

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR**

(Order reserved on 02.03.2022)

(Order delivered on 21.03.2022)

CRMP No. 1645 of 2019

Charanjeet Singh Saini, S/o. Shri Jagdish Singh Saini, Aged About 39 Years, R/o. HIG 10, MPH B Colony, Near Post Office, Tatibandh, Raipur, District- Raipur, Chhattisgarh.

---- **Petitioner**

Versus

M/s. Ispat India, Through Partner Shri Yashwardhan Agrawal, S/o. Shri Nirmal Kumar Agrawal, R/o. Plot No. 4 & 9, Phase-2, Siltara Industries Area, Raipur, District- Raipur, Chhattisgarh.

---- **Respondent**

CRMP No. 118 of 2021

1. Jagdish Singh Saini, S/o. Shri Trilok Singh Saini, Aged About 65 Years.
2. Charanjeet Singh Saini, (wrongly mentioned as Charan Singh Saini), S/o. Jagdish Singh Saini, Aged About 34 Years.

Both Resident Of HIG 10, MP Housing Board Colony, Near Tatibandh Gurudwara, Tatibandh, Raipur, District- Raipur (Chhattisgarh)

Other Address - (As Per Complaint) Saini Industries Limited, Siltara, Raipur (Chhattisgarh)

---- **Petitioners**

Versus

1. Smt. Santoshi Agrawal, W/o. Late Shri Rajkumar Agrawal, Aged About 50 Years, Residents Of House No. 30, Recreations Road, Choubey Colony, Raipur (Chhattisgarh)
2. Shyam Agrawal, S/o. Late Shri Rajkumar Agrawal, Aged About 25 Years, Residents Of House No. 30, Recreations Road, Choubey Colony, Raipur (Chhattisgarh)
3. Sammi Singh Saini, Residents Of HIG 10, MP Housing Board Colony, Near Tatibandh Gurudwara, Tatibandh, Raipur, District- Raipur (Chhattisgarh)

---- **Respondents**

CRMP No. 120 of 2021

1. Jagdish Singh Saini, S/o. Shri Trilok Singh Saini, Aged About 65 Years.
2. Charanjeet Singh Saini (wrongly mentioned as Charan Singh Saini) S/o. Jagdish Singh Saini, Aged About 34 Years.

Both Residents of HIG 10, MP Housing Board Colony, Near Tatibandh Gurudwara, Tatibandh, Raipur, District Raipur Chhattisgarh.

Other Address (As Per Complaint) Saini Industries Limited Siltara, Raipur Chhattisgarh.

---- **Petitioners**

Versus

1. Smt. Santoshi Agrawal, W/o. Late Shri Rajkumar Agrawal, Aged About 50 Years, Resident Of House No. 30, Recreation Road, Choubey Colony, Raipur Chhattisgarh.
2. Shyam Agrawal, S/o. Late Shri Rajkumar Agrawal, Aged About 25 Years, Resident Of House No. 30, Recreation Road, Choubey Colony, Raipur Chhattisgarh.
3. Sammi Singh Saini, Residents Of HIG 10, MP Housing Board Colony, Near Tatibandh Gurudwara, Tatibandh, Raipur, District Raipur Chhattisgarh.

---- **Respondents**

CRMP No. 605 of 2020

Charanjeet Singh Saini, S/o. Shri Jagdish Singh Saini, Aged About 39 Years, R/o. HIG 10, MPH B Colony, Near Post Office, Tatibandh, Raipur, District- Raipur, Chhattisgarh.

---- **Petitioner**

Versus

Kotak Mahindra Bank Ltd., A Registered Company Under The Companies Act. 1956, Having Its Registered Office Near Police Headquarter, G.E. Road, District- Raipur, Chhattisgarh, Through Its Authorised Representative, Shri Vijay Shukla, Assistant Manager.

---- **Respondent**

CRMP No. 625 of 2020

Charanjeet Singh Saini, S/o. Shri Jagdish Singh Saini, Aged About 39 Years, R/o. HIG 10, MPH B Colony, Near Post Office, Tatibandh, Raipur, District - Raipur Chhattisgarh.

---- **Petitioner**

Versus

Kotak Mahindra Bank Ltd., A Registered Company Under The Companies Act, 1956, Having Its Registered Office Near Police Headquarter, G.E. Road, District Raipur, Chhattisgarh, Through Its Authorised Representative, Shri Vijay Shukla, Assistant Manager

---- Respondent

CRMP No. 640 of 2020

Jagdish Singh Saini, S/o. Shri Trilok Singh Saini, Aged About 65 Years, R/o. HIG 10, MPH B Colony, Near Post Office, Tatibandh, Raipur, District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Dwarikadas Rathi (Now Dead) Through His Legal Heirs Gopal Das Rathi. As Per Hon'ble Court Order Dated 05-01-2022 And 09-02-2022
2. Gopaldas Rathi, S/o. Late Shri Dwarikadas Rathi, R/o. Thelghani Naka, Raipur Chhattisgarh.

---- Respondents

CRMP No. 1643 of 2019

Charanjeet Singh Saini, S/o. Shri Jagdish Singh Saini, Aged About 39 Years, R/o. HIG 10, MPH B Colony, Near Post Office, Tatibandh, Raipur, District Raipur Chhattisgarh. (Revisioner)

---- Petitioner

Versus

M/s Jai Ambe Metal Works, Through Director Shri Yashwardhan Agrawal, Son Of Shri Nirmal Kumar Agrawal, R/o. Plot No. 749/8, Behind Banjari Temple, Rawabhata Industries Area, Raipur, District Raipur Chhattisgarh.

---- Respondent

CRMP No. 1644 of 2019

Charanjeet Singh Saini, S/o. Shri Jagdish Singh Saini, Aged About 39 Years, R/o. HIG 10, MPH B Colony, Near Post- Office, Tatibandh, Raipur, District- Raipur, Chhattisgarh.

---- Petitioner

Versus

Sanjay Goyal, S/o. Shri Rajkumar Goyal, R/o. In Front Of Aakashwani Tower, Near RTO Office, Rawanbhata, Bilaspur Road, Raipur, District- Raipur, Chhattisgarh.

Presently Residing At Loha Bazaar Mandi, Govindgarh, Punjab.

Through His Power Of Attorney Holder- Mahesh Tiwari, S/o. Shri M.S. Tiwari, R/o. In Front Of Aakashwani Tower, Near RTO Office, Rawanbhata, Bilaspur Road, Raipur, District- Raipur, Chhattisgarh.

---- Respondent

For Petitioners	:	Mr. K.Rohan, Mr. Manoj Paranjpe & Mr. Rishabh Gupta, Advocates for the Petitioner(s).
For Respondents in CRMP No. 1645 & 1643 of 2019	:	Mr. D.K.Gwalre, Advocate
For Respondents in CRMP Nos. 640 of 2020, 120/2021 & 118 of 2021	:	Mr. Mayank Kumar, Advocate
For Respondents in CRMP No. 1644 of 2019.	:	Mr. Sudeep Johri, Advocates
For Respondents in CRMP Nos. 605 & 625 of 2020.	:	Mr. Malay Shrivastava, Advocates

Hon'ble Shri Justice Goutam Bhaduri

CAV ORDER

1. All these petitions are being heard and decided together, as the common questions of law is raised.
2. Different complaints were filed by the respondents under Section 138 of Negotiable Instrument Act as the cheques issued by the petitioners on behalf of M/s. Saini Industries Limited were dishonoured for want of fund in the account. Thereafter, the statutory notice having been served, the repayment of the amount was not made, consequently different complaints under Section 138 of Negotiable Instruments Act were filed.
3. The facts show that initially after filing of the complaint, objections were raised by the petitioners by filing interlocutory applications about maintainability of the petition. The same having been dismissed, revision was preferred and the Sessions Judge dismissed the revision by holding that the Directors cannot be absolved of their criminal liability, despite the fact the company has not been arrayed as an accused. Having aggrieved by the said order, the present petitions.

4. The legal question which arises for consideration that whether the complaint under Section 138 of Negotiable Instruments Act without arraigning the company as an accused would be maintainable ?
5. Mr. K. Rohan, learned counsel for the petitioners contended in the memo of complaint the petitioners were described as either Directors of Saini Industries Limited or on behalf of the Saini Industries. Therefore, the company having not been made an accused, the complaint only against the Director would not lie. Learned counsel for the petitioners would submit that the respondents herein are very well in know of the fact that the cheques were issued by petitioners as directors of company, which is evident from copy of the cheques itself. He would submit that the cheques were issued by the petitioners in the capacity of the Director of the Company M/s. Saini Industries. Admittedly, Saini Industries being not arrayed as a party before the Trial Court, in a result, in view of the law laid down in case of ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd. (2012) 5 SCC 661***, the prosecution of the like nature would not lie. He placed his reliance in ***(2020) 10 SCC 751, (2019) 3 SCC 797, (2018) (13) SCC 663, (2012) 5 SCC 661 and lastly (2009) 6 SCC 729*** and would submit that no specific averments have been made that what role the petitioners have played on behalf of the company as an authorised signatory. Therefore, if the company is not made a party as accused, the prosecution itself would not be maintainable.
6. Per contra, learned counsel for the respondents would submit that there is no dispute about the legal proposition, however, the petitioners were the Directors of the company or not, it is a matter of evidence and no inference can be drawn on this date. The reference was made to the Criminal Appeal Nos.403-405 of 2019 and (2020) 3 SCC 794 and would submit that when there is a disputed question arises for adjudication, the petition under Section 482 would not be maintainable.

7. Heard learned counsel appearing for the parties and perused the documents filed alongwith the petitions.
8. The copy of the complaint filed by the respondents shows the description of the parties in CRMP Nos.1643/2019, 625/2020, 1644/2019 & 1645/2019, they have been shown on behalf of Saini Industries. In CRMP No.625/2020 the certified copy of the cheque bears Saini Industries Limited and signed by the Director. So the copy of the complaint would clearly demonstrate the fact that different cheques were issued on behalf of Saini Industries Limited. Admittedly, the company has not been arrayed as an accused.
9. Dealing with similar issue wherein only directors of company is made the accused, leaving the company, the complaint under Section 138 of Negotiable Instruments Act would not lie. In recent judgment in case of ***Hindustan Unilever Ltd. v. State of Madhya Pradesh (2020) 10 SCC 751***, at para 23 the Court held the person who is in charge of and responsible to the company for the conduct of business would be guilty of the offence. Para 23 is reproduced hereinbelow :

“23. Clause (a) of sub-section (1) of Section 17 of the Act makes the person nominated to be in charge of and responsible to the company for the conduct of business and the company shall be guilty of the offences under clause (b) of sub-section (1) of Section 17 of the Act. Therefore, there is no material distinction between Section 141 of the NI Act and Section 17 of the Act which makes the company as well as the nominated person to be held guilty of the offences and/or liable to be proceeded and punished accordingly. Clauses (a) and (b) are not in the alternative but conjoint. Therefore, in the absence of the company, the nominated person cannot be convicted or vice versa. Since the Company was not convicted by the trial court, we find that the finding of the High Court to revisit the judgment will be unfair to the appellant-nominated person who has been facing trial for more than

last 30 years. Therefore, the order of remand to the trial court to fill up the lacuna is not a fair option exercised by the High Court as the failure of the trial court to convict the Company renders the entire conviction of the nominated person as unsustainable.”

10. Likewise in case of ***Himanshu v. B.Shivamurthy & Another (2019) 3 SCC 797***, the Supreme Court held that commission of offence by the company is an express condition precedent to attract the vicarious liability of others and the word “as well as the company” makes it clear when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof that the company is a juristic person. At para 7, 8, 9,10, 12 & 13 held as under :

“7. The first submission on behalf of the appellant is no longer res integra. A decision of a three-Judge Bench of this Court in *Aneeta Hada v. Godfather Travels and Tours Private Limited (2012) 5 SCC 661* governs the area of dispute. The issue which fell for consideration was whether an authorized signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 without the company being arraigned as an accused. The three Judge Bench held thus: (SCC p.688 para 58)-

“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would

create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.”

In similar terms, the Court further held: (SCC p.688, para 59)

“59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself.

8. The judgment of the three-Judge Bench has since been followed by a two-Judge Bench of this Court in *Charanjit Pal Jindal vs. L.N. Metalics* (2015) 15 SCC 768. There is merit in the second submission which has been urged on behalf of the appellant as well. The proviso to Section 138 contains the pre-conditions which must be fulfilled before an offence under the provision is made out. These conditions are: (i) presentation of the cheque to the bank within six months from the date on which it is drawn or within the period of its validity, whichever is earlier; (ii) a demand being made in writing by the payee or holder in due course by the issuance of a notice in writing to the drawer of the cheque within thirty days of the receipt of information from the bank of the return of the cheques; and (iii) the failure of the drawer to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.

9. In *MSR Leathers vs. S. Palaniappan* (2013) 1 SCC 177, this Court held thus : (SCC p.188 para 12)-

“12. The proviso to Section 138, however, is all important and stipulates three distinct conditions precedent, which must be satisfied before the dishonour of a cheque can constitute an offence and become punishable. The *first condition* is that the cheque ought to have 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. The *second condition* is that the payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The *third condition* is that the drawer of such a cheque should have failed to make 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. *It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the person issuing the cheque.*”

10. The importance of fulfilling these conditions has been adverted to in a recent judgment of a two-Judge Bench of this Court in *N. Harihara Krishnan vs. J. Thomas (2018) 13 SCC 663*. Adverting to the ingredients of Section 138, the Court observed as follows:

“26.Obviously such complaints must contain the factual allegations constituting each of the ingredients of the offence under Section 138. Those ingredients are: (1) that a person drew a cheque on an account maintained by him with the banker; (2) that such a cheque when presented to the bank is returned by the bank unpaid; (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier; (4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and (5) such a notice of payment is made within a period of 30 days from the date of the receipt of the information by the

payee from the bank regarding the return of the cheque as unpaid.”

12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, every person, who at the time when the offence was committed was in charge of or 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.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.”

11. In case of ***Aneeta Hada v. Godfather Travels & Tours Private Limited (2012) 5 SCC 661***, the Supreme Court held that in order to maintain a prosecution against the Director, the company would be a necessary party. At para 3, 7, 58 & 59, the Court held as under :

“3. The core issue that has emerged in these two appeals is whether the company could have been made liable for prosecution without being impleaded as an accused and whether the directors could have been prosecuted for offences punishable under the aforesaid provisions without the company being arrayed as an accused.

7. While assailing the said order before the two-Judge Bench, the substratum of argument was that as the Company was not arrayed as an accused, the legal fiction created by the legislature in [Section 141](#) of the Act would not get attracted. It was canvassed that once a legal fiction is created by the statutory provision against the Company as well as the person responsible for the acts of the Company, the conditions

precedent engrafted under such deeming provisions are to be totally satisfied and one such condition is impleadment of the principal offender.

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under [Section 141](#) of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in *State of Madras v. C.V. Parekh* [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal v. State of M.P.* [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada v. Indian Acrylic Ltd.* [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in paragraph 51. The decision in *U.P. Pollution Control Board v. Modi Distillery* [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

12. The Supreme Court further in case of ***Ramraj Singh v. State of M.P.*** (2009) 6 SCC 729 held that to launch a prosecution against the alleged

Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. It held that there should be clear and unambiguous allegation as to how that the Directors are incharge and responsible for the conduct of the business of the company.

13. Now referring back to the allegations and averments made in the complaint under Section 138 of Negotiable Instrument Act, though the petitioners have been described somewhere in the petition as Director in some petition for and on behalf of Saini Industries Limited would make it clear that the respondents were in know of the fact that with whom they are dealing. The copy of the cheques which are produced in few of the cases would also show that the cheques were issued on behalf of the company not in the individual capacity of the petitioners. Consequently, in the complaint when the company has not been arrayed as accused, the prosecution simplicitor against the Director without making specific averments about the role played by them would not be maintainable.
14. The petitions have been filed at the stage of framing of charges. Whether it would be maintainable ? In order to arrive at an answer to the query, the complaint and the orders summoning the accused is examined. Admittedly, the company was not made an accused in the cases except the Directors, therefore, applying the law laid down by the Supreme Court as cited *supra*, it appears that while summoning the accused, the Magistrate has failed to see the principles of law and in turn when the objection was made, the learned Sessions Judge also failed to take into account the principles laid down by the Supreme Court. Therefore, applying the principles as has been decided in case of ***Pepsi Foods Limited & Anr. v. Special Judicial Magistrate (1998) 5 SCC 749***, which mandates that the Magistrate has to carefully scrutinize the evidence brought on record and cannot be a silent spectator at the time of recording of preliminary evidence, the petition under

Section 482 would be maintainable for the reason that both the Courts below have failed to take into account.

15. In the result, the present petitions are allowed. The impugned orders passed in the following criminal revisions as also the criminal proceedings, initiated against the respective petitioners, pending in the Court of J.M.F.C. Raipur, are hereby quashed.

CRMP No.	Impugned Order in Revision	Criminal Case / Complaint No.
1645 / 2019	Date - 17.06.2019 Cr. Rev. No.172 / 2019	506 / 2012
640 / 2020	-	174 / 2013
1643 / 2019	Date – 17.06.2019 Cr. Rev No.173 / 2019	507 / 2012
605 / 2020	-	1218 / 2012
120 / 2021	-	10723 / 2014
118 / 2021	-	10722 / 2014
1644 / 2019	Date – 01.06.2019 Cr. Rev. No.204 / 2019	222 / 2017
625 / 2020	-	9142 / 2012

16. There shall be no order as to cost(s).

Sd/-
Goutam Bhaduri
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1645 of 2019

Charanjeet Singh Saini **-Versus-** M/s Ispat India

along-with

**CRMP/640/2020, CRMP/1643/2019, CRMP/605/2020, CRMP/120/2021,
CRMP/118/2021, CRMP/1644/2019, CRMP/625/2020,**

Head Note

A director cannot be prosecuted under Section 138 of the Negotiable Instruments Act without the company being arraigned as an accused.

कंपनी को आरोपी के रूप में अभियोजित किये बिना उसके निदेशक पर परक्राम्य लिखत अधिनियम की धारा 138 के तहत मुकदमा नहीं चलाया जा सकता है।