

and Chandigarh and several other townships. The vehicles would take the outer road and proceed in several directions without causing any traffic congestion in Chandigarh-Zirakpur etc. From the map, it appears that even if Haryana does not implement the project by continuing the proposed road in its State, it would make no difference as decongestion would still occur on account of this outer road.

(30) In the circumstances, the writ petitions are dismissed. The stay granted shall continue upto and including 06.04.2015.

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V. Suri

*Before Ritu Bahri, J.*

**MANISH JAIN —Petitioner**

**versus**

**SURENDER SINGH — Respondent**

**CRMM No. 26819 of 2012**

**February 25, 2015**

*Code of Criminal Procedure, 1973 — S. 319 and 482 — Negotiable Instruments Act, 1881 — Ss. 138, 141 — Dishonour of Cheques — Liability of director — Vicarious liability — Petitioner being Director of Company signed cheque — Cheque drawn in name of the Company— Complainant filed complaint against petitioner — Company not impleaded as a party — Quashing of complaint and summoning order sought — Petition allowed — Held, cheques had been issued by the company and signed by the petitioner on its behalf — Company shall be deemed to have committed the offence — Company not arrayed as a party — Complaint not maintainable against the petitioner who is Director of the Company — Further held, Section 319 Cr.P.C. is not intended for curing infirmity in the proceedings — Argument that application under Section 319 Cr.P.C. pending for impleading Company as accused rejected.*

*Held*, that in the present case, the complainant filed the complaint bearing No. 23, dated 10-1-2012 (P-13). It was (St) filed by the respondent/complainant under section 138 against the petitioner, who is merely a Director of M/s. Santur City (P.) Ltd., which was not impleaded as a party. The petitioner being a Director of the Company

had only signed the cheques and the account was of the company. The complainant itself was not maintainable.

(Para 27)

*Further held*, that the second argument of counsel for the respondent has informed that his application under Section 319 Cr. PC for impleading the company as an accused is pending before the Court below to remove the technical defect, is liable to be rejected. The provision of section 319 Cr. PC under the Act, has been considered by Madras High Court in cases of Suryanarayanan v. Anchor Marine Service 1998(94) Comp. Cas. 874, Anandan v. Arivazhagan 1998(1) BC 573 and S. Vishwanathan v. United Phosphorous Ltd. 1999(97) Comp Cas 922 and it has been held that when the complaint has the initial defect in its sustainability, the defect cannot be cured by amending the proceedings. Section 319 Cr. PC no doubts permits for impleading any other accused, who was party to the commission of the offence but impleading such co-accused under Section 319 Cr. PC will not have any bearing as to the maintainability of the proceedings against other accused. Section 319 Cr. PC is not intended for curing the infirmity in their proceedings but only to bring all the culprits before the Court when their role in the commission of offence was brought to light only after the evidence before the Court.

(Para 28)

*Further held*, that in the present case, the alleged cheque were part of the complaint (P-13) and the amount was to debited from the account of the company, which has not been arrayed as a party, therefore as per section 138 and 141, the complaint itself is not maintainable against the petitioner, who is a director of the company.

(Para 30)

Aalok Jagga, Advocate *for the petitioner*

Davinder Bir Singh, Advocate for the respondent.

**RITU BAHRI, J.**

(1) This petition under Section 482 Cr.P.C is for quashing of complaint bearing No. 23 dated 10.01.2012 (P-13) filed by respondent/complainant under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act') and summoning order dated 14.05.2012 (P-6), vide which the petitioner has been summoned to face the trial.

(2) The complainant is a proprietor of Rathee Sales Corporation, Sector 5, near Mata Sheetla Mandir, Gurgaon. On 17.02.2011, the complainant made an agreement with land lords/farmers Sh. Mangat Ram and others to purchase their land approx 7000/- sq yards, which is situated at village Sarai Alawardi, Tehsil and District Gurgaon for total sale consideration amount of ₹8,20,00,000/- (Eight crores twenty lacs). The date of registration of sale deed was fixed as 07.07.2011 in the office of Sub Registrar, Gurgaon. On 20.06.2011, the accused/petitioner Manish jain approached the complainant/respondent through Sh. Subhash Rawal, proprietor of Shriram properties, Pal Vihar Gurgaon and requested the complainant that the accused are interested to purchase 6560 sq yards out of the aforesaid land. The accused offered a consideration amount of ₹11,28,00,000/-(Eleven crores and twenty eight lacs) of the aforesaid property. The accused gave an advance of ₹20,00,000/-(twenty lacs) through two cheques in the presence of witnesses. A receipt was also executed by the complainant and the accused and the same was witnessed by Sh. Subhash Rawal. The accused promised the complainant that the balance sale consideration amount of ₹11,08,00,000/-would be paid on or before 07.07.2011.

(3) The accused gave two cheques i.e cheque bearing No. 110481 dated 7.7.2011 for a sum of ₹75,00,000/-(seventy lacs) and cheque No. 110484 dated 7.7.2011 for a sum of ₹40,00,000/- (forty lacs) drawn on Standard Chartered Bank, Branch Greater Kailash, Part-I, New Delhi in favour of Rathi Sales Corporation in presence of witnesses. On presentation, the above cheques were dishonored/unpaid by the banker of the accused with the specific endorsement “payment stopped by drawer” and intimation regarding the same was given to the respondent by his banker on 19.11.2011. Thereafter, a legal notice was issued to the accused on 30.11.2011 by the complainant through its Advocate calling upon the accused to pay within 15 days of the receipt of the legal notice the cheque amount as stipulated in the provisions of the Act. The accused gave reply dated 07.12.2011 to the legal notice. Hence the complaint was filed by the complainant against the accused under Section 138 of the Act and Section 420 IPC and the Court below has passed the summoning order dated 14.05.2012 (P-6), vide which the petitioner has been summoned to face the trial.

(4) The petitioner is seeking quashing of complaint as well as summoning orders in the present petition.

(5) Mr. Jagga, learned counsel for the petitioner, has argued that the above said two cheques have been issued as the complainant had approached to the petitioner and stated that he had entered into agreement to sell dated 18.02.2011 with M/s Ansal Properties and Industries Pvt Ltd in respect of land measuring 29 kanals 06 marlas, situated in the revenue estate of Sarai Alawardi, Tehsil and District Gurgaon and on account of execution of the aforesaid agreement, he is in a position to get the land referred to above transferred in favour of the accused/petitioner. He had further told the accused that in terms of alleged agreement of sale dated 18.02.2011, he held the unhindered right to purchase the land in favour of his nominee. However, on 08.07.2011, the petitioner was made aware of the agreement dated 18.02.2011 (P-2) which was entered into between M/s Ansal Properties and Industries Pvt. Ltd. and Sh. Sanjeev Kumar Sharma and other. Thus, the representation of the complainant was found to be false. Later on the petitioner/accused came to know that M/s Ansal Properties and Industries Pvt. Ltd. filed a criminal complaint dated 26.08.2011 with the Assistant Commissioner of Police, Gurgaon stating that the said agreement was never authorized to be executed in favour of the signatories, namely Sanjiv Kumar Sharma and other. Thus, the petitioner asked his bankers to stop the payment of the above two cheques. No transaction took place between the petitioner and the respondent and thus, no offence is made out against the petitioner under Section 138 of the Act, as the prosecution would only lie if the cheque is dishonored on account of funds insufficient or exceeds arrangement. In the present case, the chequ has not been dishonored on account of the aforesaid two reasons but on account of payment stopped. Pursuant to the agreement (P-2), the respondent could not transfer any land in favour of the petitioner, thus, the petitioner has stopped the payment of the aforesaid two cheques.

(6) Mr. Jagga has further argued that the petitioner had also filed the complaint against the respondent with the allegations that the respondent had taken away ₹75 lacs in cash and cheques worth ₹75 lacs and ₹40 lacs respectively and the petitioner had instructed his bankers to stop the payment of the same. During the course of investigation, the matter was compromised between the parties on the statement given by the petitioner on 10.02.2012 vide P-11 and P-12. The complainant did not inform the trial Court with the regard to the settlement of the matter before the police authorities and thus, the trial Court had wrongly summoned the petitioner.

(7) Learned counsel further argues that the complaint was filed by the respondent whereas the cheque was drawn in favour of Rathi Sales Corporation. The cheque had been issued by the Company and the petitioner signed as a Director but the Company is not made as a party in the complaint. Thus, the complaint is liable to be dismissed.

(8) Further no enquiry was conducted by the trial Court as contemplated under Section 202 Cr.P.C and thus, the summoning order dated 14.05.2012 is against the judgment passed by this court in a case of *Nereta Sinha versus PS Raj Steel Pvt. Ltd*<sup>1</sup>.

(9) Petitioner had earlier filed CRM-M-24880 of 2012 seeking quashing of complaint filed by the respondent alleging handing over a cheque of ₹1.5 crores to the respondent, which is pending consideration before this Court.

(10) Reference has been made to judgment of Hon'ble the Supreme Court of India in cases of *Aneeta Hada versus M/s Godfather travels and tours Pvt. Ltd*<sup>2</sup>, *Anil Gupta versus Star India Pvt. Ltd and another*<sup>3</sup> and judgment passed by this Court in a case of *Vijay Kumar Bansal and another versus Shiv Kumar Grover*<sup>4</sup>, to contend that in a complaint of dishonor of cheque under Section 138 of the Act, prosecuting a Director without arraying the Company being as accused, the complaint is not maintainable. Proceedings against Managing Director could not continue in absence of arraigning of Company as an accused, under Section 138 read with Section 141 of the Act.

(11) In *Anneta Hada's case (supra)*, Hon'ble the Supreme Court while dealing with Section 85 of Information and Technology Act, 2000 has held that Directors could not be prosecuted without the company being arrayed as an accused. For prosecuting the Director under Section 85 of 2000 Act arraying of Company as an accused is an imperative.

(12) Learned counsel has further referred to judgment passed by Madras High Court in a case of *B. Adhikari versus Ponraj*<sup>5</sup>, Jharkhand High Court in a cases of *Shahid Ali versus State of Jharkhand and another*<sup>6</sup>, *Rashid Ali versus State of Jharkhand and another*,

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<sup>1</sup> 2010(3) PLR 4

<sup>2</sup> 2012(2) RCR (CrI) 854

<sup>3</sup> 2014 (3) RCR (CrI) 587

<sup>4</sup> 2013 (7) RCR CrI 1902

<sup>5</sup> 1996 (2) Crimes 179

<sup>6</sup> 2012 (1) RCR (CrI) 643

Karnataka High Court in a case of *Dr. Geetha versus Vesanthe S. Shetty*<sup>7</sup> and on the point that cause of action arises of the drawee when demand notice is issued to the drawee within 15 days of the date of dishonor of cheque. Requirement of Section 138 (b) and (c) is mandatory.

(13) On notice, a reply has been filed by the respondent denying that the respondent had entered into agreement dated 18.02.2011 with M/s Ansal Properties and Industries Pvt Ltd in respect of the land situated in the Revenue Estate of Village Sarai Allawards, Tehsil and Distt Gurgaon. The receipt produced by the petitioner (P-1) is a forged and fabricated document which does not bear the signatures of the respondent. The respondent had entered into agreement with Land Lords/Farmers Sh. Mangat Rai and others to purchase their land measuring approximately 7000 sq yards situated in the Revenue Estate of Sarai Allawards, Tehsil and Distt Gurgaon for a total sale consideration amount of ₹8 crores 20 lacs. The date of registration of the sale deed was fixed as 7.7.2011 and 8.8.2011 in the office of Sub Registrar Gurgaon. One of the clause of the agreement provided that the respondent could get the sale deed registered in his name or the name of any of his nominee or any other person for which there will be no objection, as per Annexure R-1 and R-2. In the meantime, the petitioner approached the respondent to purchase 6560 sq yards out of the aforesaid land. The accused offered a consideration amount of ₹11,28,00,000/- (Eleven crores and twenty eight lacs) of the aforesaid property. The accused gave an advance of ₹20,00,000/- (twenty lacs) through two cheques in the presence of witnesses. A receipt was also executed by the complainant and the accused and the same was witnessed by Sh. Subhash Rawal. The accused promised the complainant that the balance sale consideration amount of ₹11,08,00,000/- would be paid on or before 07.07.2011 (R-3). The accused gave two cheques bearing No. 110481 dated 7.7.2011 for a sum of ₹75,00,000/- (seventy lacs) and cheque No. 110484 dated 7.7.2011 for a sum of ₹40,00,000/- (forty lacs) drawn on Standard Chartered Bank, Branch Greater Kailash, Part-I, New Delhi in favour of Rathi Sales Corporation in presence of witnesses. On presentation, the above cheques were dishonored/unpaid by the banker of the accused with the specific endorsement “payment stopped by drawer” and intimation regarding the same was given to the respondent by his banker on 19.11.2011. Thereafter, a legal notice was issued to the

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<sup>7</sup> 2011(6) RCR (Criminal) 282

accused on 30.11.2011 by the complainant to pay within 15 days of the receipt of the legal notice the cheque amount as stipulated in the provisions of the Act. The accused gave reply dated 07.12.2011 to the legal notice and failed to repay the amount stating. A complaint was also submitted by the respondent to the Police Commissioner, Gurgaon on 22.11.2011 with regard to the fraud played by the petitioner and the bouncing of the cheque in question and the abuses and threat given by the petitioner by hiring gunda elements for demanding the balance amount regarding the deal dated 20.06.2011. The respondent had earlier approached the S.H.O of Police Station Palam Vihar, Gurgaon with a complaint against the petitioner but the petitioner has connived with the police officials of the said Police Station and no action was taken by the police. The copy of complaint dated 22.11.2011 to the Police Commissioner Gurgaon is Annexure R-4. A deal was entered in to between the petitioner and the respondent on 20.06.2011 through Sh. Subhash Rawal, proprietor of Shri Ram Properties with regard to the land measuring 6560 sq yards situated in village Sarai Allawardi, Tehsil and District Gurgaon for a total sale consideration of ₹11,28,00,000/-. ₹20 lacs was paid as earnest money and The accused promised the complainant that the balance sale consideration amount of ₹11,08,00,000/- would be paid on or before 07.07.2011.

(14) The accused gave two cheques i.e cheque bearing No. 110481 dated 7.7.2011 for a sum of ₹75,00,000/-(seventy lacs) and cheque No. 110484 dated 7.7.2011 for a sum of ₹40,00,000/- (forty lacs) drawn on Standard Chartered Bank, Branch Greater Kailash, Part-I, New Delhi in favour of Rathi Sales Corporation in presence of witnesses. On presentation, the above cheques were dishonored/unpaid by the banker of the accused with the specific endorsement “payment stopped by drawer” and intimation regarding the same was given to the respondent by his banker on 19.11.2011.

(15) Respondent further stated that there is no agreement dated 17.02.2011 (P-2), which was shown by the petitioner and the respondent had nothing to do with the said agreement. Annexure R-3 clearly shows that there was agreement between the petitioner and the respondent for sale of plot measuring about 6560 sq yards belonging to Mangat Ram, Balwan Singh etc village Sarai Alawardi and the complaint (P-13) was filed with regard to dishonor of the above said two cheques. The petitioner is trying to confuse the facts by making reference to agreement dated 18.02.2011 (P-2) which was never shown by the respondent to the petitioner and the respondent has nothing to do

with the said agreement. It has further been stated with regard to the complaint regarding cheque of ₹1.5 crores, the compliant was dismissed by the the trial Court and accordingly, CRM-M-24880 of 2012 filed by the petitioner was dismissed as having been infructuous on 04.10.2012 by this Court. Hence, the plea taken by the petitioner that he had given a cheque of ₹1.5 crores to the complainant, is liable to be rejected.

(16) Learned counsel for the respondent has argued that in order to remove the objection that the complaint has not filed against the Company, an application under Section 319 Cr.P.C has been filed before the trial Court to implead the Company as a party, which is pending consideration.

(17) Reference has been made to judgment passed by Hon'ble the Supreme Court in a case of *Hardeep Singh versus State of Punjab*<sup>8</sup>, wherein the Constitution Bench has consideration the provisions of Section 319 Cr.P.C and held that Section 319 Cr.P.C. springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. This is also a part of fair trial and in our opinion, in order to achieve this very end that the legislature thought of incorporating provisions of Section 319 Cr.P.C. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the above mentioned avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is subject matter of trial.

(18) Heard learned counsel for the parties.

(19) The facts which are not in dispute are that the respondent-Surinder Singh, proprietor of Rathee Sales Corporation along with Mangat Ram, Balwan Sigh etc, had entered in to agreement to sell for the land measuring 6560 sq yards on 20.06.2011 with M/s Santur City Pvt. Ltd of which the present petitioner was the Director, for an amount of ₹11,28,00,000/-. The last date for registration of sale deed was fixed as 07.07.2011. The complainant received ₹20,00,000/- as earnest

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<sup>8</sup> 2014(1) RCR (Criminal) 623



money from the petitioner being the Director of M/s Santur City (R-3). A complaint was also submitted by the respondent to the Police Commissioner, Gurgaon on 22.11.2011 against the petitioner, with regard to the fraud played by him and the bouncing of the two above mentioned cheques and the abuses and threat given by the petitioner by hiring gunda elements for demanding the balance amount regarding the deal dated 20.06.2011.

(20) However, in the petition, the petitioner has placed on record a receipt dated 07.07.2011 wherein the complainant had entered in to agreement dated 18.02.2011 with M/s Ansal Properties & Industries in respect of land measuring 29 kanals 06 marlas, situated at village Sarai Alawardi, Tehsil and District Gurgaon. Upon this representation, the respondent demanded ₹1.5 crores from the petitioner by alleging that on the basis of the aforesaid agreement, the respondent would get the sale of the aforesaid land in favour of the petitioner, being director of M/s Santur City. The petitioner paid ₹1,50,00,000/- (₹75,00,000/- in cash and ₹75,00,000/-, vide Cheque No. 110481 dated 07.07.2011) from M/s Santur City (P-1). However, the respondent in its written stated denied this fact and stated The receipt produced by the petitioner (P-1) is a forged and fabricated document which does not bear the signatures of the respondent. The respondent had entered into agreement with Land Lords/Farmers Sh. Mangat Rai and others to purchase their land measuring approximately 7000 sq yards situated in the Revenue Estate of Sarai Allawards, Tehsil and Distt Gurgaon for a total sale consideration amount of ₹8 crores 20 lacs. The date of registration of the sale deed was fixed as 7.7.2011 and 8.8.2011 in the office of Sub Registrar Gurgaon.

(21) Mr. Jagga, learned counsel for the petitioner further informed the Court that the petitioner had earlier filed CRM-M-24880 of 2012 seeking quashing of complaint filed by the respondent alleging handing over a cheque of ₹1.5 crores to the respondent, which was dismissed as having become infructuous, as the petitioner stands acquitted in criminal complaint No. 1391/2012 dated 10.01.2012 filed by the complainant.

(22) On 08.07.2011, the petitioner on behalf of M/s Santur City wrote a letter to the Banker Standard Bank, Greater Kailash, Part-I, New Delhi directing the Bank to stop the payment of the above mentioned two cheques of ₹75 lacs and ₹40 lacs respectively, which had been issued by the petitioner on behalf of its Company. Learned counsel for the petitioner has further informed the Court that the

petitioner, his Company and sister Companies are all maintaining their accounts with the same bank i.e Standard Chartered Bank from where the cheques in question were issued. When the cheques were issued, on the said date, the accounts of the petitioner and the company had jointly sufficient balance and besides that there was also an FDR of over ₹1 crore. The bank statements are Annexure P-5. The petitioner was successful in saving his two cheques but a payment of ₹75 lacs had been paid by the petitioner, in cash to the respondent. Thus, on 14.11.2011, the petitioner through his counsel issued a legal notice to the respondent, claiming the refund of ₹75 lacs, which he had received fraudulently from the petitioner by cash by breaching his trust (P-6). Thereafter, the petitioner filed a complaint with the Commissioner of Police, Gurgaon requesting him to register an F.I.R against the respondent for committing a fraud upon the petitioner (P-6).

(23) The respondent had also filed a complaint levelling frivolous allegations to the effect that some amount was to be paid by the petitioner and the above referred amount of ₹1.90 crores was paid in lieu of the same. Thereafter, a compromise was affected between the petitioner and the respondent (P-11 and P-12), which shows that the matter had been amicably resolved between the parties and the petitioner had agreed that he will take no action against Surender Rathi, Proprietor, Rathi Sales Corporation. But after the compromise was affected between the parties, the respondent filed a complaint dated 10.01.2012 (P-13) on account of dishonor of the cheques and the petitioner was summoned, vide order dated 14.05.2012 (P-14). A perusal of the two cheques annexed with the complaint shows that it had been signed by the petitioner, being director of M/s Santur City Pvt. Ltd. It is no longer in dispute that it was M/s Santur City Pvt. Ltd who had entered into agreement with M/s Rathee Sales Corporation even as per money receipt Annexure R-3, the petitioner on behalf of its Company had paid the earnest money. Further the petitioner on behalf of the Company had given its reply dated 07.12.2011 to the legal notice dated 30.11.2011.

(24) The cheques in questions had been issued by the Company and signed by the petitioner on behalf of the Company, being a Director of the Company. The account from where the cheque was drawn, is in the name of the Company and as per Section 138 of Negotiable Instruments Act, it was the Company which shall be deemed to have committed the offence on account of dishonor of cheques. Section 138 of Negotiable Instruments Act reads as under:-

Section 138 (a) (b) and (c) of the Act and Section 141 reads as under:-

***Section 138 in The Negotiable Instruments Act, 1881***

138 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 <sup>19</sup> [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,<sup>20</sup> [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.”

Section 141 in The Negotiable Instruments Act, 1881

21[ 141 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: <sup>22</sup> [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.]

(25) In *Anneta Hada's case (supra)*, Hon'ble the Supreme Court while dealing with the above said provision, has held in paragraph 42 and 43 as under:-

“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*, (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 others v. Rajendra Prasad Ardevi* 2007 (10) SCC 528 and *Sarabjit Rick Singh v. Union of India*, 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. 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 37. The decision in Modi Distilleries (*supra*) has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

(26) Thereafter, in Anil Gupta's case (*supra*), Hon'ble the Supreme Court in paragraph 15 held as under;-

15. In the present case, the High Court by impugned judgment dated 13th August, 2007 held that the complaint against respondent no.2-Company was not maintainable 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 (*supra*) has been overruled by three Judge Bench of this Court in Aneeta Hada (*supra*), 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 13th August, 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

(27) In the present case, the complainant filed the complaint bearing No.23 dated 10.01.2012 (P-13) filed by the respondent/complainant under Section 138 of the Act against the petitioner, who is merely a Director of M/s Santur City Pvt. Ltd, which was not impleaded as a party. The petitioner being a Director of the Company had only signed the cheques and the account was of the Company. The complainant itself was not maintainable.

(28) The second argument of learned counsel for the respondent has informed that his application under Section 319 Cr.P.C for impleading the Company as an accused is pending before the Court below to remove the technical defect, is liable to be rejected. The provision of Section 319 Cr.P.C. under the Act, has been considered by Madras High Court in cases of *Suryanarayanan versus. M/s Anchor Marine Service*<sup>9</sup>, *Anandan versus Arivazhagan*<sup>10</sup> and *S.*

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<sup>9</sup> 1998(94) Comp Cas 874

<sup>10</sup> 1998(1) BC 573

***Vishwanathan versus United Phosphorous Ltd.***<sup>11</sup> and it has been held that when the complaint has the initial defect in its sustainability, the defect cannot be cured by amending the proceedings. Section 319 Cr.P.C. no doubts permits for impleading any other accused, who was party to the commission of the offence but impleading such co-accused under Section 319 Cr.P.C. will not have any bearing as to the maintainability of the proceedings against other accused. Section 319 Cr.P.C. is not intended for curing the infirmity in their proceedings but only to bring all the culprits before the Court when their role in the commission of offence was brought to light only after the evidence before the Court.

(29) The judgment referred by learned counsel for the respondent ***i.e Hardeep Singh versus State of Punjab***<sup>12</sup>, will not be applicable to the facts of the present case under the Negotiable Instruments Act.

(30) In the present case, the alleged cheques were part of the complaint (P-13) and the amount was to debited from the account of the Company, which has not been arrayed as a party, therefore as per Section 138 and 141 of the Act, the complaint itself is not maintainable against the petitioner, who is a director of the Company.

(31) With the above observations, complaint bearing No. 23 dated 10.01.2012 (P-13) filed by the respondent/complainant under Section 138 of the Act as well as summoning order dated 14.05.2012 (P-6) are hereby set aside. The petition stands allowed.

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*J. S. Mehndiratta*

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<sup>11</sup> 1999(97) Comp Cas 922

<sup>12</sup> 2014(1) RCR (Criminal) 623