

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

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

Bharat Mittal Ex-Director, Aged About 43 Years, Shiv Mahima Ispat Private Limited, Having Its Registered Office At 6/403, Chitrakoot, Vaishali Nagar, Jaipur, Rajasthan And Office At 1St Floor, Rangroop Chamber 2, Dudu Baag. Loha Mandi, Sansar Chandra Road, Jaipur, Rajasthan.

-----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor
2. Steel Authority Of India Limited, Branch Office - Fourth Floor, S-16-A, Mahaveer Marg, C -Scheme, Jaipur Through Bank Manager And Authorized Representative- Jacob Chako
3. Shiv Mahima Ispat Private Limited, Registered Office 6/403, Chitrakoot, Vaishali Nagar, Jaipur And Office Address- Ist Floor, Rangroop Chamber 2 Dudu Baag, Loha Mandi, Sansar Chandra Road, Jaipur, Rajasthan Through Official Liquidator, Address- Corporate Bhawan, G-6-7, Civil Lines, Jaipur.

-----Respondents

For Petitioner(s)	:	Dr.Sachin Kumar Sharma
For Respondent(s)	:	Mr.Rishi Raj Singh Rathore, PP Mr.Manvendra Singh Shekhawat, PP

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Judgment

Reserved on :: 16/05/2025

Pronounced on :: 27/05/2025

REPORTABLE:

1. The present petition is filed under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 with a prayer seeking quashing of the impugned order dated 27.11.2024 (to the extent of deposition of 20% compensation award) and order dated

02.05.2025 passed by Additional District and Sessions Court in Criminal Appeal No. 83/2024, whereby, learned Appellant Court has rejected the application of the petitioner for waiver of condition of depositing 20% compensation amount.

FACTS OF THE CASE:

2. The petitioner in capacity of a director and as an authorized signatory of respondent No.3/Company had issued a cheque on behalf of the Company in favour of the respondent No.2/complainant. Thereafter, for dishonor of the said cheque with the remark "Exceeds arrangement" and non-payment of amount even after service of legal notice, respondent No.3 filed a complaint against the petitioner alleging offence under Section 138 of **Negotiable Instruments Act, 1881 (for short 'NI Act')**.

3. Learned Trial Court vide judgment dated 28.10.2024, convicted the petitioner under Section 138 of NI Act with two Year simple imprisonment and ordered for the payment of Rs. 8,10,00,000/- as compensation under Section 357(3) of **Criminal Procedure Code, 1973 (for short 'Cr.P.C')** to the respondent No.2 and in case of default, additional six months imprisonment was imposed.

4. Subsequently, the petitioner filed an appeal against the said judgment, whereby vide order dated 27.11.2024 learned Appellant Court suspended the sentence as per the provision of Section 141 of NI Act subject to condition that the petitioner herein would pay 20 % of the compensation amount of Rs.

8,10,00,000/- within 60 days to the complainant/respondent No.2 herein.

5. Aggrieved of the same, the petitioner moved an application for modification/amendment before the learned Appellant Court, with a prayer seeking waiver of the said condition qua deposition of 20 % compensation amount, which was dismissed by the learned Appellant Court vide order dated 02.05.2025. Therefore, the present petition is filed.

6. In this background, learned counsel for the petitioner had submitted that the petitioner was only acting in capacity of the director and as an authorized signatory of the respondent No.3/Company therefore, as per the dictum encapsulated by Hon'ble Apex Court in **Bijay Agarwal vs M/s Medilines: Special Leave Petition (Crl.) No. 2696/2024**, the petitioner as authorized signatory of the cheque on behalf of the company is not the drawer of the cheque and condition under Section 148 of NI Act qua deposition of compensation is not applicable qua the petitioner herein.

7. It was further submitted that the petitioner herein is falsely implicated in the instant dispute for the reason that the petitioner and the Company-respondent No.3 have separate identity, therefore, as per the provisions of Companies Act, 2013 when the Company has a separate legal entity, the petitioner cannot be made liable for the acts of the Company.

8. Further, it was submitted that the petitioner had resigned from the Company on 10.02.2016, thereafter, the respondent No.3/Company was wound up by the High Court vide

order dated 01.12.2016, thus no case is made out against the petitioner. Moreover, the Official Liquidator had admitted that the claim of respondent No.2 will be paid as per the Rules.

9. Furthermore, it was submitted that denial of the learned Appellant Court in waiving the condition of 20% pre-deposit is contrary to the dictum encapsulated in the judgment passed by Hon'ble Apex Court in **Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Ltd. & Ors.: (2023) 10 SCC 446**, as in the said judgment it is opined that the Court can interfere for dispensing with the requirements of pre- deposit, if *prima facie* case is established.

10. *Per contra*, learned counsel for the respondent had stoutly opposed the contentions of the learned counsel for the petitioner and had submitted that neither before presenting the disputed cheque in the bank, the petitioner had transferred any amount to the respondent No.2 nor prior to serving legal notice, no amount of any kind was paid by the accused-petitioner in relation to the disputed cheque to the respondent No.2.

11. Lastly, it was submitted that when the cheque that is endorsed is dishonored when it is sought to be endorsed upon maturity, then the offence under Section 138 of NI Act will be attracted. In support of the said contention reliance was placed upon the judgment passed by Hon'ble Apex Court in **Dashrathbhai Trika Mbhai Patel Vs. Hitesh Mahendrabhai Patel & Ors.: (2023) 1 SCC 578**.

12. Heard and considered.

13. Considering the arguments advanced by the learned counsel for the parties and upon assiduously scanning the material available on record, this Court has made the following observations:-

13.1 That the petitioner was director and authorized signatory of the Company- respondent No.3.

13.2 That Memorandum of Understanding dated 17.04.2012 was signed inter-se the complainant- respondent No.2 and the respondent No.3 qua HR totaling 12001 metric tonnes coils. Resultant to the same, the respondent No.2 Company dispatched the said goods worth Rs. 4,82,72,269/- approximately under the terms and conditions of Central Excise Invoice.

13.3 That qua the same respondent No.3- Company issued a cheque dated 03.01.2013 signed by the petitioner in capacity of authorized signatory/director to the respondent No.2-Company and gave full assurance qua payment of the said amount. However, upon depositing the said cheque in the Bank, the same was dishonored and returned with a remark "Exceeds arrangement".

13.4 Immediately, the respondent No.2 served a notice for demand upon the petitioner along-with interest and liability which was accepted by the petitioner and the Company- respondent No.3 vide letter dated 12.01.2013 with assurance to pay the due amount by 20.01.2013, however, the same was flouted. Subsequently, dispute arose with regard to the payment on the plea that the goods were of inferior quality.

14. Qua the said plea, this Court has noted that invoice(s) sent by the respondent No.2 were supported by the certificate of the material quality, which was duly admitted by the petitioner upon receipt of the said goods, therefore, the plea that goods were of inferior quality is an afterthought to avoid the payment which is due.

15. In this background, a legal notice under Section 138 of the NI Act was served upon the petitioner and the respondent No.3 respectively, and learned Trial Court took cognizance of the matter vide order dated 20.05.2013 and initiated proceedings under the said Act.

16. Learned Trial Court vide impugned order dated 28.10.2024 convicted the petitioner and imposed a sum of Rs. 8,10,00,000/- on the petitioner as compensation under Section 357(3) of Cr.P.C. Thereafter, the petitioner challenged the said order and prayed for suspension of sentence before the learned Appellant Court, whereby Court vide order dated 27.11.2024 imposed a condition of furnishing bond and depositing 20% of the compensation amount to the respondent No.2, within a period of 60 days for hearing the appeal and for keeping the order of conviction in abeyance, as per the provisions of Section 148 of NI Act. However, the petitioner, being a compulsive litigant, filed a modification application qua the said order on 20.04.2025 (after the expiry of 60 days), which was dismissed by the learned Appellant Court vide order dated 02.05.2025 stating that as per the provisions of Section 362 Cr.P.C no change or modification can

be made in the order except for correction of clerical or arithmetic error.

17. It is pertinent to mention here that initially learned Trial Court took cognizance against the other directors of the Company namely Mr.Sunil Mittal and Ms.Mukta Mittal and others, however, they filed a revision qua the same which was allowed by the Court vide order dated 12.05.2014, and petitioner herein never assailed the said order, thereby making it absolute.

18. Further, learned Trial Court has held the petitioner vicariously liable. Before commenting upon the same, this Court intends to examine the underlying principle of vicarious liability. Hon'ble Apex Court in **Ravindranatha Bajpe vs Mangalore Special Economic Zone Ltd. and Others** reported in **(2022) 15 SCC 430**, has laid down two possibilities of attributing liability to individuals on behalf of the company, firstly, an individual who commits an offense on behalf of the company can be held liable alongside the company, secondly, an individual can be held vicariously liable if a statute specifically provides for it. Therefore, this Court has noted that a company, being an artificial entity operates through individuals, and crime committed by a company often involves *mens rea*, that is actions and decisions of the said individuals. However, criminal law generally doesn't recognize vicarious liability unless specifically provided by the statute. Thus, the directors can be prosecuted alongside the company if evidence reflects that they have played an active role with *mens rea*. Taking note of the case in hand wherein as per the provisions Section 141 of NI Act, which expressly extends liability on company officials for

dishonor of cheque, the petitioner can be held liable for the acts of the Company. Therefore, the learned Trial Court has rightly held the petitioner vicariously liable. The same is reiterated herein below :-

"Section 141

141. Offences by companies. — (1) *If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) *Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

19. Further, learned Appellant Court upon application filed by the petitioner praying suspension of sentence directed the petitioner, as per the provisions of Section 148 of NI Act, to deposit 20 % of the compensation amount

within 60 days, despite the same, the petitioner has flouted the said condition imposed by the concerned Court and instead filed a modification/amendment application, after the expiry of the 60 days as directed and with a significant delay, which reflects petitioners' vindictive attitude and intent to frustrate the proceedings under NI Act before the concerned Court. The relevant Section is reiterated below :-

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 deposit¹ such sum which shall be a minimum of twenty percent 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."

20. This Court has noted that learned Trial Court has adjudicated the matter without adhering to the provision of Section 143 of NI Act, which mandates expeditious disposal of cases, preferably within a period of six months. Notably,

cognizance was taken in the Year 2014, and the decision was rendered in 2024, reflecting significant delay. The relevant Section is reiterated below :-

Section 143

143. Power of Court to try cases summarily.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees: Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

21. That relying upon dictum encapsulated in **Harshendra Kumar D. Vs Rebatilata Koley and others** reported in **(2011) 3 SCC 351**, this Court has opined that the petitioner has resigned from the Company after issuance of the cheque and subsequent

dishonor of cheque, thence it can be deduced that the petitioner was involved in the affairs of the company, thereby making him liable for the acts of the Company. That before and after issuance of the cheque, it was the responsibility of the petitioner to ensure its compliance.

Conclusion:-

22. Taking note of the aforementioned observations, this Court has concluded that the dispute in the instant matter pertains to the year 2012-13 for default in making payment qua the amount of Rs. 5 crore approximately; that the petitioner has admitted the obligation/liability due towards respondent No.2; that the petitioner has never assailed the order dated 12.05.2014, whereby, learned Trial Court took cognizance against the petitioner and exonerated other directors; that direction passed by the learned Appellant Court qua deposition of 20 % of the compensation amount within a period of 60 days for keeping the suspension order in abeyance, as per the provision of Section 148 of NI Act, was flouted by the petitioner; that the said order was not immediately assailed by the petitioner and modification application qua the same was filed with a significant delay, reflecting malice intent on the part of petitioner; that the petitioner till date has not paid any amount to the respondent No.2; that the petitioner has acted as a compulsive litigant and has attempted to frustrate the provisions of the NI Act, therefore, this Court deems it apposite to dismiss the present petition with a cost of Rs.5,00,000/- (Rupees Five Lakhs only), which is to be recovered from the petitioner only. Further, the petitioner is

hereby restrained from alienating any of his personal assets, whether movable or immovable, until such time as petitioner satisfy the Official Liquidator that these assets were acquired through legitimate means unrelated to the company's funds.

23. In view of the observations and directions given above, the present criminal miscellaneous petition is dismissed with aforementioned cost. Stay application and/or pending application(s), if any, also stand disposed of.

(SAMEER JAIN),J

Preeti Asopa