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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.886 OF 2022

Lyka Labs Limited & Anr. … Applicants
V/s.
The State of Maharashtra & Anr. … Respondents

WITH
WRIT PETITION NO.201 OF 2022

Md. Shoaib & Anr. … Petitioners
V/s.
The State of Maharashtra & Anr. … Respondents

WITH
WRIT PETITION NO.1250 OF 2022

Devendra Dang … Petitioner
V/s.
The State of Maharashtra & Anr. … Respondents

WITH
CRIMINAL APPLICATION NO.240 OF 2021

Venugopal N. Dhoot … Applicant
V/s.
The State of Maharashtra & Anr. … Respondents

WITH
WRIT PETITION NO.4128 OF 2021

Shadab Khan … Petitioner
V/s.
The State of Maharashtra & Anr. … Respondents

WITH

WRIT PETITION NO.2075 OF 2022

Rajiv Kantilal Gogri & Anr. … Petitioners
V/s.
Siddharth Mehta & Anr. … Respondents

WITH
WRIT PETITION NO.3443 OF 2022

K. Raghavendra Rao … Petitioner
V/s.
The State of Maharashtra & Anr. … Respondents

WITH
CRIMINAL APPLICATION NO.967 OF 2022

Prithviraj Sayajirao Deshmukh & Ors. … Applicants
V/s.
Shri Gurudatta Sugars Marketing
Pvt. Ltd. & Anr. … Respondents

WITH
CRIMINAL APPLICATION NO.1205 OF 2022

Lyka Labs Limited & Ors. … Applicants
V/s.
The State of Maharashtra & Anr. … Respondents

WITH
CRIMINAL APPLICATION NO.1208 OF 2022

Lyka Labs Limited … Applicant
V/s.
The State of Maharashtra & Anr. … Respondents

WITH
CRIMINAL APPLICATION NO.1207 OF 2022

Lyka Labs Limited … Applicant
V/s.
The State of Maharashtra & Anr. … Respondents

WITH
WRIT PETITION NO.2644 OF 2022

Kaluvoy Sreenivasulu Reddy … Petitioner
V/s.
The State of Maharashtra & Anr. … Respondents

WITH
WRIT PETITION NO.4455 OF 2022

Tridhaatu Asset Holdings LLP & Ors. … Petitioners
V/s.
Ramkrishnan Subramanian & Anr. … Respondents

WITH
WRIT PETITION NO.4576 OF 2022

Nikhil P. Thampi & Anr. … Petitioners
V/s.
The State of Maharashtra & Anr. … Respondents

Mr. Aabad Ponda, Senior Advocate with Mr. Bhomesh Bellam, Mr. Karma Vivan i/by Mr. Jugal Kanani for the applicant in APL/1205/2022, 1207/2022, 1208/2022 & 886/2022.

Mr. Jatin P. Shah with Ms. Snehankita M. Munj & Ms. Shraddha Kamble for respondent no.2 in APL/1205/2022, 1207/2022 & APL/886/2022.

Mr. Atal Bihari Dubey with Mr. Arvind Tiwari for the petitioner in WP/1250/2022.

Mr. Kunal Dalal for respondent no.1 in WP/2075/2022.

Mr. Niranjan Mundargi with Ms. Keral Mehta, Ms. Anisha Nair, and Mr. Khalid Kazi i/by Vis Legis Law Practice for the petitioner in WP/2644/2022.

Mr. Rajesh Kanojia with Ms. Nikita Singh i/by Res Juris for respondent no.2 in WP/2644/2022.

Mr. Sukrut Mhatre i/by Jyotirmai Deshmukh for the petitioner in WP/201/2022 & WP/4128/2022.

Mr. Maniram R. Gaud for the petitioner in WP/2075/2022.

Ms. Priya Rita i/by Disha Karambar & Associates for respondent no.2 in WP/201/2022 & WP/1250/2022.

Mr. Niranjan Mundargi with Mr. veerdhawal Deshmukh i/by Mr. Naved Askari for the petitioner in WP/3443/2022.

Ms. Y.N. Katpitia with Ms. R.B. Mrolia i/by Kry Legal for respondent no.2 in WP/3443/2022.

Mr. Ansh Karnawat with Mr. Paras Yadav and Mr. Vivek Babar i/by Ruturaj Bankar for the applicants in APL/967/2022.

Mr. Sharan Jagtiani, Senior Advocate with Mr. Gautam Ankhad, Mr. Vishal Narichania, Mr. Tushar Gujjar, Mr. Deepak Singh, and Briti Machdani i/by SL Partners for respondent no.2 in WP/4128/2022.

Ms. Jaldhara Shah with M. Shrinidhi i/by Bharucha & Partners for respondent no.1 in APL/967/2022.

Mr. Aabad Ponda, Senior Advocate with Mr. Pulkitesh Dutt Tiwari and Bency Ramkrishnan i/by Akash Menon for applicant in APL/240/2021.

Mr. Sandeep Kumar Singh i/by SKS Juris for respondent no.2 in APL/240/2021.

Ms. Mahalaxmi Ganpathy with Ms. Sayee Sawant and Ms. Savani Vaze for the petitioner in WP/4576/2022.

Mr. Rishi Bhuta with Mr. Suraj Iyer, Mani Thevar, Ms. Kavita Sharma, Ms. Ankita Bamboli, Mr. Prateek Dutta, Ms. Saakshi Jha, Mr. Aashish Dubey, Mr. Ujjwal Gandhi, Mr. Anurag Ghag and Mr. K.R. Shah i/by Ganesh Co. for the petitioner in WP/4455/2022.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

RESERVED ON : DECEMBER 16, 2022

PRONOUNCED ON : MARCH 8, 2023

JUDGMENT:

1. This is a batch of matters before me wherein the same common question of law arises for decision. Accordingly, I propose (also as has been agreed to by all the learned counsel appearing for the parties) to decide only the principle question of law posed for decision and leave the individual cases to be decided accordingly. Hence, I am relieved of the need of noticing facts of individual cases.

(i) 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 (hereafter “NI Act”, for short) living aside the company."

(ii) Whether a deposit of a minimum sum of 20% of the fine or compensation is necessary under Section 148 of NI Act in an appeal filed by persons other than "drawer" against the conviction and sentence under section 138 of the NI Act.

2. Mr. Ponda learned senior advocate on behalf of the accused made the following submissions:

(i) As per section 143A, only a ‘drawer’ of the cheque is required to pay interim compensation and no one else. To attract liability under section 138 of the NI Act, the cheque must be drawn from the account of the drawer. Under the scheme of chapter XVII of the Act, the word ‘drawer’ can never be construed to mean signatory of a cheque from whose account the cheque is not drawn.

(ii) Section 143A of the act uses the word 'drawer'. In the case of an individual's cheque, the drawer is the signatory from whose account the cheque is drawn. Similar would be a case of a company being a legal person, it is a living being who can sign the cheque, but the cheque is issued from the account of the company, and, therefore, the signatory of the cheque does not become a drawer.

(iii) Under sections 30 and 31 of the act, it is the drawer of a cheque who is bound to compensate the holder in case of dishonour. The responsibility and liability for honouring the cheque is that of the drawer only. Such liability arises at the first instance to ensure that the cheque is honoured on presentation. Such responsibility and obligation to honour the cheque can only be traced to the drawer company and not to an individual authorised signatory, whether he is a director or not. If the cheque bounces, the drawer is liable to pay the payee, provided a demand notice is given to him. The requirement to have sufficient funds in the account from which the cheque is issued is only with the drawer company

and not the authorised signatory.

(iv) As an illustration, in the case of a large public limited company authorising a salaried employee as a signatory, can such employee be made liable for payment of interim compensation under section 143A for a cheque of thousands of crores. Such a signatory employee has no personal liability concerning the money transaction with the company, which is a legal person.

(v) The power to direct interim compensation under section 143A of the NI Act is of draconian nature and tantamounts to adjudication and compensation amount before adjudication of guilt in a criminal trial. Therefore, such provisions are required to be strictly construed.

(vi) Relying on the judgment of the Apex Court in the case of **P.J. Agro Tech Ltd v. Water Base Ltd.,** reported in (2010) 12 SCC 146, he submitted that a criminal or a quasi-criminal provision has to be strictly construed. Therefore, it would be unjust and unfair to foist the liability to pay interim compensation to a person not covered under the provision.

(vii) Relying on section 143A(5), he submitted that the interim compensation directed under section 143A needs to be recovered as if it is a fine under section 421 of the Code of Criminal Procedure, 1973. Such amount of fine under section 421, can be recovered either by a warrant of

attachment or sale of immovable property or by warrant to the Collector authorising him to realise the amount as arrears of land revenue. Moreover, section 183 of Maharashtra Land Revenue Code, 1966 confers the power of the Collector to arrest and detain a person in custody for ten (10) days in the office of the Collector or Tehsildar.

(viii) He submitted that there is no concept of joint or several liability under section 143A, and in the case of the direction of interim compensation, it needs to be made only against the drawer.

(ix) As per the scheme of provisions of section 138 of the Act, the role of the drawer of the cheque assumes great significance. Based on the requirement under section 30 of the Act, section 138 (b) mandates service of the legal notice on the drawer of a cheque who must ensure the such cheque is honoured as per the scheme of Sections 30 and 31 of the Act. The offence under Section 138 is completed only on failure to comply with demand notice within the stipulated period. Therefore, unless notice is given to the drawer and he fails to comply with the requisition of payment under the said notice, no offence can be said to be committed by the drawer. Therefore, the drawer of the cheque is the principal offender who alone is liable for an offence.

(x) Section 141 of the Act is incorporated in the statute to widen the dragnet of the offence under section 138, which

has been committed by the drawer alone, to include other persons who are made vicariously liable, particularly when the principal offender is a company. The word 'drawer' is used in singular and plural; therefore, it is restricted to the principal offender only and not persons who fall within the dragnet of being vicariously liable either under section 141(1) or 141(2) of the act. There is no provision analogous to section 141 of the Act found in section 143A to rope in individuals.

(xi) In the case of the company, the notice under proviso-(b) of section 138 of the NI Act has to be issued to the drawer of the cheque, i.e. company and not to the authorised signatory of a cheque as it is the company who is liable to make payment under the cheque. Section 138 of the NI Act requires a cheque to be issued on an account maintained by the drawer in his personal capacity.

(xii) Learned senior advocate, after taking me through the judgment in the case of **Aneeta Hada** (supra), submitted that section 141 refers to section 138 of the NI Act. It makes other persons vicariously liable for compensation for an offence on the company's part. The words "as well as the company" appearing in section 141 makes it clear that when the company is prosecuted, then only persons mentioned in the other category could be vicariously liable for the offence. Therefore, it was held that for maintaining prosecution under section 141 of the Act, the arraignment of a company

as an accused is imperative. If the word drawer is interpreted to mean authorised signatory, it will turn the decision in **Aneeta Hada** (supra) on its head.

(xiii) Learned senior advocate endeavoured to rely on the judgment in the case of **N. Hariharu Krishnan V. J. Thomas**, reported in (2018) 13 SCC 663 to urge that every person signing the cheque drawn on behalf of the company on whose account of the cheque is drawn does not become the drawer of the cheque. Such a signatory is only a person duly authorised to sign the cheque on behalf of the company. Drawing distinction in the observations made in paragraph 20 of **Aneeta Hada** (supra) and para 22 of **N. Hariharu Krishnan** (supra), it is submitted that the observations made in paragraph 22 constitute ratio and, therefore, bind this court. The question whether the signatory of a cheque authorised by a company is the drawer is no longer *res integra* and has been succinctly answered by the Apex Court in the case of **N. Hariharu Krishnan V. J. Thomas**, reported in (2018) 13 SCC 663. The Apex Court, in the said judgment, has considered the judgment in the case of **Aneeta Hada** (supra), and, therefore, it is the latter judgment which would prevail.

(xiv) He relied on the judgment of the Kerala High Court in the case of **S. Velayudhan Pillai Vs. Chellath Franklin and Another** reported in 2021 SCC OnLine Ker 2577, which has held that by merely signing a cheque on behalf of

a company or a firm, the person signing does not become the drawer.

(xv) He relied on the judgment in the case of **Jitendra Vora V. Bhavana Y. Shah**, (2015) 16 SCC 744 to urge that if the drawer of a cheque happens to a juristic person like a body corporate, it can be prosecuted for the offence under section 138 of the act. Accordingly, it is held that when the drawer of the cheque who falls within the ambit of section 138 of the Act is a human being or a body corporate or even firm, prosecution proceedings can be initiated against such drawer.

(xvi) Drawing sustenance from the judgment of the Apex Court in the case of **S.M.S. Pharmaceuticals Ltd. V. Neeta Bhalla**, reported in (2005) 8 SCC 89, it is submitted that the liability of the signatory of the cheque or the managing directors or joint managing director would only be under section 141(2) of the NI Act which is in relation to section 138 of the NI Act, provided he has done overt the act on behalf of the company.

(xvii) Relying on the judgment of the Apex in the case of **Aparna A. Shah v. Sheth Developers (P) Ltd**., (2013) 8 SCC 71, he submitted that the criminal liability on account of dishonour of cheque primarily falls on the drawer. If the drawer is a company, then dragnet is extended to its officers under section 141 of the NI Act.

(xviii) In support of his submission, he relied on the judgments in **Dashrath Rupsingh Rathod v. State of Maharashtra** reported in (2014) 9 SCC 129, **Major General A.S. Gauraya v. S.N. Thakur** reported in (1986) 2 SCC 709, **Nandkishor Prallhad Vyvhare v. Mangala W/o Pratap Bansar** reported in (2018) 3 MhLJ 913, **Pawan Kumar Goel V. State of U.P. & Anr.** reported in (2022) SCC OnLine SC 1598, **S.P. Mani and Mohan Dairy v. Snehlatha Elangovan** reported in (2022) SCC OnLine SC 1238, **Sunita Palita v. Panchami Stone Quarry** reported in 2022 SC OnLine SCC 945, **K.K. Ahuja v. V.K. Vora** reported in (2009) 10 SCC 48, **National Small-Scale Industries Corporation v. Harmeet Singh** (2010) 3 SCC 330, **Pooja Ravinder Devidsani v. State of Maharashtra and another** reported in (2014) 16 SCC 1, **Surinder Singh Deswal and Ors. v. Virendra Gandhi** reported in (2019) 11 SCC 341, **CESC Ltd and Others Vs. Subhash Chandra Bose and Others** reported in (1992) 1 SCC 441, **Yudhistir v. Ashok Kumar** reported in (1987) 1 SCC 204, **Bijaya Kumar Agarwala v. State of Orissa** reported in (1996) 5 SCC 1, **Regina v. Cuthbertson and Ors.** reported in (1980) 3 wlr 89, **Steel Authority of India Limited v. National Union Waterfront Workers and Others** reported in (2001) 7 SCC 1, **Maruti Udyog Ltd. v. Ram Lal and Others** reported in (2005) 2 SCC 638, **Maharashtra Housing and Area Development**

Authority v. P.V. Anturkar reported in (2008) SCC OnLine Bom 648, **Maharashtra v. Shri Morarao Malojirao Ghorpade** reported in 2011 (5) MhLJ 112, **State of Orissa v. Sudhansu** reported in AIR 1968 SC 647, **Sharad Kumar v. CBI** reported in 2011 (126) DRJ 525, **Assistant Collector of Central Excise v. Dunlop India Limited** reported in (1985) 1 SCC 260, **Sundeep Kumar Bafna v. State of Maharashtra and Another** reported in (2014) 16 SCC 623, **Rodger Shashoua and Others v. Mukesh Sharma and Ors**. reported in (2017) 14 SCC 1, **Dr. Shah Faesal and Ors. v. Union of India and Anr**. reported in (2020) 4 SCC 1, **Secretary to Government of Kerala, Irrigation Department and Ors. v. james Varghese and Others** reported in (2022) 9 SCC 593, **Kartar Singh v. State of Punjab** reported in (1994) 3 SCC 569, **State v. Nalini** reported in (1999) 5 SCC 253, **Wyre Forest District Council v. Secretary of State for the Environment and Another** reported in (1990) 1 All ER 780, **State Bank of India v. Yogendra Kumar Srivastava and Others** reported in AIR (1987) SC 1399, **Union of India v. Kanti Lal Chunilal and Others** reported in AIR (1987) SC 1410, **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Another** reported in (2005) SCC 89, **Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad and Another v. P.S. Rao** reported in (2000) 2 SCC 451, **Nedungadi Bank Ltd. v. K.P.**

Madhavankutty and Others reported in (2000) 2 SCC 455, **Chowgule and Co. Pvt. Ltd. v. union of India and Others** reported in (1987) 1 SCC 730 and **The Vanguard Fire and General Insurance Co. Ltd. Madras v. M/s. Fraser and Ross and Another** reported in AIR (1960) SCC 971.

3. Mr. Sharan Jagtiani, learned senior advocate appearing on behalf of the complainant, made the following submissions:

(i) The authorised signatory of a company becomes the drawer for the purpose of sections 138 and 143A of the NI Act as he has been authorised to do so in respect of the account maintained by the company.

(ii) The Apex Court, in the case of **Aneeta Hada Vs. Godfather Travels & Tours Private Limited** reported in 2012 5 SCC 661 has held that the authorised signatory of a company becomes drawer as contemplated by section 7 of the NI Act. The law laid down in the case of **Aneeta Hada (supra)** is still a good law and has been repeatedly considered and followed in subsequent judgments by the Apex Court. When the Supreme Court has rendered a particular decision, it must be followed by the High Court and the subordinate Courts unless it is distinguished, overruled, or set aside. The observations of the Apex Court, which may not be strictly called the *ratio decidendi* of the judgment, are still binding on the High Court as *obiter*

dictum in the absence of direct pronouncement on such question elsewhere by the Supreme Court. The judicial propriety, dignity and decorum demand that the Apex Court being the highest court in the country, even the *obiter dictum* of the Supreme Court, should be followed as binding. It is impermissible for the High Court to ignore the decision of the Supreme Court on the ground that the Supreme court laid down the legal position without considering another point. The decision of the Apex Court cannot be ignored on the ground that certain aspects of the law were not considered or relevant provisions of the law were not brought to the notice of the court. He submitted that when High Court finds any conflict of views expressed between larger and smaller bench of the Supreme Court, the High Court cannot disregard the views of larger bench. High Court must follow the opinion of larger bench of the Supreme Court in preference to those smaller bench.

(iii) While interpreting section 138 of the NI Act, Apex Court held that any interpretation that withdraws the provision's life and blood and makes it ineffective and dead letter should be avoided. The legislative purpose is to ensure that the cheque is not dishonoured and credibility of the transaction of business of a bank is maintained. Therefore, the text and context of section 143A must be considered keeping in mind the mischief it intends to obliterate and the fundamental intention of the legislature with respect to social welfare.

(iv) An authorised signatory of a cheque on behalf of the company is covered under section 141(2) of the act. Compensation, as contemplated under section 143A, is in the nature of interim relief, which is in aid of final relief as contemplated under section 141 of the NI Act.

(v) The definition of the drawer has been explained as the 'act of making and preparing a cheque' and, therefore, used in the expression maker. This is the underlying rationale for the authorised signatory of cheques issued by the companies.

(vi) Sections 138 and 143A of the NI Act are prospective in operation and can be invoked in cases where an offence under section 138 of the NI Act was committed after the introduction of 143A and 148 of the NI Act to adopt purposive interpretation. Whenever a statute incorporates a legal fiction, that must be carried to its logical conclusion, and the court has to ensure all the facts and circumstances that are incidentally or inevitably corollary to be given effect to the fiction.

(vii) Moratorium provisions contained in section 14 of the insolvency and bankruptcy code would apply only to the corporate debtor, and natural persons mentioned in section 141 of the NI Act would continue to be statutorily liable.

(viii) Mr. Jagtiani, in support of his submissions, relied on the judgments in **Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd.** reported in (2012) 5 SCC 661, **N.**

Harihara vs J Thomas reported in (2008) 13 SCC 663, **Pawan Kumar Goel v. State of U.P. and Anr**. reported in (2002) SCC Online SC 1598, **P. Saravana Kumar v. S.P. Vijaya Kumar** reported in (2022) SCC Online Mad 1387, **S.P. Mani & Mohan Dairy vs. Dr. Snehalatha Elangovan** reported in (2022) SCC Online SC 1238, **South Central Railway Employees Cooperative Credit Society Employees Union v. B. Yashodabai** reported in (2015) 2 SCC 727, **Peerless General Finance and Investment Company Limited v. Commissioner of Income Tax** reported in (2020) 18 SCC 625, **Oriental Insurance Co. Ltd v. Meena Variyal** reported in (2007) 5 SCC 428, **Municipal Committee, Amritsar v. Hazara Singh** reported in (1975) 1 SCC 794, **Suganthi Suresh Kumar v. Jagdeeshan** reported in (2002) 2 SCC 420, **Director of Settlements, AP v. MR Apparao**, reported in (2002) 4 SCC 638, **Pradip Chandra Parija and Ors. v. Pramod Chandra Patnaik and Ors.** reported in (2002) 1 SCC 1, **Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr**. reported in (2005) 2 SCC 673, **Chandra Prakash and Ors v. State of U.P. and Anr**. reported in (2002) 4 SCC 234, **Kamleshkumar Ishwardas Patel vs. Union of India** reported in 1994 MHLJ 1669, **Union of India v. Subramanian** reported in (1976) 3 SCC 677, **The State of U.P. v. Ram Chandra Trivedi** reported in (1976) 4 SCC 52, **G.J. Raja vs. Tejraj Surana** reported in (2019)

19 SCC 469, **Surinder Singh Deswal and Ors. v. Virender Gandhi** reported in (2019) 11 SCC 341, **Surinder Singh Deswal and Ors. v. Virender Gandhi** reported in (2020) 2 SCC 514, **Industrial Supplies Pvt. Ltd. and Anr v. Union of India and Ors.** reported in (1980) 4 SCC 341, **P. Mohanraj and Others v. Shah Brothers Ispat Pvt. Ltd.** reported in (2021) 6 SCC 258, **Goaplast (P) Ltd. v. Chico Ursula D'Souza.** reported in (2003) 3 SCC 232, **Eerra Through Dr. Manjula Krippendorf v. State (NCT of Delhi)** reported in (2017) 15 SCC 133, **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla** reported in (2005) 8 SCC 89, **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla** reported in (2007) 4 SCC 70, **K.K. Ahuja v. V.K. Vora** reported in (2009) 10 SCC 48, **Sunita Palita and Ors. v. Panchami Stone Quarry** reported in (2022) 10 SCC 152 and **Cotton Corporation of India Ltd. vs. United Industrial Bank Ltd. & Ors.** reported in (1983) 4 SCC 625.

4. In rejoinder, Mr. Ponda, learned senior advocate, submitted that the Supreme Court's observations in paragraph 20 in the case of **Aneeta Hada** (supra) are not *ratio decidendi*, but there are mere casual observations. They are not even *orbiter dictum*. He submitted that observation in paragraph 20 is a mere stay obesrvation which could not be read in isolation but has to be read along with paragraphs Nos.19, 39, 40 and 48 of the said judgment. No question or argument was raised regarding whether the authorised signatory was drawer or not. According to him, the

facts of the case in **N. Harihara Krishnan** (supra) are similar to the facts of the present case. Relying on the observations made in paragraphs Nos.10, 11.1, 11.3, 19 and 20, he submitted that the Apex Court laid down a precise ratio a person does not become a drawer merely because he signs the cheque. The word "every" in paragraph 22 of the said judgment includes any person who signs the cheque, and none of these persons become the drawer. He submitted that if the submission of the respondent is accepted to hold that the authorised signatory becomes drawer, it will run counter to the judgments of the Apex Court in the case of (i)**Aneeta Hada** (supra) (ii) **N. Hariharu Krishnan** (supra) (iii)**S.M.S. Pharmaceuticals Ltd.** (supra).

5. Neither section 141(1) nor 141(2) confers power on the Magistrate to pass an order of interim compensation against the person covered by Section 143A. Section 148 uses the expression 'appellant', which is different from the signatory of a cheque. A conjoint reading of sections 30 and 31 of the NI Act militates against the proposition that the authorised signatory is a drawer in the case of a company. Proceedings under section 143A are criminal in nature as the amount of compensation is recovered by following procedure under section 421 of the Code of Criminal Procedure. Apart from the said fact, the proceedings under section 143 are triable by the Magistrate in the Criminal Court and are governed by the Code of Criminal Procedure. He submitted that if the respondent's interpretation is accepted, it will delay the disposal of cases, thereby frustrating the amended provision. The object of dealing with unscrupulous drawers with a heavy hand

would get diluted entirely. Expansive interpretation of section 143A would result in writing down something in the statute which is not the function of the Courts but of the legislature.

6. In rejoinder, Mr. Sharan Jagtiani learned senior advocate submitted that the consequences of not including an authorised signatory in the expression 'drawer' would defeat the main intendment and purpose of insulting said provision. He submitted that sections 143A and 148 of the NI Act were introduced for the benefit of payees of dishonoured cheques. The legislature deemed it appropriate that while proceedings under section 138 of the NI Act were pending, the payee shall have the right to claim part dishonoured cheque's sum through interim compensation under section 143A. While the proceedings are in appeal, section 148 requires the appellant to deposit of part amount under section 148 of the NI Act during the pendency of the appeal. . Apprehension expressed by the petitioners of roping in salaried employees as authorised signatories has been taken care of by conferring discretion on the learned Magistrate trying offence under section 138 to pass suitable orders in relation to such employees. Relying on the judgment of the Apex Court in the case of **Ms. Eera through Dr. Manjula Krippendorf Vs. State (NCT of Delhi) & Anr.** reported in (2017) 15 SCC 133, he submitted that the Supreme Court has emphasised adopting purposive interpretation even to a criminal statute to achieve social welfare objectives.

7. Mr. Niranjan Mundargi, learned advocate for the petitioner

in Writ Petition No.2644 of 2020, supplemented submissions of Mr. Ponda, learned senior advocate on the applicability of observations in the case of **Aneeta Hada** and **N. Hariharu Krishnan** (supra). He submitted that the expression drawer takes within its fold only a legal person. However, a natural person or individual, i.e., an authorised signatory, differs from a legal person. To fulfil ingredients of section 138 of the Act, the authorised signatory must personally maintain an account, and the dishonoured cheque is issued from such account. Section 141 of the act is not attracted in relation to the payment of compensation under section 143A of the NI Act.

8. Mr. Ansh Karnawat forensically made his submissions by submitting that the word drawer in section 143A has a clear and unambiguous meaning. The word 'drawer' has obtained a fixed and legal connotation over the years, which has been consistently held to include only principal offenders and not vicariously liable persons. He submitted that a purposive interpretation of the statute could be adopted only if a plain reading of the section creates an absurdity, contraction, and unworkable consequence. Amplifying the submissions, it was strenuously urged by relying on statements and objects of the Negotiable Instruments Act (Amendment Act, 2018), the objective was to make the drawer of the cheque pay interim compensation and was not the object to extend vicarious liability at the pre-trial stage. By referring to the opening remarks in the minutes of the Lok Sabha debates, he submitted that the liability was proposed to be created upon the "issuer" of the cheque.

9. Learned advocate invited my attention to the provisions of sections 14, 95 and 96 of the Insolvency and Bankruptcy Code, 2016 (IBC) to urge that at the time of bringing section 143A into force, the legislature was aware that there could be drawer companies who could be made to pay interim compensation in the light of moratorium imposed by section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) while undergoing corporate insolvency resolution process. In support of his submission, he relied on the judgment of the Apex Court in the case of **Keshavji Ravji & Co. Etc. Etc vs Commissioner Of Income Tax** reported in (1990) 2 SCC 231, **Sri Ram Saha v. State Of West Bengal & Ors** reported in (2004) 11 SCC 497 and **State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.** reported in MANU/SC/0152/1958. He submitted that the word 'drawer' has been used in the singular sense and cannot be interpreted to mean in the plural sense. He submitted that the concept of interim relief being in furtherance of final relief is a concept predominantly in civil laws where the law contemplates proceeding ex-parte, whereas, on a plain reading of section 143A, the question of having interim relief in furtherance of final relief does not arise.

10. Learned advocate for the petitioner in Writ Petition No.4455 of 2022 adopted submissions of Mr. Ponda and submitted that section 141(2) comes into place only after the offence under section 138 is proved.

11. Mr. Niranjan Mundargi, learned advocate for the petitioner

in Writ Petition No.3443 OF 2022, submitted that in relation to the applicability of section 148 of the NI Act, said section would apply to only those appeals filed by the drawer and would not apply to the appeals filed by the person other than the drawer.

12. *Per contra,* Ms. Y.N. Katpitia for respondent No.2 in Writ Petition No. 3443 OF 2022 submitted that the petitioner had been held guilty under section 138 of the NI Act read with section 141(1)(2). According to her, the term drawer used in section 148 includes all persons responsible for drawing the dishonoured cheque and includes each and every person held guilty who, at the time of the offence committed, was in charge and was responsible to the company for the conduct of its business. It also includes every person who is proved to have consented to or connived for the offence or to whom the offence is attributable. Absolving the authorised signatory of a company from the purview of section 148 of the NI Act will completely defeat the purpose of section 148. Placing reliance on the judgment of the Apex Court in the case of **Surinder Singh Deswal @ Col. S. S. vs. Virender Gandhi** reported in Criminal Appeal Nos.1936-1963 of 2019, she submitted that the Apex Court had directed the accused to deposit a minimum of 20% amount of fine and compensation awarded by the Trial Court. She submitted that if the petitioner's interpretation of section 148 is accepted, it would amply that in no case of dishonoured cheque, suspension of sentence of imprisonment can be ordered by the Appellate Court on condition of deposit and every order of suspension of a sentence need to be passed without deposit of any amount. According to her, section 148 applies to all

appellants filing an appeal against conviction under section 138 of the Act. She emphasised on word 'appellant' in sub section (1) of section 148 to urge that if the legislature intended to restrict the ambit of section 148 of the NI Act to only the drawer against the conviction, the legislature would have provided so in the section instead of using the word 'appellant'.

13. She submitted that in the facts of the case, there are only two directors: the petitioner and his wife. In the cross-examination, the petitioner admitted that he was in charge of the company's affairs and that his wife did not participate in any company activity. He also admitted his signature on the cheque; therefore, the learned Sessions Judge rightly directed the petitioner to deposit an amount of 20%. She submitted that, in the facts of the case, the petitioner accepted the liability on behalf of the company and admitted that he had issued a cheque in question which showed that the petitioner was playing an active role in day-to-day business. In conclusion, she submitted that the legislature's intention behind enacting section 148 of the NI Act is to curb dilatory tactics of unscrupulous drawers of dishonoured cheques which would be frustrating if the interpretation made by the petitioner is accepted.

14. Mr. Jatin P. Shah, learned advocate for respondent No.2 in Writ Petition No.886 of 2022, invited my attention to the provisions in chapter 17 of the NI Act. He took me through the development of law in relation to the interpretation of section 138, which initially was restricted to only two categories referred to in

section 138, namely (i) Funds insufficient and (ii) Exceed arrangement. He submitted that thereafter the Supreme Court, by adopting liberal interpretation, made provisions of section 138 applicable to all contingencies of dishonour of cheque. He submitted that if the petitioner's interpretation is accepted, it will give an advantage to unscrupulous drawers who would not sign on the cheque to avoid liability under section 143A of the NI Act. He submitted that the conjoint effect of section 143A, read with section 141, makes the authorised signatory of the cheque as regards the account maintained by the company liable for payment of interim compensation. To bolster his submissions, he relied on the following judgments: **NEPC Micon Ltd Vs Magma Leasing Ltd** reported in 1999 (1) SCC (Cri) 524, **Laxmi Dye Chem Vs State of Gujrat** reported in 2012 (13) SCC 375, **Union of India Vs Filip Tiago De Gama** reported in 1990 (1) SCC 277, **Ballarpur Industries Limited Vs Union of India** reported in 1997 AIR (Del) 1, **Dilip S. Dhanukar Vs Kotak Mahindra Ltd.** Reported in 2007 (6) SCC 528, **Surinder Deswal V/s. Virender Gandhi (1st)** reported AIR 2019 SC 2956 and **G.J. Raja Vs Tejraj Surana** reported in AIR 2019 SC 3817.

15. The rest of the advocates appearing in respective matters adopted submissions by Mr. Ponda and Mr. Jagtiani respectively.

16. I have given my anxious consideration to the rival submissions.

17. As the controversy revolves around the construction of the provisions contained in sections 7, 30, 31, 138, 143A and 148 of the NI Act, the relevant provisions deserve extraction as under :

> **"7. "Drawer" "Drawee"**.—The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee".
>
> **30. Liability of drawer.**—The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.
>
> **31. Liability of drawee of cheque.**—The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.
>
> **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, [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.

S.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.

143A. Power to direct interim compensation.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), 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 sub-section (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 years, 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.

S. 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 143-A.

(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.]"

18. As per Section 7 of the NI Act the maker of a bill of exchange or cheque is called the "*drawer*," the person thereby directed to pay is called the "*drawee*." Drawer is a person who draws an instrument in writing. He is a person who draws a bill of

exchange or cheque. Sections 138, 143A and 148 fall under chapter XVII of the Act, entitled "all penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts". In the context of the question involved, a plain reading of section 138 of the NI Act makes it evident that the said section is controlled by the expression "where in a cheque drawn by a person on an account maintained by him". To attract liability under section 138, it is one of the preconditions that a cheque must be drawn on an account maintained by the drawer. The person contemplated in the section can be an individual or legal entity. The principal liability is imposed on the drawer. On a conjoint reading of sections 30, 31 and 138, it is evident that the obligation to honour the cheque is on the drawer. Reading section 138 of the NI Act makes it clear that the duty to maintain sufficient funds on the date of presentation of the cheque is cast on the drawer. On receipt of demand notice, section 31 creates the right to receive compensation from the drawee bank if the drawer has sufficient funds in the account maintained by him and the drawee bank fails to honour the cheque. Such compensation needs to be paid only to the drawer. Unless demand notice is served on the drawer, the offence under section 138 of the said Act is not complete. It is evident that the drawer of the cheque is the principal offender who alone is liable for the offence under section 138 of the NI Act. The drawer of the cheque is deemed to have committed an offence when the cheque drawn by him is returned unpaid on the specified grounds, subject to fulfilment of conditions precedent and conditions subsequent.

19. The general rule in cases involving criminal liability is against vicarious liability. No one is to be held criminally liable for an act of another. This general rule is subject to the exception because of specific provisions in the statutes extending liability to others. Section 141 is an instance of a specific provision which, in case of an offence under Section 138 committed by a company, extends criminal liability for the dishonour of a cheque to officers of a company. Section 141 contains conditions that must be satisfied before the liability can be extended to officers of the company. Liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. An exception to sole liability of the drawer is provided in section 141 of *the Act,* which makes the persons other than the drawer liable for the offence under section 138 of the *said Act*, but only if the drawer is a company or firm or association of individuals and in such an eventuality all such persons who at the time when the offence was committed, were in charge or responsible for the conduct of the business of such company or firm or association of individuals. The criminal liability for the offence by a company under section 138 of the Act is fastened vicariously on the persons referred to in sub-section (1) of section 141 by virtue of a legal fiction. To widen the dragnet of an offence under section 138, which is committed by the drawer only, the persons other than drawer are made vicariously liable. It is well settled that all other persons, such as signatories of the cheque, managing directors, and in-charge directors, are brought into the dragnet on the touchstone of vicarious liability under

section 141 of the said act.

20. Having considered the scheme of relevant provisions of the NI Act, to answer the question framed, it is necessary to understand the essential difference between Legal Entity or Legal Person and an individual, as in the facts of cases involved, cheques are signed by individuals as authorised signatories. A legal entity has rights and responsibilities and the capacity to sue and be sued under the law. Legal persons, being the artificial creations of the law, maybe as many kinds as the law pleases. They include corporations or companies. A legal person is any subject matter other than a human being to which the law attributes personality. A juristic person is a body of persons, a corporation or company, a partnership or other legal entity recognised by law as the subject of rights and duties, also called an artificial person. An entity, such as a company, is created by law and given certain legal rights and duties of a human being. It is therefore evident that authorised signatory being individual cannot be equated with or termed as a legal entity created under a statute.

21. According to petitioners sections 143A and 148 need to be interpreted in plain language; whereas respondents submit that both provisions need to be interpreted by applying the rule of purposive construction.

22. For appreciating submissions on interpretation of statute, well-settled rule of interpretation of a statute needs to be borne in mind that when a language of a provision is plain and

unambiguous and capable of only one meaning, there is no question of the construction of a statute, as the provision speaks for itself. The natural and ordinary meaning of words should only be departed from if it is shown that the legal context in which the words are used requires a different meaning. In that case, it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the act. When the provision's plain meaning produces injustice, absurdity or contradiction of the statutory object, the language may be interpreted to avoid such disadvantage. When the legislature chooses appropriate words to express its intention, such intention must be employed so long as this does not result in absurdity. .

23. It is also a settled rule of construction that all the constituent parts of a statute are to be taken together to ascertain the legislative intent. Each word, phrase or sentence is to be considered in the light of the general purpose of the act itself. Words and phrases occurring in a statute are to be taken not in an isolated or detached manner dissociated from the context but are to be read together and construed in the light of the purpose and object of the act itself. The meanings of words and expressions used in an Act must take their colour from the context in which they appear. The principle that the statute must be read as a whole equally applies to different parts of the same section.

24. The language of section 143A allows for a plain interpretation to the exclusion of all other rules of interpretation.

The word 'drawer' in section 143A has a clear and unambiguous meaning. The legislature's intention as to who should pay interim compensation is clear in plain and simple language in section 143A. The plain interpretation of the expression 'Drawer' in section 143A gets support from the intent and purpose of the provision and the act. The Statement of Object and Reasons of the Negotiable Instruments Act (Amendment) Act, 2018 is gathered from the corresponding Bill of 2017,

> *"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 the cheques…"*

25. The objective is to make the payee of the cheque pay interim compensation to provide relief to drawees from undue delay in the final resolution of the dishonoured cheque. The lawmakers' intention is also clear from the recorded minutes of Lok Sabha Debates conducted when the Bill was introduced and passed. In that regard, reference must be made to the opening remarks of the parliamentarian who tabled the Bill, who referred to the proposed liability to be created upon the "issuer" of the cheque. Pertinently, a reference is made only to section 138 without referring to section 141 (on vicarious liability). The opening remarks are reproduced below:

> "*What we have done in this that a new section 143(a) of the NI Act has been inserted and under section 138, Courts have*

been given the power of direct the issuer to make an interim payment of 20 percent of the cheque amount to the drawer. The issuer can pay the interim compensation within 60 days and it can be extended upto 30 days. If the issuer is acquitted, the court shall direct to repay to the complainant the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India and prevalent at the beginning of the relevant financial year."

Therefore, it appears that the legislature's purpose was to provide interim relief to the drawee by directing the drawer to pay temporary compensation. This compensation was made payable by the cheque's drawer or issuer. By specifically fastening the liability on the drawer/issuer, the legislature excluded anyone else from being made liable to pay interim compensation. The plain language section 143A clearly spells out the intention of the parliament by resorting to the golden rule of interpretation- that a statute must be read plainly to arrive at its meaning. Principal offender under Section 138 in case cheque issued by the company is the drawer(company). Drawer alone would have been the offender thereunder if the Act did not contain section 141. By virtue of Section 141 of the Act that penal liability under Section 138 is cast on other persons connected with the company. Therefore there is no need to interpret the word 'drawer' to include authorised signatory.

26. A reference can be made to the pronouncement of the Apex Court in ***Sri Ram Saba vs State of West Bengal [(2004) 11 SCC 497]***, the apex court held as follows:

"10. It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading; in the

absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object the purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, courts will interpret such a provision keeping in mind the objects sought to be achieved and the purpose intended to be served by such a provision so as to advance the cause for which the enactment is brought into force. If two interpretations are possible, the one which promotes or favours the object of the act and purpose it serves, is to be preferred. At any rate, in the guise of purposive interpretation, the courts cannot re-write a statute. A purposive interpretation may permit a reading of the provision consistent with the purpose and object of the act but the courts cannot legislate and enact the provision either creating or taking away substantial rights by stretching or straining a piece of legislation."

27. A reference can be made to the pronouncement of the apex court in **Keshavji Ravji and Co and Ors. vs. Commissioner of Income Tax [(1990) 2 SCC 231]**. In this case, the question was whether gross interest payment should be deducted rather than net interest payment made by the partnership firm to its partners. Justice Venkatachaliah, writing for a bench of three judges, gave the following observations, which are not fact-specific but of a general expository nature:

> 11. *...Section 40(b), it is true, seeks to prevent the evasion of tax by diversion of the profits of a firm; by the legislature expedience adopted to achieve that objective requires to be given effect on its own language...As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislature intent become impermissible. The supposed intention of the legislature cannot then be appealed to to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used, it is nowhere else. The*

need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the legislature."

28. In para 12, Justice Venkatachaliah went on to quote Thomas M. Cooley in Law of Taxation, Vol. 2:

> "12. *...Artificial rules of construction have probably found more favour with the courts than they ever deserved. Their application in legal controversies has oftentimes been pushed to an extreme which has defeated the plain and manifest purpose in enacting the laws. Penal laws have sometimes had all their meaning construed away and in remedial laws, remedies have been found which the legislature never intended to give. Something akin to this has befallen the revenue laws..."*

29. In para 15, Justice Venkatachaliah went on the cite a principle stated by the Judicial Committee (of Privy Council) in H. H. Ruckmaboye v. Lullobhoy Mottichund, calling it a well-recognised principle:

> "15. *…it is, therefore, of considerable importance to ascertain what has been deemed to be the legal import and meaning of them, because, of it shall appear that they have long been used, in a sense which may not improperly be called technical, and have been judicially construed to have a certain meaning, and have been adopted by the legislature in that sense, long prior to the statue…the rule of construction of statutes will require, that the words in the statute should be construed according to the sense in which they had been so previously used, although that sense may vary from strict literal meaning of them...*"

30. The additional principle of interpretation which supports the view that the expression 'drawer' does not include 'authorised signatory' is that when a term has achieved a technical connotation

over the years of its usage, the connotation must not be disturbed. The expression 'drawer' has obtained a fixed and legal connotation over the years on account of (i) the legislature never having changed said definition nor the context in which the expression is used, (ii) the judicial pronouncements having consistently held drawer to include only the principal offender and not those who are vicariously liable. Such legal connotation to the expression 'drawer' in section 143A strengthens from the clear, unambiguous meaning that the expression 'drawer' has always had. Such interpretation gets further support from the stage at which liability on the drawer to pay interim compensation gets triggered- the stage is recording the plea. At this stage, Magistrate cannot go beyond the averments contained in the complaint. This test is analogous material to be considered by the magistrate at the stage of issuance of summons. At the stage of recording the plea, to get out of liability under section 143A, the onus of proof to show innocence would be on the drawer, which he may only satisfactorily discharge with leading evidence. Such a consequence might have weighed with the legislature while enacting the Amendment Act of 2018 by choosing not to employ words that could have created a vicarious liability under section 143A.

31. In this regard, a reference must also be made to a judgment by the Supreme Court in the ***State of Madras* v. *Gannon Dunkerley and Co. (Madras) Ltd. AIR 1958 SC 560***, where the true meaning of the word "sale" as used in Entry 48 and Entry 54 was examined at length. It was observed after considering the earlier cases of the Supreme Court "that the expression 'sale of

goods' in Entry 48 cannot be construed in its popular sense and that it must be interpreted in its legal sense." Tracing from the Roman Law of *emptio venditio,* the Supreme Court considered "the common law of England relating to sales which had developed very much on the lines of the Roman Law in insisting on an agreement between parties and price as essential elements of a contract of sale of goods" and referring to the codification of the law in England by the Sale of Goods Act, 1893, and the Indian Sale of Goods Act, 1930, Venkatarama Aiyyar J. explained the general rule of construction that words used in statutes must be taken in their legal sense and observed,

> "22. ……..the ratio of the rule of interpretation that words of legal import occurring in a statute should be construed in their legal sense is that those words have, in law, acquired a definite and precise sence, and that, accordingly, the legislature must be taken to have intended that they should be understood in that sense. In interpreting an expression used in a legal sense, therefore, we have only to ascertain the precise connotation which it possesses in law. It has been already stated that, both under the common law and the statute law relating to sale of goods in England and in India, to constitute a transaction of sale there should be an agreement, express or implied, relating to goods to be completed by passing of title in those goods. It is of the essence of this concept that both the agreement and the sale should relate to the same subject-matter. ……."

32. According to the respondents, amended provisions of section 143-A and section 148 need to be interpreted, keeping in mind the rule of purposive interpretation. To consider said submission the rule laid down in *Heydon's* case which is also known as 'purposive construction needs to be noted which states that when the material

words are capable of bearing two or more constructions, the most firmly established rule for the construction of such words "of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)" . Even if a purposive interpretation were to be given, it would have to be to cure mischief. The mischief/purpose sought to be addressed by the legislature is to provide interim compensation to the holder of the cheque. That purpose has already been served by imposing liability on the drawer company. Additionally, reading sections 143A and 148, suggested by respondents, would constrain this court to read something in the statute that is not provided for or permissible.

33. To interpret expression 'drawer' to include 'authorised signatory' who may be a shareholder or director it is necessary to refer to settled principles of company law which are relevant for adjudication of issues involved. The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is that the entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the corporation. This position has been well established since the decision in the case of **Salomon v. Salomon and Co. [1897] A. C. 22**. It has always been the well recognised principle of common law. However, with time, the

doctrine that the Corporation or a Company as a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the corporation can be lifted and its face examined in substance. The judicial approach to cracking open the corporate shell is somewhat cautious and circumspect. It is only when the legislative provision justifies the adoption of such a course that the veil has been lifted. Broadly, where fraud is intended to be prevented, or trading with the enemy is sought to be defeated, the corporation's veil is lifted by judicial decision, and the shareholders are held to be persons who work for the corporation.

34. Under company law, the company's liability is generally not transferred onto the directors. As per the Companies Act 2013, a company has a separate legal identity. The directors and members of the company act as representatives and mutually exist in a fiduciary relationship. Directors serve as an agent and hence are not liable personally for the acts and actions of the company. However, a director can be held personally responsible if he acts beyond his powers and duties. It is so done by lifting the corporate veil. The corporate veil states that the company's identity is separate from the directors' and members' identities. However, directors can be personally liable for their acts under the Companies Act 2013 if there is a breach of fiduciary duty or an instance of fraud. A company is considered a separate legal entity, distinct and independent of the persons that constitute it. This conception is primarily understood as the veil of incorporation, a principle that separates the legal personality of a company from its

members, thus affording them protection against personal liability towards the debts and obligations of the company. After the stage of recording a plea by the magistrate, such an enquiry as regards a breach of fiduciary duty or instance of fraud is not contemplated by the legislature while inserting section 143-A as it would defeat the purpose of granting immediate interim compensation to obviate delay in disposal of cheque dishonour case.

35. Another argument of the effect of legal impossibility, such as section 14 of the IBC, which prevents a drawer company from being compelled to pay interim compensation, derives no support to include authorised signatories within expression 'drawer' as such legal impossibility is created by Act of the parliament of which the legislature is deemed to be fully aware of at the time of enacting section 143A and 148 of NI Act. The legislature enacted sections 143A and 148 in the year 2018 much after the legislature enacted the Insolvency and Bankruptcy Code, 2016 (**IBC**). Therefore, at the time of bringing section 143A into force, the legislature was aware that drawer companies could not be made to pay interim compensation in light of the moratorium imposed by section 14 of IBC on companies undergoing a corporate insolvency resolution process (**CIRP**). The legislature was also aware that there could be natural persons who may have drawn/issued the cheque but could not be made to pay interim compensation under section 143A of the NI Act on account of the moratorium imposed by sections 95 and 96 of the IBC. Despite this knowledge, the legislature chose a language in its enactment that limits the liability to the drawer/issuer and does not extend it

vicariously/severally onto any other person. Therefore, the words of the enactment are clearly intended to be limited to drawers, be they natural persons or companies.

36. The petitioners interpretation of expression 'Drawer' does not include 'authorised signatory' gets further support from the well established canon of construction that the same word used in different parts of the same statute must have the same meaning, unless something to the contrary appears from the context. The objection to the argument of respondents to interpret 'Drawer' to include 'authorised signatory' is that it violates the fundamental principle of interpretation which prohibits cutting out inter-related portions of the same statute, tearing them from their context and construing them as stripped of their relation to each other or to the whole. When the word "drawer" has been defined under the NI Act, its meaning would not vary when the same word is used at more than one place in the same statute, as otherwise, it will defeat the very object of the definitive section. The repugnancy of a definition arises only when the definition does not agree with the subject or context; any action not in conformity with the definition will not obviously make it repugnant to the subject or context of the provision containing the term defined under which such action is purported to have been taken. When the application of the definition to a term in a provision containing that term makes it unworkable and *otiose*, it can be said that the definition does not apply to that provision because of a contrary context. [**see. *Indian Immigration Trust Board of Natal v Govindaswamy*, AIR 1920 PC 114, p 116; *Vanguard Fire***

***and General Insurance Co Ltd, Madras v Fraser & Ross*, AIR 1960 SC 971, p 975 *Special Officer and Competent Authority Urban Land Ceilings Hyderabad v PS Rao,*AIR 2000 SC 843, p 844].**

37. In ***Central Bank of India* v. *Ravindra* [(2002) 1 SCC 367]**, the question before the Constitution Bench was as to the meaning of the phrases "the principal sum adjudged" and "such principal sum" as occurring in Section 34 CPC as amended by the Code of Civil Procedure (Amendment) Act (66 of 1956) w.e.f. 1-1-1957. While repelling the contention of borrowers that the expression “on such principal sum” as occurring twice in the latter part of Section 34(1), which refers to interest pendente lite and post-decree, should be interpreted to mean principal sum arrived at by excluding the interest even if it has stood capitalised which would be consistent with the legislative intent as reflected in the report of the Joint Committee and sought to be fulfilled by the 1956 amendment, the Constitution Bench has observed as under:

> “42. ……Ordinarily, a word or expression used at several places in one enactment should be assigned the same meaning so as to avoid “a head-on clash” between two meanings assigned to the same word or expression occurring at two places in the same enactment. It should not be lightly assumed that “Parliament had given with one hand what it took away with the other” (see *Principles of Statutory Interpretation*, Justice G.P. Singh, 7th Edn. 1999, p. 113). That construction is to be rejected which will introduce uncertainty, friction or confusion into the working of the system (*ibid*, p. 119). While embarking upon interpretation of words and expressions used in a statute, it is possible to find a situation when the same word or expression may have

somewhat different meanings at different places depending on the subject or context. This is however an exception which can be resorted to only in the event of repugnancy in the subject or context being spelled out. It has been the consistent view of the Supreme Court that when the legislature used the same word or expression in different parts of the same section or statute, there is a presumption that the word is used in the same sense throughout (*ibid*, p. 263). More correct statement of the rule is, as held by the House of Lords in *Farrell* v. *Alexander* [(1976) 2 All ER 721 : 1977 AC 59 : (1976) 3 WLR 145 (HL)] All ER at p. 736*b*, "where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning". The court having accepted invitation to embark upon interpretative expedition shall identify on its radar the contextual use of the word or expression and then determine its direction avoiding collision with icebergs of inconsistency and repugnancy."

38. Mr. Jagtiani, learned senior advocate next submitted that power to direct interim compensation is also conferred under section 141 of the NI Act, as signatory of a cheque is vicariously liable for punishment. The liability of the authorised signatory of the company for an offence under section 138 of NI Act, was the subject matter of scrutiny before the Apex Court in **SMS Pharma (supra).** The Apex Court after considering section 141 of NI Act held as follows:

(i) .....

(ii) Person signing the cheque. The signatory of a cheque which is dishonoured, is clearly responsible for the act and will be covered under sub-section (2) of Section 141. Therefore, no special averment would be necessary to make him liable.

(iii) .....

39. The consistent view of the Apex Court while interpreting section 138 of NI Act which contains the expression 'drawer', is that person signing the cheque, i.e. signatory of a dishonoured cheque, is responsible for the act of dishonour under sub-section (2) of Section 141. The director in charge of and responsible for conducting the company's business at the relevant time is also liable but only under section 141(1) of the NI Act. The expression 'drawer' in section 138 has not been interpreted to include either signatory of the cheque or the signatory director. Despite the expression 'drawer' occurring in section 138, both- signatories of a cheque and in charge director have been held vicariously liable under section 141.

40. Moreover, liability for the punishment of persons specified in section 141(2) is triggered only after it is 'proved' that offence has been committed with their consent or connivance of or is attributable to any neglect on the part of such persons. Power to direct interim compensation under section 143A is exercisable after recording a plea of the accused. Based on specific averments in the complaint and complying with ingredients of section 141(2), persons specified in sub-section (2) of section 141 can be proceeded against or punished. In the absence of specific power conferred under section 141, the Court cannot direct persons other than 'drawer' to pay interim compensation, particularly when section 143(A) confers such specific power on the Courts to direct payment of interim compensation. Such interpretation gets support from a well-settled principle that where a power is given to do a certain thing in a certain way, the thing must be done in

that way or not at all and that the other methods of performance are necessarily forbidden. The Privy Council applied this principle in **Nazir Ahmad v. King Emperor, AIR 1936 Privy Council 253** and **State of Uttar Pradesh v. Singhara Singh, AIR 1964 SC 358**, while considering the provision of section 164 Criminal Procedure Code. In a recent judgment in the case of **Noor Mohammed v. Khurram Pasha, (2022) 9 SCC 23,** the Apex Court was considering the power of the magistrate in a complaint under section 138 of the NI Act to take away the right of cross-examination of the accused for non-payment of interim compensation under section 143A of NI Act. While holding that the expression interim compensation is one which is payable under section 143A, it is observed as under,

> **"13.** After empowering the court to pass an order directing the accused to pay interim compensation under sub-section (1) of Section 143-A, sub-section (2) then mandates that such interim compensation should not exceed 20% of the amount of the cheque. The period within which the interim compensation must be paid is stipulated in sub-section (3), while sub-section (4) deals with situations where the drawer of the cheque is acquitted. Said sub-section (4) contemplates repayment of interim compensation along with interest as stipulated. Sub-section (5) of said Section 143-A then states "the interim compensation payable under this section can be recovered as if it were a fine". The expression interim compensation is one which is "payable under this section" and would thus take within its sweep the interim compensation directed to be paid under sub-section (1) of said Section 143-A.
>
> **14.** The remedy for failure to pay interim compensation as directed by the court is thus provided for by the legislature. The method and modality of recovery of interim

compensation is clearly delineated by the legislature. It is well-known principle that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. While relying on the decision of the Privy Council in *Nazir Ahmad* v. *King-Emperor* [*Nazir Ahmad* v. *King-Emperor*, 1936 SCC OnLine PC 41 : AIR 1936 PC 253 (2) : (1935-36) 63 IA 372] , a Bench of three Judges of this Court made the following observations in *State of U.P.* v. *Singhara Singh* [*State of U.P.* v. *Singhara Singh*, AIR 1964 SC 358] . (AIR p. 361, paras 7-8)

"*7*. In *Nazir Ahmad case* [*Nazir Ahmad* v. *King-Emperor*, 1936 SCC OnLine PC 41 : AIR 1936 PC 253 (2) : (1935-36) 63 IA 372] the Judicial Committee observed that the principle applied in *Taylor* v. *Taylor* [*Taylor* v. *Taylor*, (1875) LR 1 Ch D 426] , Ch D at p. 431 to a court, namely, that *where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164* and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that '*it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves*'.

8. The rule adopted in *Taylor* v. *Taylor* [*Taylor* v. *Taylor*, (1875) LR 1 Ch D 426] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. *A Magistrate, therefore, cannot in the course*

> *of investigation record a confession except in the manner laid down in Section 164*. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. *The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him.*
>
> **17.** The provision concerned nowhere contemplates that an accused who had failed to deposit interim compensation could be fastened with any other disability including denial of right to cross-examine the witnesses examined on behalf of the complainant. Any such order foreclosing the right would not be within the powers conferred upon the court and would, as a matter of fact, go well beyond the permissible exercise of power.

41. It is, therefore, not possible to accept submission of respondents that power to direct interim compensation can be traced under section 141 in addition to section 143(A) of the NI Act.

42. Now it is necessary to turn to another facet of submissions by the parties where they derive support from seemingly conflicting observations of supreme court. Mr. Ponda, learned Senior Counsel relying on the judgment in the case of **N. Harihara Krishnan** (supra), submitted that the said judgment is rendered after the judgment of **Aneeta Hada** (supra) and considers it; therefore, the subsequent judgment of **N. Harihara Krishnan** (supra) is binding on this Court. According to him, observations made in

paragraph 20 of the **Aneeta Hada (supra)** need to be read in the light of the observations made in paragraph 19. According to him, the observations made in **N. Harihara Krishnan** (supra) are more elaborate and authoritative. Per contra, according to Mr. Jagtiani, learned Senior Advocate observations made in paragraph 20 in **Aneeta Hada (supra)** are made by the bench consisting of three judges. The observations in **N. Harihara Krishnan** (supra) are made by the bench consisting of two judges. Therefore the observations of the larger bench prevails.

43. Before I turn to the judgments of the Supreme Court, it is necessary to have clear idea as to what is a ratio which has a binding effect upon a Court. Every decision contains three basic postulates: (a) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (b) statements of the principles of law applicable to the legal problems disclosed by the facts; and (c) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. Observations of courts are neither to be read as Euclid's Theorems nor as provisions of the statute, and that too taken out of their context. [**See--Oriental Insurance Co. Ltd. vs. Smt. Raj Kumari, AIR 2008 SC 403, Dr. Chanchal Goyal vs State of Rajasthan, (2003) 3**

SCC 485, Bihar School Examination Board vs Suresh Prasad Sinha, AIR 2010 SC 93]

44. It is true that on considerations of judicial uniformity and judicial discipline, the High Courts must accept as binding not only the ratio decidendi in the decisions of the Supreme Court but also the obiter dicta. In determining the binding nature of the expression of opinion, the courts should consider—Whether the expression of opinion was casual or considered. Whether it was connected with any point arising in the case. It is true that under Article 141 of the Constitution, the law declared by the Supreme Court is binding on all the courts and therefore, even the principles enunciated by the Supreme Court, including its obiter dicta, when they are stated in clear terms, have a binding force. But when a question is neither raised nor discussed in a judgment rendered by the Supreme Court, it is difficult to deduce any principles of a binding nature from it by implication.

45. In **Aneeta Hada (supra)** a question liability authorised signatory terming him as 'drawer' never arose before the Supreme Court, which was never argued, which was never considered and which was never decided. In paragraph 19, 20, 58 and 59 of **Aneeta Hada (Supra**) it is observed as under

> "19..... The emphasis has been laid on the factum that the cheque has to be drawn by a person on the account maintained by him and he must have issued the cheque in discharge of any debt or other liability."
>
> 20. Section 7 of the Act defines "drawer" to mean the maker

of a bill of exchange or a cheque. An authorised signatory of a company becomes a drawer as he has been authorised to do so in respect of the account maintained by the company."

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 dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself."

46. In **Aneeta Hada** (Supra), the point for determination before the Supreme Court was whether a complaint under Section 138 read with Section 141 of the NI Act was maintainable against a Director or Authorised signatory of a company without joining the company as an accused. Answering the same in negative, it is held that in terms of the provisions of Section 141 NI Act, a commission of the offence by the company is an express condition precedent to attract vicarious liability of another. It is observed that 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. Therefore the prosecution of other persons under Section 138 NI Act is permissible only when the company is named as an accused in the complaint. The Apex Court has treated company as 'principal offender' in a prosecution under section 138 and 'authorised signatory' vicariously liable under section 141(2) of NI Act. Emphasis in para 19 is on the person drawing cheque on the account maintained by him. Therefore observation in paragraph 20 needs to be construed in the light of emphasis made paragraph 19 that cheque must be drawn by a person on the account maintained by him. Acceptance of a submission of Respondents would run contrary to the ratio of **Aneeta Hada (Supra)** that for maintaining prosecution against vicariously liable persons under section 141 arraigning company as an accused is imperative.

47. In **N. Harihara** (supra), the Apex Court was considering a case where the cheque was drawn by a private company and signed by the appellant in his capacity as the director of a company. On behalf of the appellant (authorized signatory), it was submitted that the appellant being a signatory in his capacity as a director of the company, would only be vicariously liable for the offence committed by the company. Relying on the judgment in the case of **Aneeta Hada** (supra), it was submitted that prosecution against the appellant (signatory) could not be successfully maintained without prosecuting the company. The Apex Court

holds that the offence under section 138 of the Act is capable of being committed only by the drawer of the cheque. Commenting on a finding recorded by the High Court in the said case that the revision filed by the authorized signatory was not maintainable as the company did not choose to challenge the Trial Court's order, it was observed that the High Court failed to appreciate that the liability of the appellant (signatory) is only statutory because of his legal status as the director of the company. It is held that every person signing a cheque on behalf of the company on whose account a cheque is drawn does not become a drawer of the cheque. Such a signatory is only a person duly authorized to sign the cheque on behalf of the company/drawer of the cheque.

48. Reading paragraphs 21 and 22 of the judgment in **N. Harihara** (supra), it is clear that the subsequent bench of the Apex Court, after noticing and relying on **Aneeta Hada** (supra), has observed that every person signing a cheque on behalf of a company on whose account a cheque is drawn does not become the drawer of the cheque and such signatory is only a person duly authorized to sign the cheque on behalf of the company/drawer of the cheque, the Apex Court has made these observations after noticing and relying on **Aneeta Hada** (supra) would be binding on this Court. Therefore respondents' submission of including "authorized signatory" within the expression "drawer" under sections 143A and 148 of the Negotiable Instruments Act, 1881 cannot be accepted.

49. Having held that the expression "drawer" in section 143A

does not include the authorized signatory of a company, amended section 148 needs to be interpreted accordingly. The plain language of section 148 makes it clear that the Appellate Court is granted the power to direct deposit of a minimum sum of 20% of the fine or compensation awarded by the Trial Court "in an appeal by the drawer". Section 148 emphasizes such power being conferred only in an appeal by the ‘drawer’. As already held in the earlier part of the judgment that the ‘drawer’ does not include an ‘authorized signatory’ in the case of a company or legal person, section 148 needs to be interpreted to mean that such power to direct compensation is conferred on the Appellate Court only in an appeal filed by the drawer against the conviction under section 138 of the Act. Proviso to section 148 clarifies that such payment shall be in addition to the amount payable under section 143A. The expression "drawer" under section 143A does not include the authorized signatory of a company; therefore, the language of the proviso to section 148 lends support to the interpretation that such power is available only in an appeal filed by the "drawer". It needs to be clarified that section 148 starts with the non-obstante clause having an overriding effect on the provisions under the Code of Criminal Procedure, 1973.

50. However, in an appeal filed by persons other than a drawer Appellate Court has power under section 389 of Code of Criminal Procedure Act to direct deposit of amount in an appeal under section 148 of NI Act filed by persons other than "drawer" against the conviction under section 138 of the NI Act while considering the application for suspension of conviction or sentence.

51. For the reasons stated above questions framed above are answered as below:-

(i) The signatory of the cheque, authorized by the "Company", is not the drawer in terms of section 143A of the NI Act and cannot be directed to pay interim compensation under section 143A.

(ii) In an appeal under section 148 of NI Act filed by persons other than "drawer" against the conviction under section 138 of the NI Act, a deposit of a minimum sum of 20% of the fine or compensation is not necessary.

However, in an appeal filed by persons other than "drawer" against the conviction under section 138 of the NI Act such power to direct deposit of compensation is available with the Appellate Court while suspending sentence under section 389 of code of criminal procedure.

52. Individual petitions will be decided in accordance with answers in above paragraph.

(AMIT BORKAR, J.)