In the Court of Additional Sessions Judge, Court No.3, Hathras
Present:- Bushra Adil Rizvi, H.J.S.
J.O. Code No. UP 1749
Criminal Appeal No.- 06 of 2025

UPHT010007172025

Smt. Meena Singh W/O- Sh. Vinod Singh R/O-253 Pawan Vihar, Bareilly, U.P. ....APPELLANT

Versus

1. Pt. Jaishiv Kumar Sharma & Company New Grain Market Hathras, Through Prop. Jaishiv Kumar Sharma.

2. Jaishiv Kumar Sharma Prop. Jaishiv Kumar Sharma & Company R/o A-27, New Grain Market Hathras, U.P.

3. State Through its P.P.

………...RESPONDENTS

Judgment

[1] The instant criminal appeal has been preferred by Smt. Meena Singh, the appellant, against the judgment dated 23.12.2024 and the order on sentence dated 16.01.2025 passed by the learned Civil Judge (Junior Division), F.T.C.-I, Hathras, in Complaint Case No. 4470 of 2018 under Section 138 of the Negotiable Instruments Act.

Factual Matrix as Set Out in the Complaint

[2] The factual matrix of the case, as set out in the complaint, is that complainant no. 1 is a firm, namely M/s Naveen P.T. Jai Shiv Kumar Sharma and Company, represented through its proprietor, and complainant no. 2, Shri Jai Shiv Kumar Sharma, is the proprietor of the said firm. It has been alleged that complainant no. 2 is a grain commission agent and carries on business through the aforesaid firm situated at Hathras. Accused no. 1, M/s Chum Impex Private Limited, has been described in the complaint as a firm engaged in the business of purchasing paddy, processing it into rice and supplying the rice to various places. Accused no. 2, Smt. Meena Singh, is stated to be its Director; accused no. 3 its authorised representative; accused no. 4 its manager; and accused no. 5 its agent. It has further been alleged that on 17.10.2018, accused nos. 3, 4 and 5, along with two other persons, visited the complainant's office at Hathras for the purpose of purchasing paddy. During the discussions, they introduced themselves and represented that they were operating a rice mill at Bareilly, had recently commenced the said business, and therefore intended to purchase paddy from different mandis. It has further been alleged that accused nos. 3, 4 and 5, along with two other persons, acted with the intention of cheating the complainant and assured him that payment for the paddy would be made within four days. Pursuant to the alleged conspiracy to obtain wrongful gain, the complainant was induced to supply the paddy. Believing the representations made by the accused persons, the complainant supplied paddy on different dates between 20.10.2018 and 30.10.2018 through 15 trucks under separate bills, Form No. 9-R of the Mandi Samiti, GST documents and other relevant papers. After completion of the legal formalities, 13 trucks were transported through Bhagwati Transport, Hathras, and two trucks through Brijbhumi Roadlines, Hathras, to the address of accused no. 1. The consignment comprised 5,686 bags weighing 3,410.70 quintals and was valued at Rs. 97,79,842/-. According to the complainant, all the accused persons were morally and legally liable to make payment of the aforesaid amount. It has further been alleged that accused nos. 3, 4 and 5 delivered two post-dated cheques issued on behalf of accused no. 1 and signed by accused no. 2, Smt. Meena Singh. The cheques were drawn on Axis Bank, Bareilly, for Rs. 60,00,000/- and Rs. 37,79,842/- respectively, with an assurance that they would be honoured upon presentation. One cheque was dated 19.11.2018 and the other 21.11.2018. Cheque no. 193577 dated 19.11.2018, for Rs. 60,00,000/-, drawn on Account No. 91802-00053-00204 maintained with Axis Bank, Bareilly, bearing the stamp of accused no. 1 and the signature of accused no. 2, was presented by the complainant in his account maintained with Axis Bank, Hathras Branch, on 20.11.2018. The cheque was returned unpaid on the same day with the endorsement 'Stop Payment by Drawer', and the original cheque along with the return memo was returned to the complainant.

The complainant thereafter attempted to contact the accused persons. According to him, their conduct indicated that they had acted fraudulently and in a pre-planned manner. He approached the police and administrative authorities, but no action was taken, allegedly owing to the influence of the accused persons. The complainant then consulted Shri Harish Kumar Sharma, Advocate, Hathras, and caused a legal notice dated 30.11.2018 to be issued. It has been alleged that accused no. 2 refused to accept the notice, while the notice sent to accused no. 1 was returned with a postal endorsement. The postal endorsement stated that no firm by the name of accused no. 1 existed at the given address. Accordingly, the complainant prayed that accused nos. 1 to 5 be prosecuted and punished under Section 138 of the Negotiable Instruments Act and Sections 120-B and 420 of the Indian Penal Code.

Summoning Order and Conclusion of Trial

[3] The learned trial court, after recording the statements under Sections 200 and 202 Cr.P.C. and considering the documentary evidence available on record, summoned accused no. 2 alone to face trial under Section 138 of the Negotiable Instruments Act.

[4] The learned trial court, vide order dated 18.02.2019, observed that on the basis of the oral and documentary evidence available on record, a prima facie case was made out against accused no. 2, Smt. Meena Singh. It further observed that no offence was made out against the remaining accused persons. Accordingly, Smt. Meena Singh, stated to be a Director of M/s Chum Impex Private Limited, was summoned to face trial under Section 138 of the Negotiable Instruments Act.

[5] Upon conclusion of the trial, the learned Civil Judge (J.D.), F.T.C.-I, Hathras, passed the impugned judgment dated 23.12.2024 and the consequential order on sentence dated 16.01.2025, which are under challenge in the present appeal.

Facts set out in the appeal

[6] The Chum Impex Private Limited is a Company incorporated under the provisions of Companies Act, 1956 on dated 19.11.2013 vide CIN No. U51909DL2013PTC260346. The company is working as a leading Manufacturer, Trader & Exporter of all kind of Indian Basmati & Non-Basmati Rice. The Company has taken one Rice Mill at B-3, Road No. 1, Parsakheda Industrial Area, Bareilly, U.P for the Period of 11 Months ie. 01.10.2018 to 30.09.2019 in the consideration amount of Rs. 1,50,000/- (One Lakh Fifty Thousand Rupees only) Per Month and started the business of Rice Milling from 18.10.2018 from the Purchase of Paddy and Production in the Rice Mill started from 26.10.2018. The Appellant/Accused No. 2 is a law abiding and peace-loving citizen of India. The Appellant/Accused No. 2 is 53 year old lady and a house wife having two children. The Appellant/Accused No. 2 have no past antecedent. The Appellant/Accused No. 2 was the Ex-director of the Company M/s Chum Impex Private Limited and resigned from the company on dated 15.10.2018 approximately one month before the Incident of LOOT and DACKOITI has been executed by the Complainant/Respondent No. 2 & other co-accused persons of Paddy, Rice & Cheques which were in question in this case i.e., from 16.11.2018 to 26.11.2018. The Complainant/Respondent No. 2 was fraudulently showing Appellant/Accused no. 2 as the Director of the Company Chum Impex Private Limited while sending the Legal Notice on dated 30.11.2018 and Complainant/Respondent No. 2 filed U/s 138 in the Hon'ble Trial Court when the Appellant/Accused no. 2 already resigned from the Company Chum Impex Private Limited on dated 15.10.2018. That the Appellant/Accused No. 2 after the resignation from the company was having no authority and not involved in any day-to-day affair of the company. From dated 16.11.2018 to 26.11.2018, when the incident of LOOT/DAKAITI of Paddy, Rice & Cheques was executed by the Complainant/Respondent No. 2 & other co-accused persons then at that time there were two full time working Directors in the Company Chum Impex Private Limited one Mr. Sidharth Nautiyal and another one Mr. Surendra Mehto who were responsible for the day to day working of the Company Chum Impex Private Limited.The complainant supplied the paddy in the Rice Mill of accused no. 1 at B-3, Road No. 1, Parsakheda Industrial Area, Bareilly, U.P. That there was no fixed payment term was decided between the Complainant/Respondent No. 1 & 2 and the accused no. 1 because there was no meeting took place between Complainant/Respondent No. 2 and Accused No. 3 who was authorised for the purchase of Paddy. The Complainant fraudulently mentioned in the Complaint U/s 138 N.I. Act of 1881 that accused no. 3, 4 & 5 visited the place of Complainant/Respondent No. 2 on dated 18.10.2018. That as per the customary practices of the market the Payment of the said Bills will be paid within the period of 14 days without any Cash Discount. This is the reason the Complainant/Respondent No. 2 has supplied the Paddy regularly 10 days from 20.10.2018 to 30.10.2018 and if the payment term would be 3-4 days then definitely the Complainant/Respondent No. 1 & 2 would stops the delivery of the Paddy after 3-4 days and not continued the supply till 10 days from 20.10.2018 to 30.10.2018 without any demand of payment. On dated 16.11.2018 the Complainant/Respondent No. 2 has reached in the Rice Mill of the Accused No. 1 Chum Impex Private Limited at B-3, Road No. 1, Parsakheda

Industrial Area, Bareilly with the Criminal Intension of LOOT & DAKAITI along with 15-20 other criminal persons lashed with Arms & Ammunition and forcefully Loaded the Paddy in several Trucks which was stopped by the mill staff at that time by requesting the Complainant/Respondent No. 2 but he stayed in the Rice Mill only in the night with several other criminal persons with the criminal intensions. The pictures of the loot are already a part of judicial record in trial courts. On 17.11.2018 the Complainant/Respondent No. 2 demanded Rs. 10,00,000/-from the Accused No. 1 & 3 as extortion money for not executing the LOOT/DAKAITI and not to call other Aadatiya/Traders with other Criminal Persons but the accused no. 1 & 3 completely denied these illegal demands. But after the Telephonic conversation between the Complainant/Respondent No. 2 & Accused no. 3, the accused no. 1 transferred Rs. 4,00,000/- in SBI Account of the Complainant as a part money from the Bill Amount of the complainant. The Complainant/Respondent No. 2 and accused no. 3 is the strong evidence against the Complainant/Respondent No. 2 which proves his presence in the Rice Mill with the Criminal Intension of the LOOT/DAKAITI and receiving of Rs. 4,00,000/- which the Complainant/Respondent No. 2 completely denied in his cross in the Hon'ble Trial Court and said that this Rs. 4,00,000/- the Complainant/Respondent No. 2 received in different transaction but it has not been specifically mentioned against which business. On 17.11.2018 after receiving Rs. 4,00,000/- from the Accused No. 1, the Complainant/Respondent No. 2 started executing the sinister plan during his stay in the Rice Mill compound with other criminal elements and forcefully stopped the working in the Rice Mill by ordering that no processed rice would move from rice mill till the demand of the complainant of Rs. 10,00,000/-would not fulfill Complainant/Respondent No. 2 and started calling other 8 Aadatiyas/traders and other criminal Persons lashed with Arms & Ammunition and started to execute the LOOT/DAKAITI by all means. During this period 17.11.2018 to 19.11.2018 Complainant/Respondent No. 2, other 8 Aadatiya/Traders, & other criminal persons involved so many Powerful Politicians, Administrative Officers, Lessor of the Rice Mill and Police against the accused no. 1 by allurement and offering them the huge Money and Share in the LOOT/DAKAITI for executing the LOOT/DAKAITI in the Rice Mill of Accused No. 1. On 19.11.2018 Complainant/Respondent No. 2, other 8 Aadatiyas with more than 50 criminal persons with the full force entered in the rice mill of accused no. 1 and started executing LOOT/DAKAITI by placing Several Trucks and labour for LOOT/DAKAITI of the Paddy & Rice in the Rice Mill of the accused no. 1 and accordingly open LOOT/DAKAITI was executed by the Complainant/Respondent No. 2 with all other co-accused from 19.11.2018 to 26.11.2018. The entire chapter of the LOOT/DAKAITI between 19.11.2018 to 26.11.2018 of the Total material of Rs. 9,08,12,463/- (Nine Crore Eight Lakhs Thirteen Thousand Four Hundred Sixty-Three Rupees only) was well recorded by the Print and Digital Media of Bareilly and other Districts of U.P on daily basis which flaunted the complete modus operandi adopted by the Complainant/Responded N0.2 and other co-associated persons and which is the part of judicial record in trial court. Ld. Trial Court vide prosecuting and convicting the appellant completely over reached the provisions Sec 141 of NI Act as applicable to the company as Sec of 138 NI Act pre-supposes the commission of offence in only when a cheque which is dishonoured is drawn by a person on an account nominated by him with the banker for payments of any amount of money to another person from out of that account for discharge in whole or in part of any debt or other liability. It is only such a cheque which is dishonoured would attract the provision of Sec 138 of NI Act against the drawer of the cheque. Thereafter, the Ld. Trial Court conducted the trial into the matter, the respondent/complainant was got examined and cross-examined, during cross-examination the respondent/complainant admitted about the registration of crime case number 712/2018 under section 506,395,342,323 IPC PS collector Ganj Bareilly, whereby it was reported that on 19th, November 2018, an incident of dacoity and the looting of the will of M/s Chum Impex Private Limited in Bareilly. Thereafter, the defence evidence of the appellant could not be leaded as it was closed by Ld. Trial court, against which the appellant preferred the revision petition, which is still pending, however, the documents filed together with list of document dated 9 November 2022 Filed by the Appellant were taken on record by the Ld. Trial Court but ld. Trial court failed to take into consideration those documents while dealing with evidence, and pass the impugned judgement of Conviction and sentence.

Submissions of the opposite party:-

[7] The learned Counsel for the opposite party has stated that the appeal has been file without any valid ground in their favour they have no reason to deny the liability of a plant accused on behalf of the company and their food. The appeal is liable to be dismissed with cost. It is further stated that both the cheques were return with stop payment or fund efficient remark of the drawee bank which means that deliberately, the opposite party or appellant or its company has deliberately have no intention to pay the funds in view of supply of paddy. Therefore, it is wrong to say that the Appellant has no liability towards opposite parties. It is further stated that Mandi samiti papers have been filed where the appellant has shown herself to be the director of the accused company. The affidavit bearing dated 16th October, 2018 has been duly signed by the appellant. These paper very much prove the liability of appellant as director of the company where the aforesaid papers has been executed after the so called resignation of appellant as director of the company. The sign of being director are very much admitted and therefore these paper can be relied upon. The case of the Opposite Party is proved. It is stated by Ld. Counsel for opposite party that the paddy was supplied by 15 trucks loaded with paddy and in view of those in new of those items send and delivered the checks we should buy the opposite company and the plant on behalf of the accused company has received the check in favour of the opposite party there for the appeal and cannot deny the liability towards supply of paddy. It is further submitted by learned Counsel for opposite party that the cheques received from the accused company signed by the director/appellant, the cheques were presented before the banker of the opposite party where they were dishonored on remark of stop payment or fund insufficient. It is further submitted that cheques were presented within time and the procedure established in section 138 Ni act are during followed. The notice issue to the appellant and their company are within time and therefore it is not denied that the process or proper procedure have not been followed in prosecution under section 138 NI Act. It is further submitted by Ld. Counsel for opposite parties that due procedure have been followed while giving evidence under section 244 or 246 of CrPC. No contradictions have been provided in arguments or cross examination by the appellant from the witnesses presented by complainant/opposite party in Ld. lower court record. Therefore the appeal is liable to be dismiss and the impugned judgement is liable to be confirmed. It is submitted that during the testimony of appellant under section 313 CrPC, she has not provided any details as to how the case is not made against her. Therefore the appellant is not liable to be getting any relief. Appeal is liable to be dismissed. It is also brought into the knowledge of this Court that accused has not been testified under section 315 CrPC after recording of statement under section 313 CrPC. The accused can be best evidence to present her case before this court. Therefore the appeal is liable to be dismiss and the impugned judgement is liable to be confirmed.

WRITTEN SUBMISSION ON BEHALF OF THE APPELLANT

It is submitted that the cheques issued were of the company M/s Chum Impex Pvt Ltd and the appellant had only been summoned and tried as the sole accused and the company was not tried as an accused and therefore the conviction of the appellant was erroneous. That without the company being tried as an accused the appellant could not have been tried. It is held:

A. In the case of **Aneeta Hada and Ors. vs. Godfather Travels and Tours Pvt. Ltd. and Ors. (27.04.2012-SC): MANU/SC/0335/2012** it has been held that:

"42. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The Learned Counsel for the Respondents have vehemently urged that the use of the term "as well as" in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as” have to be understood in the context.

In **Reserve Bank of India v. Peerless General Finance and Investment Company Ltd. and Ors. MANU/SC/0073/1987: (1987) 1 SCC 424** it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in **Deewan Singh and Ors. v. Rajendra Prasad Ardevi and Ors. MANU/SC/0207/2007: (2007) 10 SCC 528** and **Sarabjit Rick Singh v. Union of India MANU/SC/0041/2008: (2008) 2 SCC 417.**

Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative.

The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself."

That the appellant was tried as the accused as the complainant has failed to explain to the Hon'ble Trial Court that the M/s Chum Impex Pvt Ltd is a private limited company which is clear from the impugned judgment that while holding the appellant guilty, the Hon'ble court was not aware about the nature of M/s Chum impex as to whether it is a company or a proprietorship. That the Hon'ble trial court has erroneously held that the burden was on the appellant to prove the nature of M/S Chum Impex Pvt Ltd which was incorrect since at the time of taking cognizance it was the duty of the complainant to prove the nature of the M/s Chum Impex Pvt Ltd.

That the appellant was not the director of the company M/s Chum Impex Pvt Ltd on the date when the cause of action to file the present complaint was committed and had the appellant had resigned much prior to the said date. That the appellant had resigned on 15.10.2018 whereas the cause of action to file the present complaint arose on 16.12.2018 which is after the expiry of the 15 days from the date of legal demand notice dated 01.12.2028. That the appellant has filed form DIR 12 which is unimpeachable document which is annexed as ANNEXURE A-2 to prove beyond reasonable doubt that the appellant was not the director on the date of the alleged offence. That it was specifically stated in the notice framing u/s 251 of Cr.P.C that the appellant had resigned on 15-10.2018 therefore the appellant had not admitted that she was the director of M/s Chum Impex Pvt Ltd on the date of cause of action of filing the present complaint, therefore, it was the burden on the complainant to prove that the appellant was the director of M/s Chum Impex Pvt Ltd.

That the appellant is not the drawer of the cheque and the liability u/s 138 of NI act is only of the drawer of the cheque which is the persons involved in the day today affairs of the company and the appellant had resigned from the company M/s Chum Impex Pvt Ltd much prior to the arising of the cause of action. That the liability u/s 138 of NI act is of the drawer has been held:

A. In the case of **Adhiraj Singh Vs. Yograj Singh and Ors. Criminal Appeal Nos. 4926-4927 of 2024 (Arising out of S.L.P. (Crl.) Nos. 16051-16052,** MANU/SC/1488/2024 it has been held that;

Having considered the submissions made by learned Counsel for the parties, we find that in the present case on the date of issuance of the cheques, the Appellant had already resigned. The fact regarding resignation is not in dispute. It is also not in dispute that the cheques issued by the Company were signed by another competent person on behalf of the Company. Once the facts are plain and clear that when the cheques were issued by the Company, the Appellant had already resigned and was not a director in the Company and was not connected with the company, he cannot be held responsible for the affairs of the Company in view of the provisions as contained in Section 141 of the NI Act.

B. In the case of **Shri Gurudatta Sugars Marketing Pvt. Ltd. vs. Prithviraj Sayajirao Deshmukh and Ors.(24.07.2024-SC): MANU/SC/0769/2024** it has been held that:

The High Court's interpretation of Section 7 of the NI Act. accurately identified the "drawer" as the individual who issues the cheque. This interpretation is fundamental understanding the obligations and liabilities Under Section 138 of the

NI Act, which makes it clear that the drawer must ensure sufficient funds in their account at the time the cheque is presented. The Appellants argument that directors or other individuals should also be liable Under Section 143A misinterprets the statutory language and intent. The primary liability, as correctly observed by the High Court, rests on the drawer, emphasizing the drawer's responsibility for maintaining sufficient funds.

The general Rule against vicarious liability in criminal law underscores that individuals are not typically held criminally liable for acts committed by others unless specific statutory provisions extend such liability. Section 141 of the NI Act is one such provision, extending liability to the company's officers for the dishonour of a cheque. The Appellants attempt to extend this principle to Section 143A, to hold directors or other individuals personally liable for interim compensation, is unfounded. The High Court rightly emphasized that liability Under Section 141 arises from the conduct or omission of the individual involved, not merely their position within the company.

The **distinction between legal entities and individuals acting as authorized signatories is crucial.** Authorized signatories act on behalf of the company but do not assume the company's legal identity. This principle, fundamental to corporate law, ensures that while authorized signatories can bind the company through their actions, they do not merge their legal status with that of the company. This distinction supports the High Court's interpretation that the drawer Under Section 143A refers specifically to the issuer of the cheque, not the authorized signatories.

The principle of statutory interpretation, particularly in relation to Sections 143A and 148, was also correctly applied by the High Court. The Court emphasized that when statutory language is clear and unambiguous, it should be given its natural and ordinary meaning. The legislative intent, as discerned from the plain language of the statute, aims to hold the drawer accountable. The Appellants' argument for a broader interpretation to include authorized signatories Under Section 143A contradicts this principle and would lead to an unjust extension of liability not supported by the statutory text.

The High Court's reliance on established legal precedents further reinforces its interpretation. Judicial precedents relied upon in the impugned judgment underscore the need for a literal interpretation of the statutory provisions. **These precedents support the High Court's decision to limit the definition of 'drawer' to the issuer of the cheque, excluding authorized signatories.**

The Respondents correctly argued that an authorized signatory is not a drawer of the cheque, as established in N. Harihara Krishnan (Supra) MANU/SC /1062/2017: (2018) 13 SCC 663. This judgment clarified that a signatory is merely authorized to sign on behalf of the company and does not become the drawer. The Respondents interpretation aligns with the principle that penal statutes should be interpreted strictly, particularly in determining vicarious liability. The judgment in K.K. Ahuja (Supra) MANU/SC/1111/2009: 2009:INSC:859: (2009) 10 SCC 48, further supports this approach, emphasizing that penal provisions must be read strictly to determine liability.

In conclusion, the High Court's decision to interpret 'drawer' strictly as the issuer of the cheque, excluding authorized signatories, is well-founded. This interpretation aligns with the legislative intent, established legal precedents. and principles of statutory interpretation. The primary liability for an offence Under Section 138 lies with the company, and the company's management is vicariously liable only under specific conditions provided in Section 141. The Appellants' submissions are thus rejected, and the High Court's judgment is upheld. This decision maintains the clarity and consistency of the law regarding cheque dishonour cases, ensuring that liability is appropriately assigned to the responsible parties under the NI Act. Therefore, the question of law put before this Court is answered in the negative.

C. In the case of **Bijay Agarwal Vs. Medilines Criminal Appeal No. 4301 of 2024 (Arising out of Special Leave Petition (Crl.) No. 2696 of 2024)** and **Criminal Appeal No. 4302 of 2024 (Arising out of Special Leave Petition (Crl.) No. 2695 of 2024) Decided On: 21.10.2024 MANU/SC/1285/2024,** it has been held that:

To wit, as in the case of the position qua Section 143A, NI Act, merely because an officer of a company concerned is the authorised signatory of the cheque concerned by itself will not make such an officer 'drawer of the cheque Under Section 148, NI Act, so as to empower the Appellate Court, in an appeal against conviction for an offence Under Section 138, NI Act, to direct to deposit compensation of any sum Under Section 148(1), of the NI Act.

From the reading and relying upon the above decision it is clear that merely because an officer of a company concerned is the authorised signatory of the cheque concerned by itself will not make such an officer 'drawer of the cheque'

That the complainant has not prove by leading evidence of the banker that the cheque was dishonoured and that the cheque returning memo is genuine and not forged. That the cheque was dishonoured in the accounts of the company M/s Chum

Impex Pvt Ltd was not admitted by the appellant hence it was the burden on the complainant which was not discharged, that the cheque was dishonoured. It is prima facie proved that the cheque was never presented in the account as there is no stamp of the bank on the cheque and no cheque dishonour charges were debited from the account of the complainant. that the complainant has also not annexed the account statement proving that the cheque was presented and dishonoured.

That the cheque was a stolen cheque as the FIR was registered by M/s Chum Impex Pvt Ltd through Mr. Rakesh singh. This fact has not been denied by the complainant, on the contrary he has admitted the knowledge of the final of the final report by the Investigating Officer. That it was complained that the complainant along with 28-30 people entered the mill premises and looted the paddy and the signed cheques and the other documents. That as per the final report of the investigating the complainant has taken back his 80% of the paddy with the consent of M/s Chum Impex Pvt Ltd and the complainant has made the statement to the investigating officer to that affect. The said report has been challenged by M/s Chum Impex Pvt Ltd by filing protest petition and the said petition has been allowed by the Hon'ble Judicial Magistrate, Bareilly, but the complainant has not disputed the said statement by filing any protest before the senior police officer or petition before the competent court, therefore the appellant has proved by preponderance of probability that the cheque was a stolen cheque. That the complainant has failed to state as to when the cheque was handed over to him therefore the contention that the cheque was obtained on 19.11.2018 in the loot as on the same date the cheque was alleged to have been deposited and not before. Copy of the FIR, Closure Report and the protest petition are part of the present appeal.

As per the facts no amount was due to the complainant as the alleged cheque were fore the liability towards purchase of paddy from the complainant and the FIR was registered by M/s Chum Impex Pvt Ltd through Mr. Rakesh Singh against the complainant and other persons. That it was complained that the complainant along with 28-30 people entered the mill premises and looted the paddy and the signed cheques and the other documents. That as per the final report of the investigating the complainant has taken back his 80% of the paddy with the consent of M/s Chum Impex Pvt Ltd and the complainant has made the statement to the investigating officer to that affect. The complainant has not disputed the said statement by filing any protest before the senior police officer or other petition before the competent court. Therefore as per the admitted statement of the complainant he has received by

80% of the paddy back and in addition he has received Rs.4 Lacs from M/s Chum Impex Pvt Ltd in the cross examination dated 30.11.2023. That the complete amount has been received by the complainant has been proved hence there was no legally enforceable liability on the date of dishonour as no amount was due and payable.

It is stated that Erroneous procedure was adopted by the Hon'ble Trial court because-

a. the list of witness was not allowed by any order of the Hon'ble Trial court.

b. Dasti summons were issued by the Hon'ble Trial court which is unknown in Criminal Procedure Code, 1973. That for non appearance of the witness the Hon'ble court did not issue closed.

The mandi samiti documents were not proved in evidence by calling the officials of mandi samiti, this was for the reason that these document were part of the loot on 19.11.2018 from the mill premises of M/s Chum Impex Pvt Ltd.

No any other witness was produced other than the complainant who was unreliable witness.

That the receiving of the notice was not proved and even any officer from the post office was not summoned and the receiving of the legal notice was proved hence the necessary ingredients to prove the case of 138 of the NI act was proved, hence the conviction is liable to be set aside.

That the order dated 23.12.2024 is liable to be set aside and the appellant is liable to the acquitted

It is also orally submitted that though the appellant was the director of the company but the opposite party has not submitted a single paper showing appellant as the director of the company. It is also admitted that the accused company has purchased paddy from OPs.

It is brought to the knowledge of this court that the cheque is dated 19.11.18 and the loot took place on 09.11.18. It is further submitted that there is no proof that the cheque was dishonored as no banker has been examined. It is also submitted that cheque bears no stamp of bank.

Following Case Laws have been relied upon by the appellant:-

1- Shri Gurudatta Sugars Marketing Pvt. Ltd. **Vs** Prithviraj Sayajirao Deshmukh & Ors. SLP (Crl.) Nos. 8849-8850 of 2023

2- N. Harihara Krishnan Vs J. Thomas SLP (Crl.) No. 1439 of 2017

3- Aneeta Hada Vs M/S Godfather Travels & Tours Pvt. Ltd 27 April 2012

4- Anil Gupta Vs Star India Pvt. Ltd. & Anr. SLP (Crl.) No. 7.39 of 2007

5- Ashok Shewakramani & Ors Vs State Of Andhra Pradesh & Anr. 2023 LiveLaw (SC) 622: 2023 INSC 692
6- Bijoy Kumar Moni Vs Paresh Manna & Anr. SLP (Crl.) No. 13133/2024
7- S.M.S. Pharmaceuticals Ltd Vs Neeta Bhalla & Anr on 20 February, 2007
8- N.K Wahi Vs Shekhar Singh and Ors on 9 March, 2007 (Supreme Court)
9- Ashok Sikka Vs State (Along With Crl. M.C. ….. on 7 February, 2008 (Delhi High Court)
10- K. Srikanth Singh Vs North East Securities Ltd. And Anr on 20 July , 2007
11- Sh. J.B. Garg Vs State & Anr. Crl. M.C. No. 908/2005 and Crl. M.A. No. 3092/2005 (Delhi High Court)
12- Pooja Ravinder Devidasani Vs State Of Maharashtra & Ors on 17 December, 2014. (Supreme Court)
13- K.R. Indira Vs Dr. G. Adinarayana on 9 October, 2003
14- Dashrathbhai Trikambhai Patel Vs Hitesh Mahendrabhai Patel on 11 October, 2022 (Supreme Court)
15- M/S Alliance Infrastructure Project…. Vs Vinay Mittal on 18 January, 2010 (Delhi High Court)
16- Central Bank Of India And Anr Vs Saxons Farms And Ors on 7 October, 1999
17- Joseph Sartho Vs G. Gopinathan Crl. Appeal No. 1432 of 2003 (Kerala High Court)
18- Angu Parameswari Textiles (P) Ltd. And… Vs Sri Rajam & Co. on 24 January, 2001.
19- Suman Sethi Vs Ajay K, Churiwal on 2 February, 2000
20- Satya Narain Singh Vs Janardan Kanth And Ors. On 22 May, 1980
21- Nagisetty Nagaiah Vs State Of A.P. And Anr. On 16 July, 2004
22- Dilip Hiraramani Vs Bank Of Baroda on 9 May, 2022 (Supreme Court)
23- Dashrathbhai Trikambhai Patel Vs Hitesh Mahendrabhai Patel & Anr. 2022 LiveLaw (SC) 830
24- Bijay Agarwal Vs M/s Medilines SLP (Crl.) No. 2696 of 2024
25- Sumaj Jain & Anr Vs State NCT of Delhi And Anr. W.P. (Crl.) 3047/2024 & Crl. M.A. 29607/2024
26- Jamboo Bhandari Vs M.P. State Industrial Development … on 4 September, 2023 (SC)
27- Surinder Singh Deswal @ Col. S.S. Deswal and others Vs Virender Gandhi (2019) 8 S.C.R. 746
28- Muskan Enterprises Vs The State Of Panjab on 19 December, 2024 (SC)

Respondant has filed Judgment dated 18, March, 2025 of J.M.F.C. (NI Act) 1 South West District Dwarka Courts New Delhi Shri Avneet Singh Vs Ravinder Kumar @ Hira.

Questions of Law Raised in the Appeal

[8] Accused no. 2, Smt. Meena Singh, has preferred the instant appeal raising various factual grounds of defence and, inter alia, the following questions of law:

(i) Whether the appellant is liable to be convicted when the cheque was of the accused company and the company was discharged by the trial court?

(ii) Whether the appellant is liable to be convicted when the cheque in question was presented after her resignation from the Board of Directors of the company?

(iii) Whether the appellant is liable to be convicted when the trial court had not afforded a proper opportunity to lead defence evidence, even though the said order was challenged before the revisional court?

(iv) Whether the appellant is liable to be convicted when there was no liability at the time of filing of the complaint under Section 138 of the Negotiable Instruments Act?

(v) Whether the appellant is liable to be convicted when the complainant had already admitted leakage of 80% of the material supplied to the accused company?

(vi) Whether the appellant is liable to be convicted when the complainant has not proved any case against her?

(vii) Whether the appellant is liable to be convicted when the cheque was of the accused company?

(viii) Whether the appellant is liable to be convicted when she had already resigned from the company and no role has been attributed to her in the complaint filed by the complainant, the present respondent?

(ix) Whether the appellant is liable to be convicted when no documents were exhibited at the pre-summoning stage or in the post-summoning evidence?

(x) Whether the appellant is liable to be convicted when there was no deduction from the account in relation to the dishonour of the cheque?

(xi) Whether the appellant is liable to be convicted when the cheque in question was not properly stamped?

(xii) Whether the appellant is liable to be convicted when the return memo was issued by the Bareilly Branch, which was not within the jurisdiction of the Hathras Court?

(xiii) Whether the appellant is liable to be convicted when no cause of action had arisen?

Determinative Question

[9] The principal question that arises for consideration, and which is determinative of the instant criminal appeal, is whether the summoning order dated 18.02.2019, whereby cognizance was taken against the appellant, Smt. Meena Singh, as well as the impugned judgment dated 23.12.2024 and the order on sentence dated 16.01.2025, were passed in disregard of the provisions of the Negotiable Instruments Act and the binding judicial pronouncements governing the issue.

Analysis

[10] It has been argued that, while passing the aforesaid summoning order, the impugned judgment and the order on sentence, the learned trial court remained oblivious to the fact that the appellant had been prosecuted alone under Section 138 read with Section 141 of the Negotiable Instruments Act. It has further been contended that, while prosecuting and convicting the appellant, Smt. Meena Singh, the learned trial court completely overlooked the statutory scheme governing vicarious liability.

[11] Section 138 of the Negotiable Instruments Act presupposes the commission of an offence only where a cheque, which is subsequently dishonoured, has been drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person out of that account, for the discharge, in whole or in part, of any debt or other liability. It is only the dishonour of such a cheque that attracts Section 138 against the drawer of the cheque. Where the drawer is a company, the liability of its officers, if any, must be determined in accordance with Section 141 of the Act.

[12] At this stage, it would be apposite to reproduce the provisions of Section 138 & 141 of the Negotiable Instruments Act, which read as follows:

Section 138 in The Negotiable Instruments Act, 1881:- Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:Provided that nothing contained in this section shall apply unless—

(a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b)the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]

Section 141 in The Negotiable Instruments Act, 1881:- *Offences by companies.*
—

(1)If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2)Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a)"company" means any body corporate and includes a firm or other association of individuals; and

(b)"director", in relation to a firm, means a partner in the firm.

[13] From a bare perusal of the averments made by the complainant in the complaint, read in conjunction with the aforesaid provisions of Sections 138 and 141 of the Negotiable Instruments Act, it becomes conspicuously clear that the order dated 18.02.2019, whereby the appellant, Smt. Meena Singh, alone was proceeded against while accused nos. 1, 3, 4 and 5 were not summoned, was passed in disregard of the statutory scheme embodied in Sections 138 and 141 of the Act.

[14] It has been argued by learned counsel for the appellant that it was incumbent upon the complainant to state clearly and prove before the Court that accused no. 1, M/s Chum Impex Private Limited, was a company registered under the Companies Act. Learned counsel has further submitted that the complainant repeatedly referred to accused no. 1 as a 'firm' in the complaint and that this description created doubt regarding its true legal character.

[15] It has been submitted that, owing to the aforesaid confusion, the order dated 18.02.2019, whereby accused no. 2, Smt. Meena Singh, was summoned to face trial while the remaining accused persons were not summoned, as well as the impugned judgment and the order on sentence, were erroneously passed.

[16] This Court does not find merit in the aforesaid submission. While passing an order, the Court is required to consider the record in its entirety. The very name of accused no. 1, M/s Chum Impex Private Limited, indicates that it is a company incorporated under the Companies Act. Further, the cheque produced by the complainant reflects that the appellant/accused no. 2, Smt. Meena Singh, affixed her signature thereon for and on behalf of M/s Chum Impex Private Limited.

[17] It is true that the complainant described accused no. 1 as a 'firm'; however, that description does not absolve the Court of its duty to consider the record and the surrounding circumstances as a whole. The complainant specifically described accused no. 2 as a Director of the said entity. The complaint further makes it clear that the agreement for the supply of paddy was entered into with M/s Chum Impex Private Limited and that the paddy was delivered to accused no. 1.

[18] Before issuing process under Section 204 Cr.P.C., the Court is expected to conduct the inquiry contemplated under Sections 200 and 202 Cr.P.C. and to consider the documentary evidence produced at that stage. In the present case, however, the order dated 18.02.2019 reflects non-application of judicial mind. Although the learned trial court specifically observed that no offence was made out against accused nos. 1, 3, 4 and 5, it assigned no reason for arriving at that conclusion or for declining to summon the said accused persons.

[19] It is noteworthy that the complainant did not challenge the order dated 18.02.2019, which constituted the very foundation of the trial that ultimately culminated in the impugned judgment dated 23.12.2024 and the order on sentence dated 16.01.2025.

[20] The learned trial court further displayed non-application of judicial mind while passing the impugned judgment dated 23.12.2024 and the order on sentence dated 16.01.2025.

[21] It is clearly stated in the complaint that the two cheques, one dated 19.11.2018 and the other dated 21.11.2018, bore the stamp of accused no. 1 and were signed by accused no. 2. It is also evident from the averments in the complaint that Account No. 91802-00053-00204 maintained with Axis Bank, Bareilly, belonged to accused no. 1, M/s Chum Impex Private Limited.

[22] Therefore, accused no. 2 cannot be held personally liable for payment of the amount in question to the complainant. She has consistently been described as a Director of M/s Chum Impex Private Limited; consequently, any liability sought to be fastened upon her could only be in the nature of vicarious liability under Section 141 of the Negotiable Instruments Act.

[23] Thus, even if the learned trial court were to disregard the defence of accused no. 2, Smt. Meena Singh, that she had resigned from the directorship of the company on 15.10.2018, it remains significant that the transaction, as set out in the complaint, commenced only on 20.10.2018, that is, after the alleged resignation.

[24] Even in the absence of such a defence, accused no. 2 could neither have been prosecuted nor convicted when accused no. 1, M/s Chum Impex Private Limited, the drawer of the cheque and principal offender, had not been proceeded against.

[25] It has further been asserted on behalf of the appellant that the impugned judgment of conviction and the order on sentence suffer from a fundamental legal infirmity. Where a cheque is issued on behalf of a company by its authorised signatory, prosecution cannot be maintained against such authorised signatory or against persons occupying the positions contemplated under Section 141 of the Negotiable Instruments Act unless the company, being the drawer of the cheque, is arraigned as an accused.

Vicarious liability can be fastened upon a Director, authorised signatory or other officer of the company only when the company is prosecuted for the commission of the offence under Section 138 of the Act. Applying the rule of strict construction applicable to penal provisions, the commission of the offence by the company is an express condition precedent for attracting the vicarious liability of the persons referred to in Section 141. The expression 'as well as the company' appearing in that provision makes it clear that the persons falling within the other categories may be held vicariously liable only when the company is prosecuted, subject to the requisite averments in the complaint and proof thereof.

A company is a separate juristic person. Therefore, for maintaining a prosecution under Section 141 of the Negotiable Instruments Act, arraigning the company as an accused is imperative. The other categories of persons can be brought within the ambit of criminal liability only on the principle of vicarious liability expressly stipulated in the provision. In support of the aforesaid submission, reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661.**

[26] The aforesaid conclusion was arrived at by the Hon'ble Supreme Court after considering and discussing several judicial pronouncements in **paragraphs 35 to 43 of the above judgment, which are reproduced hereinbelow:**

"35. With greatest respect to the learned Judges in Sheoratan Agarwal (supra), the authoritative pronouncement in C.V. Parekh (supra) has not been appositely appreciated. The decision has been distinguished despite the clear dictum that the first condition for the applicability of Section 10 of the 1955 Act is that there has to be a contravention by the company itself. In our humblest view, the said analysis of the verdict is not correct. Quite apart, the decision in C.V. Parekh (supra) was under Section 10(a) of the 1955 Act and rendered by a three-Judge Bench and if such a view was going to be expressed, it would have been appropriate to refer the matter to a larger Bench. However, the two-Judge Bench chose it appropriate to distinguish the same on the rationale which we have reproduced hereinabove. We repeat with the deepest respect that we are unable to agree with the aforesaid view.

36. In the case of Anil Hada (supra), the two-Judge Bench posed the question: when a company, which committed the offence under Section 138 of the Act eludes from being prosecuted thereof, can the directors of that company be prosecuted for that offence. The Bench referred to Section 141 of the Act and expressed the view as follows: - "12. Thus when the drawer of the cheque who falls within the ambit of Section 138 of the Act is a human being or a body corporate or even firm, prosecution proceedings can be initiated against such drawer. In this context the phrase "as well as" used in Sub-section (1) of Section 141 of the Act has some

importance. The said phrase would embroil the persons mentioned in the first category within the tentacles of the offence on a par with the offending company. Similarly the words "shall also" in Sub-section (2) are capable of bringing the third category persons additionally within the dragnet of the offence on an equal par. The effect of reading Section 141 is that when the company is the drawer of the cheque such company is the principal offender under Section 138 of the Act and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per the section. Hence the actual offence should have been committed by the company, and then alone the other two categories of persons can also become liable for the offence. 13. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused, and hence the prosecuted accused is not liable to be punished. The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act." On a reading of both the paragraphs, it is evincible that the twoJudge Bench expressed the view that the actual offence should have been committed by the company and then alone the other two categories of persons can also become liable for the offence and, thereafter, proceeded to state that if the company is not prosecuted due to legal snag or otherwise, the prosecuted person cannot, on that score alone, escape from the penal liability created through the legal fiction and this is envisaged in Section 141 of the Act. If both the paragraphs are appreciated in a studied manner, it can safely be stated that the conclusions have been arrived at regard being had to the obtaining factual matrix therein. However, it is noticeable that the Bench thereafter referred to the dictum in Sheoratan Agarwal (supra) and eventually held as follows: - "We, therefore, hold that even if the prosecution proceedings against the Company were not taken or could not be continued, it is no bar for proceeding against the other persons falling within the purview of sub-sections (1) and (2) of Section 141 of the Act."

37. We have already opined that the decision in Sheoratan Agarwal (supra) runs counter to the ratio laid down in the case of C.V. Parekh (supra) which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in Anil Hada (supra) has to be treated as not laying down the correct law as far as it states that the director or any other officer can be prosecuted without impleadment of the company. Needless to emphasize, the matter would stand on a different footing where there is some legal impediment and the doctrine of lex non cogit ad impossibilia gets attracted.

38. At this juncture, we may usefully refer to the decision in U.P. Pollution Control Board v. M/s. Modi Distillery and others[43]. In the said case, the company was not

arraigned as an accused and, on that score, the High Court quashed the proceeding against the others. A two-Judge Bench of this Court observed as follows: - "Although as a pure proposition of law in the abstract the learned single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-s.(1) or (2) of S.47 of the Act unless there was a prosecution against Messers Modi Industries Limited, the Company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum. We have already pointed out that the technical flaw in the complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the Board. Furthermore, the legal infirmity is of such a nature which could be easily cured. Another circumstance which brings out the narrow perspective of the learned single Judge is his failure to appreciate the fact that the averment in paragraph 2 has to be construed in the light of the averments contained in paragraphs 17, 18 and 19 which are to the effect that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company." Be it noted, the two-Judge Bench has correctly stated that there can be no vicarious liability unless there is a prosecution against the company owning the industrial unit but, regard being had to the factual matrix, namely, the technical fault on the part of the company to furnish the requisite information called for by the Board, directed for making a formal amendment by the applicant and substitute the name of the owning industrial unit. It is worth noting that in the said case, M/s. Modi distilleries was arrayed as a party instead of M/s Modi Industries Limited. Thus, it was a defective complaint which was curable but, a pregnant one, the law laid down as regards the primary liability of the company without which no vicarious liability can be imposed has been appositely stated.

39. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.

40. In this context, we may usefully refer to Section 263 of Francis Bennion's Statutory Interpretation where it is stated as follows: -

"A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention.

41. It will be seemly to quote a passage from Maxwell's The Interpretation of Statutes (12th Edition) : - "The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in

requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

42. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others[44] it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in Deewan Singh and others v. Rajendra Prasad Ardevi and others[45] and Sarabjit Rick Singh v. Union of India[46]. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

43. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph**."**

[27] On facts broadly similar to those of the present case, the Hon'ble **Madhya Pradesh High Court, in Bhupendra Suryavanshi v. Sai Traders, decided on 09.06.2020,** held as follows:

"11. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its

Director. A notice of demand was served only on the appellant. The com-plaint was lodged only against the appel-lant without arraigning the company as an accused.

12. The provisions of Section 141 postulate that if the person committing an of-fence under Section 138 is a company, every person, who at the time when the of-fence was committed was in charge of or was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be li-able to be proceeded against and punished.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in hold-ing that the company could now be arraigned as an accused."

[28] Upon a careful perusal of the complaint, this Court finds that the complainant's firm had entered into an agreement with accused no. 1, M/s Chum Impex Private Limited, for the supply of paddy. In discharge of the liability arising from the said transaction, two cheques dated 19.11.2018 and 21.11.2018, for sums of Rs. 60,00,000/- and Rs. 37,79,840/- respectively, were issued on behalf of accused no. 1, as specifically averred in paragraph 7 of the complaint. Upon presentation, the said cheques were dishonoured. Consequently, the complainant instituted proceedings against the accused persons under Section 138 of the Negotiable Instruments Act.

[29] In the considered opinion of this Court, the summoning order dated 18.02.2019, insofar as it directed accused no. 2 to face trial, suffers from a fundamental legal infirmity. Despite the specific averments that the transaction had been entered into with accused no. 1 and that the cheques in question had been drawn on an account maintained by it, the learned trial court assigned no reason for declining to summon the company as an accused. A prosecution under Section 138 read with Section 141 of the Negotiable Instruments Act against a Director or authorised signatory, whose liability is vicarious, cannot be maintained without arraigning the company - the drawer of the cheque and the principal offender - as an accused. The learned trial court, therefore, erred in summoning accused no. 2 without simultaneously summoning accused no. 1, M/s Chum Impex Private Limited, to face trial.

[30] This Court refrains from adjudicating upon the questions of fact raised by the appellant because, even without considering the defence so taken, the order of the learned trial court - whereby accused no. 2 alone was proceeded against while accused nos. 1, 3, 4 and 5 were not summoned - cannot be sustained in law.

[31] Upon a plain reading of Section 141 of the Negotiable Instruments Act, it is evident that the provision deals with offences committed by companies. Where an offence under Section 138 is committed by a company, every person who, at the time of commission of the offence, was in charge of and responsible to the company for the conduct of its business, as well as the company itself, is liable to be proceeded against and punished accordingly. The proviso affords a defence where such person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent its commission.

In the present case, the complainant arrayed accused nos. 1 to 5 in the complaint and also specified the alleged role of accused no. 2 on behalf of the company. In Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661, the Hon'ble Supreme Court held that only when the company is prosecuted can the persons falling within the other categories contemplated by Section 141 be held vicariously liable, subject to the requisite averments in the complaint and proof thereof. Thus, vicarious liability cannot be fastened upon such persons in the absence of prosecution of the company.

Further, in **Anil Gupta v. Star India Private Limited, (2014) 10 SCC 373, the Hon'ble Supreme Court, following Aneeta Hada (supra),** held as follows:

"13.In the present case, the High Court by impugned judgment dated 13.08.2017 held that the complaint against respondent no. 2-Company was not maintain-able and quashed the summon issued by the Trial Court against respondent no. 2-Company. Thereby, the Company being not a party to the proceedings under Section 138 read with Section 141 of the Act and in view of the fact that part of the judgment referred to by the High Court in Anil Hada v. Indian Acrylic Ltd.., (2000) 1 SCC 1 has been overruled by three Judge Bench of this Court in Aneeta Hada v. Godfather Travels and Tours (p) Ltd., (2012) 5 SCC 661, we have no other option but to set aside the rest part of the impugned judgment whereby the High Court held that the proceedings against the appellant can be continued even in absence of the Company. We, accordingly, set aside that part of the impugned judgment dated 13.08.2007 passed by the High Court so far it relates to appellant and quash the summon and proceeding pursuant to complaint case No. 698 of 2001 qua the appellant."

[32] In the present case, the statutory notice was served upon all five accused persons, and each of them was arrayed as an accused in the complaint. The complaint also contains specific allegations concerning the roles attributed to the respective accused persons.

[33] This is a classic case where, owing to the disregard of the statutory provisions of the Negotiable Instruments Act and the settled judicial pronouncements governing the field, an otherwise triable complaint has been rendered unsustainable. The complainant's failure to challenge the order dated 18.02.2019, whereby accused no. 2 alone was summoned to face trial under Section 138 of the Negotiable Instruments Act while accused nos. 1, 3, 4 and 5 were not summoned, has further contributed to this result.

Accordingly, this Court is of the considered opinion that the summoning order dated 18.02.2019, the impugned judgment dated 23.12.2024, and the consequential order on sentence dated 16.01.2025 are unsustainable in law, having been passed without due appreciation of the material facts, the statutory provisions, and the settled legal principles governing the matter. Consequently, the aforesaid summoning order, judgment of conviction, and order on sentence are liable to be set aside. Accordingly, the present criminal appeal deserves to be allowed.

Order

The criminal appeal No. 06 of 2025 is hereby allowed. The summoning order dated 18.02.2019, the impugned judgment of conviction dated 23.12.2024, and the consequential order on sentence dated 16.01.2025 passed by the learned trial court are hereby set aside.

Dated :-30.06.2026 (Bushra Adil Rizvi)
Additional Sessions Judge, Court No.3,
Hathras.

Judgment signed, dated and pronounced by me in open court today.

Dated :-30.06.2026 (Bushra Adil Rizvi)
Additional Sessions Judge, Court No.3,
Hathras.