2026 INSC 789

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026

(Arising out of SLP Criminal No. 8240 of 2016)

MANJULA KAPOOR ...APPELLANT(S)

VERSUS

THE STATE OF HIMACHAL PRADESH AND ANR.
...RESPONDENT(S)

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.

2. Appellant filed a petition under Section 482 of the Code of Criminal Procedure, 1973[1] read with Article 227 of the Constitution of India in the High Court of Himachal Pradesh at Shimla[2] for quashing proceedings of Complaint Case No. 25/1 of 2009, titled Pankaj Sharma v. Manjula Kapoor), in the Court of Judicial

[1] CrPC
[2] The High Court

Magistrate[3] under Section 138 of Negotiable Instruments Act, 1881[4]. By the impugned order dated 19.09.2016, the High Court, though declined the prayer to quash the proceedings, directed the Trial Court to *suo motu* issue notice to M/s Cine Prime Entertainment[5] under Section 319 of CrPC and, after impleading it as accused No.2, commence trial *de novo* against the Company, as per provisions of sub-section (4) of Section 319 of CrPC, and bring it to its logical conclusion expeditiously and in accordance with law.

Facts:

3. In brief, the facts are as follows:

(i) Pankaj Sharma (i.e., Respondent No.2) filed a complaint under Section 138 of NI Act against the accused-appellant, *inter alia*, alleging that the Company owed Rs. 5,00,000 to the complainant in lieu of services rendered by him; the accused-appellant is one of the directors and authorised signatory of the Company; in

[3] Judicial Magistrate 1st Class, Barsar, Hamirpur (State of Himachal Pradesh)/ Trial Court
[4] NI Act
[5] Hereinafter referred to as the Company

discharge of the liability of the Company, a cheque of Rs. 5,00,000, duly signed by the accused-appellant, as authorised signatory of the Company, was issued to the complainant, which returned unpaid with remark 'payment stopped by drawer'; thereafter, the complainant served a notice of demand on the accused-appellant; despite service of the notice, the accused-appellant failed to make the requisite payment.

(ii) The learned Judicial Magistrate took cognizance on the complaint and summoned the appellant under Section 138 of NI Act *vide* order dated 30.01.2010. Thereafter, trial commenced.

(iii) When the proceedings were at the stage of recording statement of accused under Section 313 CrPC, the accused-appellant filed a petition before the High Court for quashing the proceedings on the ground that the cheque in question was drawn on the account maintained by the Company and, therefore, without impleading the Company as an accused, the complaint was liable to be quashed in the light of decision of this Court in ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.***[6]

(iv) The High Court accepted the legal position settled by this Court in ***Aneeta Hada (supra)***, but took the view that, since from the evidence led in the course of trial it appeared that the offence was committed by the Company, the Trial Court could have taken recourse to the powers under Section 319 of CrPC to arraign the Company as accused No.2. Accordingly, *vide* the impugned order, the High Court directed the Trial Court to act in terms *supra*.

4. Aggrieved by the order of the High Court, this appeal has been filed.

<u>Submissions on behalf of the Appellant:</u>

5. On behalf of the appellant, it is submitted that it is no longer *res integra* that where an offence punishable under Section 138 of NI Act is committed by a company, without impleading the company as an accused, the

[6] (2012) 5 SCC 661

complaint against the director, or any person, who, at the time the offence was committed, was in-charge of, and responsible to the company for conduct of its business, is not maintainable.[7] Besides, Section 142 of NI Act provides a limitation for filing the complaint under Section 138. Therefore, if the complaint suffers from a fatal defect, the complaint being a dead letter in the eyes of law, its defect cannot be removed beyond the period of limitation. Admittedly, the period of limitation had passed, and the complaint was *non est* in law, there was no question of reviving a dead complaint by taking recourse to the powers under Section 319 CrPC. In such circumstances, it is submitted, the High Court committed manifest error in declining the prayer to quash the complaint and all consequential proceedings.

<u>Submissions on behalf of Respondent No.2:</u>

6. *Per contra,* on behalf of the complainant (i.e., respondent No.2), it was submitted that, admittedly, the appellant was the authorised signatory of the Company; the appellant had signed the cheque on behalf of the

[7] Aneeta Hada (supra)

Company, therefore, there was only a formal defect in the complaint which could be rectified by taking recourse to the provisions of Section 319 CrPC. Any other view would allow the accused to go scot-free resulting in grave injustice. Thus, the High Court was justified in exercising its inherent and constitutional powers to secure the ends of justice.

<u>Submissions on behalf of State:</u>

7. On behalf of State it was submitted that since it is a case based on a private complaint, the State has no role. In so far as the complaint is concerned, it is well settled that if the person who commits the offence is a company, without impleading the company as an accused, the complaint is not maintainable.

<u>Discussion:</u>

8. We have considered the rival submissions and have perused the materials placed on record. There exists no dispute that the cheque in question was drawn on the account maintained by the Company and, according to the allegation, it was issued to meet the obligation of the Company, though under the signatures

of the appellant. It is also not in dispute that the notice of demand was not sent to the Company, but to the appellant, i.e., the authorised signatory of the Company.

9. A plain reading of Section 138[8] of NI Act would make it clear that to successfully prosecute a person for an offence punishable under Section 138, the complainant must prove:

(i) that the person drew a cheque on an account maintained by him with the banker;

(ii) that such cheque was drawn 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;

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[8] **Section 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 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 30 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 15 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.

(iii) that such cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity, whichever is earlier;

(iv) that such cheque was 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;

(v) that the payee or the holder in due course of the cheque, as the case may be, demanded in writing from the drawer of the cheque, the payment of the amount of the money due under the cheque to the payee;

(vi) that such a notice for payment is made within a period of thirty days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid.

(vii) that the drawer of such cheque has failed 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 15 days of the receipt of the said notice.

10. In ***Aneeta Hada (supra),*** a three-Judge Bench of this Court observed:

> "19. The main part of the provision can be segregated into three compartments, namely, (i) the cheque is drawn by a person, (ii) the cheque drawn on account maintained by him with the 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 a debt or other liability, is returned unpaid, either because the amount of money standing to the credit of that account is insufficient to honour the cheque or it exceeds the amount arranged to be paid from that account by an arrangement made with the bank, and (iii) such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of the Act, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both. The proviso to the said section postulates under what circumstances the section shall not apply. In the case at hand, we are not concerned with the said aspect. <u>It will not be out of place to state that the main part of the provision deals with the basic ingredients and the proviso deals with certain circumstances and lays certain conditions where it will not be applicable. The emphasis has been laid on the factum that the cheque has to be drawn by a person on the account maintained by him and he must have issued the cheque in discharge of any debt or other liability.</u>"
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> (Emphasis supplied)

11. What is clear from above is that the liability for the offence falls on "such person" who has drawn the

cheque on an account maintained by him with a banker. Company is a 'juristic person' and can maintain an account with the bank. Thus, if the cheque concerned is drawn on the account maintained by the Company, subject to fulfilment of other ingredients of Section 138 of NI Act, it would be the Company which would commit the offence. Section 141[9] of NI Act creates vicarious liability of certain other persons when the offence is committed by the company. Section 141 provides that 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

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[9] **Section 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:
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 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 anybody corporate and includes a firm or other association of individuals;
(b) "director" in relation to a firm, means a partner in the firm.

guilty of the offence and shall be liable to be proceeded against and punished accordingly. Interpreting the provisions of Sections 138 and 141 of NI Act, in ***Aneeta Hada (supra)***, it was held that for maintaining prosecution of any director of the company arraigning a company as an accused is mandatory. It was further held that commission of offence by the company is a condition precedent to attract the vicarious liability of others. This Court went on to observe that the words “as well as the company” appearing in Section 141 make it absolutely clear that when the company can be prosecuted, then only the persons mentioned in other categories could be held vicariously liable for the offence subject to the averments in the petition and proof thereof. The relevant paragraphs of this Court’s decision in ***Aneeta Hada (supra)*** are being reproduced below:

> “58. 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.

59. 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 drag-net 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***[10] which is a three-Judge Bench decision. Thus, the view expressed in ***Sheoratan Agarwal***[11] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in ***Anil Hada***[12] is overruled with the qualifier as stated in para 51. The decision in ***Modi Distillery***[13] has to be treated to be restricted to its own facts as has been explained by us hereinabove."

12. Now we shall consider whether recourse can be had to the provisions of Section 319 of CrPC to arraign the company as an accused when the complaint fails to implead the company. To appropriately answer the issue we must have a look at the provisions of Section 142 which deals with cognizance of the offence punishable under Section 138 of NI Act. Section 142[14] of NI Act provides that

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[10] State of Madras v. C.V. Parekh, (1970) 3 SCC 491: 1971 SCC (Cri) 97
[11] Sheoratan Agarwal v. State of M.P., (1984) 4 SCC 352: 1984 SCC (Cri) 620
[12] Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1: 2001 SCC (Cri) 174
[13] U.P. Pollution Control Board v. Modi Distillery, (1987) 3 SCC 684: 1987 SCC (Cri) 632
[14] **Cognizance of offences.—** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)--

notwithstanding anything contained in CrPC no Court shall take cognizance of any offence punishable under Section 138 except upon a complaint in writing made by the payee or, as the case may be, the holder in due course of the cheque; and such complaint must be made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138. Clause (c) of the proviso to Section 138 gives 15 days' time to the drawer to make payment upon service of notice of demand. This would imply that cause of action crystalises when the drawer of such cheque fails to make payment of the amount concerned within fifteen days of the receipt of the notice contemplated in clause (b) of the proviso to Section 138.

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offense punishable under section 138.

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,--

(a) if the cheque is delivered for collection through an account, the branch of the account where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the check is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.-- For the purposes of clause (a), when a cheque is delivered for collection at any branch at the Bank of the payee or the holder in due course, then the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

Therefore, the statute fixes a time period within which the complaint is to be made for an offence punishable under Section 138.

13. No doubt, the Court empowered to take cognizance has the power, under the proviso to sub-section (1) of Section 142 of NI Act, to take cognizance of a complaint made after the prescribed period upon being satisfied that the complainant had sufficient cause for not making the complaint within such period. But this power must not be used to circumvent the provisions of the Act and allow the complainant to remove fatal defects in the course of the proceedings when the complaint itself deserved dismissal at the threshold.

14. Here, the complaint suffered from a fatal defect for its failure to implead the Company as an accused on whose account the cheque was drawn. In such circumstances, no cognizance on that complaint could have been taken in view of the decision in ***Aneeta Hada (supra)***. Hence, all further proceedings on the complaint were bad in law.

15. In ***N. Harihara Krishnan v. J. Thomas***[15], a somewhat similar issue had arisen for consideration before this Court. It was held that power under Section 319 of CrPC should not be used as a device to initiate prosecution against the company beyond the period of limitation stipulated under the Act. We respectfully agree with the aforesaid view of this Court. Besides, in our view, where the complaint suffers from so fundamental a defect that no cognizance can be taken thereupon, the Court cannot proceed and take recourse to the provisions of Section 319 to cure that defect. The reason is simple, if the complaint suffers from a fatal defect, there is no valid institution of a proceeding. In such circumstances, only a fresh complaint can be filed after removing the defect provided it is within the period of limitation prescribed by the Act. However, if the fresh complaint is beyond the prescribed period of limitation, the Court concerned may take cognizance if it is satisfied that the complainant had sufficient cause for not making the complaint within the prescribed period.

[15] (2018) 13 SCC 663

16. For the reasons above, we are of the view that the High Court clearly exceeded its jurisdiction by directing the learned Magistrate/ Trial Court to *suo moto* arraign company as an accused. In consequence, and having regard to the finding that the complaint suffered from a fatal defect, we have no hesitation in holding that the complaint and all consequential proceedings arising there from are liable to be quashed and are hereby quashed.

17. The appeal is allowed. The impugned order of the High Court is set aside. The impugned Complaint and all consequential proceedings under Section 138 of NI Act are hereby quashed.

18. Pending application(s), if any, shall stand disposed.

............................J.
(MANOJ MISRA)

............................J.
(VIJAY BISHNOI)

New Delhi;
July 29, 2026