MHAM010028062022

Presented on : 14.06.2022

Registered on : 15.06.2022

Decided on : 31.07.2026
Duration : 04Y. 01M. 15D.

**Exh. No. :**

**<u>IN THE COURT OF ADDITIONAL SESSIONS JUDGE-2 AMRAVATI</u>**

( Presided over by Yashwant A. Goswami)

**<u>Criminal Appeal No.101/2022</u>**

1. Ashutosh Ashok Parasrampuria
   Age 43 Yrs., Occu. Business

2: Ashok Tuganlal Parasrampuria
   Age: 72, Occupation : Business
   Both R/o 146-1, Ramdaspeth, Near Nilgiri
   Building, Nagpur-440010
   Tq. & Dist. Nagpur. …. **<u>Appellants</u>**

**<u>VERSUS</u>**

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

2. State of Maharashtra
   Through PSO Rajapeth
   Amravati.

3. Ameya Paper Mills Pvt. Ltd
Having registered office at 2nd Floor
West High Court Road, Dharampeth
Nagpur. And office at
50-D, Mata Mandir Road,
Gokulpeth, Nagpur.

4. Dilip Shrikrushna Andhare,
Age Major., Occu. Business

5. Lata Dilip Andhare
Age- Mjor, Occu. Business,

6. Shriniwas Dilip Andhare
Age: Major, Occupation : Business

Nos. 4 to 6 R/o Vihangam Plot No. 5
Ambazari Hill top,
Nagpur, Tq. Dist. Nagpur .... **Respondents.**

**APPEAL UNDER SECTION 374 OF CRIMINAL PROCEDURE CODE**

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|---|---|---|
| **Advocate for Appellant** | : | **Shri. Yogesh Bafna** |
| **Advocate for respondent no.1** | : | **Shri. P.V.Deshpande** |
| **Advocate for respondent no.2** | : | **Shri. P.S.Ganorkar** |

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**J U D G M E N T**

**(Dated 31.07.2026)**

This appeal is directed against 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, whereby accused Nos.1 to 5 came to be convicted for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. Feeling aggrieved thereby, original accused

Nos.4 and 5 have preferred the present appeal under Section 374(3) of the Code of Criminal Procedure.

2. For the sake of convenience and continuity, the parties shall hereinafter be referred to by their original status before the trial Court, namely, the complainant and the accused.

**COMPLAINT**

3. The complainant is a private limited company carrying on business through its Managing Director. Accused No.1 is also a private limited company. Accused Nos.2 to 5 were stated to be its Directors and persons in charge of and responsible for the conduct of its business at the relevant time. It is the case of the complainant that accused No.1 Company approached the complainant for financial assistance and, accordingly, a Memorandum of Understanding (Exh.60) came to be executed between the complainant and accused No.1 Company.

4. According to the complainant, pursuant to the said Memorandum of Understanding, financial assistance amounting to ₹1,50,19,831/- was extended to accused No.1 Company from time to time by different cheques during the period from 23.11.2007 to 12.03.2009. It is further pleaded that, towards discharge of part of the outstanding liability arising out of the said transaction, accused No.1 Company, acting through accused No.2, issued the cheque which forms the subject matter of the present complaint.

5. The complainant has further pleaded that, on presentation, the cheque came to be dishonoured for insufficiency of funds. Thereafter, a statutory notice demanding payment of the cheque amount was issued to all the accused. Despite receipt of the notice, the

amount remained unpaid within the prescribed period. According to the complainant, all the accused, being in charge of and responsible for the conduct of the business of accused No.1 Company, became liable under Sections 138 and 141 of the Negotiable Instruments Act, resulting in institution of the present complaint.

**PLEA OF THE ACCUSED**

6. Upon appearance before the learned Trial Court, the particulars of the offence were explained to the accused. The accused pleaded not guilty and claimed to be tried.

7. The defence of the accused, as emerging from the plea, cross-examination of the complainant's witnesses, statement under Section 313 of the Code and the defence evidence, was that the amount paid by the complainant was not a loan or financial assistance creating any legally enforceable debt. According to the accused, the amount represented an investment made by the complainant in the share capital of accused No.1 Company pursuant to the Memorandum of Understanding (Exh.60). It was contended that shares had in fact been allotted to the complainant and, therefore, no liability to repay the investment amount survived. The accused further disputed the complainant's interpretation of the Memorandum of Understanding and contended that its oral case was contrary to the written terms thereof.

8. It was further contended that the accused disputed the existence of a legally enforceable debt, the service of the statutory notice and the appreciation of the documentary evidence by the learned Trial Court. Reliance was placed upon the company records, including

the documents obtained from the office of the Registrar of Companies, as well as several judicial precedents in support of their defence.

**PROCEEDINGS BEFORE THE TRIAL COURT**

9. In support of its case, the complainant examined its Managing Director and another witness and relied upon the documentary evidence produced on record, including the Memorandum of Understanding, the cheque, bank memos, statutory notice and other connected documents. The accused cross-examined the complainant's witnesses in detail.

10. The accused thereafter entered upon their defence. Besides the oral evidence adduced on their behalf, they relied upon documentary evidence including the records relating to the company, the list of shareholders and documents obtained from the office of the Registrar of Companies in support of their contention that the transaction in question was one of investment and not of loan.

11. After completion of the evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure were recorded. The incriminating circumstances appearing against them were put to them. The accused denied the allegations and reiterated their defence.

12. Upon appreciation of the oral and documentary evidence, the learned Trial Magistrate held that the complainant had established the ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act and that the statutory presumptions available under Sections 118 and 139 of the Act operated in favour of the complainant. The learned Trial Magistrate further held that the

accused had failed to rebut the said presumptions by raising a probable defence. Consequently, the accused came to be convicted and sentenced as stated hereinabove.

13. Aggrieved by the said judgment and order, the present appeal has been preferred.

**GROUNDS OF APPEAL**

14. The conviction and sentence recorded by the learned Trial Magistrate have been assailed on several grounds. It is contended that the learned Trial Magistrate failed to appreciate the true nature of the transaction between the parties and erroneously treated the amount advanced by the complainant as a legally enforceable debt. According to the accused, the Memorandum of Understanding (Exh.60) unmistakably demonstrates that the complainant had agreed to invest in the share capital of accused No.1 Company and that the amount in question was never intended to be a loan. It is, therefore, urged that the very foundation of the complaint under Section 138 of the Negotiable Instruments Act is misconceived.

15. It is further contended that the findings recorded by the learned Trial Magistrate are contrary to the documentary evidence on record, particularly the Memorandum of Understanding, the records of the Registrar of Companies and the documents relating to allotment of shares. According to the accused, the oral evidence adduced by the complainant travels beyond the terms of the written agreement and has been erroneously accepted in preference to the documentary evidence.

16. It is also urged that the complainant has failed to establish the existence of any legally enforceable debt or liability and that the

statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act stood sufficiently rebutted by the defence evidence and the documentary material placed on record. It is further contended that the learned Trial Magistrate failed to properly appreciate the defence evidence as well as the judicial precedents relied upon by the accused.

17. It is, therefore, prayed that the impugned judgment and order of conviction and sentence be set aside and that the accused be acquitted of the offence with which they have been charged.

**SUBMISSIONS**

18. During the course of hearing, learned Advocate Shri Yogesh Bafna appearing for the accused addressed elaborate oral submissions and also tendered detailed written notes of arguments. The submissions advanced before this Court substantially reiterate the grounds raised in the memorandum of appeal. It is principally contended that the learned Trial Magistrate has misconstrued the Memorandum of Understanding (Exh.60) and ignored the documentary evidence demonstrating that the transaction was one of investment and not of loan. It is further submitted that the complainant has failed to establish the existence of any legally enforceable debt and that the conviction is unsustainable in law.

19. Per contra, learned Advocate Shri Prashant Deshpande appearing for the complainant supported the impugned judgment. He also filed written notes of arguments. According to him, the evidence led by the complainant clearly establishes the legally enforceable liability, issuance and dishonour of the cheque and compliance with all the statutory requirements under Section 138 of the Negotiable

Instruments Act. It is, therefore, urged that the appeal deserves to be dismissed.

20. 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 has proved that the cheque in question was issued towards discharge, in whole or in part, of a legally enforceable debt or liability and that the accused have failed to rebut the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act? | ..Yes |
| 2 | Whether the impugned judgment and order at the instance of appellant Nos. 1 and 3 call for interference? | ..No |
| 3 | What order. | The appeal is dismissed. |

**REASONS**

**As to Point Nos. 1 and 2:**

**A. Statutory Scheme Governing Corporate Criminal Liability**

21. There is no dispute that the cheque in question (Exh.44) was issued on behalf of accused No.1 Company. The dishonour memo (Exh.46), statutory notice (Exh.47), postal acknowledgments (Exhs.48 to 59) and the complaint are also directed against the Company. However, the present appeal is preferred only by original accused Nos.4 and 5. Therefore, the principal controversy before this Court is not whether the ingredients of Section 138 are fulfilled against the Company, but whether the complainant has succeeded in fastening vicarious

criminal liability upon the present appellants under Section 141 of the Negotiable Instruments Act.

22. Learned Advocate Shri Yogesh Bafna adopted all the submissions advanced on behalf of accused Nos.1 to 3 in the connected appeals and further contended that the present appellants have been convicted merely because they happened to be Directors of the Company. According to him, neither the complaint nor the evidence satisfies the mandatory requirements of Section 141. Learned Advocate Shri Prashant Deshpande, on the other hand, submitted that both the pleadings and the evidence sufficiently establish that all the Directors, including the present appellants, were responsible for the affairs of the Company and therefore the learned Magistrate has rightly convicted them.

23. Before examining the rival submissions, it is necessary to notice the statutory scheme. Section 138 creates the substantive offence relating to dishonour of cheque. Section 141 extends criminal liability to persons connected with a Company when the offence under Section 138 is committed by the Company. Since Section 141 creates vicarious criminal liability, which is an exception to the normal rule of criminal jurisprudence, its requirements have to be strictly complied with.

**B. Principles Governing Section 141**

24. The legal position regarding prosecution of Directors is now well settled by a long line of decisions of the Hon'ble Supreme Court.

25. In *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla*, (2005) 8 SCC 89, a three-Judge Bench of the Hon'ble Supreme Court held that it is not sufficient merely to describe an accused as a Director. The complaint must contain the basic averment that such Director was in

charge of and responsible for the conduct of the business of the Company at the time when the offence was committed.

26. In *National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal*, (2010) 3 SCC 330, the Hon'ble Supreme Court further clarified that designation alone does not create criminal liability. The complainant must plead and ultimately prove the role played by the concerned Director. Criminal liability cannot be inferred merely because a person occupies the office of Director.

27. In *Aneeta Hada vs. Godfather Travels & Tours Pvt. Ltd.*, (2012) 5 SCC 661, the Hon'ble Supreme Court explained that the liability of Directors under Section 141 is only vicarious and arises because of the liability of the Company. Therefore, the prosecution against persons covered by Section 141 necessarily rests upon the commission of the offence by the Company.

28. The same principles have been reiterated in *Gunmala Sales Pvt. Ltd. vs. Anu Mehta*, (2015) 1 SCC 103, *Pooja Ravinder Devidasani vs. State of Maharashtra*, (2014) 16 SCC 1 and recently in *Sunita Palita vs. Panchami Stone Quarry*, (2022) 10 SCC 152. These authorities consistently hold that the Court must first examine the pleadings in the complaint and thereafter ascertain whether those pleadings are substantiated by evidence.

29 Thus, two requirements emerge. Firstly, the complaint must disclose the necessary factual foundation for invoking Section 141. Secondly, the evidence adduced during trial must establish those pleadings. Mere reproduction of statutory language or mere holding of the office of Director is not by itself sufficient.

**C. Whether the Complaint contains necessary averments?**

30. In view of the above legal position, the first objection raised by learned Advocate Shri Yogesh Bafna deserves consideration. According to him, the complaint contains no specific averments against the present appellants and therefore the prosecution itself is not maintainable.

31. A careful reading of the complaint , however, shows that the complainant has specifically pleaded that accused Nos.2 to 6 were Directors of accused No.1 Company, that they were jointly looking after its affairs and business and that the Memorandum of Understanding (Exh.60) was executed with the consent and knowledge of all the Directors. The complaint further alleges that all the accused were responsible for the business and financial affairs of the Company at the relevant time.

32. Therefore, it cannot be said that the complaint is completely silent regarding the role of the present appellants. Whether these pleadings are ultimately proved by evidence is a different matter. That aspect shall be examined after considering the documentary evidence and oral testimony.

**D. Memorandum of Understanding (Exh.60)**

33. The next important document is the Memorandum of Understanding (Exh.60). According to the complainant, this document forms the basis of the entire transaction. It is under this agreement that the complainant agreed to provide financial assistance to accused No.1 Company. It is also the case of the complainant that, acting upon Exh.60, different amounts were advanced to the Company from time to

time and ultimately the cheque in question (Exh.44) came to be issued towards repayment of a part of that liability.

34. Learned Advocate Shri Yogesh Bafna submitted that Exh.41 itself supports the defence. According to him, the agreement was executed between the complainant Company and accused No.1 Company. The present appellants have not executed the agreement in their personal capacity. It is therefore argued that no personal liability can be imposed upon them merely because they were Directors of the Company.

35. The submission deserves consideration. A reading of Exh.60 shows that the agreement is indeed between the complainant Company and accused No.1 Company. It does not contain any clause by which appellant Nos.1 and 2 agreed to discharge the liability in their personal capacity. They have not stood as guarantors nor have they undertaken any independent contractual obligation under Exh.60.

36. However, this by itself does not conclude the matter. The complainant has not prosecuted the present appellants on the basis of any personal contract. Their liability is claimed only under Section 141 of the Negotiable Instruments Act. Therefore, the absence of personal liability under Exh.60 is not sufficient to hold that they cannot be prosecuted. Their liability has to be examined on the touchstone of Section 141 and not merely on the terms of Exh.60.

37. Exh.60, however, has another important aspect. It shows the nature of the transaction between the complainant and accused No.1 Company. It also supports the complainant's case that the financial transaction was with the Company and not with any individual Director.

Therefore, the principal liability, if any, was that of the Company. The liability of the Directors can arise only if the complainant proves the conditions required under Section 141 of the Act.

38. Thus, Exh.60 neither automatically fastens liability upon the present appellants nor automatically absolves them. It is only one piece of evidence. Whether the appellants were actually in charge of and responsible for the conduct of the business of the Company has to be gathered from the entire evidence placed on record.

**E. Cheque and Connected Documents (Exhs.44 to 59)**

39. The complainant has produced the cheque in question at Exh.44. The cheque was drawn on the account of accused No.1 Company. It is not the case of the complainant that the present appellants signed the cheque. Admittedly, they are not the signatories to Exh.44.

40. The cheque was presented for encashment but came to be dishonoured. The bank return memo (Exh.46) shows the reason for dishonour. Thereafter, the complainant issued the statutory demand notice (Exh.44). The postal receipts and acknowledgements are produced at Exhs.48 to 59 to show dispatch and service of the notice.

41. Learned Advocate Shri Yogesh Bafna argued that all these documents merely establish compliance with the requirements of Section 138 against the Company and the signatory of the cheque. According to him, none of these documents indicates that appellant Nos.1 and 2 were managing the affairs of the Company or had any role in issuance of the cheque.

42. The submission is correct to the extent that Exhs.42 to 53 by themselves do not establish the role of the present appellants in the affairs of the Company. These documents mainly prove issuance of the cheque, its dishonour, issuance of statutory notice and non-payment within the prescribed period. They do not by themselves establish the ingredients required under Section 141.

43. At the same time, these documents cannot be ignored because they prove the commission of the principal offence by accused No.1 Company. Once the offence against the Company is established, the Court has to further examine whether the complainant has proved that the present appellants also fall within the ambit of Section 141. For that purpose, the oral evidence of the complainant assumes considerable importance.

44. It therefore becomes necessary to examine the deposition of the complainant (Exh.42) to ascertain whether the complainant has produced satisfactory evidence to show that appellant Nos.1 and 2 were in charge of and responsible for the conduct of the business of accused No.1 Company at the relevant time.

**F. Oral Evidence of the Complainant (Exh.42)**

45. The complainant examined its authorised representative at Exh.58. His examination-in-chief is substantially in accordance with the averments made in the complaint . He deposed that accused No.1 Company entered into the Memorandum of Understanding (Exh.60), accepted financial assistance from the complainant, issued the cheque (Exh.44) towards repayment of part of the liability and that the cheque

was dishonoured. He also deposed that accused Nos.2 to 6 were Directors of the Company and were responsible for its affairs.

46. The complainant further stated in his evidence that all the accused were looking after the business of accused No.1 Company and that the cheque was issued with their knowledge and consent. On the strength of this evidence, learned Advocate Shri Prashant Deshpande submitted that the complainant has proved not only the transaction but also the responsibility of the present appellants under Section 141 of the Act.

47. However, the evidence cannot be read in isolation. It has to be tested in the light of the cross-examination. If the admissions made during cross-examination create doubt about the role of the present appellants, the Court is bound to consider those admissions while appreciating the evidence.

**G. Cross-examination of the Complainant**

48. Learned Advocate Shri Yogesh Bafna has invited the attention of this Court to several admissions brought on record during the cross-examination of the complainant. According to him, those admissions clearly show that the complainant had no personal knowledge regarding the day-to-day management of accused No.1 Company and has made only general allegations against all the Directors.

49. It has been brought on record during the cross-examination that the Memorandum of Understanding (Exh.60) does not specifically state that it was executed with the consent of all the Directors. It was also suggested that the statements made in the complaint and in the

examination-in-chief that the financial assistance was given with the consent of all the Directors and that the cheque was issued with their consent are not supported by the recitals in Exh.60.

50. It was further brought on record that Exh.60 does not contain any clause showing that appellant Nos.1 and 2 had personally undertaken to repay the amount or that they had accepted any personal liability. On this basis, learned Advocate Shri Yogesh Bafna submitted that the oral evidence travels beyond the documentary evidence and therefore deserves little weight.

51. The cross-examination also proceeds on the footing that the complainant has not produced any independent document, such as a Board Resolution, internal correspondence, minutes of meetings or any record of the Company, to show that appellant Nos.1 and 2 were actually controlling the day-to-day affairs of accused No.1 Company. According to the defence, except making a general statement in the complaint and in the affidavit, no independent material has been produced to establish this important requirement of Section 141.

52. These admissions certainly require careful consideration. It is settled law that where documentary evidence is available, it ordinarily carries greater evidentiary value than a general oral statement. Therefore, if the oral evidence is inconsistent with Exh.60 or any other contemporaneous document, the Court has to examine such inconsistency with care. At the same time, merely because Exh.60 does not expressly mention the role of every Director does not necessarily mean that the complainant's case must fail. The liability under Section 141 can also be proved by other admissible evidence, if such evidence inspires confidence.

53. Therefore, the question is not whether Exh.60 alone proves the case against the appellants. The real question is whether, after considering the complaint, the oral evidence, the documentary evidence and the admissions brought on record, it can safely be held that appellant Nos.1 and 2 were in charge of and responsible for the conduct of the business of accused No.1 Company at the time when the cheque (Exh.44) was issued and dishonoured.

54. Before recording any finding on this aspect, it is necessary to examine the evidence produced by the defence and the documents relied upon by the appellants, particularly Form No.32 and the other company records, as both sides have placed considerable reliance upon those documents while addressing arguments on the applicability of Section 141.

**H. Defence Evidence and Documentary Evidence**

55. The present appellants have mainly relied upon the documentary evidence produced during the trial to show that they were not liable under Section 141 of the Negotiable Instruments Act. According to learned Advocate Shri Yogesh Bafna, these documents completely demolish the complainant's case regarding the role of appellant Nos.1 and 2.

56. One of the important documents relied upon by the defence is Form No.32 (Exh.92). It has come on record that appellant No.1 Dilip Andhare and his father were Directors of accused No.1 Company from 01.04.2007. The defence, however, contended that merely because a person is shown as a Director in the statutory records

of the Company, it cannot be presumed that he was in charge of and responsible for the conduct of the business of the Company.

57. Learned Advocate Shri Yogesh Bafna further argued that the complainant has not produced any Board Resolution, attendance register of Board meetings, minutes of meetings, correspondence or any other Company record to show that appellant Nos.1 and 2 were actually managing the affairs of the Company. According to him, in absence of such evidence, the requirement of Section 141 remains unproved.

58. It was also argued that the Memorandum of Understanding does not state that it was executed with the consent of all the Directors. Likewise, the cheque was admittedly not signed by the present appellants. Therefore, according to the defence, there is no documentary evidence directly connecting appellant Nos.1 and 2 with the issuance of the cheque or the transaction in question.

59. On the other hand, learned Advocate Shri Prashant Deshpande submitted that the complainant is not expected to produce every internal record of the Company. According to him, the complaint contains the necessary averments. Those averments have been repeated on oath by the complainant in his evidence (Exh.42). The defence has not produced any convincing evidence to show that appellant Nos.1 and 2 were merely sleeping Directors or that they had no concern with the affairs of the Company.

60. It is pertinent to note that the burden upon the complainant is to establish the ingredients of Section 141. Once the complainant produces prima facie material showing that the accused were in charge of and responsible for the conduct of the business of the

Company, it is always open for the concerned Director to establish that the offence was committed without his knowledge or that he had exercised due diligence to prevent its commission. This defence is specifically recognised in the proviso to Section 141(1).

**I. Whether mere Directorship is sufficient?**

61. The first objection raised by learned Advocate Shri Yogesh Bafna is that the present appellants have been convicted only because they were Directors of accused No.1 Company.

62. This submission is correct as a proposition of law. Mere designation as a Director does not automatically make a person criminally liable under Section 141. The Hon'ble Supreme Court in **S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla**, (2005) 8 SCC 89, **National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal**, (2010) 3 SCC 330 and **Dilip Hariramani vs. Bank of Baroda**, (2022) 2 SCC 411 has held that criminal liability cannot be fastened merely because a person happens to be a Director of the Company.

63. At the same time, these very decisions also lay down that where the complaint contains the necessary averments and the evidence supports those averments, a Director may be held liable under Section 141 even though he is not the signatory of the cheque.

64. Therefore, the real issue before this Court is not whether appellant Nos.1 and 2 were Directors. Their directorship is not in dispute. The real issue is whether they were **in charge of and responsible for the conduct of the business of accused No.1 Company** when the cheque was issued and dishonoured.

65. The answer to this question depends upon the appreciation of the entire evidence and not upon any single document. The complaint, the Memorandum of Understanding (Exh.60), the cheque (Exh.44), the evidence of the complainant (Exh.42), the admissions in cross-examination and the defence documents have to be read together before recording a final conclusion.

66. The next objection raised by the appellants is that the complaint itself does not contain sufficient averments to satisfy the mandatory requirements of Section 141. Since this objection goes to the root of the prosecution, it requires separate consideration.

**J. Whether the complaint contains sufficient averments under Section 141?**

67. Learned Advocate Shri Yogesh Bafna vehemently argued that the complaint does not satisfy the mandatory requirements of Section 141 of the Negotiable Instruments Act. According to him, except making a general statement that all the Directors were responsible for the affairs of the Company, no specific role has been assigned to appellant Nos.1 and 2. He therefore submitted that the prosecution itself is not maintainable.

68. In support of this submission, reliance is placed upon **S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla**, (2005) 8 SCC 89, **National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal**, (2010) 3 SCC 330, **Dilip Hariramani vs. Bank of Baroda**, (2022) 2 SCC 411, **Mahendrapratap Singh vs. M/s. N.K. Metals** (Hon’ble Delhi High Court), **Nopany** (Hon’ble Calcutta High Court) and **Vinodkumar** (Hon’ble Bombay High Court). According to the learned counsel, these

decisions clearly lay down that a Director cannot be prosecuted merely because of his designation.

69. There cannot be any dispute regarding the principles laid down in the aforesaid judgments. However, every case has to be decided on its own pleadings. Therefore, the complaint is required to be examined carefully.

70. On going through the complaint , it is seen that the complainant has specifically pleaded that accused Nos.2 to 6 were the Directors of accused No.1 Company, that they were looking after the affairs and business of the Company and that they were responsible for its day-to-day management. The complaint further states that the cheque in question was issued on behalf of the Company with the knowledge and consent of all the accused.

71. Thus, this is not a case where the complaint is completely silent regarding the role of the Directors. Necessary averments, though general in nature, are found in the complaint. Whether those averments are ultimately proved is a different question. The sufficiency of evidence cannot be confused with the sufficiency of pleadings.

72. In **S.M.S. Pharmaceuticals Ltd. (supra)**, the Hon'ble Supreme Court has itself held that the complaint should contain the basic averment that the accused was in charge of and responsible for the conduct of the business of the Company. The Court has not held that the complainant must narrate every act performed by each Director. The details regarding the actual role of the Directors are matters of evidence.

73. Similarly, in **Gunmala Sales Pvt. Ltd. vs. Anu Mehta**, (2015) 1 SCC 103, the Hon'ble Supreme Court observed that where the basic averments are present in the complaint, the High Court should ordinarily permit the prosecution to proceed and the correctness of those averments has to be tested during trial on the basis of evidence.

74. Therefore, the judgments relied upon by learned Advocate Shri Yogesh Bafna do not advance the case of the appellants on the question of maintainability. Those judgments undoubtedly protect a person who has been unnecessarily arrayed as an accused without any pleading whatsoever. However, where the complaint contains the necessary averments and evidence has also been led in support of those averments, the Court has to appreciate the evidence on merits.

In the present case, the complaint contains the necessary averments required under Section 141. Hence, it cannot be held that the complaint is liable to fail at the threshold for want of pleadings.

**K. Whether the complainant has proved those averments?**

75. Having held that the complaint contains the necessary averments, the next question is whether the complainant has succeeded in proving those averments by reliable evidence.

76. As discussed earlier, the complainant has examined its authorised representative at Exh.42. He has supported the contents of the complaint and has stated that appellant Nos.1 and 2 were actively looking after the affairs of accused No.1 Company. His testimony on this aspect has remained substantially consistent throughout his examination-in-chief.

77 The defence has undoubtedly brought out certain admissions in the cross-examination, particularly that Exh.60 does not specifically mention the consent of all the Directors and that appellant Nos.1 and 2 have not signed the cheque (Exh.44). However, these circumstances by themselves are not sufficient to reject the entire testimony of the complainant.

78. It is well settled that under Section 141, every Director need not be the signatory to the cheque. A person may incur liability if he was in charge of and responsible for the conduct of the business of the Company, even though he has not signed the cheque. This principle has been recognised in **S.M.S. Pharmaceuticals Ltd.**, **Aneeta Hada** and **Dilip Hariramani**.

79 Therefore, the fact that appellant Nos.1 and 2 are not signatories to Exh.44 is not decisive. The Court has to see whether the evidence, taken as a whole, establishes that they were responsible for the conduct of the business of accused No.1 Company when the cheque came to be issued.

80. It is now necessary to examine the defence based upon the statutory records of the Company, particularly Form No.32 (Exh.92), and the admissions of appellant No.1 during the trial, because both sides have heavily relied upon those circumstances while arguing the appeal.

**L. Form No.32 (Exh.91 & 92) and other Company Records**

81. Learned counsel for the complainant has placed reliance upon the company documents, namely, 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), to contend that appellant Nos.1 and 2 were Directors of accused No.1 Company at the relevant time. It is, therefore, necessary to examine the evidentiary value of these documents.

82. A careful scrutiny of the aforesaid documents undoubtedly establishes that appellant Nos.1 and 2 were associated with accused No.1 Company as its Directors. However, these statutory records merely disclose the constitution of the Company and the particulars required to be maintained under the Companies Act. They neither describe the functions discharged by the individual Directors nor indicate who was entrusted with the day-to-day management and affairs of the Company.

83. Form No.32 is intended to notify the Registrar of Companies regarding the appointment, resignation or change in the particulars of Directors or other officers of the Company. The said form is not a document declaring that every Director shown therein was in charge of and responsible for the conduct of the business of the Company within the meaning of Section 141 of the Negotiable Instruments Act. Consequently, the mere production of Form No.32 cannot, by itself, satisfy the statutory requirement of proving vicarious liability.

84. Likewise, neither the Memorandum of Association nor the remaining company records relied upon by the complainant contain any recital indicating that appellant Nos.1 and 2 were entrusted with the control of the day-to-day affairs of accused No.1 Company or that they were responsible for the transaction giving rise to the cheque in question. These documents merely establish their legal association with the Company and nothing beyond.

85. Thus, the company records relied upon by the complainant undoubtedly prove the status of appellant Nos.1 and 2 as Directors of accused No.1 Company. However, they do not prove the further and distinct requirement mandated by Section 141 of the Negotiable Instruments Act, namely, that they were in charge of and responsible for the conduct of the business of the Company at the relevant time. The distinction between the status of a Director and the statutory responsibility contemplated under Section 141 cannot be overlooked.

86. Therefore, even if the entire documentary evidence relied upon by the complainant is accepted at its face value, it falls short of establishing the foundational facts necessary to fasten vicarious criminal liability upon appellant Nos.1 and 2. These documents, either individually or collectively, do not cure the deficiency in the pleadings and oral evidence already noticed by this Court.

**M. Defence of "Sleeping Director"**

87. Learned counsel for appellant Nos.1 and 2 has contended that they were merely sleeping Directors of accused No.1 Company and were neither concerned with nor responsible for its day-to-day business affairs. According to the learned counsel, they had no role in the transaction in question or in the issuance of the cheque.

88. In the considered opinion of this Court, it is not necessary to examine whether appellant Nos.1 and 2 could, in fact, be described as sleeping Directors. The Negotiable Instruments Act does not create any distinction between an active Director and a sleeping Director. The determinative test under Section 141 is not the designation or description of the Director but whether such person was, at the relevant

time, in charge of and responsible for the conduct of the business of the Company.

89. As already discussed, the initial burden lay upon the complainant to plead and prove the foundational facts necessary to attract Section 141 of the Negotiable Instruments Act. Only after such foundational facts are established would the question of considering the defence raised by the concerned Director assume significance.

90. In the present case, this Court has already held that the complainant has failed to establish by satisfactory pleadings and evidence that appellant Nos.1 and 2 were in charge of and responsible for the conduct of the business of accused No.1 Company. Consequently, irrespective of whether they were active Directors, sleeping Directors or non-executive Directors, the statutory requirements for fastening vicarious criminal liability remain unfulfilled.

91. Thus, the defence of appellant Nos.1 and 2 describing themselves as sleeping Directors neither advances nor weakens their case. Their acquittal does not rest upon acceptance of that defence but upon the failure of the complainant to discharge the burden cast upon it by Section 141 of the Negotiable Instruments Act.

**N. Appreciation of the entire evidence**

92. This Court has carefully re-appreciated the entire evidence, both oral and documentary, in the light of the rival submissions and the settled legal principles governing Sections 138 and 141 of the Negotiable Instruments Act. The documentary evidence satisfactorily establishes the issuance of the cheque, its dishonour, issuance of statutory notice and non-payment within the prescribed period. It also

establishes the existence of accused No.1 Company and the fact that appellant Nos.1 and 2 were its Directors during the relevant period.

93. However, the controversy in the present appeal does not revolve around the ingredients of Section 138 of the Negotiable Instruments Act. The real controversy is whether appellant Nos.1 and 2 can be held vicariously liable under Section 141 of the Act. For that purpose, the complainant was required to establish not only that they were Directors but also that they were, at the relevant time, in charge of and responsible for the conduct of the business of accused No.1 Company.

94. The complaint contains only general averments regarding the status of appellant Nos.1 and 2 as Directors. The oral evidence led by the complainant also does not disclose the nature of their duties, the extent of their participation in the affairs of the Company or their role in the transaction culminating in the issuance of the cheque. The company records relied upon by the complainant likewise establish only their position as Directors and do not prove that they were entrusted with the management or day-to-day affairs of the Company.

95. The defence raised by appellant Nos.1 and 2, whether described as that of sleeping Directors or otherwise, need not detain this Court for long. The decisive factor is the complainant's inability to establish the foundational facts required under Section 141. Once such foundational facts remain unproved, the question of fastening vicarious criminal liability upon appellant Nos.1 and 2 does not arise.

96. The learned trial Magistrate appears to have proceeded on the premise that the designation of appellant Nos.1 and 2 as Directors

was by itself sufficient to attract Section 141 of the Negotiable Instruments Act. Such an approach is inconsistent with the law consistently declared by the Hon'ble Supreme Court. The distinction between being a Director and being a person in charge of and responsible for the conduct of the business of the Company is fundamental and cannot be ignored while recording a conviction under Section 141 of the Act.

97. Upon an independent re-appreciation of the entire material on record, this Court is of the considered view that the complainant has failed to establish the essential ingredients necessary to fasten vicarious criminal liability upon appellant Nos.1 and 2. Consequently, the finding of guilt recorded against them cannot be sustained and is liable to be set aside.

**O. Appreciation of the Authorities Relied upon by the Parties**

98 Learned Advocate Shri Yogesh Bafna has relied upon several decisions to contend that the conviction of appellant Nos.1 and 2 cannot be sustained. There is no dispute regarding the legal principles laid down in those judgments. However, every judgment has to be applied in the light of the facts of the case before the Court.

99 In **S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla**, (2005) 8 SCC 89, the Hon'ble Supreme Court held that there must be a basic averment in the complaint that the Director was in charge of and responsible for the conduct of the business of the Company. As already discussed, such averments are found in the complaint . Therefore, this judgment does not assist the appellants.

100. In **National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal**, (2010) 3 SCC 330, the Hon'ble Supreme Court held that criminal liability cannot be fastened merely because a person is a Director. This principle is well settled. However, in the present case, the complainant has not relied only upon the designation of the appellants as Directors. The complaint and the evidence contain specific assertions regarding their responsibility for the affairs of the Company. Therefore, the said judgment does not advance the defence.

101. Reliance is also placed upon **Dilip Hariramani vs. Bank of Baroda**, (2022) 2 SCC 411. In that case also, the Hon'ble Supreme Court reiterated that vicarious liability under Section 141 is not automatic and that the complainant must satisfy the statutory requirements. There is no disagreement with this proposition. However, whether those requirements are satisfied depends upon the facts of each individual case.

102. Learned Advocate Shri Yogesh Bafna also relied upon the decisions of the Hon'ble Delhi High Court in **Mahendrapratap (supra)**, the Hon'ble Calcutta High Court in **Nopany (Supra)**, and the Hon'ble Bombay High Court in **Vinodkumar (Supra)**. Those decisions were rendered on their own facts where either the complaint lacked necessary averments or the evidence failed to establish the responsibility of the Directors. As discussed earlier, the facts of the present case are materially different.

103. On the other hand, learned Advocate Shri Prashant Deshpande relied upon the decisions of the Hon'ble Supreme Court in **Aneeta Hada vs. Godfather Travels & Tours Pvt. Ltd.**, (2012) 5 SCC 661 and **Gunmala Sales Pvt. Ltd. vs. Anu Mehta**, (2015) 1 SCC 103. These

decisions explain that where the complaint contains the necessary averments and evidence has been led in support thereof, the Court has to appreciate the evidence on merits instead of rejecting the complaint at the threshold.

104. Thus, there is no conflict between the authorities cited by both sides. All of them consistently hold that Section 141 creates vicarious liability only on fulfilment of the statutory conditions. The dispute in the present appeal is not regarding the legal principles but regarding their application to the evidence available on record.

**P. Findings**

105. From the discussion made above, it is evident that the complainant has proved the execution of the Memorandum of Understanding (Exh.60), issuance of cheque (Exh.44), its dishonour (Exh.46), issuance of statutory notice (Exh.47) and compliance with the other requirements of Section 138 of the Negotiable Instruments Act.

106. The complaint contains the necessary averments required under Section 141. Those averments have also been supported by the oral evidence of the complainant at Exh.42.

107. The defence has succeeded in showing that appellant Nos.1 and 2 are not the signatories to the cheque and that Exh.60 does not create any personal contractual liability against them. However, these circumstances alone do not absolve them from liability under Section 141, if the statutory requirements are otherwise satisfied.

108. The defence has also failed to produce satisfactory evidence to establish that appellant Nos.1 and 2 had no concern with

the affairs of accused No.1 Company or that they had exercised due diligence so as to claim the protection available under the proviso to Section 141.

109. The findings recorded by the learned Magistrate, therefore, cannot be termed as perverse or contrary to the evidence merely on the grounds urged in the appeal.

110. Accordingly, Point No.1 subject to the further discussion, is answered in the **Affirmative**.

**Q. Effect of the Company Records and the Order of the Hon'ble Supreme Court**

111. Learned Advocate Shri Yogesh Bafna has placed considerable reliance upon Form No.32 (Exh.92), Form MGT-7 (Exh.87) and the order passed by the Hon'ble Supreme Court while disposing of the proceedings initiated by appellant Nos.1 and 2 for quashing of the complaint. According to him, these documents probabilise that the appellants were not in charge of and responsible for the conduct of the business of accused No.1 Company.

112. Form No.32 (Exh.92) merely records the appointment of the Directors of the Company. Likewise, Form MGT-7 is an annual statutory return required to be filed under the Companies Act. These documents undoubtedly constitute relevant statutory records. However, the purpose for which they are maintained is altogether different. They disclose the constitution of the Company and particulars required to be filed before the Registrar of Companies. They are not intended to record which Director was actually controlling the day-to-day affairs of the Company or the extent of responsibility entrusted to each Director. The

entries contained therein, therefore, cannot by themselves conclude the issue arising under Section 141 of the Negotiable Instruments Act.

113. Learned Advocate Shri Yogesh Bafna submitted that Form MGT-7 mentions the names of the Directors and Key Managerial Personnel and also reflects the allotment of shares to the complainant Company. According to him, this document probabilises the defence that the transaction was one of investment and not financial assistance. That contention has already been dealt with while discussing the Memorandum of Understanding (Exh.60). Merely because statutory returns disclose allotment of shares, it does not automatically negate the complainant's case regarding the liability arising out of the transaction. Similarly, the mere description of a person as Director or Key Managerial Personnel in the statutory return neither establishes nor negatives the requirement that such person was in charge of and responsible for the conduct of the business of the Company at the relevant time.

114. Much emphasis was also placed on the order of the Hon'ble Supreme Court passed in the proceedings arising from the challenge to issuance of process. The record shows that while accused No.6 obtained relief before the High Court, appellant Nos.1 and 2 approached the Hon'ble Supreme Court. The Hon'ble Supreme Court declined to terminate the prosecution at that stage and directed that all the connected cases be tried together expeditiously, expressly leaving the question of liability to be decided on the basis of evidence adduced before the Trial Court.

115. The said order of the Hon'ble Supreme Court has an important bearing. It neither records any finding that appellant Nos.1

and 2 were liable under Section 141 nor records that they were not liable. On the contrary, the Hon'ble Supreme Court considered the averments in the complaint sufficient to permit the prosecution to proceed, while consciously leaving it open to the appellants to establish during trial that they were not in charge of and responsible for the affairs of the Company. Thus, the issue before this Court is required to be answered solely on the basis of the evidence led before the Trial Court and not on the observations made at the stage of considering the prayer for quashing.

116. Therefore, neither Form No.32 (Exh.92) nor Form MGT-7 (Exh.107), nor the order of the Hon'ble Supreme Court, by themselves conclude the controversy either in favour of the complainant or in favour of the appellants. Their evidentiary value has to be assessed along with the remaining oral and documentary evidence available on record.

**R. Whether the appellants discharged the burden cast by the proviso to Section 141?**

(i) Once the complainant establishes the foundational requirements of Section 141 by making the necessary averments in the complaint and by leading evidence in support thereof, the proviso to Section 141 enables a Director to avoid criminal liability by proving either that the offence was committed without his knowledge or that he had exercised all due diligence to prevent its commission. Thus, the burden thereafter shifts upon the concerned Director to establish the existence of either of these statutory defences.

(j) Learned Advocate Shri Yogesh Bafna submitted that the appellants were not concerned with the day-to-day affairs of accused No.1 Company. According to him, the complainant has failed to produce any resolution of the Board of Directors, any internal correspondence or any other document showing that appellant Nos.1 and 2 were controlling the affairs of the Company. It is therefore submitted that the complainant failed to establish the essential ingredients of Section 141.

(k) The argument appears attractive at first blush. However, it overlooks the distinction between the burden cast upon the complainant and the burden cast upon the Director under the proviso to Section 141. The complainant cannot ordinarily be expected to have access to the internal administration of the accused Company. Matters such as allocation of work amongst Directors, internal delegation of powers or day-to-day managerial responsibilities normally remain within the exclusive knowledge of the Company and its Directors.

(l) Consequently, if the appellants intended to contend that they were merely nominal or non-executive Directors, or that they were not participating in the affairs of the Company, it was incumbent upon them to place some positive material before the Court. Such material could have been in the form of resolutions of the Board, Articles governing distribution of powers, records showing entrustment of management to some other Director, statutory filings, or any other reliable evidence demonstrating that they had no role in the conduct of the business.

(m) In the present case, except making such assertions in the written statement, cross-examination and arguments, no convincing documentary material has been produced to establish that appellant

Nos.1 and 2 were merely sleeping Directors or that the management of the Company was exclusively entrusted to some other person.

(n) On the contrary, the statutory documents relied upon by the appellants themselves show that they continued to hold the office of Director during the relevant period. Their case is not that they had ceased to be Directors before issuance of the cheque or before its dishonour. Their defence is only that they were not actively participating in the affairs of the Company. As already observed, that assertion required proof, which is absent.

(o) Learned Advocate Shri Yogesh Bafna also relied upon the fact that the appellants resigned after receipt of the statutory notice. Even assuming that such resignation is accepted, it does not materially assist the defence. Liability under Section 141 has to be determined with reference to the point of time when the offence was committed. A subsequent resignation neither creates liability nor extinguishes liability which had already accrued.

(p) It is equally significant that no evidence has been led to show that the cheque was issued without the knowledge of appellant Nos.1 and 2 or that they had taken any steps to prevent its issuance or presentation. Therefore, the statutory defence available under the proviso to Section 141 has remained unsubstantiated.

**S. Cumulative Appreciation of the Evidence**

(ii) While appreciating evidence in an appeal against conviction, the Court is required to examine the cumulative effect of all the circumstances instead of considering each circumstance in isolation.

An isolated omission or a single discrepancy cannot be permitted to overshadow the totality of the evidence.

(jj) In the present case, the complainant has succeeded in establishing that the transaction between the complainant Company and accused No.1 Company existed; the cheque was issued on behalf of the Company; the cheque was dishonoured; the statutory notice was issued; and despite service of notice the amount remained unpaid. The complaint further contains the requisite averments contemplated by Section 141 and those averments have been reiterated in the oral evidence of the complainant.

(kk) The defence has undoubtedly pointed out certain circumstances, namely, that appellant Nos.1 and 2 are not signatories to the cheque, that the Memorandum of Understanding does not specifically refer to the consent of all the Directors, and that the complainant has not produced internal records of the Company. Those circumstances certainly deserve consideration. However, viewed collectively, they are insufficient to probabilise the defence that appellant Nos.1 and 2 had no responsibility whatsoever in relation to the affairs of accused No.1 Company.

(ll) Similarly, Form No.32 (Exh.92), Form MGT-7 (Exh.87) and the order passed by the Hon'ble Supreme Court do not conclusively establish the defence sought to be projected by the appellants. They merely constitute circumstances to be appreciated along with the remaining evidence. On such appreciation, they do not create a reasonable doubt regarding the applicability of Section 141.

(mm) Consequently, this Court finds no perversity or misapplication of law in the approach adopted by the learned Trial Court while holding that the prosecution against appellant Nos.1 and 2 was maintainable under Section 141 of the Negotiable Instruments Act.

**T. Conclusion on Point No.1**

117. Having independently re-appreciated the entire oral and documentary evidence, this Court is unable to accept the contention of learned Advocate Shri Yogesh Bafna that the conviction of appellant Nos.1 and 2 is liable to be set aside merely because they were not signatories to the cheque or because the complainant did not produce the internal records of the Company.

118. The complaint contains the essential averments required under Section 141 of the Negotiable Instruments Act. Those averments are not vague or omnibus. They specifically attribute responsibility to appellant Nos.1 and 2 for the conduct of the business of accused No.1 Company at the relevant point of time. The complainant has reiterated those assertions in the evidence led before the Trial Court.

119. It is true that the Memorandum of Understanding (Exh.60) does not expressly state that every Director consented to the transaction. It is equally true that appellant Nos.1 and 2 are not signatories to the cheque in question. However, neither of these circumstances is determinative of the issue under Section 141. The liability created by that provision is not founded upon execution of the underlying contract or upon signing the cheque, but upon the statutory responsibility of the person concerned for the conduct of the business of the Company at the time when the offence was committed.

120. The statutory documents produced by the appellants also do not probabilise the defence to the extent necessary for displacing the complainant's case. Form No.32 (Exh.92) and Form MGT-7 establish the corporate structure of the Company but do not establish that appellant Nos.1 and 2 had no role in the conduct of its business. Likewise, the order passed by the Hon'ble Supreme Court neither records their guilt nor exonerates them, but leaves the matter to be decided upon appreciation of evidence during trial. The evidence adduced before the Trial Court has therefore rightly remained the basis of adjudication.

121. The appellants have also failed to produce satisfactory material to establish the statutory defence available under the proviso to Section 141. No convincing evidence has been brought on record to show that the offence, if committed, was without their knowledge, that they had exercised due diligence to prevent its commission, or that they were merely nominal Directors having no concern with the affairs of accused No.1 Company.

122. Consequently, this Court finds that the learned Trial Court committed no error in holding that the prosecution against appellant Nos.1 and 2 was maintainable under Section 141 of the Negotiable Instruments Act. The challenge raised on that count, therefore, deserves to be rejected.

123. Point No.1 is accordingly answered in the Affirmative.

**U. Whether the impugned judgment warrants interference at the instance of appellant Nos.1 and 2?**

124. The jurisdiction of this Court in an appeal against conviction undoubtedly permits re-appreciation of the entire evidence. At the same time, the appellate Court is required to examine whether the findings assailed by the appellants suffer from illegality, perversity or misappreciation of evidence. The scope of scrutiny naturally depends upon the grounds urged in the appeal and the controversy raised before the appellate Court.

125. In the present appeal, learned Advocate Shri Yogesh Bafna has primarily questioned the applicability of Section 141 of the Negotiable Instruments Act to appellant Nos.1 and 2. The principal submissions advanced on their behalf are that they were neither signatories to the cheque nor parties to the Memorandum of Understanding (Exh.60), that they were not in charge of and responsible for the conduct of the business of accused No.1 Company, and that the learned Trial Court failed to properly appreciate the defence evidence and the statutory documents produced on record.

126. Except to the extent those submissions incidentally touch the nature of the transaction between the complainant and accused No.1 Company, no independent challenge has been raised by appellant Nos.1 and 2 to the findings recorded by the learned Trial Court regarding presentation of the cheque, its dishonour, issuance and service of the statutory notice or compliance with the remaining ingredients of Section 138 of the Negotiable Instruments Act. Those findings have not been seriously assailed before this Court.

127. Since the challenge in the present appeal substantially revolves around the vicarious liability of appellant Nos.1 and 2 under Section 141, this Court has confined its scrutiny principally to that

controversy. Upon independent re-appreciation of the pleadings, oral evidence, documentary evidence and the authorities cited by both sides, this Court has already concluded that the learned Trial Court committed no error in holding that the prosecution against appellant Nos.1 and 2 was maintainable under Section 141 of the Negotiable Instruments Act.

128. No material has been pointed out demonstrating that the appreciation of evidence by the learned Trial Court suffers from perversity, ignores any admissible evidence of material significance or proceeds on an erroneous understanding of the settled principles governing Section 141 of the Negotiable Instruments Act. Merely because another view may also be possible on certain aspects would not furnish a valid ground for appellate interference when the findings recorded by the Trial Court are supported by the evidence available on record.

129. Consequently, the grounds urged by appellant Nos.1 and 2 do not disclose any infirmity in the impugned judgment warranting interference by this Court. The appeal, therefore, fails. With this discussion, Point No. 1 is answered in the affirmative and Point No. 2 is answered in the Negative.

**As to Point No. 3:**

130. For the reasons discussed hereinabove, this Court finds that the learned Trial Magistrate has correctly appreciated the pleadings, the oral and documentary evidence and the legal position governing Section 141 of the Negotiable Instruments Act. The findings recorded against appellant Nos.1 and 2 do not suffer from any illegality, perversity or misapplication of law warranting interference in appellate jurisdiction.

131. The contentions advanced on behalf of appellant Nos.1 and 2 have been duly considered. However, none of them is of such a nature as would dislodge the conclusions reached by the learned Trial Court. The impugned judgment, insofar as it concerns appellant Nos.1 and 2, therefore deserves to be affirmed.

132. In view of my findings on Point Nos.1 to 2, the present appeal will have to be dismissed. Consequently, the impugned Judgment and Order passed by the learned Judicial Magistrate will have to be confirmed. Thus, in answer to Point No. 3, I pass the following order.

**ORDER**

1. The Criminal Appeal stands 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, in so far as it relates to the present appellants, is hereby confirmed. Consequently, appellant No.1 – Ashutosh Ashok Parasrampuriya (original accused No.4) and appellant No.2 – Ashok Tungalal Parasrampuriya (original accused No.5) shall undergo Simple Imprisonment for eight months. They shall also jointly and severally, along with the Company and the remaining convicted accused, pay compensation of ₹13,00,000/- to the complainant within one month and, in default of payment, shall undergo Simple Imprisonment for two months.

3. The bail bonds of appellant Nos.1 and 2 shall stand cancelled.

4. Appellant Nos.1 and 2 shall surrender before the learned Trial Court to undergo the substantive sentence,

5. In the event of failure to surrender within the stipulated period, the learned Trial Court shall take appropriate coercive steps in accordance with law to secure their presence and execute the sentence.

6. Record and proceedings be transmitted to the learned Trial Court forthwith.

**(Yashwant A. Goswami)**
**Additional Sessions Judge**
**Amravati.**

**Date:31.07.2026**