documents including the challan (Exh.109), certificate (Exh.111), Memorandum of Association (Exh.89), Form No.23 (Exh.90), Form No.32 (Exhs.91 and 92) and the audit report (Exh.93). Learned Senior Counsel Shri Dharmadhikari submitted that these documents establish that shares were allotted to the complainant in pursuance of the MOU and, therefore, the amount ceased to be recoverable.

51. This contention requires careful scrutiny. Mere production of company records showing allotment of shares does not, by itself, answer the real question. The issue is whether those documents establish that the liability represented by the cheque stood fully discharged before the cheque was presented. Unless such nexus is established, the statutory presumption cannot be said to have been rebutted.

52. It is, therefore, necessary to examine the defence evidence witness-wise and document-wise to ascertain whether, when read as a whole, it creates a probable defence sufficient to displace the statutory presumptions.

IV. Appreciation of Defence evidence

53. Learned Senior Counsel Shri Dharmadhikari submitted that the defence has not merely denied the complainant's case but has led independent oral and documentary evidence. According to him, the evidence of **Dilip Shrikrishna Andhare (DW-1)**, **Shriniwas Dilip Andhare (DW-2)** and **Ashutosh Ashok Parasrampuriya (DW-3)**, read together with the company records, probabilises the defence and rebuts the statutory presumptions.

54. Learned Advocate Shri Prashant Deshpande submitted that the learned Trial Magistrate has correctly appreciated the defence evidence. He argued that although the defence has produced several company documents, none of them establishes that the liability covered by the cheque had been discharged. According to him, the defence evidence is consistent with the allotment of shares but not with the extinction of the debt under the cheque.

55. The defence has principally relied upon the challan (Exh.87), certificate (Exh.88), Memorandum of Association (Exh.89), Form No.23 (Exh.90), Form No.32 (Exhs.91 and 92) and the audit report (Exh.93). These documents undoubtedly show certain statutory compliances undertaken by accused No.1 Company. They also indicate changes in the shareholding pattern of the Company.

56. However, the existence of these documents is not, by itself, sufficient to rebut the statutory presumptions. The Court has to examine what these documents actually prove. They establish that shares were allotted and the necessary statutory records were maintained. They do not, however, record that the complainant accepted such allotment in full and final satisfaction of the amount covered by the cheque. Equally,

they do not contain any recital that the cheque had become unenforceable or was liable to be returned.

57. The oral evidence of Dilip (DW-1) proceeds on the footing that the transaction was an investment and that the cheques were issued only as security. His evidence substantially reflects the defence pleaded by the appellants. However, during his cross-examination, nothing has been brought on record to show that the complainant acknowledged that no amount remained payable after the allotment of shares.

58. The evidence of Shriniwas (DW-2) and Ashutosh (DW-3) is also directed to establish the corporate transactions undertaken by accused No.1 Company. Their evidence may support the fact of allotment of shares and compliance with company law requirements. Nevertheless, neither witness has referred to any contemporaneous document showing that the complainant agreed to treat the transaction as fully concluded or waived its right to recover the amount covered by the cheque.

59. It is well settled that rebuttal of the statutory presumptions is to be judged on the basis of the entire evidence. At the same time, the evidence relied upon by the accused must have a direct bearing on the existence or otherwise of the legally enforceable debt. Evidence proving only one part of the commercial arrangement, without showing that the liability under the cheque stood discharged, is insufficient to rebut the presumptions recognised in **Rangappa v. Sri Mohan, (2010) 11 SCC 441** and explained in **Basalingappa v. Mudibasappa, (2019) 5 SCC 418**.

60. Therefore, even if the defence evidence is accepted to the extent that shares were allotted pursuant to the MOU (Exh.60), that fact alone does not probabilise the defence that the liability under the cheque had ceased to exist. The defence evidence falls short of establishing that the cheque had become incapable of being presented or that the complainant had relinquished its right to recover the amount represented by the cheque.

61. Consequently, this Court is unable to hold that the evidence of Dilip (DW-1), Shriniwas (DW-2), Ashutosh (DW-3) and the company documents is sufficient to rebut the statutory presumptions on the touchstone of preponderance of probabilities. The finding of the learned Trial Magistrate on this aspect, therefore, does not warrant interference.

62. Learned Senior Counsel Shri Dharmadhikari laid considerable emphasis on the company records to contend that the complainant had in fact become a shareholder of accused No.1 Company. According to him, once shares were allotted in pursuance of the MOU (Exh.60), the amount paid by the complainant assumed the character of share capital and ceased to be a recoverable debt. Learned Advocate Shri Prashant Deshpande, however, submitted that these documents only evidence corporate compliances and do not establish that the liability under the cheque had come to an end.

63. This submission of the complainant deserves acceptance. The company records have to be appreciated for the purpose for which they were created. They may establish the allotment of shares and compliance with the provisions of the Companies Act. However, they do not, by themselves, determine the civil and contractual rights flowing from the transaction between the parties. The question before this Court

is not whether shares were allotted, but whether the liability represented by the cheque subsisted on the date of its presentation.

64. Learned Senior Counsel Shri Dharmadhikari also relied upon the audit report (Exh.93) to contend that the amount received from the complainant was reflected in the accounts of accused No.1 Company as share application money. Learned Advocate Shri Prashant Deshpande submitted that entries in the books of account are only one piece of evidence. Such entries cannot, by themselves, extinguish a contractual liability arising under the transaction between the parties, particularly when the accused themselves issued the cheque which is the subject matter of the present complaint.

65. The contention advanced on behalf of the complainant merits acceptance. The audit report reflects the accounting treatment adopted by the Company. It does not record that the complainant accepted the allotment of shares in full and final settlement of its claim. Nor does it state that the cheque in question had become unenforceable or that the parties had mutually agreed to discharge the liability. Therefore, the audit report, though relevant, is not conclusive of the controversy before the Court.

66. Learned Senior Counsel Shri Dharmadhikari further submitted that the complainant has not challenged the allotment of shares before any forum. According to him, this circumstance itself probabilises the defence. Learned Advocate Shri Prashant Deshpande rightly pointed out that the present proceedings are confined to the offence under Section 138 of the Negotiable Instruments Act. The validity of the allotment of shares or the legality of the corporate actions is not directly in issue. The only question is whether the cheque was

issued towards a legally enforceable debt or liability and whether such liability existed on the date of presentation of the cheque.

67. This Court finds merit in the said submission. The present proceedings cannot be converted into an adjudication on the validity of corporate actions taken by accused No.1 Company. Those questions, if any, fall within a different jurisdiction. Their determination is not necessary for deciding the present complaint.

68. The subsequent conduct of the accused also assumes significance. The cheque admittedly came to be presented and dishonoured. There is no contemporaneous correspondence placed on record to show that, before its presentation, the accused informed the complainant that the cheque should not be presented because the liability had already stood discharged. Likewise, there is no material to show that the accused demanded return of the cheque on the ground that it had become redundant after the alleged allotment of shares. These circumstances are relevant while appreciating the probability of the defence.

69. On an overall assessment of the oral and documentary evidence, this Court finds that the defence has undoubtedly established the background of the commercial transaction and the allotment of shares. However, it has failed to establish the more important fact, namely, that the legally enforceable liability represented by the cheque had ceased to exist before the cheque was presented. Consequently, the evidence led by the defence does not rebut the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act on the touchstone of preponderance of probabilities.

<u>V. Liability of the Appellants under Section 141 of the Negotiable Instruments Act</u>

70. Learned Senior Counsel Shri Dharmadhikari submitted that even assuming that the ingredients of Section 138 of the Negotiable Instruments Act are satisfied, the conviction of appellant Nos.2 and 3 is unsustainable. According to him, the complainant has failed to establish that they were in charge of and responsible for the conduct of the business of accused No.1 Company at the relevant time. He submitted that mere designation as Directors is not sufficient to attract Section 141 of the Act.

71. Learned Advocate Shri Prashant Deshpande submitted that the complaint contains the necessary averments required under Section 141 of the Negotiable Instruments Act. He further submitted that the complainant has also produced documentary evidence to show that appellant Nos.2 and 3 were Directors of accused No.1 Company when the transaction took place and when the cheque was issued. According to him, the defence has failed to establish that they were not concerned with the affairs of the Company.

72. The complaint specifically alleges that appellant Nos.2 and 3 were Directors of accused No.1 Company and were actively looking after its day-to-day affairs. These averments have been reiterated by Tushar (CW-1) in his evidence. During the cross-examination of Tushar (CW-1), no material omission or contradiction has been brought on record to discredit these assertions.

73. The complainant has also relied upon the company documents, namely, the challan (Exh.87), certificate (Exh.88),

Memorandum of Association (Exh.89), Form No.23 (Exh.90) and Form No.32 (Exhs.91 and 92). Learned Advocate Shri Prashant Deshpande submitted that these documents establish that appellant Nos.2 and 3 were Directors of accused No.1 Company during the relevant period. Learned Senior Counsel Shri Dharmadhikari did not dispute the existence of these documents but submitted that they merely establish the status of the appellants as Directors and not their responsibility for the conduct of the business of the Company.

74. Learned Senior Counsel Shri Dharmadhikari is correct in submitting that mere designation as a Director does not attract Section 141 of the Negotiable Instruments Act. The Hon'ble Supreme Court in **SMS Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89** held that there must be a specific averment that the person sought to be prosecuted was in charge of and responsible for the conduct of the business of the Company at the relevant time. The said principle has been consistently followed in **National Small Industries Corporation Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330** and **Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1**.

75. Examining the present complaint on the touchstone of the above principles, it is seen that the complainant has specifically pleaded that accused Nos.2 and 3 were Directors and were in charge of and responsible for the day-to-day affairs of accused No.1 Company. These averments have been reiterated by **Tushar (CW-1)** in his examination-in-chief and have remained substantially unshaken during cross-examination.

76. The complainant has further relied upon the challan (Exh.87), certificate (Exh.88), Memorandum of Association (Exh.89),

Form No.23 (Exh.90) and Form No.32 (Exhs.91 and 92). Learned Advocate Shri Prashant Deshpande submitted that these documents corroborate the pleadings regarding the position held by accused Nos.2 and 3 in the Company during the relevant period. Learned Senior Counsel Shri Dharmadhikari submitted that these documents merely prove directorship and not responsibility for the conduct of the business.

77. The contention cannot be accepted. The documentary evidence does not stand in isolation. It has to be read along with the pleadings, the evidence of **Tushar (CW-1)** and the absence of any evidence from the defence showing that accused Nos.2 and 3 were not concerned with the affairs of the Company. No resolution, resignation, delegation of powers or any other contemporaneous document has been produced to show that they were not in charge of the business when the cheque was issued and dishonoured.

78. Thus, applying the principles laid down in **SMS Pharmaceuticals (supra)**, **Harmeet Singh Paintal (supra)** and **Pooja Ravinder Devidasani (supra)**, this Court is of the opinion that the complainant has proved the foundational facts necessary to attract Section 141 of the Negotiable Instruments Act. The appellants have failed to rebut the same. The learned Trial Magistrate has therefore rightly held appellant Nos. 1 to 3 vicariously liable.

<u>VI. Whether the Impugned Judgment Calls for Interference?</u>

80. Learned Senior Counsel Shri Dharmadhikari submitted that the learned Trial Magistrate has failed to appreciate the evidence in its proper perspective. According to him, the Trial Court proceeded on the

footing that once the cheque and the signatures were admitted, conviction must necessarily follow. He submitted that the documentary evidence produced by the defence, particularly the company records, probabilised the defence and rebutted the statutory presumptions. Therefore, the conviction deserves to be set aside.

81. Learned Advocate Shri Prashant Deshpande supported the impugned judgment. He submitted that the learned Trial Magistrate has considered every defence raised by the appellants and has assigned cogent reasons for rejecting the same. He argued that the findings are based upon proper appreciation of both oral and documentary evidence and settled principles governing Sections 118, 139 and 141 of the Negotiable Instruments Act.

82. This Court has independently reappreciated the entire evidence, as is required in an appeal against conviction. On such reappreciation, this Court finds that the complainant proved the foundational facts necessary for attracting Section 138 of the Negotiable Instruments Act. The execution of the cheque, its presentation within the period of validity, its dishonour, issuance of the statutory notice and failure to make payment within the prescribed period have all been duly established.

83. Once these foundational facts were established, the statutory presumptions under Sections 118 and 139 came into operation. As held by the Hon'ble Supreme Court in **Rangappa v. Sri Mohan, (2010) 11 SCC 441**, the presumption extends to the existence of a legally enforceable debt or liability. The burden, therefore, shifted upon the appellants to rebut the presumption on the touchstone of preponderance of probabilities.

84. The appellants undoubtedly led oral as well as documentary evidence. The evidence establishes that the parties had entered into the **MOU (Exh.60)** and that certain corporate steps, including allotment of shares, were taken thereafter. However, for the reasons already recorded, the defence evidence does not establish that the liability represented by the cheque stood extinguished before its presentation. Consequently, the appellants have failed to rebut the statutory presumptions in the manner explained by the Hon'ble Supreme Court in **Basalingappa v. Mudibasappa, (2019) 5 SCC 418**.

85. Equally, the challenge to the conviction under Section 141 of the Negotiable Instruments Act cannot be accepted. The complaint contains the necessary averments regarding the role of appellant Nos.2 and 3. Those averments have been supported by the evidence of **Tushar (CW-1)** and the company documents. Applying the principles laid down in **SMS Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89**, **National Small Industries Corporation Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330** and **Pooja Ravinder Devidasani v. State of Maharashtra, (2014) 16 SCC 1**, this Court finds that the complainant has established the ingredients necessary to fasten vicarious liability upon appellant Nos.1 to 3. The defence has failed to prove otherwise.

86. The learned Trial Magistrate has discussed the oral evidence, the documentary evidence and the defence raised by the appellants in considerable detail. This Court does not find that any material evidence has been ignored or that any inadmissible material has been relied upon. The findings recorded by the learned Trial Magistrate are supported by the evidence available on record and are in

conformity with the settled legal principles governing prosecutions under Sections 138 and 141 of the Negotiable Instruments Act.

87. For all the aforesaid reasons, this Court is satisfied that the appellants have failed to make out any ground warranting interference with the judgment of conviction. Point No. 1 is answered in the Affirmative and Point Nos. 2 and 3 are answered in the Negative.

As to Point No. 4:

88. Having confirmed the judgment of conviction and sentence, the legal consequences contemplated by the Code necessarily follow. The accused was under an obligation to remain present on the date fixed for pronouncement of the appellate judgment after confirmation of the conviction unless exempted in accordance with law. His unexplained absence has the effect of frustrating the execution of the sentence and delaying the culmination of the criminal proceedings. Such conduct cannot receive the approval of the Court.

118. The accused has remained absent during the hearing of the appeal. Despite sufficient opportunities, neither the accused nor his learned Advocate advanced arguments. Since the appeal is liable to be dismissed and the conviction and sentence are liable to be confirmed, necessary directions will have to be issued to the learned Trial Court to ensure execution of the sentence. The learned Trial Court will also have to be directed to take appropriate steps for recovery of the balance amount of compensation, if any, by invoking the provisions of Sections 421 and 431 of the Code of Criminal Procedure, as may be applicable. Thus, in answer to Point No. 4, I pass the following order.

ORDER

1. The Criminal Appeal is dismissed.

2. The Judgment and Order dated 19.05.2022 passed by the learned Judicial Magistrate First Class, Court No.3, Amravati, in Summary Criminal Case No.2500 of 2012, is hereby confirmed. Consequently, accused No.1 – Ameya Paper Mills Pvt. Ltd. stands convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Accused No.1 – Dilip Shrikrishna Andhare, accused no.2 Lata Dilip Andhare and accused No.3 – Shrinivas Dilip Andhare, being the persons sentenced on behalf of accused No.1 Company, shall undergo Simple Imprisonment for eight months. Accused No.1 Company and accused Nos. 1 to 3 shall jointly and severally pay compensation of ₹13,00,000/- (Rupees Thirteen Lakh only) to the complainant within one month and, in default of payment, accused Nos 1 to 3 shall undergo Simple Imprisonment for two months.

3. During the pendency of the appeal, the accused deposited partial amount of compensation, therefore, the complainant is permitted to withdraw the same. Due credit shall be given to the amounts already deposited while giving effect to this judgment.

4. The appellant remained absent on the date fixed for pronouncement of judgment without obtaining exemption from personal appearance. He has thereby committed breach of the conditions of the bail bond executed by him. Accordingly, the bail bond and surety bond executed by the appellant stand forfeited.

The learned trial Court shall take consequential proceedings in accordance with Section 446 of the Code of Criminal Procedure.

5. The learned Trial Court shall immediately take effective steps under Section 418 of the Code of Criminal Procedure, 1973 to secure the presence of the accused and commit him to prison for undergoing the substantive sentence. For that purpose, the learned Trial Court shall issue appropriate coercive process permissible in law, including warrant of arrest, if necessary, and ensure due execution of the sentence without avoidable delay.

6. After giving due credit to the amount already deposited by the accused, the balance amount of compensation, if remaining unpaid, shall be recovered by the learned Trial Court in accordance with Sections 421 and 431 of the Code of Criminal Procedure, 1973.

7. Record and Proceedings be transmitted forthwith to the learned Trial Court together with a copy of this judgment for immediate compliance.

8. The appeal stands disposed of accordingly.

(Yashwant A. Goswami)
Additional Sessions Judge
Amravati.

Date:31.07.2026