

Bijay Agarwal

v.

M/s Medilines

(Criminal Appeal No(s). 4301 of 2024)

21 October 2024

[C.T. Ravikumar* and Sanjay Karol, JJ.]

Issue for Consideration

Whether the signatory of a cheque authorized by the Company is a drawer and whether such a signatory could be directed to deposit any sum out of the fine or compensation awarded by the trial Court u/s.148 of the Negotiable Instruments Act, 1881, as a condition for suspending the sentence in an appeal filed against his conviction u/s.138 of the NI Act.

Headnotes[†]

Negotiable Instruments Act, 1881 – ss.138 and 148 – Appellant is the authorized signatory of the company – The signed cheques were presented in the bank – The cheques were dishonoured and returned with the endorsement “payment stopped by the drawer” – Trial Court found appellant guilty and accordingly was convicted and sentenced – Appellant filed criminal appeals before the Principal City Civil and Session Judge – The sentence was suspended with condition to deposit 20% of the fine/compensation – It is against the said direction to deposit 20% of the compensation amount that the appellant approached the High Court, which culminated in the impugned common order dated 09.01.2024:

Held: In the case of the position qua Section 143A, NI Act, merely because an officer of a company concerned is the authorised signatory of the cheque concerned by itself will not make such an officer ‘drawer of the cheque’ under Section 148, NI Act, so as to empower the Appellate Court, in an appeal against conviction for an offence under Section 138, NI Act, to direct to deposit compensation of any sum under Section 148(1), of the NI Act – It is settled that an Appellate Court in an appeal against conviction under Section 138, NI Act, could not place a condition to deposit

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an amount invoking the power under Section 148(1), NI Act, mechanically without considering whether the case falls within exceptional circumstances – In view of the said exposition of law, the Appellate Court ought to have considered the aforesaid aspects as it would certainly be an exceptional circumstance to exempt the appellant who is not the ‘drawer’ of the cheque concerned to deposit the amount payable under Section 148(1) by an appellant who is the ‘drawer’ of the cheque – In the instant case, the High Court has failed to consider these crucial aspects in the light of the dictum laid down by this Court in its various decisions while considering the application for suspension of sentence for the conviction under Section 138 of the NI Act in the pending appeal – In view of the discussion, the impugned order passed by the High Court is set aside and the orders passed by the Principal City Civil & Sessions Judge stands quashed and set aside to the extent it put the condition to deposit of 20% of the fine amount payable.
[Paras 16, 17, 18]

Case Law Cited

Shri Gurudatta Sugars Marketing Pvt. Ltd. v. Prithviraj Sayajirao Deshmukh & Ors. [2024] 7 SCR 1211 : (2024) SCC OnLine SC 1800; K.K. Ahuja v. V.K. Vohra and Another [2009] 9 SCR 1144 : (2009) 10 SCC 48; N. Harihara Krishnan v. Godfather Travels and Tours P. Ltd. (2018) 13 SCC 663; Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited and Ors. (2023) 10 SCC 446 – referred to.

List of Acts

Negotiable Instruments Act, 1881.

List of Keywords

Signatory of a cheque authorized by the Company; Section 148 of Negotiable Instruments Act, 1881; Suspension of sentence; Condition to deposit an amount out of fine or compensation; Exceptional circumstances.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 4301 of 2024

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From the Judgment and Order dated 09.01.2024 of the High Court of Karnataka at Bengaluru in CRLP No. 13095 of 2023

With

Criminal Appeal No. 4302 of 2024

Appearances for Parties

Siddharth Aggarwal, Sr. Adv., Anjan Datta, Sumon Pathak, Ms. Ishita Srivastava, Ms. Arshiya Ghose, Ashish Raghuvanshi, Vishal Arun Mishra, Advs. for the Appellant.

Gautam S. Bharadwaj, Ashwin Kumar D.S., Ishan Roy Chowdhury, Ms. Surbhi Mehta, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

C.T. Ravikumar, J.

Leave granted.

On the consent of the parties, the matter was finally heard.

1. The captioned appeals by a special leave are directed against the impugned common order dated 09.01.2024 passed by the High Court of Karnataka at Bengaluru in Criminal Petition Nos. 13095 of 2023 and 13153 of 2023 respectively.
2. Heard the learned senior counsel appearing for the appellant and the learned counsel appearing for the respondent.
3. In view of the factual background obtained in these cases, a question of seminal importance arises for consideration viz., “whether the signatory of a cheque authorized by the Company is a drawer and whether such a signatory could be directed to deposit any sum out of the fine or compensation awarded by the trial Court under Section 148 of the Negotiable Instruments Act, 1881 (for short ‘NI Act’), as a condition for suspending the sentence in an appeal filed against his conviction under Section 138 of the NI Act?”
4. The contention of the appellant is that he is only an authorized signatory of the company M/s. Gee Pee Infotech Private Limited, which was held liable to adequately compensate the complainant

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company by the trial Court. The status of the appellant authorised signatory of the aforesaid company is undisputed rather, it is indisputable as it is the very case of the respondent complainant. Before the trial Court the said company was the first accused and the appellant herein was the second accused. In unambiguous terms, the respondent-complainant described the appellant Sri. Bijay Agarwal as the authorized signatory/ Director of M/s. Gee Pee Infotech Pvt. Ltd.

5. Bearing in mind the said indisputable and undisputed fact, we will briefly refer to the other relevant facts of the case.

The complaint being C.C. No. 13938 of 2013 was filed by the respondent company against M/s. Gee Pee Infotech Private Ltd. and appellant, under Section 138 of the NI Act. The crux of the complaint was as under: -

The Accused No.1 is a Company incorporated under provisions of Companies Act 1956. The second accused is an authorised signatory/Director of the first accused company and he is incharge and responsible for the day today administrative affairs and functioning of the accused No.1 Company. The accused by representing that they are the Pan Indian circle licence holder for distribution of Electronic Pin Recharge BSNL, induced the complainant to pay advance amount of Rs.1,00,00,000/- and to become the Master Distributor for BS recharge pin for Karnataka State and accordingly entered in agreement with the complainant on 01/10/2011. By virtue of said Agreement, the accused appointed the complainant Master Distributor for BSNL E-recharge pin for Karnataka and collected the advance payment while undertaking liquidate/transfer BSNL E-recharge pin load to the complainant as to enable them to distribute through their constituents of the State of Karnataka. After entering into the Agreement accused supplied certain BSNL E-recharge pin to the complainant. However, to their utter shock, surprise and dismay, it came to the knowledge of the complainant through their constituents that 99% of the BSNL E-recharge pin supplied by the accused are fake and the talk time under the said BSNL E-recharge load supplied to them could not be uploaded to the Mobile Numbers of the customers.

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6. It was the further case that on being told that appropriate action would be initiated they executed a Memorandum of Understanding on 10.04.2012 and assured return of the amount advanced and issued five post-dated cheques. The cheque presented was dishonoured and thereupon the complainant caused legal notice. Pursuant to the same, the accused issued two fresh post-dated cheques each for a sum of Rs.25 lakhs in lieu of the old cheques. Later, cheque bearing No.955437 dated 24.04.2013 for a sum of Rs.25 lakhs was presented, but dishonoured and returned with the endorsement "payment stopped by the drawer". The complaint was, thereupon, filed after complying with the requisite procedures and was taken on file as C.C. No.13938/2013
7. After appreciating the evidence, the trial Court arrived at the following finding as against issue No.2:

32. Point No.2:- Complainant Company paid a sum of Rs. 1,00,00,000/- to the accused Company for purchasing BSNL E recharge pins but was supplied fake E-recharge pins which the complainant Company demanded repayment, the accused not be uploaded to the Mobile numbers of the customers. With a sum of Rs.50,00,000/- and for the balance Company repaid amount it issued the cheque in question which came to be dishonoured on presentation. Complainant Company has been deprived of its money for all these years, i.e. for a period of more than years. Hence, accused Company shall adequately compensate the complainant for the same.

8. As relates the latter appeal, the complaint that was taken on file as C.C. No.13937/2013 was filed pursuant to the dishonour of cheque No.955421 dated 24.12.2012 for a sum of Rs. 25 lakhs under similar circumstances. On appreciating the evidence the trial Court, as per a separate order passed on 30.09.2023 itself arrived at similar conclusion as in C.C. No.13938/2013.
9. Based on the aforesaid conclusions, in both the cases the trial Court found the appellant guilty and accordingly convicted and sentenced, as per judgment and order dated 30.09.2023 as under:-

"Accused is found guilty of the offence punishable U/Sec. 138 of Negotiable Instruments Act 1881.

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Acting U/sec. 255(2) of Cr.PC accused is hereby convicted for the offence punishable U/Sec. 138 of Negotiable Instruments Act 1881 and he is sentenced to pay to pay fine of Rs. 40,00,000/-.

In default, accused shall undergo simple imprisonment for a period of six months.”

10. Feeling aggrieved by the conviction and sentence passed in C.C. No.13937/2013, the appellant preferred Criminal Appeal No.1536/2023 and against the conviction and sentence passed in C.C. No.13938/2013 filed Criminal Appeal No.1537/2023, before the Principal City Civil and Sessions Judge Court at Bangalore. In the appeals, the appellant herein filed separate applications and sought for suspension of sentence passed in both the cases, under Section 389 of the Cr.PC. Separately, but on the very same lines orders were passed in both the appeals on 10.11.2023. The sentence was suspended with condition to deposit 20% of the fine/compensation amount in each of the appeals. It is against the said direction to deposit 20% of the compensation amount that the appellant approached the High Court by filing Criminal Petition Nos.13095/2013 and 13153/2013 seeking that part of the order dated 10.11.2023 requiring deposit of fine be quashed, which culminated in the impugned common order dated 09.01.2024.
11. Now, the self-same appellant raised the contention in both the appeals that in the light of the decision of this Court in *Shri Gurudatta Sugars Marketing Pvt. Ltd. Vs. Prithviraj Sayajirao Deshmukh & Ors.*,¹ he could not have been directed to pay any amount payable under Section 148 (1) of the NI Act, for this Court laid down the law that merely because an officer of a company being the authorised signatory of the cheque by itself would not make him its drawer. It is submitted that though the said decision was dealing with Section 143A of the NI Act in view of its analogicalness to Section 148, NI Act, the dictum laid down in the said decision is to be followed as relates Section 148 as well and hence, an authorized signatory of an accused company not being the drawer of the cheque could not be directed to deposit any particular percentage of the fine or compensation awarded by the trial Court under Section 148, NI Act. The learned counsel for the

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respondent resisted the contention and canvassed for the dismissal of the appeals. According to the learned counsel, the exposition of law in the decision in Shri Gurudatta Sugars Marketing Pvt. Ltd. case (supra) is inapplicable in the cases on hand.

12. To appreciate rival contentions, it is only appropriate to refer to Sections 143- A and 148 of the NI Act: -

"S.143 – A. 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 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."

"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

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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.”

(Underline supplied)

13. A scanning of Sections 143A and 148 would reveal that the former deals with the power of the Court trying an offence under Section 138 of the NI Act to direct the drawer of the cheque to pay interim compensation to the complainant whereas the latter Section deals with the power of the Appellate Court in an appeal by the drawer against the conviction under Section 138 to the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. The proviso to Section 148(1) would further reveal that the amount payable thereunder shall be in addition to any interim compensation paid by the appellant under Section 143A, NI Act. Thus, a scanning of both the Sections would reveal that the said sections empower to issue such directions only to the ‘drawer’ of the cheque. We have already noted that in ‘*Shri Gurudatta Sugars Marketing Pvt. Ltd.*’ Case (*supra*) after referring to the earlier decisions of this Court including in ‘*K.K. Ahuja v. V.K. Vohra and Another*,²’ and in ‘*N. Harihara Krishnan v. Godfather Travels and Tours P. Ltd.*,³’ this Court held that the primary liability for an offence under Section 138 lies with the company and the company’s management is vicariously liable only under specific conditions provided in Section 141 and for the purpose of Section 143A of the NI Act and a signatory merely authorised to sign on behalf of the company would not become the ‘drawer’ of the cheque and, therefore, could not be directed to pay interim compensation under Section 143A. In the contextual situation, it is relevant to refer to paragraphs 28 to 30, 34 and 35 of ‘*Shri Gurudatta Sugars Marketing Pvt. Ltd.’s* case to the extent it is relevant for the purpose of this case, as under: -

2 [2009] 9 SCR 1144 : (2009) 10 SCC 48

3 (2018) 13 SCC 663

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"28. The High Court's interpretation of section 7 of the Negotiable Instruments Act, 1881 accurately identified the "drawer" as the individual who issues the cheque. This interpretation is fundamental to understanding the obligations and liabilities under Section 138 of the Negotiable Instruments Act, 1881, which makes it clear that the drawer must ensure sufficient funds in their account at the time the cheque is presented. The appellants' argument that directors or other individuals should also be liable under Section 143A misinterprets the statutory language and intent. The primary liability, as correctly observed by the High Court, rests on the drawer, emphasizing the drawer's responsibility for maintaining sufficient funds.

29. The general rule against vicarious liability in criminal law underscores that individuals are not typically held criminally liable for acts committed by others unless specific statutory provisions extend such liability. Section 141 of the Negotiable Instruments Act, 1881 is one such provision, extending liability to the company's officers for the dishonour of a cheque. The appellants' attempt to extend this principle to section 143A, to hold directors or other individuals personally liable for interim compensation, is unfounded. The High Court rightly emphasized that liability under section 141 arises from the conduct or omission of the individual involved, not merely their position within the company.

30. The distinction between legal entities and individuals acting as authorized signatories is crucial. Authorized signatories act on behalf of the company but do not assume the company's legal identity. This principle, fundamental to corporate law, ensures that while authorized signatories can bind the company through their actions, they do not merge their legal status with that of the company. This distinction supports the High Court's interpretation that the drawer under section 143A refers specifically to the issuer of the cheque, not the authorized signatories.

34. The respondents correctly argued that an authorised signatory is not a drawer of the cheque, as established

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in N. Harihara Krishnan. This judgment clarified that a signatory is merely authorised to sign on behalf of the company and does not become the drawer. The respondents' interpretation aligns with the principle that penal statutes should be interpreted strictly, particularly in determining vicarious liability. The judgment in [K.K. Ahuja](#) further supports this approach, emphasising that penal provisions must be read strictly to determine liability.

35. In conclusion, the High Court's decision to interpret "drawer" strictly as the issuer of the cheque, excluding authorised signatories, is well-founded."

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

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15. There can be no doubt with respect to the position that Section 143A and 148 empowers the Court trying an offence under Section 138 and the Appellate Court considering an appeal by a drawer against his conviction under Section 138 respectively to fasten liability to pay interim compensation and additional compensation under Section 148(1), as the case may be, and therefore, the question whether any particular officer of the company concerned can be made to pay interim compensation or deposit additional compensation under the aforesaid relevant provision(s) would depend upon the question whether he is only a signatory of the cheque or whether he is the drawer of the cheque. It is that question with reference to Section 143A, NI Act, that was answered as above in the decision in *Shri Gurudatta Sugars Marketing Pvt. Ltd.'s* case (*supra*). In view of the analogicalness of Section 143A to Section 148, that both the provisions are under the same Act though applicable at different stage of proceedings under Section 138 of NI Act and that the proviso to Section 148(1) makes it abundantly clear that deposit under Section 148(1) of the NI Act shall be an additional compensation paid by the appellant under Section 143A thereof, it can only be said that the decision in *Shri Gurudatta Sugars Marketing Pvt. Ltd.'s* case (*supra*) is applicable to the extent it holds an officer of a company who is an authorised signatory of the cheque issued by a company is not the drawer of the same subject to what is held in the said decision with reference to Section 141, NI Act, as relates Section 148 thereof.
16. To wit, as in the case of the position qua Section 143A, NI Act, merely because an officer of a company concerned is the authorised signatory of the cheque concerned by itself will not make such an officer 'drawer of the cheque' under Section 148, NI Act, so as to empower the Appellate Court, in an appeal against conviction for an offence under Section 138, NI Act, to direct to deposit compensation of any sum under Section 148(1), of the NI Act.
17. In the decision in '*Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited and Ors.*'⁴ this Court held that an Appellate Court in an appeal against conviction under Section 138, NI Act, could not place a condition to deposit an amount

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invoking the power under Section 148(1), NI Act, mechanically without considering whether the case falls within exceptional circumstances. In view of the said exposition of law, the Appellate Court ought to have considered the aforesaid aspects as it would certainly be an exceptional circumstance to exempt the appellant who is not the ‘drawer’ of the cheque concerned to deposit the amount payable under Section 148(1) by an appellant who is the ‘drawer’ of the cheque. In the case on hand, the High Court has failed to consider these crucial aspects in the light of the dictum laid down by this Court in the decisions referred *supra* while considering the application for suspension of sentence for the conviction under Section 138 of the NI Act in the pending appeal.

18. The upshot of the discussion is that these appeals should succeed and consequently, it is allowed. The impugned common order dated 09.01.2024 passed by the High Court of Karnataka at Bengaluru in Criminal Petition Nos.13095/2023 and 13153/2023 is set aside. Accordingly, the orders dated 10.11.2023 passed by the Principal City Civil & Sessions Judge at Bangalore respectively in Criminal Appeal No. 1537/2023 and 1536/2023 stands quashed and set aside to the extent it put the condition to deposit of 20% of the fine amount payable under orders in CC Nos.13937/2023 and 13938/2013, passed by the Court of XXXVI Additional Chief Metropolitan Magistrate, Bangalore City and restore the orders dated 10.11.2023 suspending the sentence of the appellant in both the cases, with the condition(s) imposed qua execution of bond and on such execution it will remain in force till the disposal of the above mentioned appeals pending before the First Appellate Court concerned.
19. The First Appellate Court shall endeavour to dispose of the appeals expeditiously.
20. The appeals stand allowed as above.
21. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals allowed.

[†]Headnotes prepared by: Ankit Gyan