

AN AUTHORIZED SIGNATORY IS MERELY AUTHORIZED TO SIGN ON BEHALF OF THE COMPANY AND DOES NOT BECOME THE DRAWER OF A CHEQUE

INTRODUCTION:

*The Apex Court in its decision in **Shri Gurudatta Sugars Marketing Pvt. Ltd. Vs Prithviraj Sayajirao Deshmukh and Ors.**¹, held that the general rule against vicarious liability in criminal law underscored that individuals were not typically held criminally liable for acts committed by others unless specific statutory provisions extended such liability. Section 141 of the Negotiable Instruments Act, 1881 ("**NI Act**") was one such provision, extending liability to the company's officers for the dishonour of a cheque. An attempt to extend this principle to Section 143A of the NI Act, to hold directors or other individuals personally liable for interim compensation, was unfounded. Any liability under Section 141 arose from the conduct or omission of the individual involved, not merely their position within the company.*

FACTS:

The Appellant entered into several Agreements and Sale Orders with one Cane Agro Energy (India) Ltd. ("**Cane**") between September 2016 and June 2017. Under these Agreements and Sale Orders, the Appellant made advance payments amounting to Rs. 63,46,00,000/- (Rupees Sixty-Three Crores Forty-Six Lakhs only) to Cane for the supply of sugar.

It was alleged by the Appellant that Cane failed to supply the ordered quantities of sugar and also failed to discharge its other obligations as agreed upon. Cane agreed to refund the advance amount to the Appellant. In part discharge of its liability, Cane refunded a sum of Rs.1,00,00,000/- (Rupees One Crore only) to the Appellant on 30th January 2018.

Subsequently, Respondent Nos. 1 to 3 issued two cheques both dated 30th March 2020 in favour of the Appellant, one for Rs. 45,00,00,000/- (Rupees Forty-Five Crores only)

and one for Rs. 6,64,41,300/- (Rupees Six Crores Sixty-Four Lakhs Forty-One Thousand and Three Hundred only), amounting to a total of Rs. 51,64,41,300/- (Rupees Fifty-One Crores Sixty-Four Lakhs Forty-One Thousand and Three Hundred only) ("**said Cheques**"). The said Cheques were signed by Respondent No. 1, who was the Chairman of Cane.

The said Cheques were presented by the Appellant to its Bank but were dishonored due to insufficiency of funds.

The Appellant issued a notice dated 18th June 2020 to the Respondent Nos. 1 to 3 demanding payment of dues. The said notice was duly served on Respondent Nos. 1 to 3 on 30th June 2020.

As the payments were not cleared even after receipt of the said notice by the Respondent Nos. 1 to 3, the Appellant preferred a complaint before the Judicial Magistrate, First Class, Kolhapur. On 11th August 2020, the Judicial

¹ SLP (Crl.) Nos. 8849-8850 of 2023

Magistrate, First Class, Kolhapur issued process against Respondent Nos. 1 to 3.

In the meantime, Cane was admitted into Corporate Insolvency Resolution Process ("**CIRP**") by order of the National Company Law Tribunal, Mumbai.

On 20th May 2021 an order imposing moratorium against Cane was passed by the National Company Law Tribunal, Mumbai under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). Thereafter, the Respondent Nos. 1 to 3 entered appearance before the Judicial Magistrate and preferred an application under Section 258 of the Code of Criminal Procedure, 1973, seeking stay of proceedings in view of the moratorium.

The Judicial Magistrate partly allowed the above application and held that the complaint shall not proceed against Cane in view of Section 14 of the IBC, till the order of moratorium was operative. The Appellant was however allowed to proceed ordinarily against the Respondent Nos. 1 to 3.

The Appellant filed an application under Section 143A of the NI Act against the Respondent Nos. 1 to 3 seeking interim compensation from the Respondents during the pendency of the criminal proceedings before the Judicial Magistrate. Vide an order dated 27th April 2022, the Judicial Magistrate directed each of the three Respondents to pay 4% of the total cheque amount as interim compensation to the Appellant within 60 days.

The Appellant thereafter preferred an application under Section 421 of the Code of Criminal Procedure, 1973 ("**CrPC**") read with Section 143A(5) of the NI Act seeking execution of the order dated 27th April 2022 and recovery of interim compensation as if it were a fine.

The Respondent Nos. 1 to 3 preferred Criminal Application No. 967 of 2022 before the Bombay High Court challenging the order of interim compensation dated 27th April 2022 passed by the Judicial Magistrate. The Bombay High Court, vide interim order dated 23rd September, 2022, stayed the operation of the order dated 27th April 2022.

During the pendency of the above Criminal Application, the Bombay High Court, in a batch of Writ Petitions and Criminal Applications dealing with the same issue and the question of law on whether the signatory of the cheque, authorized by any "Company", was the "drawer" of such cheque and whether such signatory could be directed to pay interim compensation in terms of Section 143A of the NI Act beside a "Company", vide its final judgment and order dated 8th March, 2023, held that the signatory of the cheque was not a "drawer" in terms of Section 143A of the NI Act and could not be directed to pay interim compensation under Section 143A of the NI Act.

In light of the above judgment, the Bombay High Court vide order its dated 29th March 2023 ("**Impugned Order**"), allowed the application preferred by the Respondent Nos. 1 to 3 herein and set aside the order of interim compensation granted by the Judicial Magistrate on 27th April, 2022.

Being aggrieved by the Impugned Order, the Appellant preferred a Criminal Appeal in Special Leave to Petition (Criminal) before the Apex Court.

ISSUE FOR CONSIDERATION:

The main issue for consideration before the Apex Court was as follows:

- (i) Whether the signatory of the cheque, authorized by the "Company", was the

"drawer" and whether such signatory could be directed to pay interim compensation in terms of Section 143A of the Negotiable Instruments Act, 1881 leaving aside the "Company"?

SUBMISSIONS ON BEHALF OF THE APPELLANT:

It was submitted on behalf of the Appellant that if a director, managing director, chairman, promotor of a company could be arrayed as accused under Section 141 of the NI Act despite not being a signatory to the cheque, then it was only fair that one or more of such individuals be held liable to pay the interim compensation as provided under Section 143A of the NI Act.

Relying upon the object of Section 143A of the NI Act, it was submitted that for addressing the issue of undue delay and for providing relief to the payees of dishonoured cheques, it was only just and fair that this be done through payment of interim compensation by the director or any such person in charge of the company.

It was submitted that in the present case the company was admitted to CIRP, therefore being its alter ego, it was only the directors who could be directed to pay interim compensation. In furtherance of the object of the provision in light of the CIRP proceedings against the company, the payees of the dishonoured cheque could not be left with no interim relief, thereby defeating the purpose of Section 143A of the NI Act and causing injustice to the payees already suffering due to the pending litigation.

In support of its submissions, the Appellant relied upon the judgement in ***Aneeta Hada v. Godfather Travels And Tours Pvt. Ltd.***², wherein it was observed that that an authorised

² (2012) 5 SCC 661

³ (2018) 13 SCC 663

signatory of a company became a drawer of a cheque as he has been authorised to do so in respect of the account maintained by the company.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

It was submitted on behalf of the Respondent that it is a well settled position of law that an authorised signatory of a company is not a drawer of the cheque. To substantiate this submission, reliance was placed upon the judgement in ***N. Harihara Krishnan v. J. Thomas***³, wherein it was held that, "Every person signing the cheque on behalf of a company on whose account the cheque is drawn does not become the drawer of the cheque. Such a signatory is only a person duly authorised to sign the cheque on behalf of the company/drawer of the cheque".

It was further submitted that with respect to the interpretation of the provision, the Appellant's submission that the meaning of 'drawer' under Section 143A of the NI Act must be read liberally and purposively was contrary to the position of law on interpretation of statutes. It was submitted that such an interpretation of penal statutes was contrary to the settled principles of criminal law, as penal provisions were to be read strictly in order to determine the liability of a party, more so where vicarious liability was to be determined. To substantiate this submission, reliance was placed upon the judgment in ***K.K. Ahuja v. V.K. Vohra***⁴.

JUDGMENT:

The Apex Court observed that the Bombay High Court's interpretation of Section 7 of the NI Act accurately identified the "drawer" as the

⁴ (2009) 10 SCC 48

individual who issues the cheque. This interpretation was fundamental to understanding the obligations and liabilities under Section 138 of the NI Act, which made it clear that the drawer must ensure sufficient funds in their account at the time the cheque is presented for payment. The Appellants' argument that directors or other individuals should also be liable under Section 143A misinterpreted the statutory language and intent of such section.

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

The distinction between legal entities and individuals acting as authorized signatories was crucial. Authorized signatories act on behalf of the company but do not assume the company's legal identity. This principle, fundamental to corporate law, ensures that while authorized signatories can bind the company through their actions, they do not merge their legal status with that of the company. This distinction supports the Bombay High Court's interpretation that the

drawer under Section 143A of the NI Act referred specifically to the issuer of the cheque, not the authorized signatories.

The Apex Court observed that the Appellant's reliance on the judgment in **Aneeta Hada (Supra)**, was misplaced and out of context. While it underscored the necessity of involving the company as an accused to maintain a prosecution under Section 141 of the NI Act, it did not support the extension of liability to authorized signatories under Section 143A of the NI Act.

The Apex Court further observed that the Respondents correctly argued that an authorized signatory was not a drawer of the cheque, as established in **N. Harihara Krishnan (Supra)**. This aforesaid judgment clarified that a signatory was merely authorized to sign on behalf of the company and did not become the drawer. The Respondents' interpretation aligned with the principle that penal statutes should be interpreted strictly, particularly in determining vicarious liability. The judgment in **K.K. Ahuja (Supra)**, further supported this approach, emphasizing that penal provisions must be read strictly to determine liability.

The Apex Court observed that the Bombay High Court's decision to interpret 'drawer' strictly as the issuer of the cheque, excluding authorized signatories, was well-founded. This interpretation aligned with the legislative intent, established legal precedents, and principles of statutory interpretation.

In view of the aforesaid, the Criminal Appeal was dismissed.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.