MHHM110108042015

Received on	:	03/03/2016
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Decided on	:	24/01/2025
Duration	:	08Y : 10M : 21D

Exh.

IN THE COURT OF JUDICIAL MAGISTRATE (FIRST CLASS), 23RD COURT, ESPLANADE, MUMBAI.

(Presided over by Prashant S. Ghodke)

(J.O.Code-MH-02491)

Case No. 971/SS/2016

(CNR No.MHMM11-010804-2015)

COMPLAINANT	**Ankola Paper Mills Pvt. Ltd** **(formerly known as Mak Ampoules Pvt. Ltd)** **Through Anilkumar Manoharlal Aggarwal** Having Registered Office Address at : 505, Maker Bhawan-III, 21, New Marine Lines Mumbai-400 020.
REPRESENTED BY	**Advocate Mr. Prasad Borkar**
ACCUSED NO. 1	**Elder Pharmaceuticals Ltd.** Having Registered Office Address at : Elder House, Plot No. C-9, Dalia Industrial Estate, Off Veera Desai Road, Andheri (W) Mumbai-400 053.
ACCUSED NO. 2	**Mr. Alok Jagdish Saxena** Age : Adult Occ : ---, Having Address at : Flat No. 11, 1st Floor, Anjali Building Near Radio club, Kamal Mansion back side, A. B. Road, Colaba, Mumbai-400 005.

REPRESENTED BY	**Advocate Mr. Rajiv Hingu**
ACCUSED No. 3	**Mr. Karim Khan** Age : Adult Occ : ---, Flat No. 302, Nova Rosa, CTS C 486 A, St. Domic Road, Bandra (W), Mumbai- 400 053.
REPRESENTED BY	**Advocate 1) Mr. Ashok Mishra**
ACCUSED No. 4	**Dr. Anuj Jagdish Saxena** Age : Adult Occ :--- , Flat No. 11, 1st Floor, Anjali Building Near Radio Club, Kamal Mansion back side, A. B. Road, Colaba, Mumbai-400 005.
REPRESENTED BY	**Advocate Shri. Subodh Bhosale**

Date of dishonour of cheque	04/04/2015
Date of demand notice	08/04/2015
Date of service of notice	09/04/2015
Date of filing of complaint	03/03/2016
Date of filing of evidence	17/03/2017
Date on which case reserved for Judgment	24/01/2025
Date of the Judgment	24/01/2025
Date of the Sentencing Order	24/01/2025

Accused Details

Rank of accus-ed	Name of the accused	Date of arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during trial for purpose of

							Section 428, Cr.P.C.
1)	**Elder Pharmaceuticals Ltd.**	-	-	Under section 138 r/w 141 of Negotiable Instruments Act	Convicted	Pay fine of double amount of cheque amount ie .Exh.64	-
2)	**Mr. Alok Jagdish Saxena**	-	-	Under section 138 r/w 141 of Negotiable Instruments Act	Abated	-	-
3)	**Mr. Karim Khan**	-	-	Under section 138 r/w 141 of Negotiable Instruments Act	Acquitted	-	-
4)	**Dr. Anuj Jagdish Saxena**	-	-	Under section 138 r/w 141 of Negotiable Instruments Act	Process was not issued	-	-

J U D G M E N T

(Delivered on 24.01.2025)

The accused has faced trial for the offence punishable under section 138 r/w 141 of Negotiable Instruments Act (Hereinafter referred to as “ The NI Act ”).

2) **The case of the complainant in brief as follows :-**

The complainant is the Director of Ankola Paper Mills Pvt. Ltd. and he is authorized to file this complaint against the accused on behalf of the complainant company based on resolutions passed in the Board meeting of complainant company dated 17.04.2015.

Accused No. 1 is a company incorporated under Companies Act, 1956, Accused No. 2 is the Managing Director and Authorized signatory of accused no. 1. The Accused No. 3 is Director and Authorized Signatory of Accused No. 1. The accused No. 4 is the Chief Operating Officer of Accused No. 1 and was very much present in the deciding terms and conditions regarding Inter Corporate deposits were negotiated between complainant and accused. Accused No. 1 forming the subject matter of the present complaint. Accused No. 2, 3 and 4 were and are the persons responsible and incharge of day to day business of Accused No. 1 when the offence was committed. In the month of October/November, 2012 the Accused Nos. 2, 3 and 4 approached the complainant company and requested to grant Inter Corporate Deposit for a short term financial arrangement for the business of accused no. 1. The Accused Nos. 2, 3, and 4 agreed to give interest at @ of 11.50% per annum. Pursuant to above request of accused and subsequent corresponedence which the complainant compay held with Accused Nos. 2, 3, and 4 on behalf of Accused No. 1 regarding grant of Inter Corporate Deposit for short term financial arrangement for the business of Accused No. 1 on the terms and conditions agreed between the parties. The complainant company agreed to give short term Inter Corporate Deposit to Accused No. 1 at the rate of 11.50 % interest per annum. Accordingly on 19th October, 2012 the complainant company transferred an amount of Rs. 45,00,000/-(Rupees Forty Five Lakhs Only) via RTGS from the bank account of Complainant Company with State Bank of Hyderabad, Nariman Point branch, Mumbai to the bank account of accused maintained with Indian Bank, Cuffe Parade branch vide RTGS No. SBHYH122933009388. On 30.10.2012 the Complainant Company again transferred an amount of Rs. 20,00,000/-(Rupees Twenty Lakhs Only) via RTGS from the bank account of complainant company with State Bank of Hyderabad, Nariman point, Mumbai to the bank account of accused maintained with Indian bank, Cuffe Parade branch vide RTGS No. SBHYH123043030086. On 02.11.2012 the Complainant Company transferred an amount of Rs. 20,00,000/-(Rupees Twenty Lakhs Only) via RTGS from the bank account of complainant company with State Bank of Hyderabad, Nariman point, Mumbai to the bank account of accused maintained with Indian bank, Cuffe Parade branch vide RTGS No. SBHYH12307300405. Thus, complainant company has given an amount of Rs. 85,00,000/- (Rupees Eighty Five Lakhs Only) to the accused by way of Inter Corporate Deposits. Initially the accused paid part of the interest on the said deposits to the Complainant Company. In the month of September, 2013 the Accused Nos. 2, 3 and 4 approached the Complainant Company and requested to rollover the said Inter Corporate Deposits for a further 90 days on the same terms and conditions. Accordingly, the accused issued three receipts dated 01.10.2013 for an amount of Rs. 48,62,959/-, Rs.21,53,753/- and Rs. 21,51,863/- having received the above amounts from complainant company. The accused also issued 3 post dated cheques bearing nos. 029160, 029163 and 029169 dated 30.12.2013 for Rs. 1,24,500, Rs. 54,917/- and Rs. 54,965/- respectively drawn on ICICI Bank Ltd, Mumbai towards the Inter Corporate Deposits. Before expiry of the period of the said Deposits the Accused Nos. 2, 3 and 4 appraoched the Complainant Company to rollover the above said Corporate Deposits for further period of time on the same terms and conditions. The Complainant agreed to rollover the above said deposits. In the month of March, 2014 before expiry of the perios of the aforesaid deposits, the accused no. 2,3 and 4 again approached the complaiant company to roll over the above said Inter Cororate Deposits for further period of 90 days on the same terms and coditions. The complainant agreed to rollover the above said Corporate deposits for furhter 90 days on the sme terms and conditions. In the month of September, 2014 the accused no. 4 being the Chief Operating Officer of Accused No.1 appraochled the Complainant Company and requested again to rollover the said deposits for 6 months ie. Upto 31.03.2015. Accordingly, the Accused No.1 through Accused Nos. 2, 3 and 4 issued a letter dtd. 12.09.2014 to the Complainant Company along with post dated cheque bearing no. 030558 dated 31.03.2015 for Rs. 91,68,575/- (Rupees Ninety One Lakhs Sixty Eight Thousand Five Hundred and Seventy five only) drawn on ICICI Bank Ltd, Nariman Point branch, Mumbai in favour of Complainant Company. The above cheque is signed by Accused No. 2 and 3 as the authorized signatories of Accused No. 1. The above cheque issued by Accused No. 1 is payble at par through clearing / transfer at all branches of ICICI Bank, Ltd in India.

3) The Complainant deposited the said cheque on 31st March, 2015 with his Banker, State Bank of Hyderabad, Nariman Point Branch, Mumbai. To the Complainant Company, the aforesaid cheque has been returned unpaid by bankers of Accused with remark “Account Closed”. On 4th April, 2015 complainant received intimation

regarding the dishonour of the above cheque. Thereafter, complainant issued demand notice through his advocate on 08.04.2015 calling them to pay the amount of Rs.91,68,575/- (Rupees Ninety One Lakhs Sixty Eight Thousand Five Hundred and Seventy five only). The Accused Nos. 1, 2 and 4 have received notice on 09.04.2015. The notice sent to Accused No. 3 at the registered address of of Accused No. 1 has been returned unserved with remark “Left”. The notice sent to Accused No. 1 at its corporate office has been returned unserved with postal remark “Left” dated 09.04.2015. The Accused No. 2 and 3 have received the demand notice sent at their residential address on 09.04.2015. The notice sent to Accused No.4 at his residential address has been returned unserved with remark “Refused” dated 09.04.2015. The accused has deliberately not received the postal envelope from the postal department knowing well that it contains demand notice.

4) Even after the receipt of aforesaid legal notice the accused have failed and neglected to pay the amount of dishonoured cheque amount mentioned in the notice to the complaiant company within stipulated period and have not replied to the aforesaid notice. The complainant filed complaint and the process was issued against the accused No. 1 to 3 and complaint was dismissed agaisnt accused no. 4.

5) Consequently, accused appeared. The substance of accusations are notified to the accused as per Exh. 19, to which they pleaded not guilty. During the pendency of the complaint accused no.

2 reported dead. Therefore, the case is abated against him. During the pendency of complaint accused no. 1 went into liquidation and therefore, official liquidator is appointed by Hon'ble Bombay High Court official liquidator and pursuant to it, notice was issued to official liquidator and he appeared and filed his say at. Exh. 96 and submitted that the court may pass an order which it may thinks proper. Thereafter, the name of the complainant is changed to Ankola Paper Mills Pvt. Ltd. From the statement under Sec. 313 of Cr.P.C. their defence appears that he was not director at the time of dishonor of the cheque and accused no. 1 used cheque which was already signed by him while he was director of accused no. 1.

6) Heard the arguments of Ld. Advocate for complainant Mr. Prasad Borkar and Ld. advocates for all the accused. The complainant and accused have also filed written notes of arguments at Exh. 129 and 131 respectively. Perused the record of the case, following points arise for determination to which I record reasons with findings as follows:

Sr.	Points	Findings
1	Whether the accused issued cheque for discharge of legally enforceable debt or liability ?	Partly Affirmative
2	Whether cheque were presented within statutory period and those are dishonoured?	Yes
3	Whether complainant issued legal demand notice to the accused for	

	payment of dishonoured cheque and accused failed to pay the cheque amount after receipt of the notice?	Yes
4	Whether offence proved against accused ?	Partly yes against accused no. 1
5	What order?	A per final order.

REASONS

As to Point Nos. 1 to 3:

7) As point nos 1 to 3 are interlinked with each other and based on common facts and evidence. I proceed to determine them together.

8) In order to prove an offence punishable under section 138 of NI Act, the complainant examined himself and reiterated contents of complaint in his affidavit in lieu of examination-in-chief. In cross-examination, he deposed that he is one of the Director of the company Ankola Paper Mills Pvt. Ltd. and Mak ampoules. The complainant is engaged in the business of manufacturing papers. He is Director of the complainant company more than 15 yrs. At the time of filing complaint he had placed certified copy of Resolution was filed but it was not appended to minutes of meeting. He has not appended the attendance sheet of the meeting of Board of Directors . On Exh.27 the date is mentioned as 25.05.2015. He has not filed extract of minutes of meeting. Subsequent to meeting approving Exh. 27 held on 25.05.2015. firstly he filed this complaint and then

lodged the report with Azad Maidan police station. There was no agreement in between complainant and accused no. 1 relating to the transaction in the present case. Accused no.3 is not the signatory to these documents Exh.32 to 43. The said promissory notes signed by Mr. M.V. Thomas was one of the Director and Authorized Signatory and under his instructions. Letter Exh.63 was not signed by accused no.3. Accused no.2 has signed this document in presence of accused no.3. The cheques in question were dishonored with remark 'account closed'. He has not mentioned in his demand notice, complaint that Exh.32 to 43 were signed by M. V. Thomas and Exh.63 is signed by accused no.2 in presence of accused no.3. accused no.3 has not signed documents Exh.45 to 62. After dishonor of cheque he did not try to find out names of directors at that time 31/03/2015, he did not try to find out either from MCA or with ROC site in order to know the names of the directors at the relevant time. After receiving postal card of the demand notice with remark 'left', he did not try to find out as to the status of accused no.3 with accused no.1. He has not instituted for suit against accused no.3 for recovery of the amount. He has not forwarded confirmation of the account to the accused no.1 or to accused no.3 before depositing the cheque. He has no any record to show accused no. 3 approached for ICD and rollover as mentioned i his evidence affidavit. The accused had assured honor of cheque at the time of its preentment and had given covering letter Exh. 53. Complainant recieved part of amount of interest from 17/01/2013 to 05/09/2014. The said interest was for first three months only.

9) C.W. No. 2 Akash Repale deposed that he is authorized by bank for deposing on its behalf and as per authority letter Exh. 105. The bank account of accused no. 1 was with his bank and it has account to 000405001634. the said account was closed on 08.11.2014. He has not brought bank account opening form of accused no. 1 as it is locked. Suresh Pai, Kamal Dave, Alok Saren, Karim Khan, Jay Saxena, M. V. Thomas, S. V. Date, J. S. Murti, Prem Ayyer, S. P. Jain, and A. V. S. Murti were operating the said account jointly. The bank had closed said bank account the cheques drawn through it were frequently dishonored and with that respect the notice was issued to accused no. 1 on 29.09.2014. Since 20.04.2013, there was no transaction in the said bank account. He has placed the letter Ex. 106 which shows that account opening form is lost. He has placed bank account extract of accused no. 1 on Exh. 107 for period of 01.04.2013 to 08.09.2014 with certificates Exh. 108 and 109.

10) In cross-examination, he deposed that he is working as Deputy manager with ICICI bank since 10.03.2021 and he used to handle the legal cases. He has not placed any document which shows that Asin Siddique is branch manager. He is not aware about the affairs of the bank before 2021. Exh. 106 does not mention the year in which there was flood and bank account opening form was lost. The bank has not reported the loss of the said bank account to the police station. He has not placed documetnt which shows that bank acount of accused no. 1 closed due to frequent dishonor of cheques .

11) On the contrary D.W. No. 1 deposed that he has joined

accused no. 1 in July 2003 as per appointment letter dtd. 01.07.2003 as senior Vice President looking after HR and logistics. The said letter is at Exh. 83. He was promoted as director of accused no. 1 in year 2007 in the proffessional category and he has placed certified copy of Form no. DIR 11 at Exh. 84. He resigned accued no. 1 company on 27.10.2014 vide letter dated 27.10.2014. The copy of said resignation letter is at Exh. 85 and board meeting resignation is accepted. He has placed copy of minutes of board meeting dtd. 14.11.2014 which is downloaded by him from website at Exh. 86 and Exh.87. He has placed letter dtd. 23.01.2015 sent to Registrar of company at Exh. 88. and the said was accepted by Registrar of companies. He has placed certified copy of DIR-12 dtd. 11.09.2019 at Exh. 89. Accused no. 1 working on the basis of various committees and he was not part of any committe. The said committees were reported to BSE vide letter dtd. 28.08.2017 and 21.08.2014 the said letters at Exh. 90 and 91 respectively. There were many signatories in accused company and as a practice managing directors used to obtain signatures in advance on blank cheques. The Managing director used to deliver cheques to Chief Finance Officer and accounts officer. This practice was by reason that if the signatories travelling then those cheques may be used by departments, by putting the names of the payees on the cheques. On 13.02.2015 resolution was passed by accused no. 1 for removing him as signatory. He had no role in respect of funds of accused no. 1 and its bank accounts and its operations. During year 2014 accused no. 1 sold 30 brands to Torrent Pharmaceuticals and the audit report is placed by him at Exh. 92 and 93. The signatory was Vijayendra Jain.

The complainant has filed FIR at Azad Maidan police station against accused no. 1 which at Exh. 75.

12) In cross-examination he deposed that whenever Pvt. Ltd Company has to open a bank account there happens to be a resolution of the Board of Directors in its meeting and speciman signature form and bank account opening form has to be accompanied with resolution. He did not find bank account of accused no. 1 with ICICI bank branch Nariman point. He is not aware as to dishonor of cheque in question by reason of account was closed. He do not know whether account of accused was already closed prior to his resignation to accused no. 1. he does not know whether the said account was closed on. 08.11.2014. He does not know whether the account was in operative prior to its closure or not. He does not know who were the signatories of bank account of accused no. 1 besides him. He cannot assign any reason why he did not mention in the reply of notice that managing director was custodian of the cheques and he used hand over blank signed cheques to Chief Finance Officer and accounts officer for convenience.

13) D.W. No. 2 Santoshi Singh deposed that she joined State Bank of Mauritius in September 2019 and he has brought original copy of the board resolution dated 13.02.2015 of the accused company which at Exh.99.

14) In Cross-examination he deposed that Prior to year 2019, he was working with some other bank. He has not brought any

authority in writing for deposing in the Court on behalf of bank. Photocopy of the said Board resolution dated 13.02.2015 and said is not similar to the original and it is at Exh.100. Original resolution does not bear the seal of accused No.1.

15) D.W. No. 3 Tejas Shah deposed that he is authorised by his company to produce documents vide list Exh.121. He has placed authority letter at Exh.123. His company appointed Deloitte Haskin and Sales Co. as its Statutory Auditor. The resolution was passed on 26/07/2013 which is at Exh.124 . The audit report was issued on 30/07/2014 for quarter ending on 30/06/2014. The company borrowed secured long-term loans from banks of Rs.1400 crores and the company has completed acquisition of Elder Pharmaceuticals Limited branded domestic formulation bussiness in India and Nepal on a slump sale basis pursuant to the business transfer agreement entered between the company and Elder on 13/12/2013. The said audit report is exhibited as Exh.125.

16) In cross-examination he deposed that he is not authorised by the company to lead the evidence. He has not placed any document to show that, Nidhi Mehta is having authority to authorise him. He has not placed any document which shows that audit report Exh. 125 was submitted with registrar of companies or any authority. He does not know which documents were supplied to Deloitte Haskin and Sales for preparing audit report which is at Exh.125. He is aware about contents on Exh. 125. He has not placed agreement dtd. 13.12.2013 in between Torrent Pharmaceuticals Ltd. and Elder

Pharmaceuticals Ltd. having reference in Exh.125. He do not remember the terms and conditions of that agreement. He can identify the signature of Hemendra Shah as it is at Exh.125.

17) It is argued by Ld. Advocate for the the complainant in written notes of argument that the complainant is a registered company under Companies Act and authorize its director Dr. Anilkumar Agarwal to file complaint against the accused. Accused no. 1 is a company incorporated under Companies Act 1956. Accused no. 2 who is expired was director of complany. Accused no. 3 is also director of company. Accused no. 2 an 3 are responsible and in charge of day-to-day business of accused no. 1 at the commission of offence and they were also signatories of cheques in question. In the month of October-November 2012 accused no. 2 and 3 and Dr. Anuj Saxena approached to the complainant and requested for ICD and they agreed to pay interest at 11.50% per annum. Accordingly complainant transfered Rs. 45 Lakhs in bank account of accused and again on 30.10.2012 and 02.11.2012 he transfereed Rs. 20 Lakhs respectively. The accused initially paid interest on deposit. In the month of september 2013 they requested to roll over ICD for 90 days and issued 3 receipts for amount of Rs. 48,62,959/-, 21,53,753/- and 21,51,863/- respectively. The accused had also issued 3 post dated cheques. Before expiry of said deposit accused approachd to complainant for rolling over ICD for further period of 90 days. They also again approached in March 2014 for rolling over ICD for further period of 90 days. They also again approaced to complainnat and request for rolling over ICD upto 31.03.2015 and accused no. 1

issued a letter dtd. 12.09.2014 alongwith post dated cheque bearing no. 030558 dtd. 31.03.2015 for amount of Rs. 91,68,575/-drawn on ICICI bank ltd. The said cheque was issued for discharge of legally enforceable debt by accused. The said cheque was presented by complainant for clearance through their bank and it was dishonor with remark that “account closed”.

18) He further argued that the complainant received intimation on 04.04.2015. Complainant sent demand notice requiring accused to pay about amount of said dishonor cheque. The accused no. 3 recieved said notice and accused no. 2 refused to accept it. There was typographical mistake with regard to amount. Therefore, complainant again sent notice by correcting it. The accused no. 1, 2 and 4 received said notice and ntice of accused no. 3 returned by endorsement “Left”. Accused no. 2 and 3 recieved notice which is sent at their residential address to which accused no. 3 filed reply and informed that he has resigned as director of accused no. 1.

19) He further argued that the complainant has placed affidavit of complainant’s authorized representative on record and demand notices sent to accused to pay Rs. 91,62,595/-. The defence of accused no. 3 is that he had never approached to complainant to avail ICD. As per Sec. 118 (1) of the Companies Act, 2013 r/w rule 25 of Companies rule 2014 every company shall cause minutes of meeting of its Board of Directors and shall be prepared and signed and it shall be initialed and signed and last page shall bear date and signature of chairman of meeting or next subsiding chairman of the

meeting. The complainant has examined bank official CW 2 and he has produced authority letter Exh. 105 and deposed that accused no. 1 had bank account with his bank and bank account opening form was lost due to flood. The accused had not stated fact that he used to sign on blank cheques and used to handover it to CFO in reply notice sent to the complainant. In cross-examination of the complainant accused had not given suggestion that cheques in question were already signed by him. DW 2 Santoshi singh deposed that original copy of board resoluting dtd. 13.02.2015 and resolution Exh. 11 are different. Therefore, his testimony is not reliable and does not support to accused. The evidence of D.W. 3 is also not helpful to accused as he was authorized by company to depose on its behalf. There is admitted fact that complainant had given to ICD to accused no. 1 and those were renewed with consent.

20) The issuance of post dated cheques by accused to complainant is also admitted fact. The disputed cheque is signed by accused no. 2 and 3 as directors and authorized signatory of accused no. 1 and cheque was presented to bank within limitation and bank memo is also proved. The complaint is also within limitation. The accused were aware of the fact of their closing bank account and they did not take effort to issue new cheque to complainant. Accused no. 3 failed to issue any press release and notice stating that he had resigned from accused no. 1. unless and until it is done the complainant will not come to know about it.

21) He relied on Judgment of **Hon'ble Apex Court, Laxmi**

Dychem Vs. State of Gujrat[1] wherein Honble Court laid down that "*the reasons of dishonor of cheque are only species of genus and dishonor of cheque on the ground that the account has been closed is dishonor falling in the first contigency referred in Sec. 138 of NI Act."* Therefore, it is proved by the complainant that cheque is dishonored in view of Sec. 138 of NI Act. He also relied on judgment of Hon'ble Apex Court in **National Small Industries Corporation Ltd Vs Harmeet and anr**[2]**.** Wherein it is held that *"if accused is a director and officer of the company who signed the cheques on behalf of the company then also it is not necessary to make specific averments in the complaint such director or officer liable to be prosecuted alongwith the company."*

22) He also relied on judgment of Hon'ble Bombay High court in case of **Bindu Kumar Mehta Vs. Rishikesh Gujar and ors.**[3] Wherein the Hon'ble court laid down that *"the director who signs cheque issued by company on its behalf cannot be absolved even if he ceases to be a director at the inception. Therefore, prayed that accused be convicted."*

23) On the contrary, it is argued by Ld. Adv. For accused in the written notes of arguments that the accused no. 1 underwent in the liquidation in the year 2016. In order to invoke vicarious liablity of accused no. 3 under Sec. 141 of NI Act the accused need to be in charge of day-to-day business of the accused no. 1. Accused no. 3 was not involved in day-to-day management and business of accused

1 (2012) 13 SCC 375
2 (2010) 3 SCC 330
3 2014 ALL MR(Cri) 4720

no. 1 and the said fact is not proved by complainant. The covering letter Exh. 63 does not bear signature accused no. 3. Accused no. 3 in his reply dated 04.05.2015 mentioned that he has resigned from accused no. 1 and he has also placed DIR form-11. From which it can be seen that accused has resigned from accused no. 1 well before issuance of cheque in question and on the date of its dishonor.

24) He relied on judgment of **Hon'ble Apex Court in case of Lalankumar Singh and ors. Vs State of Maharashtra**[4] wherein it is observed by Hon'ble Apex Court that *"for making a director of company for the offence committed by the company u.Sec. 141 of NI Act there must be specific averments against director showing as to how and in what manner director was responsible for conducting business of the company without it, ispo facto can not be held vicariously liable."*

25) He also relied on judgment of Hon'ble Apex Court **in case of S P Mani and Mohan Dairy Vs. Dr. Snehlata Elangovan**[5] wherein it is laid down by Hon'ble Apex Court that "*the complainant is expected to allege the persons in the complaint who are in charge of affairs of the company and it is only directors of company who have special knowledge about the role they have played in the company."*

26) He also relied on judgment of **Hon'ble Apex Court in case of Gunmala Sales (P) Anu Mehta**[6] Wherein it is laid down by Hon'ble Apex Court that "*when a director of a company is not in charge of*

4 2022 SCC Online SC 1383
5 (2023) 10 Supreme Court Cases 685
6 (2015) 1 Supreme Court Cases 103

day to day business of company even if in presence of averment of effect to that complainant. The High Court may quash the proceeding against the director who has no concern with day to day business of company, when the Court considers that prosecuting director is merely a arm-twisting practice."

27) He further argued that in the present case the reason of dishonor of cheque in question of account closed and it is by reason of closure of the account by the bank and not at the instance of accused. It is very clearly seen from evidence of DW 2 Repale. Therefore, the offence punishable under Sec. 138 NI is not applicable in the present case. For that purpose he placed reliance on judgment of Hon'ble Karnataka High Court in case of **Shri Adinarayan Mallapa Vs P N Sridhar Bhatt**[7] Wherein it is laid down that *"when the record shows that account of accused was closed on the date of issuance of cheque and was not closed on the intimation of accused and as per the rules of bank then it has to be appreciated that the complainant fails to prove offence punishable under Sec. 138 of NI act."*

28) He also relied on decision of **Hon'ble Karnataka High Court in case of Nagraja Upadhya Vs. M Sanjivan**[8]**.** Wherein Hon'ble court laid down that *"when the bank account is closed as per rules of bank and not at the instance of accused the offence p. u. Sec. 138 is not attracted."*

29) Considered arguments. Perused record of the case. In

7 Criminal Appeal No. 951/2008 decided on 10-12-2013
8 Indian Law Reporrts 2007 Karnataka series

order to prove an offence punishable u/Sec. 138 of NI act in the present case complainant thas placed certified copy of its resolution authorizing Anilkumar Agrawal as its representative in the present complaint although said resolution does not bear date and its genuinity cannot be disputed. The compainant has also placed on record minutes of meeting at Ex. 27. on perusal of which it appears that Dr. Anilkumar Aggrawal is authorized to represent it in present complaint. The compainant has also placed on record demand promissory note at Exh. 32 to 34, 37, 40, 43, 47, 50, 53, 56, 59, 62 on perusal of which it appears that they undertook to pay to the complainant the amounts mentioned in those promissory notes. The compainant has also placed on record verified copy of cheque in question , on perusal of which it verified with the original as original with police in context of criminal proceeding initiated by the complainant against accused. The said cheque bears date 31.03.2015 and it was presented on 31.03.2015 as per bank deposit slip. On perusal of cheque it appears that it is issued by the accused in favour of complainant and on perusal of verified copy of cheque return memo the said cheque returned by reason “account closed”.

30) There is presumption under Sec. 139 of the Negotiable Instruments Act, 1881 which lays down that the Court shall presume that the cheque was issued for discharge of legal debt or liability unless contrary proved. In the present case, the accused have not proved anything in order to rebut that presumption. There is also prsumption under s. 146 of the Negotiable Instruments Act regarding bank slips, therefore, it has to be presumed that the cheque issued by

accused no. 1 in favour of complainant and which is dishonoured by reason of the “Account closed” so the law laid down by Hon’ble Apex Court in case of **Laxmi Dychem (Supra)** is applicable in the present case. As the reason the account closed would attract offence punishable under Sec. 138 of the N.I.act.

31) The decision of Hon’ble Karnataka High Court in case of ***Adinarayan (Supra)*** is not applicable in the present case, as it has not considered law laid down by Hon’ble Apex Court in ***Laxmi Dychem(Supra).*** The decision of Hon’ble Karnataka High Court in case of ***Nagraja (Supra)*** is also not applicable in the present case as it is against the law by Hon’ble Apex Court in case of ***Laxmi Dychem(Supra).***

32) On perusal of the record, it appears that complainant issued notice to the accused on 08.04.2015 and there are postal endorsemetns and acknowledgments which shows that the said demand notice recieved by the accused no. 2, 3 and 4. on perusal of record it also reveals that the complainat has also issued corrected notice on 09.04.2015 by correcting amount of cheque in it to accused and it appears that the said notices were sent to accused. On perusal of Exh. 73 it appears that accused no. 3 had replied to said notice and raised contention that he has already resigned from accused company. Therefore, it appears that the complainant presented cheque to the bank within limitation and it was dishonoured by reason of account closed and despite of notice the accused failed to pay amount of cheque to the complainant. It is here petinent to note

that the complaint is well within limitation.

33) As regards contention of accused no. 3 he was not director of accused company at the time of issuance of cheque to the complianant. Accused no. 3 the letter issued to accused no. 1 which shows that accused no. 3 had resigned as director of accused no. 1 on 27.10.2014. On perusal of DIR-11, it appears that the resignation of accused no. 3 was communicated to Registrar of companies which shows that accused no. 3 had resigned as director of accused no. 1 on 27.10.2014. Thus, in order to show the fact that even after his resignation accused no. 3 acted for accused no. 1 there is nothing on record placed by complainant. For that purpose, I place reliance on decision of Hon'ble Bombay High Court in case of ***Suhas Bhand Vs State Of Maharashtra***[9] which answered reference and laid down that

(i) If the accused in a criminal prosecution under s. 138 of the Negotiable Instrument Act produces a certified copy of form no 32 certified by ROC and there is no dispute of the factum of his resignation, the accused is entitled to be discharged from the prosecution.

(ii) If his resignation is not accepted or admitted by the complainant upon production of Form No. 32, the accused would have to produce the truth of the contents of the said certified copy i.e factum of his resignation. Such accused is not discharged simplicitor upon production of a certified copy of of Form No. 32.

(iii) If the Complainant produces evidence showing the continuance

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of the accused as Director of the company after the date of the resignation claimed by him as per the certified copy of Form.No. 32 produced by him, such accused can not be discharged simplicitor upon production of certified copy of Form.No. 32. he would have to lead evidence to prove facum of his resignation. Similarly, the complainant would be entitled to prove the factum of his continuing as director. The trial under s.138 r/w 141 of the Negotiable Instruments Ac, would therefore, proceed.

34) Thus, In order to invoke liability under Sec. 141 of NI Act the complainant must prove that the director or partner of company or firm is dealing with affairs of company of its day to day busines. However, in present case the complainant has not placed anything on record which shows that on date of issue of cheque on 30.03.2015 accused no. 3 was dealing with day to day business of accused complany. The decision of Hon'ble Bombay High court in case of ***Bindu (Supra)*** was related to challenging the issue process order in which Honble Court observed that whether director accused in that particular case was or was not dealing with day to day businesss of complany can be determined after recording evidence and that cannot be done at the time of issuing process against the said director. Therefore, that decision is not helpful to the complainant.

35) The law laid down by Hon'ble Apex Court in cases of **Lalankumar and Mani (Supra)** is applicable in the present case as there needs to be specific averment in the complaint in order to hold accused no. 3 liable under s. 141 of N.I Act even after his resignation.

The law laid down by Hon'ble Apex in case of ***Gunmala(Supra)*** is also applicable as even if it is presumed that there are averments in the complaint, complainant failed to prove that the accused was person in charge of day to day business of accused no. 1 or in charge of its affairs on the day of issuance of cheque.Therefore, I am of the considered view that the complaianant has succeeded to prove offence p.u. Sec. 138 of NI against accused no. 1 as there is no rebutal that deceased accused no. 2 was signatory to the the cheque.

36) Moreover, it is pertinent to note that in the present case the director of the company was Karim Khan and notice was issued by the complainant to director named Karim Khan and the complaint is filed against Karim Khan and in the present case, the accused no. 3 appeared through name of Yousuf Karim Khan. Thus, the peson with name Yousuf Karim Khan was not director of the accused company

37) Therefore, I hold that accused no. 1 had issued cheque to the complainant for discharge of legal liability and it was presented by complainant to bank and even after statutory demand notice accused failed to pay amount of cheque to the complainant. Therefore, I answer point no. 1 in the partly affirmative and point nos. 2 and 3 in the affirmative.

<u>As to point no. 4 :-</u>

38) As I have observed point no. 1 in the partly affirmative and point nos. 2 and 3 in the affirmative. Accused no. 1 has

committed an offence punishable under Sec. 138 of N.I. act and accused no. 3 can not be held liable under Section 141 of N.I.Act . Therefore, I answer point no. 4 in the partly affirmative.

<u>As to Point No. 5</u> :-

39) As I have answered point no. 1 and 4 in the partly affirmative and point no. 2 and 3 in the affirmative. Accused no. 1 is liable to be convicted for an offence punishable under Sec. 138 of N.I.Act. Although accused no. 1 is under liquidation its fiction as legal entity is not come to an end, as there is nothing on the record that accused no. 1 is completely wound up. Accused no. 1 is being company is liable pay fine under Sec. 138 of NI Act and I have observed that at the time of issuance of cheque accused no. 3 was not director or dealing with day-to-day business of accused no.1 and he is entitled to be acquitted. Direction to accused no 3 requires to be given to furnish bail bonds U. Sec. 437-A of Cr. P. C. to secure his appearance before Hon'ble Appellate Court in case of appeal. Therefore, I pass following order:-

<u>O R D E R</u>

1	The accused no. 1 is convicted of the offence punishable under section 138 of Negotiable Instruments Act and sentenced to pay fine double of the cheque amount ie. Exh. 64 vide section 255(2) of the Cr.P.C.
2	The accused no. 3 is acquitted of the offence punishable under section 138 r/w 141 of Negotiable Instruments Act vide section 255(1) of the Cr.P.C.

3	The accused shall furnish personal bond of Rs.30000/- and cash security in the like amount in compliance with Sec.437-A of the code of the Criminal Procedure.
4	Present bail bonds of accused no. 3 stands cancelled.
	Dictated and pronounced in open Court.

PRASHANT SURESH GHODKE

971-SS-2016
Digitally signed by PRASHANT SURESH GHODKE
Date: 2025.01.28 13:24:49 +0530

(Prashant S. Ghodke)

Date :24/01/2025 Judicial Magistrate(First Class)

23rd Court, Esplanade, Mumbai

APPENDIX-I

PART 'C'

LIST OF COMPLAINANT / DEFENSE / COURT WITNESSES

A. Complainant :

RANK	Exh. No.	NAME	NATURE OF EVIDENCE
CW-1	20	Dr. Anil Kumar Agarwal	Complainant
CW-1	P-103	Aakash Dinkar Repale	Witness

B. Defence :

RANK	Exh. No	NAME	NATURE OF EVIDENCE
DW-1	Exh. 82	Yousuf Karim Khan	Witness
DW-2	Exh. 98	Santoshi Singh	Witness
DW-3	Exh. 122	Tejas Shah	Witness

C. Court Witnesses, if any : No.

LIST OF COMPLAINANT / DEFENCE / COURT EXHIBITS

A. Complainant :

Sr. No.	Exhibit Number	Description
1	Exh. 20	Affidavit of Evidence of Complainant
2	Exh. 26	Certified copy of the Board resolution
3	Exh. 27	Copy of the minute book
4	Exh. 28	Letter dated 18/10/2012
5	Exh. 29	Letter dated 30/10/2012
6	Exh. 30	Letter dated 02/11/2012
7	Exh. 31	Bank statement
8	Exh. 32	Demand Promissory Note dated 19/12/2012
9	Exh. 33	Demand Promissory Note dated 30/10/2012
10	Exh. 34	Demand Promissory Note dated 02/11/2012
11	Exh. 35	Letter dated 01/10/2013
12	Exh. 36	Inter corporate Deposit receipt 01/10/2013
13	Exh. 37	Demand Promissory Note dated 01/10/2013
14	Exh. 38	Letter dated 01/10/2013
15	Exh. 39	Inter corporate Deposit receipt 01/10/2013
16	Exh. 40	Demand Promissory Note dated 01/10/2013
17	Exh. 41	Letter dated 01/10/2013
18	Exh. 42	Inter corporate Deposit receipt 01/10/2013
19	Exh. 43	Demand Promissory Note dated 01/10/2013
20	Exh. 44	Letter dated 02/08/2013 alongwith resolutions
21	Exh. 45	Letter dated 30/12/2013
22	Exh. 46	Inter corporate Deposit receipt 30/12/2013
23	Exh. 47	Demand Promissory Note dated 30/12/2013
24	Exh. 48	Letter dated 30/12/2013
25	Exh. 49	Inter corporate Deposit receipt 30/12/2013
26	Exh. 50	Demand Promissory Note dated 30/12/2013

27	Exh. 51	Letter dated 30/12/2013
28	Exh. 52	Inter corporate Deposit receipt 30/12/2013
29	Exh. 53	Demand Promissory Note dated 30/12/2013
30	Exh. 54	Letter dated 01/04/2014
31	Exh. 55	Inter Corporate Deposit receipt 01/04/2014
32	Exh. 56	Demand Promissory Note dated 01/04/2014
33	Exh. 57	Letter dated 01/04/2014
34	Exh. 58	Inter Corporate Deposit receipt 01/04/2014
34	Exh. 59	Demand Promissory Note dated 01/04/2014
36	Exh. 60	Letter dated 01/04/2014
37	Exh. 61	Inter corporate Deposit receipt 01/04/2014
38	Exh. 62	Demand Promissory Note dated 01/04/2014
39	Exh. 63	Letter dated 12/09/2014
40	Exh. 64	Copy of cheque bearing no. 030558 dtd. 31.03.2015
41	Exh. 65	Deposit slip
42	Exh. 66	Memo of dishonour
43	Exh. 67	Office copy of 138 Statutory notice
44	Exh. 68	Original Speed Post AD Postal receipt (1-7)
45	Exh. 69	Original AD cards and returned envelopes(1-7)
46	Exh. 70	Office copy of Notice dtd. 09/04/2015
47	Exh. 71	Postal receipts
48	Exh. 72	Original AD cards and returned envelopes(1-8)
49	Exh. 73	Original reply of accused
50	Exh. 75	FIR 274/2015 registered with Azad Maidan Police station
51	Exh. 129	Written submissions in support of oral arguments

B. Defence :

Sr. No.	Exhibit Number	Description
1	Exh. 80	Application for admission /denial of documents U. Sec. 294 of Cr. P. C. on behalf of accused no. 3
2	Exh. 81	List of Documents
3	Exh. 86	Downloaded copy of letter dtd. 14.11.2014
4	Exh. 90	Downloaded copy of letter dtd. 21.08.2014
5	Exh. 91	Certificate U. Sec. 65B of Indian Evidence Act
6	Exh. 92	Downloaded copy of Auditors Report of Torrent Pharmaceuticals Ltd.
7	Exh. 96	Written submission of the official liquidator
8	Exh. 100	Certified true copy of resolution of board of directors company
9	Exh. 131	Written submission on behalf of accused no.3

C. Court Exhibits : No

D. Material Objects : No

(P. S. Ghodke)
Judicial Magistrate (First Class)
23rd Court, Esplanade, Mumbai

Date : 24.01.2025
Place : Mumbai

CERTIFICATE

I pledged that, the contents of this PDF judgment are the same as original judgment.	
Name of the Stenographer	Swati Vinayak Kumbhar
Court	Judicial Magistrate (First Class), 23rd Court, Esplanade, Mumbai.
Date of pronouncement of judgment	24/01/2025
Date of signature on judgment	24/01/2025
Date of uploading of judgment	28/01/2025