



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.542 of 2014

(From the order dated 05.05.2014 passed by the learned J.M.F.C., Balasore in I.C.C. No.114 of 2011)

Gourav Kumar Hota *Petitioner(s)*
-versus-

Ajay Kumar Barik *Opposite Party (s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. M. K. Mishra, Sr. Adv.*
Along with
Mr. B. K. Mishra, Adv.

For Opposite Party (s) : *Mr. Debasish Samal, Adv.*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-24.02.2025

DATE OF JUDGMENT:-13.03.2025

Dr.S.K. Panigrahi, J.

1. The Petitioner has preferred the present revision petition assailing the order dated 05.05.2014 passed by the learned J.M.F.C., Balasore in I.C.C. No.114 of 2011, contending that the proceedings are vitiated in law for want of compliance with the mandatory requirements of Section 141 of the Negotiable Instruments Act.

I. FACTS AS PRESENTED BY THE REVISIONIST:

2. The prosecution's case can be summarized as follows:



- (i). Complainant/Opposite Party is the Sole proprietor of M/s. Maa Gayatri Transport & Supplier, a business engaged in supplying building materials such as chips, metal, boulders, sand, and stone products in Balasore, Odisha.
- (ii). Petitioner/Accused is the Executive Director of CCC Builders Merchant Pvt. Ltd., Gurgaon, Haryana, a company engaged in construction work. The dispute arises from a business transaction involving the supply of building materials for the construction of a concrete road for S.E. Railways at Balasore under the direct supervision of the petitioner.
- (iii). The complainant supplied metal and sand on credit to the petitioner's company between October and November 2010. The total outstanding dues against the petitioner/company were as follows:
 - a. Materials supplied between 11.10.2010 and 01.11.2010: ₹6,58,300/-.
 - b. . Previous outstanding balance before October 2010: ₹6,34,045/-.
 - c. Total outstanding amount: ₹12,92,345/-.
- (iv). A partial payment of ₹5,00,000/- was made through a bank transfer from the company's account to the complainant's account. The remaining balance of ₹7,92,345/- was due.
- (v). To settle part of the outstanding dues, the petitioner (accused) issued a cheque (No. 255951) dated 19.12.2010 for ₹4,00,000/- from Axis Bank Ltd. at Balasore. The complainant deposited the cheque



on 20.12.2010, but it was dishonored on 29.12.2010 due to “Payment Stopped by Drawer.”

- (vi). The complainant was formally notified of the dishonor on 01.01.2011 and received confirmation on 03.01.2011. Multiple attempts were made to contact the accused but they failed.
- (vii). A demand notice under Section 138 of the Negotiable Instruments Act (NI Act) was issued on 27.01.2011 through registered post with acknowledgment due (A.D.). The accused received the notice on 04.02.2011 but failed to respond or make payment within the statutory period.
- (viii). Consequently, the complainant filed ICC Case No. 114 of 2011 before the learned SDJM, Balasore, alleging an offense under Section 138 of the NI Act (dishonor of cheque). The complaint was supported by six exhibits, including the dishonored cheque (No. 255951), the deposit slip, the cheque return memo dated 15.11.2010, the statutory advocate notice dated 27.01.2011, the postal receipts, and the returned acknowledgment due (A.D.) slip.

II. THE FINDINGS OF THE LOWER COURT:

- 3. Cognizance was taken by the learned SDJM, Balasore, on 15.03.2011, and the case was later transferred to the learned JMFC, Balasore, for trial. On 23.09.2011, the substance of the accusation was explained to the accused, and the trial commenced.
- 4. The complainant was examined as PW-1 and was cross-examined at length. At no point during the early stages of the trial did the petitioner



raise any objections about the non-inclusion of the company as an accused.

5. On 2.07.2013, at an advanced stage of the trial, the petitioner filed a petition before the trial court arguing that the case was not maintainable because the company was not arraigned as an accused, as required under Section 141 of the NI Act.
6. The JMFC Court rejected the petition on 05.05.2014, stating that the case had already substantially progressed, and raising such objections at this stage would amount to a delay tactic.

III. SUBMISSIONS OF THE REVISIONIST:

7. The counsel for the revisionist urged the following submissions:
 - (i). Section 141 of the NI Act mandates that when an offense is committed by a company, the company itself must be arraigned as an accused. The petitioner argues that since the cheque was issued on behalf of CCC Builders Merchant Pvt. Ltd., and the company was not made an accused, the complaint is not legally maintainable. The company was the actual debtor, and without its prosecution, vicarious liability cannot be imposed on its officers.
 - (ii). Section 141(1) of the NI Act provides that if an offense under Section 138 is committed by a company, then both the company and its responsible officers must be prosecuted. The petitioner, as an Executive Director, merely signed the cheque in his official capacity and had no personal liability. Since the company is not an accused, the petitioner cannot be prosecuted independently.



- (iii). The cheque was drawn on the company's account and issued for payments related to the company's transactions, not for any personal liability of the petitioner. As such, the prosecution of the petitioner without including the company is unsustainable.
- (iv). The trial court misconstrued the petitioner's application as a motion to quash cognizance, rather than a plea of maintainability. The court lacked jurisdiction to reject the petition on the ground of lack of jurisdiction. The trial court's reasoning was legally flawed and warrants interference by the revisional court.
- (v). The petitioner contends that the complaint and proceedings are legally defective, and allowing them to continue would constitute an abuse of process. The failure of the complainant to implead the company shows mala fide intent, rendering the proceedings unfair.

IV. SUBMISSIONS OF THE OPPOSITE PARTY:

- 8. The counsel for the Opposite Party urged the following submissions:
 - (i). The petitioner personally signed the cheque and was responsible for the company's financial transactions. Since the petitioner single-handedly handled business dealings, including issuing cheques, he cannot now claim that he was not personally liable.
 - (ii). The petitioner failed to raise the issue at the beginning of the trial and only did so after substantial progress had been made. Courts should not entertain objections that are clearly intended to delay proceedings.



- (iii). The cheque issued by the accused was dishonored with the reason “Payment Stopped by Drawer”. The accused received the statutory notice but remained silent, which fulfils the legal requirements of Section 138 of the NI Act.
- (iv). Reliance is placed on *S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan*¹, which held that failure to respond to a statutory notice makes the accused liable under Section 138 NI Act. Furthermore, the case of *Siby Thomas v. Somany Ceramics Ltd.*² establishes that the liability under Section 141 of the NI Act extends to individuals in charge of company affairs, and raising factual disputes at a belated stage is impermissible.

V. COURT’S ANALYSIS AND REASONS:

9. I have given my anxious consideration to the submissions of the counsel appearing for both the parties.
10. The central issue in this case is whether proceedings under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) can be maintained against the petitioner, the Executive Director of the company, when the company itself has not been arraigned as an accused. The dishonored cheque in question was drawn on the company’s account, yet the prosecution has proceeded solely against the petitioner in his individual capacity. This raises a fundamental question of law whether, in the absence of the company, which is the principal drawer of the cheque, the petitioner can be held vicariously liable under Section 141 of the Act.

¹ AIR 2022 SC 4883.

² AIR 2023 SC 4949.



11. To address the issue at hand, it is imperative to peruse the relevant provisions of the NI Act. Section 141 of the Act is produced hereinbelow:

“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 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”

12. A careful reading of the aforesaid provision establishes that the primary criminal liability for the dishonor of a cheque rests with the drawer, which, in the present case, is the company. The liability of its officers arises only when the conditions stipulated under Section 141 of the Negotiable Instruments Act are duly fulfilled. In this context, the Supreme Court, in *Aneeta Hada v. Godfather Travels & Tours (P) Ltd*³, authoritatively expounded upon the scope of Section 141, making the following observations:

“53. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.

.....

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

³ (2012) 5 SCC 661.



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."

13. In the present case, the accused, an Executive Director, had signed the cheque in question. The prosecution, however, was instituted solely against him, without impleading the company. This raises a substantial legal infirmity. The accused was not the drawer of the cheque in his personal capacity, but rather as an agent of the corporate entity. While dealing with a similar issue, the Supreme Court in the case of ***Ashok Shewakramani v. State of Andhra Pradesh***⁴ held as under:

"Section 141 is an exception to the normal rule that there cannot be any vicarious liability under a penal provision. However, such vicarious liability is attracted only when the person sought to be held liable was 'in charge of' and 'responsible to the Company' for the conduct of its business at the time the offence was committed."

14. Similarly, in the recent case of ***Bijoy Kumar Moni v. Paresh Manna***⁵ the Supreme Court provided a compelling insight into this issue. The Court quashed the proceedings against the accused where the complainant had failed to array the company as an accused. The Court reiterated that for a person to be vicariously liable under Section 141, the principal

⁴ (2023) 8 SCC 473.

⁵ 2024 INSC 1024.



offender, the Company, must first be prosecuted. The judgment categorically stated:

“It is the drawer company which must first be held to be the principal offender under Section 138 of the NI Act before culpability can be extended, through a deeming fiction, to the other Directors or persons in charge of and responsible to the Company for the conduct of its business. In the absence of liability of the drawer company, there would naturally be no requirement to hold other persons vicariously liable.”

15. Thus, in the absence of the company as a party to the proceedings, the prosecution against the accused alone is legally unsustainable. Applying this principle to the present case, since CCC Builders Merchant Pvt. Ltd. has not been made an accused, the prosecution against its Executive Director alone fails the legal test mandated under Section 141.

16. **CONCLUSION:**

17. From the foregoing discussion, it is evident that the prosecution of the petitioner is legally untenable. The statutory requirement under Section 141 of the NI Act mandates the arraignment of the company as an accused before vicarious liability can be imposed on its officers. Accordingly, the failure of the complainant to implead CCC Builders Merchant Pvt. Ltd. as an accused renders the proceedings against the petitioner unsustainable in law.

18. Accordingly, the CRLREV stands allowed, and the criminal proceedings initiated against the petitioner are quashed. However, this shall not



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preclude the complainant from initiating fresh proceedings in accordance with law.

19. Interim order, if any, passed earlier stands vacated.

(Dr.S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 13th March, 2025*