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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ARAVIND KUMAR; J., N.V. ANJARIA; J.
SPECIAL LEAVE PETITION (CRL.) NO.12327 OF 2025; December 18th, 2025
BHARAT MITTAL *versus* STATE OF RAJASTHAN AND ORS.**

Negotiable Instruments Act, 1881 – Sections 138, 141, and 148 – Appellate Deposit – Vicarious Liability – The Supreme Court referred to a larger bench the question of whether a convicted director or authorized signatory can be directed to make the 20% appellate deposit under Section 148, or if such deposit is strictly confined to the juristic "drawer" (the company) in all scenarios.

Section 148 NI Act – Mandatory Nature and Discretion – Following the ratio in *Surinder Singh Deswal v. Virender Gandhi*, the requirement under Section 148 is generally mandatory ("may" construed as "shall")- clarified in *Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd.*, the Appellate Court retains limited discretion to exempt an appellant from this deposit in "exceptional circumstances," provided specific reasons are recorded.

Interpretation of "Drawer" vs. Vicarious Liability – Noted a conflict between a literal interpretation of "drawer" (restricted to the entity whose account the cheque is drawn on) and a purposive interpretation that aligns with the legislative intent of the 2018 Amendment to prevent dilatory tactics- While *Shri Gurudatta Sugars Marketing P. Ltd. v. Prithviraj Sayajirao Deshmukh* and *Bijay Agarwal v. Medilines* held that authorized signatories are not "drawers" for the purpose of pre-trial/appellate deposits, the current Bench expressed difficulty in concurring with these views, emphasizing the compensatory and quasi-criminal nature of Section 138 proceedings- Reaffirming *Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd.*, held that while a company must generally be arrayed as an accused for vicarious liability to attach to directors under Section 141, an exception exists where a "legal snag" (like winding up or liquidation) prevents the company's prosecution- In such cases, the prosecution may proceed solely against the individuals in charge. *[Relied on Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd., (2012) 5 SCC 661; Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341; Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1; 15-30, 61-63, 71-74]*

[Arising out of impugned final judgment and order dated 27-05-2025 in SBCRMP No. 2912/2025 passed by the High Court of Judicature for Rajasthan at Jaipur]

For Petitioner(s): Mr. Raghunenth Basant, Sr. Adv. Mr. Manisha Kaushik, Adv. Mr. Satya Kam Sharma, AOR Ms. Yashpriya Sahran, Adv. Ms. Hima Bharatwaj, Adv.

For Respondent(s): Mr. Anand Varma, AOR Mr. Ayush Gupta, Adv.

J U D G M E N T

ARAVIND KUMAR, J.

1. Leave granted.
2. The important question that arises before this Court in the present case is: "*When a director of an accused company is convicted under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the NI Act'), without the company itself being convicted due to some existing 'legal snag' - such as winding up, liquidation, or any similar scenario -can the appellate court, while hearing the appeal filed by the director challenging*

his conviction and sentence, impose a condition of depositing 20% of the amount as prescribed under Section 148 of the Act?” This question assumes significance in the present context, given the large number of litigations arising under Section 138 of the NI Act. To properly address the complexity of this issue and appreciate the existing legal position that guides us in determining the mandate in such cases, it is necessary to first examine the facts of the present case, which falls within this category.

BRIEF FACTS:

3. The Respondent No. 2/ Steel Authority of India (hereinafter referred to as the SAIL/Complainant) had entered into a Memorandum of Understanding (MOU) dated: 17.04.2012 with Respondent No. 3/ Shiv Mahima Ispat Private Limited (hereinafter referred to as the Accused Company) for the supply of Steel. During the financial year 2012–13, the accused company ordered 208.01 metric tonnes of HR (Hot Rolled) coils, which were dispatched from the complainant’s Bokaro Steel Plant to Kanakpura Railway Siding, Jaipur District on 25.12.2012 and 26.12.2012 through multiple invoices.

3.1. Payment was to be made by the accused on receipt of the goods. Accused No. 1 company issued a cheque dated: 03.01.2013 for the supplied coils for a sum of Rs. 4,82,72,269/- to the complainant company, the cheque issued by the accused company was said to be signed by Accused No.2/Appellant (hereinafter referred to as the Appellant) who was the director of the Accused No. 1 company. However, on depositing the cheque amount before the concerned bank, the cheque was returned with an endorsement “Exceeds Arrangement”.

3.2. After complying with the requirements under Section 138 of the Act, the complainant filed a complaint¹ on 20.02.2013 before the Trial Court² against Respondent No. 3, Shiv Mahima Ispat Private Limited, arraying the company as Accused No. 1. The appellant herein was arrayed as Accused No. 2, while Shankar Lal Mittal, Basanti Devi, Mukta Mittal, and Sunil Mittal were arraigned as Accused Nos. 3 to 6 on the ground that they were directors of the company.

3.3. In the meanwhile, the Complainant Company also filed a Company Petition³ before the High Court⁴ seeking winding up of the Accused Company under Section 433(e) and (f), 434 and 439 of the Companies Act, 1956 on 21.03.2013.

3.4. The Trial Court took cognizance of the criminal complaint and summoned the accused persons on 20.08.2013. This order of summoning was challenged by Accused Nos. 1 to 6 before the Sessions Court⁵ by filing a revision petition⁶ under Section 397 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.). The Sessions Court, by order dated 12.05.2014, partly allowed the revision and quashed the summons qua Accused Nos. 3 to 6 on the ground that no specific role was attributed to them. However, the Sessions Court allowed the prosecution to continue against the accused company and the appellant herein.

3.5. While the case was pending before the Trial Court, the complainant company lodged FIR No. 353/2014 at P.S. Vishwakarma, Jaipur under Sections 420, 406, and 120B of the IPC against the appellant, Sunil Mittal, and the accused company. After

¹ Regular Criminal Case No. 2919/2013

² Court of Senior Judicial Magistrate, N. I. Act Matter. No.01, Jaipur Metropolitan City - II

³ S. B. Company Petition No. 9/2013

⁴ High Court of Rajasthan, Jaipur Bench

⁵ Court of Additional District and Sessions Judge – 18, Jaipur Metropolitan City

⁶ Criminal Revision Petition No. 08/2014

investigation, the Investigating Officer filed a final report concluding that there was no sufficient evidence to support the criminal allegations. The complainant filed a protest petition seeking re-investigation and challenged the final report. The protest petition was dismissed by the concerned court, and the matter attained finality.

3.6. On 22.04.2016, the High Court, in a company petition filed by the complainant company, ordered that the accused company be wound up. Pursuant to the said order, the accused company was formally wound up on 01.12.2016.

3.7. Upon the accused company being formally wound up pursuant to the order of the High Court, the only person left available for prosecution in the complaint under Section 138 of the NI Act was the appellant herein.

3.8. The Trial Court convicted the appellant for the offence under Section 138 of the NI Act and sentenced him to two years' simple imprisonment. The Trial Court further directed the appellant to pay compensation of ₹8,10,00,000/- under Section 357(3) of the Code of Criminal Procedure, failing which he was to undergo six months' additional imprisonment.

4. The appellant filed an appeal⁷ before the Appellate Court⁸ under Section 374 of the Code of Criminal Procedure (Cr.P.C. in short), along with an application under Section 389 of Cr.P.C seeking suspension of sentence. The Appellate Court, by order dated 27.11.2024, allowed the application for suspension of sentence, subject to the condition that the appellant deposit 20% of ₹8,10,00,000/- within 60 days, in terms of Section 148 of the NI Act.

4.1. On account of the appellant's failure to deposit the amount as directed, the Appellate Court issued a non-bailable warrant against him on 12.02.2025.

4.2. The appellant thereafter filed an application before the Appellate Court seeking exemption from the requirement of depositing 20% of the amount as directed vide order dated 27.11.2024. He contended that the accused company, M/s Shiv Mahima Ispat Pvt. Ltd., had already been wound up by order dated 01.12.2016 of the Hon'ble High Court, and that the Official Liquidator had accepted and partly satisfied the complainant's claim from the sale of company assets. It was therefore argued that making the appellant/director personally liable was contrary to law and would result in double recovery.

4.3. The appellant further contended that the Trial Court **had wrongly convicted him without convicting the company, in disregard of Section 141 of the NI Act**, and without considering the entire evidence on record. He also urged that he was under severe financial hardship being unemployed, without assets, struggling to support his family, and burdened with loans and medical expenses, making it impossible to deposit 20% of the compensation amount.

4.4. The appellant further relied upon the judgment of this Court in ***Jamboo Bhandari v. M.P. State Industrial Development Corporation***⁹. Placing reliance on the exceptional facts of the case namely, the liquidation of the company, the wrongful imposition of vicarious liability, partial recovery already effected, and his financial incapacity, the appellant prayed for complete exemption from the deposit condition, submitting that otherwise his right of appeal would be rendered illusory.

⁷ Criminal Appeal No. 83/2024

⁸ The Court of Additional District & Session Judge No. 8, Jaipur Metropolitan CitySecond

⁹ (2023) 10 SCC 446 Hereinafter referred to as *Jamboo*

4.5. The Trial Court, by order dated 02.05.2025, dismissed the appellant's application for exemption, on the ground that its earlier order dated 27.11.2024, passed on the suspension of sentence, was a final order in respect of that application and could not be modified or reviewed except for clerical or arithmetic errors.

5. The appellant challenged the order dated 27.11.2024 before the High Court by filing a petition¹⁰ under Section 528 of Bharatiya Nagarik Suraksha Sanhita (for short 'BNSS') up to an extent it imposes 20% of the compensation amount to be deposited.

5.1. Before the High Court, the appellant relied on the judgments of this Court in ***Bijay Agarwal v. Medilines***¹¹ and ***Shri Gurudatta Sugars Marketing P. Ltd. v. Prithviraj Sayajirao Deshmuk and Ors.***¹², wherein it was held that an authorized signatory is not the "drawer" of the cheque, and that the company alone is the drawer and therefore in view of this principle, the Court exempted the authorized agent from depositing any amount as prescribed under Sections 148 and 143A of the NI Act.

5.2. The High Court, by the impugned order dated 27.05.2025, dismissed the petition filed by the appellant on the ground that, under Section 141 of the NI Act, directors in charge of the company at the relevant time can be held vicariously liable. Since the appellant signed the dishonored cheque and assured repayment, he was rightly convicted, and neither his resignation nor the company's winding-up absolves him of past liability.

5.3. The High Court further held that the appellant had failed to comply with the mandatory 20% deposit, delayed the proceedings, and acted as a compulsive litigant. The Court dismissed the petition with costs of ₹5,00,000 and restrained him from alienating personal assets until clearance from the Official Liquidator. The appellant is challenging this order of the High Court dismissing his petition under Section 528 of the Cr.P.C.

SUBMISSION OF THE PARTIES

6. Sri R. Basant, Senior Advocate, appearing for the appellant, contended that the order of the High Court has not followed the law laid down by this Court and is therefore liable to be set aside. He further submitted that the High Court erred in not applying the principles laid down in ***Bijay Agarwal v. Medilines*** (supra) and ***Shri Gurudatta Sugars Marketing P. Ltd. v. Prithviraj Sayajirao Deshmuk and Ors.*** (supra), and that the appellant is not the drawer of the company cheque. Accordingly, he argued, the appellant is not liable to deposit any amount under Section 148 of the NI Act and should be fully exempted. He further contended that,

6.1. The cheque in question was not issued towards any existing debt or liability, as the supplied material was of inferior quality and did not meet specifications. Approximately 500 MT worth ₹2.25 crores were returned before and soon after the filing of the complaint, thereby rebutting the statutory presumption under Section 138 of the NI Act.

6.2. The complainant's own test reports, RTI replies, and the crossexamination of PW-1 establish defective supply, short quantity, absence of proper legal notice, and acknowledgment of returned goods, negating any enforceable liability.

6.3. Multiple proceedings, including FIR No. 353/2014 and the accepted closure report, confirmed the return of goods and dismissal of the protest petition, proving that the

¹⁰ S.B. Criminal Miscellaneous (Petition) No. 2912/2025

¹¹ 2024 SCC OnLine SC 4094 Hereinafter referred to as *Bijay Agarwal*

¹² 2024 SCC OnLine SC 1800 Hereinafter referred to as *Gurudatta*

complaint under Section 138 was a collateral attempt to misuse the criminal process for recovery.

6.4. The appellant had resigned as director before the winding-up order of the company. Any liability, if it exists, rests with the company under liquidation and the Official Liquidator, not personally on the appellant, as settled by this Court in ***Bijay Agarwal v. Medilines***.

6.5. The High Court erred in directing a fresh deposit of 20% of the compensation and in imposing costs and restraint on personal assets, despite the value of goods already returned exceeding 20% of the claim, rendering the impugned orders arbitrary, excessive, and contrary to law.

7. Sri Nagamuthu, Senior Advocate, appearing for Respondent No. 2/Complainant Company, while supporting the impugned order, contended as follows:

7.1. The appellant was both the signatory of the dishonored cheque and a director actively managing the affairs of Shiv Mahima Ispat Pvt. Ltd./the accused company. Having assured payment of the dues in writing, he cannot now claim that he does not fall under the category of “drawer” under Sections 138 and 141 of the NI Act.

7.2. Unlike other directors against whom the order of cognizance was set aside, the appellant’s direct role in issuing the cheque and assuring payment justified his prosecution and conviction by the Trial Court.

7.3. The appellant cannot escape liability under Section 148 of the NI Act, as any contrary interpretation would defeat the purpose of the provision. He also contended that the Appellant’s reliance on ***Bijay Agarwal*** and ***Shri Gurudatta Sugars*** is misplaced, as those cases involved non-executive directors or mere authorized signatories, unlike his active role in the present case.

7.4. Proceedings against the company could not continue due to the liquidation order under Section 446 of the Companies Act, 1956, but that does not absolve the appellant’s personal criminal liability under Section 138 of the NI Act.

7.5. The filing of a claim by the complainant company before the Official Liquidator does not negate or extinguish the appellant’s liability. Any recovery made in NI Act proceedings would be adjusted against the company’s overall outstanding dues. Accordingly, the complainant prayed for dismissal of the appeal.

THE QUESTION:

8. *Whether, upon a conviction under Section 138 read with Section 141, the appellate deposit contemplated by Section 148 may be directed against a convicted director/authorized signatory, or whether such deposit is confined to the juristic “drawer” alone in all situations?*

A. STATUTORY SETTING

9. Before we proceed to answer the question that arises before us, we wish to extract the provisions of the Act that we will be discussing in detail in our analysis. The relevant provisions of the Act necessary is as follows:

i. **Section 7: “Drawer”** - *The maker of a bill of exchange or cheque is called the “drawer”*

ii. **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 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 provision 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, 5 [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.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

iii. 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 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 anybody corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

iv. Section 143A: Power to direct interim compensation. —

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—
 - (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
 - (b) in any other case, upon framing of charge.
- (2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque.
- (3) The interim compensation shall be paid within sixty days from the date of the order under subsection (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
- (4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.
- (5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).
- (6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.]

v. Section 148. Power of Appellate Court to order payment pending appeal against conviction. —

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

- (2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.
- (3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.]

B. THE LEGAL POSITION GOVERNING THE PROSECUTION OF A COMPANY FOR AN OFFENCE UNDER SECTION 138 READ WITH SECTION 141 OF THE NI ACT

10. Before we proceed to answer the question framed in Paragraph 8, it is apposite to reiterate the legal position governing the prosecution of a company for an offence punishable under Section 138 of the NI Act.

I. THE PRINCIPLES OF VICARIOUS LIABILITY – WHO CAN BE MADE RESPONSIBLE FOR THE OFFENCE OF SECTION 138 COMMITTED BY A COMPANY.

11. Section 141 of the NI Act fastens vicarious liability under Section 138 read with Section 141 upon ‘every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of its business’, as well as upon the company itself. A plain reading of Section 141 indicates that liability may be attributed to three distinct categories of persons:

- i. the Company
- ii. every person who, at the time of commission of the offence, was in charge of and responsible to the company for the conduct of its business
- iii. any director, manager, secretary, or officer of the company with whose consent, connivance, or due neglect the company committed the offence.¹³

12. In ***K.K. Ahuja v. V.K. Vora & Anr***¹⁴, the issue that arose for consideration was whether a director or officer could be held vicariously liable under Section 141 merely on account of his designation. This Court answered the question in the negative, holding that vicarious liability under Section 141 attaches only to those persons who, at the time of commission of the offence, were in charge of and responsible for the conduct of the business of the company. The Court further held that while a Managing Director or Joint Managing Director may, by virtue of their position, be presumed to be in charge of the business, any other director or officer would require specific and necessary averments demonstrating their role, responsibilities, and involvement in the conduct of the company’s affairs. Mere designation as a director or officer is not sufficient. In ***Central Bureau of Investigation v. Asian Global Ltd.***¹⁵, this Court reiterated that criminal liability cannot be imposed mechanically or on the basis of assumptions. There must be material to indicate participation of the accused in the day-to-day management or decision-making of the company. Vicarious liability in criminal jurisprudence arises only where the statute expressly provides for such liability and where the statutory conditions are duly fulfilled. Similarly, in ***National Small Industries Corporation Ltd. v. Harmeet Singh Paintal***¹⁶, this Court held that, for fastening liability under Section 141, the complaint must contain clear and specific averments to the effect that the accused was in charge of and responsible for the conduct of the business of the company at the relevant time. A mere reproduction of the statutory language or bald assertions without particulars would not suffice.

13. In the judgment relating to vicarious liability in ***SMS Pharmaceuticals Ltd. v. Neeta Bhalla***¹⁷, this Court while answering a reference relating to vicarious liability of directors held as follows:

1. This matter arises from a reference made by a two Judge Bench of this Court for determination of the following questions by a larger Bench:

¹³ the persons mentioned in (ii) and (iii) are hereinafter referred to as the ‘category of persons’

¹⁴ (2009) 10 SCC 48

¹⁵ (2010) 11 SCC 203

¹⁶ (2010) 3 SCC 330

¹⁷ (2005) 8 SCC 89

"(a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company.

(b) whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors of Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

.....

19. In view of the above discussion, our answers to the questions posed in the Reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under Subsection (2) of Section 141.

14. It is necessary to reiterate this position of law for the reason that where a company commits an offence under Section 138 read with Section 141 of the Negotiable Instruments Act, the persons who were in charge of and responsible for the conduct of its affairs at the relevant time may also be held vicariously liable along with the company.

II. PROSECUTION CANNOT BE MAINTAINED AGAINST A DIRECTOR OR CHEQUE SIGNATORY ALONE WITHOUT MAKING THE COMPANY AN ACCUSED, EXCEPT IN ONE SITUATION - A LEGAL IMPEDIMENT (LEGAL SNAG)."

15. This Court, in *Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd*¹⁸, laid down the law that criminal prosecution against 'every person who, at the time the offence was

¹⁸ (2012) 5 SCC 661. Hereinafter referred to as *Anneetha Hada*.

committed, was in charge of and responsible to the company for the conduct of its business,' as contemplated under Section 141 of the Act, cannot be maintained unless the company itself is arraigned as an accused in a complaint filed under Section 138 read with Section 141 of the Act.

16. In **Aneeta Hada**, this Court undertook an examination of the correctness of certain earlier pronouncements which had taken the view that prosecution could be maintained against a director or the signatory of the cheque even in the absence of the company being arraigned as an accused. One such decision was **Anil Hada v. Indian Acrylic Ltd**¹⁹. In **Anil Hada**, the Court was dealing with a situation wherein the complaint had been instituted only against the directors of M/s Indo Flogate Industries Ltd., the company not having been impleaded on account of it being under liquidation. In those circumstances, this Court proceeded to hold as follows:

"10. Three categories of persons can be discerned from the said provision who are brought within the purview of the penal liability through the legal fiction envisaged in the section. They are: (1) The company which committed the offence, (2) Everyone who was in charge of and was responsible for the business of the company, (3) any other person who is a director or a manager or a secretary or officer of the company, with whose connivance or due to whose neglect the company has committed the offence.

.....

13. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused, and hence the prosecuted accused is not liable to be punished. The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act.

(Emphasis supplied)

17. **Aneeta Hada** partially overruled the ratio of **Anil Hada** to the extent that it had permitted prosecution of category of persons without arraigning the company as an accused. **Aneeta Hada** clarified that a complaint under Section 138 read with Section 141 of the Act cannot be maintained against the 'category of persons' alone unless the company is also made an accused. However, it upheld the only exception recognized in **Anil Hada** namely, that where the company cannot be prosecuted due to a legal impediment, proceedings may validly continue against the 'category of persons' alone.

18. From the above analysis, the following conclusions emerge:

i. The 'category of persons' referred to in Section 141 of the Act cannot be prosecuted in a complaint under Section 138 read with Section 141 unless the company is also arrayed as an accused.

¹⁹ (2000) 1 SCC 1. Hereinafter referred to as *Anil Hada*

ii. The only exception arises where, due to a legal impediment, the company cannot be prosecuted, in such circumstances, the prosecution may proceed solely against the ‘category of persons’.

iii. Where a complaint has been properly filed against both the company and the ‘category of persons’, but during the pendency of the proceedings the company goes into liquidation, winding-up, or faces any other legal snag, the prosecution will continue only against the ‘category of persons’ and not against the company.

19. This position of law is important for us to reiterate for the simple reason that when a prosecution proceeded just against the managerial persons or the category of persons and not against the company because of some legal snag, as is in the present case, such managerial persons can be convicted of the offences under Section 138 r/w Section 141. A person who has been convicted can maintain an appeal against his conviction.

III. SECTION 148 OF THE NEGOTIABLE INSTRUMENTS ACT – WHETHER MANDATORY?

20. In ***Surinder Singh Deswal & Ors. v. Virender Gandhi***²⁰, this Court, while examining whether Section 148 of the NI Act is mandatory or directory, held that the expression ‘may’ occurring therein is to be construed as ‘shall’, thereby rendering the provision mandatory in nature. The same question again fell for consideration in ***Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Ltd. & Ors***²¹, wherein this Court, while taking note of the ratio in *Surinder Singh*, clarified that although *Surinder Singh* treated the requirement under Section 148 as mandatory, the appellate court retains a limited discretion, in exceptional circumstances, to exempt an appellant from making the statutory deposit contemplated under the provision. The Court held as follows:

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the Appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when Appellate Court considers the prayer Under Section 389 of the Code of Criminal Procedure of an Accused who has been convicted for offence Under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.”

21. This Court, in ***Muskan Enterprises v. State of Punjab & Anr***²² once again considered the question whether Section 148 of the NI Act is mandatory in all cases. Concurring with the ratio laid down in *Jamboo Bhandari*, this Court reiterated that while Section 148 is generally mandatory, the appellate court retains the discretion, in exceptional circumstances, to exempt an appellant from making the deposit contemplated under the said provision.

22. We concur with the ratio laid down in ***Jamboo Bhandari*** and ***Muskan Enterprises*** and are of the considered view that the appellate court does possess a limited discretion,

²⁰ (2019) 11 SCC 341. Hereinafter referred to as the *Surinder Singh*.

²¹ (2023) 10 SCC 446. Hereinafter referred to as *Jamboo*.

²² (2024) SCC OnLine SC 4107. Hereinafter referred to as *Muskan*.

to be exercised only in exceptional circumstances, to exempt an appellant from making the deposit contemplated under Section 148 of the Act.

23. It is necessary to reiterate this position of law for the reason that, in the present case, while examining whether the appellant may be exempted from the deposit contemplated under Section 148 of the Act, the foremost question that arises is whether the appellate court indeed possesses the discretion to grant such exemption. It is only upon affirming the existence of such discretion that the applicability of the same to the facts of the present case can be assessed.

C. THE ISSUE, THE STATUTORY TEXT AND THE INTENT OF THE LEGISLATURE

24. Before we proceed to analyse the question framed in Paragraph 8, it is appropriate to briefly recapitulate the conclusions reached in the preceding discussion, which we reiterate as under:

I. *Where a company commits an offence under Section 138 read with Section 141 of the Negotiable Instruments Act, the persons who were in charge of and responsible for the conduct of its affairs at the relevant time may also be held vicariously liable along with the company.*

II. *Where a company is alleged to have committed an offence under Section 138 of the Act, a complaint cannot be maintained solely against the managerial personnel without arraigning the company as an accused. The only exception to this requirement arises where the company cannot be prosecuted due to a legal impediment or legal snag*

III. *An appellate court possesses a limited discretion, to be exercised only in exceptional circumstances, to exempt an appellant from making the deposit contemplated under Section 148 of the NI Act.*

25. Before proceeding with the further analysis, we consider it appropriate to reproduce the Statement of Objects and Reasons of ***the Negotiable Instruments (Amendment) Act, 2018***, by which Sections 143A and 148 were introduced into the Negotiable Instruments Act, 1881. The same reads as follows:

“The Negotiable Instruments Act, 1881 (the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonor of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonor cases. This is because of delay tactics of unscrupulous drawers of dishonored cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonored cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2. It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonor cases so as to provide relief to payees of dishonored cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3. It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following, namely:

(i) to insert a new Section 143A in the said Act to provide that the Court trying an offence Under Section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation

made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the amount of the cheque; and

(ii) to insert a new Section 148 in the said Act so as to provide that in an appeal by the drawer against conviction Under Section 138, the Appellate Court may order the Appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial court.”

I. THE ISSUE

26. Bearing in mind the legislative intent noted above, we now proceed to examine Section 148 in the context of the issue arising in the present matter. In the preceding part of our analysis, we have reiterated that prosecution may lie against the category of persons mentioned in Section 141 when the company itself cannot be prosecuted on account of a legal impediment, such persons being vicariously liable along with the company. We have also reiterated that the appellate court retains a limited discretion, in exceptional circumstances, to exempt an appellant from making the deposit contemplated under Section 148 of the Act. The question that now arises for our consideration, and which has been formulated in Paragraph 8, is whether the expression ‘drawer’ in Section 148 must be understood as referring only to the company, and consequently, whether in cases where a person falling within the category noted under Section 141 stands convicted for an offence under Section 138 on account of the company not being prosecutable due to a legal snag, all such situations must, by necessary implication, be treated as ‘exceptional cases’ within the meaning of **Jamboo Bhandari** and **Muskan Enterprises**, thereby mandating that the appellate court exempt the appellant from the statutory deposit under Section 148.

27. In order to simplify, the key issue is whether the word “drawer” occurring in Section 148 refers only to the company and if so, whether all cases where individuals are convicted vicariously (because the company could not be prosecuted) must automatically be treated as “exceptional cases” warranting exemption from the statutory deposit.

28. Having introduced the core issue which arises for our consideration we will now proceed to analyze the issue.

II. STATUTORY TEXT AND LEGISLATIVE INTENT:

29. We have extracted Section 148 as well as the Statement of Objects and Reasons for enacting Section 148 of the Act in previous sections. Therefore, at this juncture, we proceed to analyze the text of Section 148 and the Legislative Intent behind enacting the same.

30. The **Negotiable Instruments (Amendment) Act, 2018** was enacted in response to the persistent and systemic delay that had come to characterise prosecutions under Section 138 of the Act. Experience demonstrated that drawers of dishonoured cheques frequently employed procedural stratagems such as jurisdictional objections and applications for stay in order to protract the proceedings and thereby defeat the compensatory object of the statute. The legislature, cognizant of this mischief, sought to restore efficacy to the mechanism of cheque dishonour prosecutions.

31. In furtherance of this objective, Parliament introduced Section 143A, authorising the Trial Court to direct payment of interim compensation up to twenty per cent of the cheque amount during pendency of the trial. This provision marks a conscious legislative shift aimed at securing early financial relief to the complainant and deterring frivolous defences. The amendment accordingly reinforces the compensatory and remedial character of proceedings under Section 138.

32. Complementing this framework, the amendment inserted Section 148, empowering the Appellate Court to direct the convicted drawer to deposit a minimum of twenty per cent of the fine or compensation awarded by the Trial Court, even during the pendency of the appeal. The said provision addresses a long-standing lacuna wherein convicted persons routinely invoked the appellate process solely to delay or evade payment. The mandate of a pre-deposit thus strengthens enforcement and enhances the credibility of negotiable instruments in commercial transactions.

33. Section 148, operating through a non obstante clause, confers an overriding and independent power upon the Appellate Court, untrammelled by the general provisions of the Code of Criminal Procedure. The deposit envisaged is interim in nature and does not amount to a final affirmation of guilt. Its purpose is to ensure that the complainant is not deprived of the fruits of a lawful conviction due to appellate delays. The provision further contemplates release of the deposited amount to the complainant, subject to suitable undertakings for restitution in the event the appeal succeeds.

34. The architecture of Section 148 reflects a deliberate departure from the conventional appellate norm that ordinarily presumes the suspension of monetary consequences upon admission of appeal. Parliament, recognising the inherently compensatory nature of Section 138 proceedings, envisaged that the right of appeal must not become an instrument for defeating legitimate financial claims arising from a proved dishonour. Section 148, therefore, recalibrates the balance between the appellant's right to challenge the conviction and the complainant's right to timely recompense, ensuring that the appellate process does not operate as a de facto stay of monetary liability.

35. The expression "may order" in Section 148 confers a structured discretion, which is neither mechanical nor unguided. While the statutory minimum of twenty per cent indicates the legislative benchmark, the Appellate Court is expected to examine the nature of the transaction, the conduct of the convictappellant, and the reasons advanced for resisting such deposit. The purpose of the provision is not punitive, but regulatory, its object being the discouragement of dilatory tactics rather than the imposition of an additional penalty. We may also note that the deposit contemplated under Section 148 is in addition to any interim compensation already paid by the appellant under section 143A if any.

36. Further, Section 148 must be read harmoniously with the broader legislative scheme introduced in 2018, which sought to foreground restitutionary justice as a central feature of cheque dishonour cases. The mischief targeted by the amendment was not merely the delay in trial, but the erosion of confidence in the cheque as a reliable negotiable instrument of commerce. By obligating the Appellate Court to consider a pre-deposit, the Legislature sought to infuse financial discipline and ensure that convictions under Section 138 attain practical efficacy, rather than remain symbolic judicial declarations.

37. The power under Section 148 is also restorative in design. The provision enables the complainant to obtain release of the deposited amount during pendency of the appeal, subject to the appellant's right of restitution upon acquittal. This statutorily-sanctioned mechanism of conditional release underscores the legislative recognition that the complainant's hardship does not end with conviction and that appellate delays can result in cumulative financial prejudice. Section 148, therefore, creates a provisional, reversible flow of compensation to mitigate such prejudice.

38. It is equally significant that Section 148 does not interfere with or dilute the appellate court's authority to independently assess the merits of the conviction. The requirement of a pre-deposit does not create a presumption against the appellant, nor does it shift the

burden of proof. Rather, it operates within the realm of procedural regulation and is intended to maintain the integrity of the proceedings without impinging upon substantive rights. The appellate adjudication remains fully insulated from the interim financial arrangement mandated by Section 148.

39. Having reiterated the nature of provision of Section 148 of the Act and having examined the legislative intent underlying its enactment, we now proceed to consider the issue that arises for determination, and which has been the subject of deliberation by this Court in the decisions of **Shri Gurudatta Sugars Marketing Pvt. Ltd. Vs. Prithviraj Sayajirao Deshmukh and Ors** ²³ and **Bijay Agarwal v. Medilines**.²⁴

III. THE RATIO OF THE JUDGMENT IN GURUDATTA AND BIJAY.

40. The proceedings before this Court in *Gurudatta* arose from proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881, wherein the appellant-company had sought interim compensation under Section 143A in respect of cheques issued by Cane Agro Energy (India) Ltd. towards repayment of substantial advance amounts received under sugarsupply arrangements. The Magistrate, upon considering the application, directed the respondents, who were directors and authorised signatories of the company to deposit interim compensation quantified at four percent of the cheque amount as the company – Cane was admitted to Corporate Insolvency Resolution Process by the National Company Law Tribunal, Mumbai and therefore cannot be proceeded against. Aggrieved thereby, the respondents invoked the jurisdiction of the High Court, which set aside the order on the ground that the respondents, not being the “drawer” of the cheque, could not be burdened with such liability.

41. The issue that arose before this Court in the case of *Gurudatta* was 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?

42. Upon a comprehensive analysis of the statutory framework, this Court held that the expression “drawer” in the NI Act is a term of precise legal import, referring only to the person or entity whose bank account is the source of the cheque. The act of signing a cheque on behalf of a company does not elevate the signatory to the status of drawer, as the company being a distinct juristic person will remain the sole drawer in law. While vicarious criminal liability of officers and signatories may arise under Section 141 in the event of prosecution under Section 138, such vicarious liability cannot be extended to obligations relating to interim compensation under Section 143A, which is a substantive provision creating financial liability at a pre-trial stage.

43. In view of this legal position, the Court upheld the reasoning of the High Court and held that the Magistrate had committed a manifest error in directing the respondents to deposit interim compensation. Since the company alone answered the statutory description of “drawer,” interim compensation could not have been demanded from individual directors or signatories. The appeal was accordingly dismissed, with the High Court underscoring that provisions imposing monetary or penal consequences upon individuals must receive strict construction, and the separate legal identity of a corporation cannot be disregarded except where the statute expressly so provides.

44. This Court in ***Gurudatta*** held as follows:

²³ 2024 SCC OnLine SC 1800. Hereinafter referred to as *Gurudatta*

²⁴ 2024 SCC OnLine SC 4094. Hereinafter referred to as *Bijay*.

“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), (2012) 5 SCC 661 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 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) (2018) 13 SCC 663. 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) (2009) 10 SCC 48, 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 wellfounded.

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."

45. In **Gurudatta**, this Court was concerned with the interpretation of the expression 'drawer' as it appears in Section 143A of the NI Act. Sections 143A and 148 of the Negotiable Instruments Act operate in distinct statutory spheres, though both were introduced by the 2018 Amendment with the object of strengthening the compensatory framework of cheque-dishonour jurisprudence. Section 143A empowers the trial court to direct payment of interim compensation up to twenty per cent of the cheque amount during the pendency of the trial, once the accused pleads not guilty in a summons trial or upon framing of charges in other forms of trial. The provision is, therefore, procedural and interlocutory in character, intended to curb dilatory tactics and to ensure that the complainant is not left remediless during protracted proceedings. The power under Section 143A is discretionary, contingent upon the stage of trial, and the amount directed to be paid is subject to restitution in the event of acquittal, thereby preserving the presumption of innocence while balancing the interests of the complainant.

46. Section 148, on the other hand, operates post-conviction and vests the *appellate court* with the power to direct the appellant-accused to deposit a minimum of twenty per cent of the fine or compensation awarded by the trial court as a condition of the appeal. Unlike Section 143A, Section 148 is held to be mandatory in nature by this Court in the case of **Surinder Singh Deswal & Ors. v. Virender Gandhi** (supra). In **Surinder**, this Court held that the word "may" occurring in Section 148 should be read as "*shall*". The appellate court therefore "*shall*" order such deposit, subject to reasons to be recorded in writing for any reduction or exemption. The provision strengthens the enforceability of trial court orders/conviction and prevents frivolous appeals intended to stall the execution. Thus, while Section 143A is a *pre-conviction, trial-stage remedy* to provide interim relief to complainants, Section 148 is a *post-conviction, appellate-stage safeguard* ensuring the efficacy of compensation orders, reflecting two complementary but distinct legislative mechanisms to deter delay and secure the compensatory mandate of Section 138.

47. We have now examined the ratio laid down in **Gurudatta**, wherein this Court was concerned with the interpretation of the expression 'drawer' as it appears in Section 143A of the Act. The incidental question that therefore arises in the present matter is whether the interpretation of the term 'drawer' adopted in **Gurudatta** for the purposes of Section 143A would equally apply to the same expression occurring in Section 148 of the Act. This precise issue came up for consideration before this Court in **Bijay Agarwal**.

48. In **Bijay Agarwal** this Court was dealing with the issue Whether the signatory of a cheque authorized by the Company is a drawer and whether such a signatory could be directed to deposit any sum out of the fine or compensation awarded by the trial Court Under Section 148 of the Negotiable Instruments Act, 1881 (for short 'NI Act')", as a condition for suspending the sentence in an appeal filed against his conviction Under Section 138 of the NI Act?

49. It is important to look into the facts of the case in the case of **Bijay Agarwal** wherein ratio has been laid down. The appeals in **Bijay Agarwal** arose from a common order of the High Court of Karnataka rejecting the **Bijay's** challenge to the condition imposed by the Sessions Court requiring deposit of 20% of the fine/compensation amount as a precondition for suspension of sentence in appeals arising from conviction under Section 138 of the Negotiable Instruments Act. The appellant therein, described by the complainant itself as only an authorised signatory/Director of M/s Gee Pee Infotech Pvt. Ltd., who had been convicted by the Trial Court for dishonor two cheques, after the cheques issued on behalf of the company were returned with the endorsement "*payment stopped by the drawer.*" The Trial Court imposed fine and default imprisonment, the Sessions Court suspended the sentence but directed a mandatory deposit of 20% of the fine/compensation amount in each of the appeals under Section 148. It was this direction that formed the subject matter of challenge before the High Court and thereafter in appeal before this Court.

50. The primary issue before this Court was whether an authorised signatory of a company who signed the cheque on behalf of the company can be treated as a "*drawer*" for purposes of Section 148, so as to empower the appellate court to mandate a deposit of at least 20% of the fine or compensation. The appellant relied on **Shri Gurudatta Sugars Marketing Pvt. Ltd.** (supra) to contend that an authorised signatory is not the "*drawer*" within the meaning of Sections 7, 143A and 148, and thus cannot be directed to make such deposit. The respondent argued that the said decision was confined to Section 143A and could not be extended to Section 148. This Court examined the statutory scheme of Sections 143A and 148, noting their common structure, legislative purpose, and the proviso to Section 148(1), which explicitly links amounts deposited under Section 148 to interim compensation under Section 143A and applying the ratio of **Shri Gurudatta Sugars**, this Court held that both provisions operate only against the "*drawer*" of the cheque, and that an authorised signatory does not become the drawer merely by virtue of signing the cheque on behalf of the company. The Court reaffirmed that criminal liability for dishonour under Section 138 primarily rests on the company, and vicarious liability of officers arises only under Section 141 in clearly circumscribed situations. The Court further relied on **Jamboo Bhandari**, emphasising that the appellate court cannot impose a deposit condition under Section 148 mechanically, without examining whether exceptional circumstances exist and one such circumstance being that the appellant is not the drawer. This Court held that High Court, failed to consider these decisive aspects.

51. Consequently, this Court set aside the High Court's order and quashed the Sessions Court's direction requiring the appellant to deposit 20% of the fine/compensation as a condition for suspension of sentence. The order suspending sentence was restored, subject only to execution of bond. The Court clarified that an authorised signatory of a company cannot be compelled to deposit amounts under Section 148 unless shown to be the drawer, and directed the First Appellate Court to dispose of the pending appeals expeditiously.

52. This Court in **Bijay Agarwal** held as follows:

"13. A scanning of Sections 143A and 148 would reveal that the former deals with the power of the Court trying an offence Under Section 138 of the NI Act to direct the drawer of the cheque to pay interim compensation to the complainant whereas the latter Section deals with the power of the Appellate Court in an appeal by the drawer against the conviction Under Section 138 to the Appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. The proviso to Section 148(1) would further reveal that the amount payable thereunder shall be in addition to any interim compensation paid by the Appellant Under

Section 143A, NI Act. Thus, a scanning of both the Sections would reveal that the said Sections empower to issue such directions only to the 'drawer' of the cheque. We have already noted that in 'Shri Gurudatta Sugars Marketing Pvt. Ltd.' Case (supra) after referring to the earlier decisions of this Court including in 'K.K. Ahuja v. V.K. Vohra and Anr. (2009) 10 SCC 48', and in 'N. Harihara Krishnan v. Godfather Travels and Tours P. Ltd. (2018) 13 SCC 663', this Court held that 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 and for the purpose of Section 143A of the NI Act and a signatory merely authorised to sign on behalf of the company would not become the 'drawer' of the cheque and, therefore, could not be directed to pay interim compensation Under Section 143A. In the contextual situation, it is relevant to refer to paragraphs 28 to 30, 34 and 35 of '*Shri Gurudatta Sugars Marketing Pvt. Ltd.*'s case to the extent it is relevant for the purpose of this case, as under:

.....

14. As noted earlier, Section 148 would make it clear that it empowers the Appellate Court in an appeal by the drawer against conviction Under Section 138, NI Act, to direct to deposit a sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court and the same shall be in addition to any interim compensation paid by the Appellant Under Section 143A. When this be the position revealed from Sections 143A and 148 there cannot be any doubt with respect to the position that the term 'drawer' referred to in Section 148 and 143A means 'drawer of the cheque concerned'. Ergo, the question is whether the law laid down in the decision in *Shri Gurudatta Sugars Marketing Pvt. Ltd.'s case (supra)* is applicable proprio vigore in cases involving the question of liability to pay additional compensation, as contemplated Under Section 148(1), NI Act. The proviso to Section 148(1) itself makes it specifically clear that the amount payable Under Section 148(1), NI Act, if the Appellate Court so directs, shall be in addition to any interim compensation paid by the Appellant concerned Under Section 143A, NI Act. It is nobody's case that the Appellant was made to pay interim compensation Under Section 143A, in relation to the original proceedings. Be that as it may, the other question is whether an authorised signatory of the cheque can be said to be the drawer of the cheque concerned? We may hasten to add here that we were not addressed on the question whether the Appellant herein could be saddled with the liability to pay such additional compensation in terms of Section 148(1) by virtue of the provision Under Section 141, NI Act which extends liability to the officers of the company for the dishonour of a cheque and as such, we do not propose to consider that aspect as it need be considered only when pointedly posed for consideration based on proven facts.

15. There can be no doubt with respect to the position that Section 143A and 148. empowers the Court trying an offence Under Section 138 and the Appellate Court considering an appeal by a drawer against his conviction Under Section 138 respectively to fasten liability to pay interim compensation and additional compensation Under Section 148(1), as the case may be, and therefore, the question whether any particular officer of the company concerned can be made to pay interim compensation or deposit additional compensation under the aforesaid relevant provision(s) would depend upon the question whether he is only a signatory of the cheque or whether he is the drawer of the cheque. It is that question with reference to Section 143A, NI Act, that was answered as above in the decision in *Shri Gurudatta Sugars Marketing Pvt. Ltd.'s case (supra)*. In view of the analogicalness of Section 143A to Section 148, that both the provisions are under the same Act though applicable at different stage of proceedings Under Section 138 of NI Act and that the proviso to Section 148(1) makes it abundantly clear that deposit Under Section 148(1) of the NI Act shall be an additional compensation paid by the Appellant Under Section 143A thereof, it can only be said that the decision in *Shri Gurudatta Sugars Marketing Pvt. Ltd.'s case (supra)* is applicable to the extent it holds an officer of a company who is an authorised signatory of the cheque issued by a company is not the drawer of the same subject to what is held in the said decision with reference to Section 141, NI Act, as relates Section 148 thereof.

16. To wit, as in the case of the position qua Section 143A, NI Act, merely because an officer of a company concerned is the authorised signatory of the cheque concerned by itself will not

make such an officer 'drawer of the cheque' Under Section 148, NI Act, so as to empower the Appellate Court, in an appeal against conviction for an offence Under Section 138, NI Act, to direct to deposit compensation of any sum Under Section 148(1), of the NI Act.

17. In the decision in '*Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited and Ors.* (2023) 10 SCC 446' this Court held that an Appellate Court in an appeal against conviction Under Section 138, NI Act, could not place a condition to deposit an amount invoking the power Under Section 148(1), NI Act, mechanically without considering whether the case falls within exceptional circumstances. In view of the said exposition of law, the Appellate Court ought to have considered the aforesaid aspects as it would certainly be an exceptional circumstance to exempt the Appellant who is not the 'drawer' of the cheque concerned to deposit the amount payable Under Section 148(1) by an Appellant who is the 'drawer' of the cheque. In the case on hand, the High Court has failed to consider these crucial aspects in the light of the dictum laid down by this Court in the decisions referred supra while considering the application for suspension of sentence for the conviction Under Section 138 of the NI Act in the pending appeal.

18. The upshot of the discussion is that these appeals should succeed and consequently, it is allowed. The impugned common order dated 09.01.2024 passed by the High Court of Karnataka at Bengaluru in Criminal Petition Nos. 13095/2023 and 13153/2023 is set aside. Accordingly, the orders dated 10.11.2023 passed by the Principal City Civil & Sessions Judge at Bangalore respectively in Criminal Appeal No. 1537/2023 and 1536/2023 stands quashed and set aside to the extent it put the condition to deposit of 20% of the fine amount payable under orders in CC Nos. 13937/2023 and 13938/2013, passed by the Court of XXXVI Additional Chief Metropolitan Magistrate, Bangalore City and restore the orders dated 10.11.2023 suspending the sentence of the appellant in both the cases, with the condition(s) imposed qua.

53. Thus, in conclusion, this Court in ***Bijay Agarwal*** held that the interpretation of the expression 'drawer' as elucidated in ***Gurudatta*** for the purposes of Section 143A is equally applicable to the same expression occurring in Section 148 of the NI Act.

D. ANALYSIS

54. We have carefully examined the statutory text of Sections 7, 143A, and 148 of the NI Act. When read in conjunction with the legislative intent, the statutory scheme makes it evident that both Sections 143A and 148 particularly Section 148, which contemplates a post-conviction deposit are compensatory in nature, and are designed to further the underlying object of proceedings under Section 138 of the Act.

55. We have carefully considered the decision in ***Shri Gurudatta Sugars Marketing Pvt. Ltd. v. Prithviraj Sayajirao Deshmukh & Ors.*** (supra), wherein this Court held that the expression 'drawer' in Section 143A must be construed strictly in accordance with the definition contained in Section 7 of the Act. The ratio proceeds on the premise that an offence under Section 138 is criminal in nature and, therefore, the term 'drawer' in Section 143A must be confined to the juristic drawer of the cheque, and cannot extend to directors or authorised signatories, for the latter do not become the 'drawer' merely because the company cannot be prosecuted owing to a legal impediment. Similarly, in ***Bijay Agarwal v. Medilines***, this Court, following the reasoning in ***Gurudatta***, reiterated that the expression 'drawer' appearing in Section 148 must also be construed strictly, and held that both Sections 143A and 148 operate only against the drawer of the cheque, and that an authorised signatory does not assume the character of the drawer merely by signing the cheque on behalf of the company.

56. The decisions in ***Gurudatta Sugars*** and ***Bijay Agarwal***, both rendered by Coordinate Benches of this Court, proceed on the premise that Sections 143A and 148, being penal in nature, must be construed strictly. In both decisions, it has been held that

the expression ‘drawer’ must be confined to the meaning assigned under the statutory text, namely, that the drawer is the company itself, and that such definition cannot, in any circumstance, be extended to include directors, authorised signatories, or other individuals acting on behalf of the company.

57. Having analysed the aforesaid judgments in detail, we find that the reasoning adopted therein rests predominantly upon an unduly literal construction of the statutory language, without sufficient engagement with the nature of the provisions or the legislative intent underlying their enactment. For the reasons set out hereinafter, we find it difficult to concur with the outcome of conclusions reached in **Gurudatta Sugars** and **Bijay Agarwal**. In our considered view, a harmonious construction of these provisions is required which aligns with and gives effect to the intent of the legislature.

I. THE OVERLY LITERAL INTERPRETATION OF “DRAWER” IN GURUDATTA AND BIJAY AGARWAL IS NOT PREFERRED OVER PURPOSIVE INTERPRETATION WHICH ALIGNS WITH THE INTENTION OF THE LEGISLATURE

58. Before we proceed to articulate our reasons, it is necessary to advert to the nature of the offence contemplated under Section 138 of the Act, for such appreciation aids in construing the provisions in a purposive manner consistent with the legislative intent. The character of the offence and the remedial object underlying the statutory scheme form an indispensable backdrop for interpreting Sections 143A and 148 in their proper perspective.

59. **Firstly, the nature of the proceedings in Section 138 of the Act.** It is now too well settled that proceedings under Section 138 of the NI Act are predominantly compensatory and remedial in the nature of criminal proceedings, intended to uphold the sanctity of cheque-based transactions and ensure that the payee is compensated for the financial loss arising from such dishonour. This Court in the case of **R. Vijayan v. Baby and another**²⁵, held that the object of the offences under Section 138 of the NI Act appears to be both punitive as also compensatory and restitutive in nature. More recently, in **Meter and Instruments (P) Ltd. v. Kanchan Mehta**²⁶, it was reiterated that Section 138 embodies a remedial statute and the preliminary object of the provision is compensatory, punitive element being mainly with the object of enforcing the compensatory element. In **Kaushalya Devi Massand v. Roopkishore Khore**²⁷, this Court held that the “offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of civil wrong which has been given criminal overtones.” This Court in the case of **P.Mohanraj and Ors v. Shah Brothers Ispat Private Ltd**²⁸ has held that the offence under Section 138 of the Act is quasi-criminal in nature. We have no hesitation in holding that both the provisions i.e. Sections 143A and 148 are compensatory in nature and they are couched in the form of a penal statute, therefore the provisions cannot be said to be purely penal in nature.

60. **Secondly, Purposive interpretation is preferred over the literal interpretation to align the statute with the intention of the legislature:** This Court has consistently applied the principles of purposive interpretation for the provisions governing the offences under Section 138 of the Negotiable Instruments Act to align the compensatory and remedial nature of the proceedings under Section 138 with the intention of the legislature, which is of paramount importance. This Court has consistently held that the offence under

²⁵ (2012) 1 SCC 260

²⁶ (2018) 1 SCC 560

²⁷ (2011) 4 SCC 593

²⁸ (2021) 6 SCC 258

Section 138 of the Negotiable Instruments Act must be construed through a purposive interpretative lens, having regard to the mischief sought to be remedied by the statute. The legislative intent underlying Chapter XVII is to confer credibility, stability, and sanctity upon commercial transactions by ensuring that negotiable instruments particularly cheques serve as reliable substitutes for cash. Consequently, courts have consistently declined to adopt a narrow, technical, or hyper-literal interpretation that would enable the drawer of a dishonoured cheque to defeat the compensatory object of the provision. Instead, the interpretation must advance the twin purposes of deterring the practice of issuing cheques without sufficient funds and ensuring speedy and effective recovery of the cheque amount.

60.1 The purposive orientation has shaped judicial approaches on several aspects of Section 138, including service of notice, deemed receipt, territorial jurisdiction, and vicarious liability under Section 141. Courts have repeatedly held that procedural requirements cannot be construed in a manner that would undermine the remedial, compensatory, and quasi-civil nature of the offence. The Supreme Court, in a line of decisions such as **NEPC Micon Ltd. Vs. Magma Leasing Ltd.**²⁹, **C.C. Alavi Haji v. Palapetty Muhammed**³⁰, **Meters and Instruments Private Limited and Ors. Vs. Kanchan Mehta**³¹, **Harman Electronics (P) Ltd. and Ors. Vs. National Panasonic India Pvt. Ltd.**³², **Dashrath Rupsingh Rathod Vs. State of Maharashtra**,³³ **K.K. Ahuja Vs. V.K. Vora** (supra) and **MSR Leathers Vs. S. Palaniappan and Ors.**³⁴ has affirmed that interpretation of Section 138 of the Act must facilitate the achievement of the statute's objective by curbing dilatory tactics, promoting expedition, and protecting the payee's right to realise the debt. Thus, purposive interpretation ensures that Section 138 remains an effective mechanism for maintaining commercial discipline rather than a technical arena for avoiding liability.

61. We have already adverted to the legislative intent underlying the introduction of Sections 143A and 148 in an earlier part of this judgment. We now proceed to elucidate why the purposive interpretation of Section 148 of the NI Act more faithfully advances that legislative intent, as opposed to the strict textual construction adopted in **Bijay Agarwal**. A purposive approach ensures that the provision operates in harmony with the compensatory and remedial objectives of the statute, rather than being constrained by an unduly narrow reading of the term 'drawer'.

62. This Court, in **Gurudatta** and **Bijay**, adopted a strict interpretation of the statute while construing the expression 'drawer'. While such an interpretation may be warranted where the provision in question is purely criminal in nature, this Court in **P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.** has categorically held that proceedings under Section 138 of the Negotiable Instruments Act, read with Section 141, are quasi-criminal in character. In matters where the proceedings partake the character of a quasicriminal in nature, this Court has consistently observed including in **Abhilash Vinodkumar Jain v. Cox & Kings (India) Ltd.**³⁵, that a purposive interpretation, aligned with and in furtherance of the

²⁹ (1999) 4 SCC 253

³⁰ (2007) 6 SCC 555

³¹ (2018) 1 SCC 560

³² (2009) 1 SCC 720

³³ (2014) 9 SCC 129

³⁴ (2013) 1 SCC 177

³⁵ (1995) 3 SCC 732

legislative intent, is to be preferred. The interpretative approach must therefore be guided not by a rigid literalism, but by the object sought to be achieved by the statute.

63. Thus, in a factual scenario where the company is non-existent and proceedings under Section 138 read with Section 141 of the Act are instituted against the persons responsible for its affairs, a strict construction of the definition of ‘drawer’ under Section 7 so as to confine it exclusively to the company would amount to an unduly narrow interpretation, running contrary to the legislative intent underlying Sections 143A and 148. It is significant that when the amendment inserting Sections 143A and 148 was enacted, the definition of ‘drawer’ was left unchanged. To deny the complainant the benefit of the remedial framework introduced by the amendment, merely by relying on a definition framed at the time of the original enactment and without construing it in the light of the purpose sought to be achieved by the legislature, would, in our considered view, amount to a misinterpretation of the statute.

64. While an insistence on corporate separateness may accord with the principles of strict interpretation, it fails to account for the economic realities of cheque transactions, wherein the acts of authorised signatories and directors embody the volition of the company itself. A purposive and harmonised construction one that extends interim liability to the responsible officers where the corporate entity is shielded by a legal impediment which more effectively advances the legislative objective of protecting the payee and preserving the credibility of negotiable instruments is to be eschewed. Such an interpretation, in our view, would be consistent with both the remedial nature of the provisions and the over-arching purpose of the statutory scheme.

65. If Sections 143A and 148 are to be interpreted in the manner adopted in **Gurudatta** and **Bijay Agarwal**, then, in every scenario such as the present one where the company cannot be prosecuted owing to a legal impediment, a person like the appellant, who controlled the entire business of the company and effectively acted as the drawer on its behalf, would escape the requirement of making the appellate deposit on the technical ground of not being the ‘drawer’, even though he remains prosecutable and liable to conviction. Such an interpretation would result in a situation where, despite the company being beyond the reach of prosecution, the individual responsible for its affairs cannot be compelled to comply with the remedial mechanism under Section 148. This would render the purpose and intent underlying Sections 143A and 148 wholly nugatory. The compensatory and remedial object of these provisions which are meant to safeguard the interests of the complainant and to ensure meaningful relief during the pendency of proceedings would be reduced to a lifeless statutory form, devoid of practical efficacy. In our considered view, such an outcome could never have been the intention of the legislature.

II. DEPARTURE FROM THE LEGISLATIVE INTENT OF 2018 AMENDMENT ACT.

66. The legislative intent for enacting the amendments is as follows:

“As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

(2). It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.”

67. The interpretation adopted in the aforesaid decisions rests upon an overly literal construction of the statutory language and fails to give effect to the remedial intent underlying the 2018 Amendment. Sections 143A and 148 were enacted to provide interim monetary relief to payees during the pendency of cheque-dishonour proceedings, thereby addressing the longstanding problem of procedural delay and frivolous defences. To confine the application of these provisions to the company alone defeats their compensatory purpose, particularly in cases where the company is under a legal impediment and is unable to discharge its liabilities. Such an interpretation amounts to a departure from the true legislative intention, in our considered view.

68. In cases where there is no legal impediment in prosecuting a company, or where the prosecution is directed against a natural person, the statutory requirement to make payment under Sections 143A and 148 applies without exception. To then completely exempt an accused person of a company that is shielded by a legal snag from the obligation to make such payment despite standing on the same footing as those who are otherwise required to comply with the deposits would create an artificial and unwarranted distinction. Such a differential treatment between two categories of accused persons, similarly situated in all material respects, runs contrary to the very purpose for which the legislature introduced the amendment.

69. It must be emphasised that, while interpreting Sections 143A and 148 of the Act, due regard must be had to the legislative intent underlying their enactment. The object behind the introduction of these provisions was to address the problem of undue delay in the final resolution of chequedishonour cases, to provide meaningful interim relief to the payees of dishonoured cheques, and to discourage frivolous and vexatious defences, thereby conserving judicial time and resources. The amendments were enacted with the larger purpose of strengthening the credibility of cheque transactions and promoting trade and commerce, by ensuring that lending institutions and banks retain the confidence to extend financial assistance to productive sectors of the economy.

70. To deny the complainant the benefit of these amendments merely because the criminal proceedings are instituted against the directors of a non-existent company, and not against the company itself owing to a legal impossibility or impediment, would be to deprive lenders and payees of the very relief that the amendment sought to secure. Such an interpretation would run counter to the legislative intent and would effectively defeat the purpose of the amendment.

E. CONCLUSION

71. Therefore, in order to answer the question formulated in Paragraph 8, we are of the considered view that a director of a company cannot be granted a blanket exemption from the deposit contemplated under Section 148 of the Act, as suggested in ***Bijay Agarwal***. Whether such exemption is warranted must necessarily depend upon the factual matrix of each individual case.

72. With utmost respect to our learned esteemed brothers that decided ***Shri Gurudatta Sugars Marketing Pvt. Ltd. v. Prithviraj Sayajirao Deshmukh & Ors.*** and ***Bijay Agarwal v. Medilines***, we find ourselves unable to concur with the interpretation adopted therein. In our considered view, the reasoning in those decisions does not fully address the issue formulated, and the construction placed upon the statutory provisions appears to depart from the textual scheme as well as the legislative intent. As a Bench of co-equal strength, we are bound by the principles of judicial discipline and, therefore, cannot take

a different view on our own. In light of the substantial interpretative question involved, we deem it appropriate that the matter would require to be considered by a Larger Bench.

73. As indicated above, we are unable to concur with the decisions in **Gurudatta** and **Bijay Agarwal** for the reasons hereinbefore recorded. We consider it necessary to clarify that our observations are confined solely to the outcome of those decisions insofar as they adopt a strict interpretation of the provisions, which has the effect of granting a blanket exemption from the deposit contemplated under Section 148 to the category of persons referred to in Section 141 of the Act in situations where the company cannot be prosecuted. We have not, even for a moment, expressed any disagreement with the settled principles reaffirmed in those decisions such as the doctrine of corporate separateness or the proposition that an authorised signatory of a company cannot be equated with the ‘drawer’ of the cheque for the purposes of prosecution.

74. In our considered view, the issue identified herein requires an authoritative pronouncement by a Larger Bench of this Court on the following question:

i. Whether, upon a conviction under Section 138 read with Section 141, the appellate deposit contemplated by Section 148 may be directed against a convicted director/authorized signatory, or whether such deposit is confined to the juristic “drawer/company” alone in all scenarios?

75. Accordingly, we direct that the papers be placed before Hon’ble the Chief Justice for constitution of a Larger Bench to resolve the interpretative conflict.

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