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STRICT INTERPRETATION OF 'DRAWER' IN NI ACT EXCLUDES AUTHORIZED SIGNATORIES-SC

"SHRI GURUDATTA SUGARS MARKETING PVT. LTD. VERSUS PRITHVIRAJ SAYAJIRAO DESHMUKH & ORS."

Hon'ble Supreme Court in case of *Shri Gurudatta Sugars Marketing Pvt. Ltd. Versus Prithviraj Sayajirao Deshmukh & Ors.*¹, ruled that an authorized signatory, although acting on behalf of a company, remains an individual under the law. Hence, they are not considered the 'drawer' of a cheque and cannot be directed to pay interim compensation to the complainant under Section 143A of the Negotiable Instruments Act of 1881. In this instance case, Appellant contended that if a director, managing director, chairman, promotor of a company can be arrayed as accused under Section 141, NI Act despite not being a signatory to the cheque, then it is only fair that one or more of such individuals be held liable to pay interim compensation. Respondents countered that company itself holds primary liability under Section 138 of NI Act, 1881, company's management is only subsequently and vicariously liable. Therefore, only the company, as the cheque's drawer, is liable for interim compensation under Section 143-A of NI Act, 1881, not its employees, management, or signatories.

Hon'ble Supreme Court dismissed the appeal, stating that appellants' argument for holding directors or other individuals liable under Section 143A of NI Act, 1881 misinterprets the law. Hon'ble Court emphasized the general rule against vicarious liability in criminal law, noting that individuals are not usually held liable for others' actions unless explicitly stated in the statute. It underscored the critical distinction between legal entities and authorized signatories, who act on behalf of the company but do not assume its legal identity. This fundamental corporate law principle ensures that while signatories can bind the company, they remain separate legal entities.

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. OF 2024
(@ Special Leave to Petition (Crl.) Nos.8849-8850 of 2023)

**SHRI GURUDATTA SUGARS MARKETING
PVT. LTD. ...APPELLANT**

VERSUS

**PRITHVIRAJ SAYAJIRAO DESHMUKH
& ORS. ...RESPONDENTS**

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.
2. The present Appeals are filed challenging the judgments and orders passed by the Bombay High Court, dated 08.03.2023 and 29.03.2023 in CRLA 967/2022, whereby the High Court allowed the Criminal Application filed by the present respondents thereby setting aside the order of the Judicial Magistrate directing the interim payment under Section 143-A, Negotiable Instruments Act, 1881¹ to be paid by the

¹ In short, "NI Act"

respondents – directors of the company on whose account the dishonoured cheque was drawn.

3. Appellant company entered into several Agreements and Sale Orders with one Cane Agro Energy (India) Ltd. (Cane hereinafter) 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) for supply of sugar by Cane. It is 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 due and payable to the Appellant. In part discharge of liability, a sum of Rs.1,00,00,000/- (Rupees one crore) was refunded by Cane on 30.01.2018.
4. Subsequently, respondent Nos. 1 to 3 issued two cheques dated 30.03.2020 in favour of the appellant, one for Rs.45,00,00,000/- (Rupees forty five crores) and one for Rs.6,64,41,300/- (Rupees six crores sixty four lakhs forty one thousand and three hundred), amounting to a total amount of Rs.51,64,41,300/- (Rupees fifty one crores sixty four lakhs forty one thousand and three hundred).

These two cheques were signed by respondent No.1, who is the Chairman of Cane.

5. The said cheques were presented to the Bank but were dishonoured due to insufficiency of funds, vide return memos dated 02.06.2020. Appellant issued notice date 18.06.2020 to respondent Nos. 1 to 3 against the dishonour of cheques demanding payment of dues. A notice was duly served on 30.06.2020. When the payments due were not made, the appellant preferred a complaint before the Judicial Magistrate, First Class, Kolhapur, which was registered as Summary Criminal Case No.2967 of 2020. On 11.08.2020, the Judicial Magistrate, First Class, Kolhapur issued process against respondent Nos. 1 to 3. In the meantime, Cane was admitted into Corporate Insolvency Resolution Process by order of National Company Law Tribunal, Mumbai.
6. Respondent Nos. 1 to 3 entered appearance before the Judicial Magistrate and subsequently preferred an application under Section 258, Code of Criminal Procedure, 1860², seeking stoppage of proceedings in terms of the moratorium running against Cane. On 20.05.2021 an order imposing moratorium against Cane was passed under Section 14,

² CrPC

Insolvency and Bankruptcy Code, 2016³. Respondent Nos. 1 to 3, along with Cane, preferred another application under Section 258, CrPC seeking stoppage of proceedings before the Judicial Magistrate.

7. The Judicial Magistrate partly allowed the above application and held that the complaint shall not proceed against Cane in view of Section 14, IBC till the order of moratorium is operative; but the complaint was ordered to proceed ordinarily against respondent Nos.1 to 3 herein. The Judicial Magistrate observed that as per the scheme of Section 14, IBC the proceedings for offences punishable under Section 138, NI Act is withheld by order of moratorium only for corporate debtors and not against other natural persons arrayed as respondents in representative capacity for the accused company.
8. Appellant filed an application under Section 143-A, NI Act against respondent Nos. 1 to 3 seeking interim compensation from the respondents during the pendency of the criminal proceedings before the Judicial Magistrate. Vide order dated 27.04.2022, the Judicial Magistrate directed each of the respondents to pay 4% of the total cheque amount

³ IBC

as interim compensation to the appellant within 60 days. The respondents were granted an extension till 26.07.2022 to pay the interim compensation upon an application made by them.

9. Appellant preferred an application under Section 421, CrPC read with Section 143-A(5), NI Act seeking execution of order dated 27.04.2022 and thus recovery of interim compensation as if it were a fine. The respondents filed their response to the application, the same is pending before the Judicial Magistrate.
10. Respondent Nos. 1 to 3 preferred Criminal Application No. 967 of 2022 before the High Court challenging the order of interim compensation dated 27.04.2022 passed by the Judicial Magistrate. The High Court, vide interim order dated 23.09.2022, stayed the operation of the order impugned therein.
11. During the pendency of the above application, the High Court, in a batch of Writ Petitions and Criminal Application dealing with the same issue and the question of law that whether the signatory of the cheque, authorized by the "Company", is the "drawer" and whether such signatory could be directed to pay interim compensation in terms of section 143A, NI Act leaving aside the company,

vide its final judgment and order dated 08.03.2023 held that the signatory of the cheque is not a 'drawer' in terms of Section 143-A, NI Act and cannot be directed to pay interim compensation under Section 143A.

12. In light of the above judgment and order of the coordinate bench in Criminal Application No. 886 of 2022, the High Court vide order dated 29.03.2023, allowed the application preferred by the respondent Nos. 1 to 3 herein and set aside the order of interim compensation passed by the Judicial Magistrate on 27.04.2022.

13. The appellant has challenged the judgment and order of the High Court dated 29.03.2023 as well as the relied upon judgment and order dated 08.03.2023. The present Appeal is filed assailing the correctness of these orders *vis-à-vis* the larger question of law, as framed by the High Court:

“Whether the signatory of the cheque, authorized by the "Company", is 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?”

14. The High Court, in its judgment dated 08.03.2023 in Criminal Application No.886 of 2022, answered

the above question in the negative and upheld the same in its order dated 29.03.2023 in the case of the appellant before us. To answer the question of law and determine the correctness of its view it is imperative to look into the considerations before the High Court and its analysis.

OBSERVATIONS MADE BY THE HIGH COURT

15. The High Court, while answering the above question in the negative, made several observations based on the interpretation of the relevant statutes under the NI Act as well as on the judgments relied upon by the counsels in their arguments before the High Court.

15.1. Obligation of the Drawer of the Cheque

The High Court observed that under Section 7 of the NI Act, the maker of a bill of exchange or cheque is termed the "drawer," and the person directed to pay is called the "drawee." The drawer is the individual who issues the cheque. Sections 138, 143A, and 148 of the NI Act fall under Chapter XVII, which pertains to penalties for the dishonour of certain cheques due to insufficient funds. A plain reading of Section 138 highlights that the drawer must have an account with sufficient funds to cover the cheque. The primary liability under Section 138

is on the drawer, who must ensure that there are adequate funds in the account at the time the cheque is presented. Additionally, the offence under Section 138 is not complete until a demand notice is served on the drawer, emphasizing the drawer's responsibility. The drawer is considered the principal offender if the cheque is returned unpaid, subject to the fulfilment of the necessary conditions before and after the cheque is dishonoured.

15.2. General Rule of Criminal Liability

The High Court noted the general rule against vicarious liability in criminal cases, where individuals are typically not held criminally liable for acts committed by others. However, this principle is subject to exceptions created by specific statutory provisions extending liability to additional parties. Section 141, NI Act is one such provision that extends criminal liability for dishonour of a cheque committed by a company to its officers. The Court emphasized that liability under Section 141 arises from the conduct, act, or omission of the person involved, not merely their position in the company. The provision establishes vicarious liability for officers of the company, such as signatories of the cheque, managing directors, or

those in charge of its affairs, by legal fiction. Thus, while the drawer of the cheque remains primarily liable, Section 141 broadens liability to include others associated with the company's management, ensuring accountability beyond the drawer alone.

15.3. Authorised signatory cannot be equated to the company

Further, the High Court delved into the distinction between legal entities and individuals acting as authorized signatories within the framework of the NI Act. The Court observed that while individuals may sign cheques as authorized representatives of companies, they do not assume legal identity of the company itself. It clarified that a legal entity, such as a corporation or company, is an artificial creation of the law endowed with rights, duties, and the capacity to sue and be sued independently of the individuals who manage or represent it. The Court emphasized that an authorized signatory, despite acting on behalf of a company, remains distinct as an individual under the law. This distinction is crucial as it clarifies that the actions and obligations undertaken by an authorized signatory are attributable to the company they represent, but do not merge their legal status with that of the company itself. Thus, while an

authorized signatory may bind the company through their actions, they do not transform into a legal entity in the eyes of law.

15.4. Interpretation of the Section 143-A and the legislative intent

Moreover, the High Court highlighted the principle of statutory interpretation, particularly in relation to Sections 143A and 148 of the NI Act, which are under consideration. It discussed the dichotomy between interpreting statutes based on their plain language versus applying purposive construction. According to the Court, when the statutory language is clear and unambiguous, it speaks for itself, and there is no need for further interpretation. The natural and ordinary meaning of words should prevail unless the legal context necessitates a different interpretation to align with the legislative intent or to avoid absurd outcomes.

15.4.1. The Court further elucidated that legislative intent should guide the interpretation of statutes, with all parts of a statute considered together to discern the overall purpose. It stressed that words and phrases within a statute must be construed in context, taking into account the legislative objectives and the broader framework of the law. This holistic approach ensures that statutory interpretation

remains faithful to the lawmakers' intentions and avoids inconsistencies or injustices that may arise from a literal reading of isolated provisions.

15.4.2. The High Court emphasized that Section 143A should be interpreted plainly, without resorting to other rules of interpretation. It asserted that the term 'drawer' in Section 143A has a clear and unambiguous meaning, referring specifically to the person who issues the cheque. Referring to the Statement of Objects and Purposes of the Negotiable Instruments (Amendment) Act, 2018, the High Court noted that the purpose of Section 143A is to provide interim relief to payees of dishonoured cheques by imposing liability on the drawer. This, according to the High Court, aligns with the legislative intent to curb frivolous litigations and expedite resolution of cheque dishonour cases.

15.4.3. The High Court rejected the inclusion of authorized signatories within the definition of 'drawer'. It pointed out that the legislature's choice of words in Section 143A specifically targets the drawer of the cheque, whether an individual or a company, and does not extend liability to authorized signatories. Drawing from established legal precedents, the High Court underscored that

the term 'drawer' carries a specific legal meaning within the NI Act. It highlighted the cases where Courts consistently interpreted 'drawer' to refer strictly to the issuer of the cheque, reinforcing its decision to uphold this interpretation. The High Court relied on the following judgments to emphasise on the literal interpretation warranted in the present case:

- i. *Nazir Ahmad v. King Emperor*⁴**
- ii. *Central Bank of India v. Ravindra*⁵**
- iii. *Noor Mohammed v. Khurram Pasha*⁶**

15.4.4. Contextually, the High Court stressed upon the finding that 'drawer' within the framework of the NI Act consistently refers to the party issuing the cheque. It dismissed the arguments seeking to expand this definition to include authorized signatories, citing the need for consistency in statutory interpretation.

15.4.5. The High Court also invoked principles of company law to support its interpretation. It affirms the separate legal identity of a company and its authorized signatories under the Companies

⁴ AIR 1936 Privy Council 253

⁵ (2002) 1 SCC 367

⁶ (2022) 9 SCC 23

Act, which prevents extending liability to signatories under Section 143A.

16. In conclusion, the High Court's analysis underscores the critical distinction between individuals acting as authorized signatories and the legal entities they represent under the NI Act.
17. Before we delve into the arguments presented by the counsels for the parties before us, it is imperative that we also look at the observations made by the High Court with respect to the two judgments heavily relied upon by the parties before it as well as before us.
18. The High Court while addressing the reliance placed upon ***Aneeta Hada v. godfather travels and tours Pvt. Ltd.***⁷ and ***N. Harihara Krishnan v. J. Thomas***,⁸ observed that while **Aneeta Hada (supra)** underscored the necessity of involving the company as an accused to maintain a prosecution under Section 141 NI Act, **N. Harihara Krishna (supra)** clarified that an authorized signatory is not considered the "drawer" under Section 138 of the NI Act. These judgments guided the High Court in interpreting provisions of the NI Act regarding

⁷ (2012) 5 SCC 661

⁸ (2018) 13 SCC 663

vicarious liability and the definition of the term "drawer" within the statutory framework.

SUBMISSIONS OF THE APPELLANT

19. The learned counsel for the appellant submitted that if a director, managing director, chairman, promotor of a company can be arrayed as accused under Section 141, NI Act despite not being a signatory to the cheque, then it is only fair that one or more of such individuals be held liable to pay interim compensation.
20. Relying upon the object of Section 143-A, NI Act, it was submitted that for addressing the issue of undue delay and for providing relief to the payees of dishonoured cheque, it is 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. This would be in alignment with the purposes and objectives of the provision.
21. Further, it was argued that in the present case the company is admitted to CIRP, thus being its alter ego, it is only the directors who can 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 cannot be left with no interim

relief, thereby defeating the purpose of Section 143-A and causing injustice to the payees already suffering due to the pending litigation.

22. Learned counsel for the appellant further submitted that any restrictive interpretation of the provision would defeat the purpose of providing interim compensation to the payee of a dishonoured cheque. To further strengthen their argument, they relied upon this Court's judgment in ***Aneeta Hada (Supra)***⁹ and submitted that in para 20 of the judgment, this Court has observed that an authorised signatory of a company becomes a drawer as he has been authorised to do so in respect of the account maintained by the company.
23. Lastly, it was submitted that since the company is in moratorium and that it is admitted by the respondents that their case is not that they are unable to pay compensation, the grant of a meagre four percent of the cheque amount by each of them is just and fair. That even such an amount in the form of interim payment would serve the purposes of the provision and would also help the business of the appellant.

⁹ (2012) 5 SCC 661

SUBMISSIONS OF THE RESPONDENTS

24. The learned senior counsel for the respondents, Mr. Siddharth Dave, vehemently argued 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 argument, he relied upon this Court's judgment in **N. Harihara Krishnan (Supra)** 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.”*
25. Further rejecting the submissions made by the appellant with regard to the observations made in the case of **Aneeta Hada (Supra)**, it was submitted by Mr. Dave that in this judgment this Court was dealing with the question of extending criminal liability on the officers of the company and it held that the criminal liability for the dishonour of cheque primarily falls on the drawer company and is thereby extended to those in charge of it only when the conditions provided under Section 141 are satisfied. Therefore, the Court did not hold that the authorised signatory becomes a drawer but only made a reference and an observation to this

effect to elucidate that the criminal liability extends from the company to its directors and other officers by virtue of the cheque drawn on the company's account by such authorised signatory.

26. It was further submitted that with respect to the interpretation of the provision, the appellant's argument that the meaning of 'drawer' under Section 143-A must be read liberally and purposively is contrary to the position of law on interpretation of statutes. Further submission is that such an interpretation of penal statutes is contrary to the settled principles of criminal law, as penal provisions are to be read strictly in order to determine the liability of a party, more so where vicarious liability is to be determined. To substantiate this, he relied upon the judgment of this Court in the case of **K.K. Ahuja v. V.K. Vohra**.¹⁰

27. In conclusion, it was submitted that the primary liability for an offence under Section 138 is that of the company itself and the company's management is only subsequently and vicariously liable. Thus, it is only the company that is to be considered as the drawer of the cheque. Consequently, a strict interpretation of Section 143-A would mean that it

¹⁰ (2009) 10 SCC 48

is only the drawer-company's liability to pay the interim compensation as the provision does not provide for an interim compensation to be paid by the employees or the management or the signatory of the company.

ANALYSIS

28. The High Court's interpretation of Section 7 of the NI Act accurately identified the "drawer" as the individual who issues the cheque. This interpretation is fundamental to understanding the obligations and liabilities under Section 138 of the NI Act, which makes it clear that the drawer must ensure sufficient funds in their account at the time the cheque is presented. The appellants' argument that directors or other individuals should also be liable under Section 143A misinterprets the statutory language and intent. The primary liability, as correctly observed by the High Court, rests on the drawer, emphasizing the drawer's responsibility for maintaining sufficient funds.
29. The general rule against vicarious liability in criminal law underscores that individuals are not typically held criminally liable for acts committed by others unless specific statutory provisions extend such liability. Section 141 of the NI Act is one such provision, extending liability to the

company's officers for the dishonour of a cheque. The appellants' attempt to extend this principle to Section 143A, to hold directors or other individuals personally liable for interim compensation, is unfounded. The High Court rightly emphasized that liability under Section 141 arises from the conduct or omission of the individual involved, not merely their position within the company.

30. The distinction between legal entities and individuals acting as authorized signatories is crucial. Authorized signatories act on behalf of the company but do not assume the company's legal identity. This principle, fundamental to corporate law, ensures that while authorized signatories can bind the company through their actions, they do not merge their legal status with that of the company. This distinction supports the High Court's interpretation that the drawer under Section 143A refers specifically to the issuer of the cheque, not the authorized signatories.
31. The principle of statutory interpretation, particularly in relation to Sections 143A and 148, was also correctly applied by the High Court. The Court emphasized that when statutory language is clear and unambiguous, it should be given its natural and ordinary meaning. The legislative intent, as

discerned from the plain language of the statute, aims to hold the drawer accountable. The appellants' argument for a broader interpretation to include authorized signatories under Section 143A contradicts this principle and would lead to an unjust extension of liability not supported by the statutory text.

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

33. The appellants' reliance on the judgment in ***Aneeta Hada (Supra)***,¹¹ is misplaced and out of context. While this case underscored the necessity of involving the company as an accused to maintain a prosecution under Section 141, it does not support the extension of liability to authorized signatories under Section 143A. The judgment nowhere lays down that directors or authorised signatories would come under the ambit of 'drawer' for the purposes of Section 143A. The appellants' interpretation

¹¹ (2012) 5 SCC 661

conflates the roles of authorized signatories and drawers, which are distinct under the NI Act. Appellants have relied upon a single paragraph, which does not form part of the ratio therein, to substantiate their argument. But in this relied upon paragraph, the Court only made an observation that the authorised signatory becomes a drawer for the company, for the limited purpose of extending the criminal liability as per Section 141.

34. The respondents correctly argued that an authorized signatory is not a drawer of the cheque, as established **in *N. Harihara Krishnan (Supra)***.¹² This judgment clarified that a signatory is merely authorized to sign on behalf of the company and does not become the drawer. The respondents' interpretation aligns with the principle that penal statutes should be interpreted strictly, particularly in determining vicarious liability. The judgment in ***K.K. Ahuja (Supra)***,¹³ further supports this approach, emphasizing that penal provisions must be read strictly to determine liability.
35. In conclusion, the High Court's decision to interpret 'drawer' strictly as the issuer of the cheque, excluding authorized signatories, is well-founded.

¹² (2018) 13 SCC 663

¹³ (2009) 10 SCC 48

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

36. The appeals are accordingly dismissed. Pending application(s), if any, shall stand disposed of.

.....**J**
(VIKRAM NATH)

.....**J**
(PRASHANT KUMAR MISHRA)

NEW DELHI
JULY 24, 2024