

DISTRICT JUDICIARY, DURG (CHHATTISGARH)

READING MATERIAL

ON

SECTION 138 NEGOTIABLE INSTRUMENTS ACT, 1881

GROUND OF AQUITTAL

PREPARED FOR INTERNAL CIRCULATION AMONG JUDICIAL OFFICERS AND
STAFF

MADE UNDER THEABLE GUIDANCE OF

RESPECTED SHRIK. VINOD KUJUR

PRINCIPAL DISTRICT AND SESSIONS JUDGE, DURG (C.G.)

DRAFTED BY

MR. RAVI KUMAR KASHYAP

CIVIL JUDGE SENIOR DIVISON

WITH THE AID OF

MR. DWIJ SINGH SENGAR

CIVIL JUDGE JUNIOR DIVISION

GROUND FOR ACQUITTAL

1. EXISTENCE OF LEGALLY ENFORCEABLE DEBT/ CHEQUE ISSUED AS SECURITY / NOT IN DISCHARGE OF DEBT

For the commission of an offence under section 138, the cheque that is dishonoured must represent a legally enforceable debt not only on the day when it was drawn but also on the date of its maturity/presentation.

This extract is taken from **Rangappa v. Sri Mohan, (2010) 11 SCC 441¹**:

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. **Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail.** As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

If a cheque presented for collection of total value of the cheque without endorsing the part payment made by drawer (section 56 of N.I.Act), is dishonoured no offence under section 138 would be attracted, as held in ***Dasharathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel*²**

¹ (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184: 2010 SCC OnLine SC 583 at page 454.

² (2023) 1 SCC 578, dt. 11.10.2022, 2022 SCC OnLine SC 1376 at page 595.

This extract is taken from **Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel.**

33. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part-payment of the debt is made *after* the cheque was drawn but *before* the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part-payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.

In **Indus Airways Pvt. Ltd &Ors v. Magnum Aviation Pvt. Ltd & Anr**³ the Hon'ble Supreme Court has held that where payment was made by cheque in the nature of advance payment, it indicates that at the time of drawing of cheque, there was no existing liability and as such no offence was made out.

³ 2014 (2) Crimes (SC) 105.

This extract is taken from *Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd.*⁴

9. The Explanation appended to Section 138 explains the meaning of the expression “debt or other liability” for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be a legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of an existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an existing debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability.

It is a common plea in most cheque dishonour cases that the cheque in question was issued as a security cheque. In the case of **I.C.D.S. Ltd. v. Beena Shabbir & Anr.**⁵ the Hon’ble Supreme Court has observed that even if the dishonoured cheque in question was issued as a security cheque, it will still come under the ambit of Section 138 of the Act. The only condition is that the cheque must be backed by some form of legally enforceable debt or liability towards the holder.

⁴ (2014) 12 SCC 539: (2014) 5 SCC (Civ) 138: (2014) 6 SCC (Cri) 845: 2014 SCC OnLine SC 305 at page 542.

⁵ AIR 2002 SC 3014.

In **Somnath vs. Mukesh Kumar**⁶ it was held by the Hon'ble High Court the complaint under Section 138 is not maintainable when the cheque in question had been issued qua a time barred debt.

2. ABSENCE OF FINANCIAL CAPACITY OF COMPLAINANT

This extract is taken from John K. Abraham v. Simon C. Abraham⁷

9. It has to be stated that in order to draw the presumption under Section 118 read along with Section 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had the required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.

⁶ 2015(4) Law Herald 3629 (P&H).

⁷ (2014) 2 SCC 236; (2014) 1 SCC (Civ) 785; (2014) 1 SCC (Cri) 791; 2013 SCC OnLine SC 1068 at page 239.

3. CHEQUE NOT PROVED TO BE DRAWN BY ACCUSED.

This extract is taken from *Kumar Exports v. Sharma Carpets*⁸

20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are

⁸ (2009) 2 SCC 513; (2009) 1 SCC (Civ) 629; (2009) 1 SCC (Cri) 823; 2008 SCC OnLine SC 1885 at page 520.

compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.

21. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.

4. CHEQUE MISUSED / ISSUED BLANK & FILLED LATER WITHOUT CONSENT.

M/s. Pinak Bharat and Company v. Shri Anil Ramrao Naik⁹

Para- 32 “On that aspect, only I agree with the findings given by the trial Court. No doubt cheque is negotiable instrument which is transferable and negotiable, presumption under Section 138 of the Negotiable Instrument Act can be drawn only when the preconditions are satisfied. The complainant unilaterally has put in dates on the cheques without the authority of the accused and even by not informing him. So, it amounts to material alterations. If it is so such negotiable

⁹ HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPEAL NO. 1630 OF 2011.

instrument becomes void. Hence prosecution under Section 138 of the Negotiable Instrument Act cannot be initiated. On that aspect the complainant has failed to satisfy the requirement of valid cheque.”

5. NON-COMPLIANCE WITH STATUTORY CONDITIONS (NOTICE, TIME LIMITS)

This extract is taken from Dashrath Rupsingh Rathod v. State of Maharashtra¹⁰

38. A proper understanding of the scheme underlying the provision would thus make it abundantly clear that while the offence is complete upon dishonour, prosecution for such offence is deferred till the time the cause of action for such prosecution accrues to the complainant. The proviso in that sense simply postpones the actual prosecution of the offender till such time he fails to pay the amount within the statutory period prescribed for such payment. There is, in our opinion, a plausible reason why this was done. Parliament in its wisdom considered it just and proper to give to the drawer of a dishonoured cheque an opportunity to pay up the amount, before permitting his prosecution no matter the offence is complete, the moment the cheque was dishonoured. The law has to that extent granted a concession and prescribed a scheme under which dishonour need not necessarily lead to penal consequence if the drawer makes amends by making payment within the time stipulated once the dishonour is notified to him. Payment of the cheque amount within the stipulated period will in such cases diffuse the element of criminality that Section 138 attributes to dishonour by way of a legal fiction implicit in the use of the words “shall be deemed to have committed an offence”. The drawer would by such

¹⁰ (2014) 9 SCC 129; (2014) 3 SCC (Cri) 673; (2014) 4 SCC (Civ) 676; (2015) 191 Comp Cas 1; 2014 SCC OnLine SC 594 at page 164.

payment stand absolved by the penal consequences of dishonour. This scheme may be unique to Section 138 of the NI Act, but there is hardly any doubt that Parliament is competent to legislate so as to provide for situations where a cheque is dishonoured even without any criminal intention on the part of the drawer.s

6. NO VALID LEGAL NOTICE / NOTICE DEFECTIVE OR PREMATURE

Prem Chand Vijay Kumar –vs- Yashpal Singh and another¹¹ decided on the 2nd May 2005 also emphasize the law that if the notice is not given within the period indicated in proviso (b) no cause of action would arise.

Can the Court take cognizance if notice is not served on the drawer?

No cognizance can be taken if notice is not served on the drawer. Refer– **Central Bank of India Vs. Saxons Farms**¹², **MMTC Ltd. Vs. Medchi Chemicals & Pharma Pvt. Ltd.**¹³

Shakti Travel & Tours v. State of Bihar¹⁴ - A properly served legal notice is a must for maintainability of a case of cheque bounce.

¹¹ (2005)4 SCC 417.

¹² (1999) 8 SCC 221.

¹³ AIR 2002 SC 182.

¹⁴ (2002) 9 SCC 415.

5.2.1. Pertinently, in the process, delineating on the meaning of the words ‘said amount of money’, the Court in **Suman Sethi v. Ajay K. Churiwal and Another**¹⁶ stated thus.

“We have to ascertain the meaning of the words the “said amount of money” occurring in clauses (b) and (c) to the proviso to Section 138. Reading the section as a whole we have no hesitation to hold that the above expression refers to the words “payment of any amount of money” occurring in the main Section 138 i.e. the cheque amount. So, in a notice, under clause (b) to the proviso, demand has to be made for the cheque amount.” (Para 6)

5.2.2. The Court proceeded to state further,

“In the notice, demand has to be made for the “said amount” i.e. the cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to the “said amount” there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the break-up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice.” (Para 8)

5.2.3. The Court observed that the demand in the notice has to be made for the said amount which would be the ‘cheque amount’. If no such demand is made the notice would fall short of its legal requirement. In the facts of that case, however, the Court held that since the cheque amount in the notice was correctly stated, merely because the respondent claimed in addition to the cheque amount, the

¹⁵ (2025) 259 Comp Cas 658, 2025 SCC OnLine 2019.

¹⁶ (2000) 2 SCC 380.

incidental charges and notice charges, which were severable, notice could not be branded as bad in law.

5.3.1. This Court in **Rahul Builders v. Arihant Fertilizers and Chemical¹⁷** stated that one of the conditions was service of a notice making ‘demand of the payment of the amount of cheque’ as is evident from the use of the phraseology ‘payment of the said amount of money,

“Service of a notice, it is trite, is imperative in character for maintaining a complaint. It creates a legal fiction. Operation of Section 138 of the Act is limited by the Proviso. When the Proviso applies, the main section would not. Unless a notice is served in conformity with proviso (b) appended to Section 138 of the Act, the complaint petition would not be maintainable. Parliament while enacting the said provision consciously imposed certain conditions.”
(Para 10)

5.4. In more recent decision of this Court in **Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel** the dictum of law was reiterate in the following words,

“The notice demanding the payment of the “said amount of money” has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138.” (Para 34.5)

5.5.2. Before the High Court of Punjab and Haryana, in **Chhabra Fabrics Private Limited v. Bhaqwan Dass¹⁸** it was a case where there was a discrepancy in mentioning the number of cheques which was claimed to be a typographical error. The High Court observed that even if it was true that there was a typographical

¹⁷ (2007) 140 Comp Cas 600 (SC); (2008) 2 SCC 321; (2008) 1 SCC (Civ) 553; (2008) 1 SCC (Cri) 703; 2007 SCC OnLine SC 1345.

¹⁸ 2014 SCC OnLine P&H 24809, Crl. Appeal No. 1772-SB of 2002.

error in the legal notice while typing out the cheque number, such typographical error, if any, does not meet the compliance of the mandatory provisions of Section 138 of the NI Act.

8. From the afore-stated reiterative pronouncements and the principles propounded by the courts, the position of law that emerges is that the notice demanding the payment of the amount covered by the dishonoured cheque is one of the main ingredients of the offence under Section 138 of the NI Act. In the event of the main ingredient not being satisfied on account of discrepancy in the amount of cheque and one mentioned in the notice, all proceedings under Section 138 of the NI Act would fall flat as bad in law. The notice to be issued under Proviso (b) to Section 138 of the Act, must mention the same amount for which the cheque was issued. It is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment.

8.1. A failure in above regard, namely when the cheque amount is not mentioned in the Proviso (b) notice or the amount different than the actual cheque amount is mentioned, in the notice, such notice would stand invalid in eye of law. The notice in terms of Proviso (b) being a provision in penal statute and a condition for the offence, it has to be precise while mentioning of the amount of the cheque which is dishonoured. Even if the cheque details are mentioned in the notice but corresponding amount of cheque is not correctly mentioned, it would not bring in law the validity for such notice. Here the principle of reading of notice as a whole is inapplicable and irrelevant. Any elasticity cannot be adopted in the interpretation. It has to be given technical interpretation.

8.2. The condition of notice under Proviso (b) is required to be complied with meticulously. Even typographical error can be no defence. The error even if typographical, would be fatal to the legality of notice, given the need for strict mandatory compliance. And in the facts of the present case, the explanation that mentioning of wrong amount in the cheque was in the nature of typographical or inadvertent error could hardly be accepted, for, the so-called mistake occurred and recurred in both the notices dated 08.06.2012 and 14.09.2012.

9. When the provision is penal and the offence is technical, there is no escape from holding that the ‘said amount’ in proviso (b) cannot be the amount other than mentioned in the cheque in question for dishonour of which the notice is received, nor the mentioning of omnibus amount in the notice would fulfil the requirement. It has to be held that in order to make a valid notice under the Proviso (b) to Section 138 of the NI Act, it is mandatory that ‘said amount’ to be mentioned therein is the very amount of cheque, and none other.

7. CHEQUE NOT ISSUED FROM THE ACCOUNT OF THE ACCUSED:

Where the Complaint lacks necessary ingredients of the offence under Section 138: **Hon’ble Supreme Court in Jugesh Sehgal v. Shamsher Singh Goqi¹⁹, has observed**

“22. As already noted herein before, in Para 3 of the complaint, there is a clear averment that the cheque in question was issued from an account which was non-existent on the day it was issued or that the account from where the cheque was issued “pertained to someone else”. As per the complainant’s own pleadings, the bank account from where the cheque had been issued, was not held in the name

¹⁹ (2009) 14 SCC 683.

of the appellant and therefore, one of the requisite ingredients of Section 138 of the Act was not satisfied.”

8. OFFENCE BY COMPANIES & VICARIOUS LIABILITY

The matter was referred to a larger bench in the case of **Aneeta Hada Vs God father Tour and Travels Ltd**²⁰ to be ultimately decided by the Hon’ble Supreme Court of India in the following terms “Arraigning of the Company as accused imperative (2012) 5 SCC 661. It was further held in the case of **Aparna A. Shah Vs Sheth Developers Pvt Ltd and Anr**²¹ that in case of joint account only the drawer is liable. The same view has been retreated by the Apex Court in the recent ruling of **N Harihara Krishna Vs J. Thomas**²² reported— Sections 138, 141 & 142 of N.I Act – Dishonour of cheque – offence by company – Issuance of individual notices under section 138 to them, held, not required as For dishonour of cheque drawn by company, appellant issued notice under section 138 to accused company, but no individual notices were given to its Directors- Held, Section 138 does not admit of any necessity or scope for reading into it, requirement that Directors of company in question must also be issued individual notices under section 138 – Such Directors who are in charge of and responsible for affairs of company, would be aware of receipt of notice by company under section 138 **Kirshna Texport and Capital markets limited Vs.Ila A.Agarwal and others**²³ – vicarious liability of directors:

In case of **K. Shrikant Singh vs. North East Security Ltd. and others**²⁴ Hon'ble Apex court observed that vicarious liability on the part of a person must

²⁰ (2008)13 SCC 703.

²¹ (2013)8 SCC 71.

²² 2017 SCC Online SC 1017.

²³ 2015 (8) SC Cases 28, AIR 2015 SC 2091.

²⁴ J.T. 2007 (9) SC 449.

be pleaded and proved and not inferred. Section 141 provides for constructive liability. It postulates that a person in charge of and responsible to the company, in the conduct of the business of the company shall also be deemed guilty of the offence. The drawer can be a company, a firm or an association of individuals, but only those directors, partners or officers can be held responsible for the offence under section 138 of the Act or responsible for the conduct of its business. As held in **Ashok Shewakramani & Ors. v. State of Andhra Pradesh & Anr.**²⁵

In **Gunamala Sales Pvt. Ltd. v. Anu Mehta**²⁶, the Apex Court held that it is necessary to aver in the complaint filed under section 138 read with sec. 141, N.I. Act that at the relevant time when the offence was committed, the directors were in charge and were responsible for the conduct of the business of the company.

In **Mainuddin Abdul Sattar Shaikh Vs. Vijay D. Salvi**²⁷ it was held by Hon'ble Supreme Court that when an employee of a company issues a cheque on his personal account for discharging the liability of the company, the company/its directors are not liable under Section 138 of the Act. Personal liability of employee was upheld.

This extract is taken from *Rajesh Viren Shah v. Redington India Ltd.*²⁸

4. Coming to the judicial position, we notice a judgment of this Court in **Monaben Ketanbhai Shah v. State of Gujarat**²⁹ wherein it was observed that: (SCC pp. 18-19, para 6)

²⁵ (2023) 8 SCC 473; 2023 INSC 692.

²⁶ AIR 2015 SC 1072.

²⁷ 2015(3) RCR (Criminal) 593 (SC).

²⁸ (2024) 4 SCC 305; (2024) 2 SCC (Civ) 230; (2024) 2 SCC (Cri) 425; 2024 SCC OnLine SC 143 at page 308.

²⁹ (2004) 7 SCC 15; 2004 SCC (Cri) 1857.

“6. ... The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact.”

This extract is taken from Rajesh Viren Shah v. Redington India Ltd.³⁰

9. The record reveals the resignations to have taken place on 9-12-2013 and 12-3-2014. Equally, we find the cheques regarding which the dispute has travelled up the courts to have been issued on 22-3-2014. The latter is clearly, after the appellant(s) have severed their ties with the respondent Company and, therefore, can in no way be responsible for the conduct of business at the relevant time. Therefore, we have no hesitation in holding that they ought to be then entitled to be discharged from prosecution.

Held, Director who has resigned from such position and which fact stands recorded in books as per relevant rules and statutory provisions, cannot be held liable for certain negotiable instruments, failing realisation — Appellants were arrayed as accused in a complaint filed for dishonour of cheques issued by Company — Complainant has not placed any materials on record indicating complicity of appellant(s) in alleged crime — Particularly, when appellant(s) had no role in issuance of instrument, which is evident from Form 32 regarding their

³⁰ (2024) 4 SCC 305; (2024) 2 SCC (Civ) 230; (2024) 2 SCC (Cri) 425; 2024 SCC OnLine SC 143 at page 309.

resignation in accordance with provisions of the Companies Act, issued much prior to date on which cheque was drawn and presented for realisation.

(2024) 4 Supreme Court Cases 305 : (2024) 2 Supreme Court Cases (Civ) 230 : (2024) 2 Supreme Court Cases (Cri) 425 : 2024 SCC OnLine SC 143

J 2

In the Supreme Court of India

(BEFORE B.R. GAVAI AND SANJAY KAROL, JJ.)

RAJESH VIREN SHAH . . Appellant;

Versus

REDINGTON (INDIA) LIMITED . . Respondent.

Criminal Appeals No. 888 of 2024³¹ with No. 889 of 2024³², decided on February 14, 2024

A. Debt, Financial and Monetary Laws — Negotiable Instruments Act, 1881 — Ss. 138 and 141 — Dishonour of cheque — Director who has resigned — Whether can be held liable for cheques issued after such resignation

— Held, Director who has resigned from such position and which fact stands recorded in books as per relevant rules and statutory provisions, cannot be held liable for certain negotiable instruments, failing realisation — Appellants were arrayed as accused in a complaint filed for dishonour of cheques issued by Company — Complainant has not placed any materials on record indicating complicity of appellant(s) in alleged crime — Particularly, when appellant(s) had no role in issuance of instrument, which is evident from Form 32 regarding their resignation in accordance with provisions of the Companies Act, issued much prior to date on which cheque was drawn and presented for realisation

— Veracity of Form 32 has neither been disputed by respondent complainant nor has the act of resignation simpliciter been questioned — As such, basis on which liability is sought to be fastened upon appellant(s) is rendered questionable — Cheques in question had been issued after appellant(s) had severed their ties with respondent Company and, therefore, can in no way be responsible for conduct of business at relevant time — Appellants, held, entitled to be discharged from prosecution

— Corporate Laws — Companies Act, 1956 — Form 32 and Ss. 303(2), 264(2), 266(1)(a) and 266(1)(b)(iii) — Resignation of Director — Whether effective — Liability for dishonour of cheques issued after resignation — Whether could be fastened — Criminal Procedure Code, 1973, S. 482

(Paras 4 to 9)

Bijoy Kumar Moni Versus Paresh Manna and Another³¹

Following the rationale in Aneeta Hada (supra), this Court in *Anil Gupta v. Star India Private Limited*³² held that the guilt for the offence under Section 138 is only deemed upon the other persons who are connected with the Company as a consequence of Section 141 of the NI Act. Herein, since the complaint against the respondent Company was not maintainable, the High Court had quashed the summons issued by the trial court against the respondent Company. This Court opined that since the Company was not a party to the proceedings under Section 138 read with Section 141 of the Act, the proceedings

³¹ 2024 SCC OnLine SC 3833.

³² (2014) 10 SCC 373.

against the appellant Managing Director also could not be continued with. The relevant observations are reproduced hereinbelow:

*“13. In the present case, the High Court by the impugned judgment dated 13-8-2007 [Visionaries Media Network v. Star India (P) Ltd., Criminal Misc. Case No. 2380 of 2004, decided on 13-8-2007 (Del)] held that the complaint against Respondent 2 Company was not maintainable and quashed the summons issued by the trial court against Respondent 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.**³³ has been overruled by a three-Judge Bench of this Court in **Aneeta Hada v. Godfather Travels and Tours (P) Ltd.**³⁴, we have no other option but to set aside the rest part of the impugned judgment [Visionaries Media Network v. Star India (P) Ltd., Criminal Misc. Case No. 2380 of 2004, decided on 13-8-2007 (Del)] 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 13-8-2007 [Visionaries Media Network v. Star India (P) Ltd., Criminal Misc. Case No. 2380 of 2004, decided on 13-8-2007 (Del)] passed by the High Court so far as it relates to the appellant and quash the summons and proceeding pursuant to Complaint Case No. 698 of 2001 qua the appellant.”*

61. This Court's decision in **Ashok Shewakramani v. State of Andhra Pradesh**³⁵ acknowledged the normal rule that there cannot be any vicarious liability under a penal provision but however, held that Section 141 of the NI

³³ (2000) 1 SCC 1; 2001 SCC (Cri) 174.

³⁴ (2012) 5 SCC 661; (2012) 3 SCC (Civ) 350; (2012) 3 SCC (Cri) 241.

³⁵ (2023) 8 SCC 473.

Act is an exception to this rule. It further stated that vicarious liability would only be fastened when the person who is sought to be held vicariously liable was “in charge of” and “responsible to the Company” for the conduct of the business of the Company at the time when the offence under Section 138 was committed. In circumstances where such persons are indeed found vicariously liable, those persons as well as the Company shall be deemed to be guilty of the offence under Section 138 of the NI Act. The relevant observations made by the Court are reproduced hereinbelow:

“21. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section (1) of Section 141 are satisfied. The section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company shall be deemed to be guilty of the offence under Section 138 of the NI Act.”

69. As discussed above, in the case on hand, the accused was prosecuted in his individual capacity and not in his capacity of being the Director of the Shilabati Hospital Pvt. Ltd. Although it is undisputed that the accused signed the cheque in question, yet as the cheque was drawn not on an account maintained by him with a Banker but was issued on an account maintained by the hospital, the requirement of Section 138 of the Act cannot be said to have been complied with.

70. It would have been altogether a different situation if the accused was prosecuted in his capacity as a Director of the Shilabati Hospital. In such a scenario, the cheque drawn by him on an account maintained by the Company would have satisfied the requirement of Section 138 of the Act but as the accused has been proceeded against for an offence under Section 138 of the Act in his individual capacity and inasmuch as the cheque dishonoured for insufficiency of

funds was drawn on the account maintained by the Company, namely, Shilabati Hospital Pvt. Ltd., and not by the accused herein, no offence could be said to have been committed under Section 138 of the Act. The High Court rightly held that in the absence of the principal offender having been arraigned as an accused, prosecution for the commission of an offence under Section 138 of the NI Act could not have proceeded against the accused.

71. As is evident from the discussion in the preceding parts of this judgment, the requirement of Section 138 of the NI Act is that for fastening criminal liability on the accused, the cheque which was dishonoured for insufficiency of funds etc., must have been drawn on an account maintained by the accused. The mere fact that the cheque signed by the accused in his capacity as a “Director” of the Company would in the normal course be honoured by the Bank to which it was presented does not satisfy the statutory requirement of Section 138 of the Act.

72. Section 138 of the Act exposes the person who has drawn the cheque and which has been returned for insufficiency of funds to criminal liability. The provision, therefore, must be construed strictly. However, such a strict construction should not result in defeating the very purpose for which the provision has been enacted as held by this Court in the case of **NEPC Micon Limited v. Magma Leasing Limited**³⁶ At the same time, the statutory provisions creating penal liability cannot be stretched too far to embrace the persons and situations patently excluded from its purview as discernible from clear and unequivocal language used in the provision.

73. Section 138 of the NI Act clearly postulates that the cheque returned for insufficiency of funds should have been drawn by a person on an account maintained by him. It will amount to doing violence to the language of the statute if Section 138 of the Act is interpreted to mean that even if a person draws a

³⁶ (1999) 4 SCC 253.

cheque on an account not maintained by him, he shall be liable if the cheque is returned for insufficiency of funds. Such an interpretation will lead to absurd and wholly unintended results.

74. However, the peculiar factual situation of the present case and the plight of the complainant is not lost upon us. We are conscious of the fact that the option of bringing civil action against the accused or the hospital will be of no avail to the complainant as the claims are hopelessly time barred. Further, it is also not open for the complainant to initiate proceedings under Section 138 of the NI Act afresh by impleading Shilabati Hospital Pvt. Ltd. as an accused as the time period prescribed for issuance of statutory notice under Section 138 has long expired.

K. S. MEHTA versus M/S MORGAN SECURITIES AND CREDITS PVT. LTD.³⁷

S. 141 NI Act | Non-Executive & Independent Company Directors Not Liable for Cheque's Dishonour Unless Their Direct Involvement Shown: Supreme Court

Negotiable Instruments Act, 1881; Section 138 r/w. 141 – Vicarious Liability of Non-Executive Directors – Quashing of Criminal Proceedings – Held, Non-executive and independent directors cannot be held vicariously liable under Section 141 of the NI Act for dishonour of cheques unless specific allegations demonstrate their direct involvement in the company's affairs at the relevant time. Mere designation as a director or attendance at board meetings does not create automatic liability. The complaint must contain specific averments establishing a direct nexus between the directors and the financial transactions in question. In

³⁷ 2025 INSC 315, (2025) 7 SCC 615.

the absence of such specific allegations and where records confirm a non-executive role without financial decision-making authority, criminal proceedings under Section 138 read with Section 141 of the NI Act against non-signatory, non-executive directors are liable to be quashed.

16. This Court has consistently held that non-executive and independent director(s) cannot be held liable under Section 138 read with Section 141 of the NI Act unless specific allegations demonstrate their direct involvement in affairs of the company at the relevant time

17. Upon perusal of the record and submissions of the parties, it is evident that the Appellant(s) neither issued nor signed the dishonoured cheques, nor had any role in their execution. There is no material on record to suggest that they were responsible for the issuance of the cheques in question. Their involvement in the company's affairs was purely non-executive, confined to governance oversight, and did not extend to financial decision making or operational management.

18. The complaint lacks specific averments that establish a direct nexus between the Appellant(s) and the financial transactions in question or demonstrate their involvement in the company's financial affairs. Additionally, the CGR(s) and ROC records unequivocally confirm their non-executive status, underscoring their limited role in governance without any executive decision-making authority. The mere fact that Appellant(s) attended board meetings does not suffice to impose financial liability on the Appellant(s), as such attendance does not automatically translate into control over financial operations.

9. NON- SERVICE OF NOTICE ON THE ACCUSED.

NOORUDHEEN V STATE OF KERALA AND ANR ³⁸

³⁸ CRL.REV.PET NO. 865 OF 2023 KERALA HIGH COURT.

If Accused Pleads Non-Service of Notice U/S 138 NI Act, Burden Shifts on Complainant to Prove Knowledge.

In Saju's case (supra), this Court relying on the judgment of the Apex Court in *Thomas M.D v P.S.Jaleel and Another* [2009 KHC 4398] held that, service of notice to the relatives of the accused is not sufficient especially when there is no evidence from the side of the complainant that, the accused was aware of the service of notice on his relatives. This Court also observed that, if there is no such evidence regarding the knowledge of the accused about the notice, it is to be presumed that a statutory notice under Section 138(b) of NI Act is not served on the accused. The Apex Court in **Thomas M.D. v. P.S. Jaleel and Another**³⁹ has considered a similar situation. Paragraphs 4 and 5 of the said judgment read thus: Therefore, the service of notice on the relative of the accused is not sufficient, especially when there is no evidence from the side of the complainant that the accused was aware of the service of notice on his relative. If there is no such evidence, it is to be presumed that the statutory notice under Section 138(b) of the Negotiable Instruments Act, 1881 is not served on the accused. The upshot of the above discussion is that the conviction and sentence imposed on the petitioner are to be set aside.

³⁹ 2009 KHC 4398.