IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION - NEGOTIABLE INSTRUMENT ACT) NO. 1544 of 2018

With
R/CRIMINAL REVISION APPLICATION NO. 1545 of 2018
With
R/CRIMINAL REVISION APPLICATION NO. 1546 of 2018
With
R/CRIMINAL REVISION APPLICATION NO. 1547 of 2018
With
R/CRIMINAL REVISION APPLICATION NO. 1548 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No
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RAJSHIBHAI RANABHAI CHACHIYA
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MS SANDHYA D NATANI(3678) for the Applicant(s) No. 1
M S PADALIYA(7406) for the Respondent(s) No. 2.1,2.2,2.3,2.4,2.5,2.6,2.7,2.8
MS. KRINA P. CALLA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 03/07/2026

COMMON ORAL JUDGMENT

1. Present Revision applications are filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 by the applicant -original accused, challenging the judgment and order of

conviction dated 30.12.2016 passed by the learned Judicial Magistrate First Class, Dwarka in Criminal Case Nos.568 of 2011, 570 of 2011, 571 of 2011, 569 of 2011 and 572 of 2011 and as confirmed vide order dated 13.12.2018 by the learned 2nd Additional Sessions Judge, Jam Khambaliya, Devbhoomi Dwarka in Criminal Appeal Nos. 01 of 2017, 03 of 2017, 04 of 2017, 02 of 2017 and 05 of 2017 in proceedings arising under Section 138 of the Negotiable Instruments Act, 1881.

2. Since the dispute pertains to one transaction involving the complainant and the accused as parties, raising similar contentions arising out of five different complaints lodged by the complainant, the present Criminal Revision Applications are heard and decided by this common judgment. For the sake of convenience, Criminal Revision Application No. 1544 of 2018 is treated as the lead matter.

3. In order to appreciate the controversy involved in the matter, appropriate would be to consider the case of the complainant, as can be gathered from the original complaint filed before the learned Magistrate under Section 138 of the Act of 1881 against the present applicant-original accused. It is alleged by the complainant that he is holding ancestral agricultural lands and is mainly occupied in agricultural activity. His family consists of six sons, who are married and his family jointly cultivates the agricultural lands owned by them

at Village: Bardia, Dwarka. It is further contended that the accused belongs to his community and owns a Petrol Pump situated at Porbandar and is also occupied as a distributor of medicines in the name of a firm called M/s Tulsi Pharma. It is further pleaded that before 12 months of lodging of the complaint, the accused had approached him and had convinced him to invest in the Petrol Pump business viz. Vrachraj Petrol Pump by including him as a partner. He had assured him that the life of his sons will be improved and had convinced him for investment of a sum of Rs.30 Lakhs. It is further contended that the complainant being illiterate and belonging to the status of an agriculturist had accompanied the accused four to five times to Porbandar and having noticed the widespread business of the accused, had got lured to invest such an amount. It is further contended that, after the accused had received the aforesaid amount of Rs.30 Lakhs, the complainant had not been repaid any benefit from the Vrachraj Petrol Pump business. It was stated by the accused that he has applied for a loan and as soon as the loan is realized, he shall repay the amount. For two months he had waited for the realization of the amount. He had also made an attempt to contact the accused on his contact number raising demand of the aforesaid amount. It was stated that in lieu thereof, the accused had handed over him different due dates five cheques of HDFC Bank, Porbandar Branch, in favour of the complainant. The complainant had therefore, presented the aforesaid due dates cheques on 01.01.2011 bearing no.477076 of amount of Rs.5 Lakhs, with the State Bank of India, Dwarka Branch.

3.1 The said cheque was submitted in the account on 12.02.2011. However, the said cheque had been returned back by the concerned bank with a memo of return dated 17.02.2011, thereby informing the complainant about the return of the cheques on the ground of insufficient funds. In such circumstances, the complainant was constrained to issue legal notice dated 21.02.2011 through his lawyer, which was served upon the accused by R.P.A.D. as well as by UPC. However, the said notice was received back with an endorsement of "refused". In view thereof, the accused having failed to deposit the amount of the cheque within a statutory period of 45 days from the date of the receipt of the notice by the accused on 25.02.2011, the cause of action arose for the complainant before the Court of learned Magistrate for lodging a complaint under Section 138 of the N.I. Act 1881.

3.2 In view of the above, the complaint was lodged before the Court of learned Chief Judicial Magistrate, First Class, Dwarka, on 21.03.2011, which was registered as Criminal Case No. 568 of 2011. The learned Magistrate, upon recording the statement of the complainant and verifying the complaint as well as on appreciation of the documents placed for consideration, has proceeded with issuance of summons against the accused. The accused was duly served with the court summons and, had refused the charge alleged against him. The learned Magistrate had proceeded with the summary trial. The accused had submitted a pursis at Exh. 9 praying for his discharge from the offence alleged. At the stage of praying for discharge, the accused had produced on record the xerox copy of the partnership deed dated 15.02.2010 entered with the complainant. Along with the said partnership deed, the affidavits of two witnesses viz. Rambhai Lilabhai dated 22.11.2011 (Exh.67) and Kamabhai Alabhai Chachiya (Exh.68) dated 22.11.2011, were produced on record. The learned Magistrate, however, refused to entertain such application of discharge vide order dated 28.11.2011. The matter was requested to be adjourned at the instance of the accused. In absence of the appearance of the accused, the learned Magistrate was constrained to issue a non-bailable warrant against the accused. Noticing the explanation offered with regard to the medical conditions, the same was recalled. Later on, a pursis was filed at Exh. 19 by the parties, whereby the accused had shown his willingness to repay the amount of Rs.30 Lakhs in installment of Rs.50,000/- and had urged the Court to place this matter in the Lok Adalat. However, the parties could not negotiate the dispute before the Lok Adalat, the matter was placed once again before the learned Magistrate.

3.3 The plea of the accused was recorded before the learned Magistrate. The complainant had also produced on record various documentary evidences mainly the original disputed cheque at Exh. 33, the return memo of the disputed cheque at Exh. 34, the legal notice along with the cover with endorsement of "refused", along with the postal slip has also been produced on record by the complainant. On the other hand, the accused has examined two witnesses in support of his case viz. Rambhai Lilabhai Khara, the Manager of M/s Tulsi Pharma Distributors and Kamabhai Alabhai-the uncle of the accused, who was a witness to the deal. Since the xerox copy of the partnership deed was produced on record, the witness summons application was moved by the accused at Exh. 70, whereby the Competent Officer from the office of SBI was requisitioned to appear as a witness along with the document in the nature of partnership deed. In this regard, the witness named Purnachandrasinh Jasubha Jadeja was examined at Exh. 73, who has brought on record the certified copy of the partnership deed which was recovered during the course of investigation in an FIR lodged by the Bank against the accused and investigated by the CBI. The aforesaid document was evidence at Exh. 74. The complainant had also moved an application seeking examination of the accused at Exh. 78. However, the learned Magistrate having noted the evidence brought on record, the parties were requested to proceed with the final arguments. The accused had submitted written arguments at Exh. 94. It is required to be noted that the original complainant- Ranabhai Valabhai Chachiya was reported to have expired on 16.11.2016, and therefore, an application was moved by the heirs and legal representatives of deceased complainant at Exh. 96, which was allowed by the learned Magistrate, in view of the death certificate of the complainant being brought on record at Exh. 99 and the pedigree being produced at Exh. 100. Considering the legal position, the heirs were permitted to pursue the complaint under Section 138 of the N.I. Act, 1881. The matter was finally heard and by impugned judgment and order dated 30.12.2016, the learned Magistrate was pleased to convict the present applicant-original accused for the offence punishable under Section 138 of the N.I. Act, 1881, by imposing sentence of one year and fine of Rs.5000/-, failing deposit of the aforesaid amount, the accused was directed to undergo further period of three months sentence.

3.4 Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction, the original accused had approached in appeal under Section 374 of the Code, 1973, before the Court of learned 2nd Additional Sessions Judge, Jamkhambhaliya, which was registered as

Criminal Appeal No. 1 of 2017. Considering the assurance given by the accused and noticing the conduct as transpired on record, the learned Sessions Judge was pleased to allow the application of suspension of sentence, pending the appeal subject to condition. Before the learned Sessions Judge, the parties were heard. The written arguments were submitted by the accused at Exh. 15. The learned Sessions Judge, after re-appreciating the evidence on record in light of the submissions made by the respective parties, had dismissed the appeal thereby upholding the impugned judgment and order of conviction and sentence with fine by impugned order dated 13.12.2018.

3.5 Being aggrieved and dissatisfied with the aforesaid concurrent judgments and order of conviction and sentence with fine, the accused has approached in Revision before this Court.

4. Considering the grounds raised in the Revision Application and the submissions made by learned advocate for the applicant, the learned Single Judge of this Court vide order dated 27.12.2018 had admitted the Revision and had suspended the impugned order of sentence, pending hearing of the present application. It was further observed that the applicant shall be admitted on bail initially for a period of four weeks' on his executing a bail bond and surety for sum of Rs.10,000/- on usual terms and conditions and, the ad-interim relief

was granted of suspension. Later on, vide order dated 17.01.2019, the learned Single Judge had confirmed the ad-interim relief till final disposal of the present application.

5. The matter was notified for final hearing under special assignment of old matters. With the able assistance of learned advocates on record, the matters were finally heard.

6. Ms. Sandhya D. Natani, learned advocate appearing for the applicant -original accused, has vehemently assailed the impugned judgment and order of conviction by submitting that the trial court as well as the Appellate Court have failed to appreciate the evidence brought on record in its right perspective. She has submitted that, on close appreciation of the evidence of the complainant, the defence raised by the accused about existence of legally enforceable debt has been challenged. According to the accused, the cheques were handed over to the complainant as security and the complainant has misused those cheques. In this regard, she has invited my attention to the specific defence raised by the accused and recorded by the learned Magistrate in para 10.3 of the impugned judgment and order passed by the trial court. She has pointed out that, as per the case of the complainant the cash amount of Rs.30 Lakhs on different occasions in part was handed over to the accused on the assurance given by the

accused that he would be introduced as partner in the Vranchraj Petrol Pump run by the accused. However, as per the case of the complainant, which can be gathered from his deposition, was that within a period of one month, he had prayed for refund of such amount and since the accused was unable to pay the amount, five different blank cheques dated 01.01.2011 of HDFC Bank, Porbandar Branch, were handed over to the complainant. She has further pointed out that in the cross examination, the complainant has admitted that the aforesaid cheques were handed over prior to a period of one month. As against that, the accused has brought on record the unregistered notarized partnership deed which has been admitted as an evidence at Exh. 74, wherein the date of such deed reflected is 24.02.2010. Referring to the aforesaid dates emerging on record, learned advocate has submitted that, the case of the complainant was that, he was not introduced as partner and no amount has been refunded to him, is contradicted.

6.1 Inviting my attention to the aforesaid contradiction, she has submitted that a probable defence has emerged on record with regard to a security cheque being misused by the complainant. She has further invited my attention to the observations made by the learned Magistrate while appreciating the evidence of two witnesses namely Ramabhai Lilabhai Khara at Exh. 67 and Kamabhai Ramabahi Chachia at

Exh. 68. According to learned advocate, the trial court ought to have appreciated the fact that the defence has not only brought on record the contradictions to the case put forward by the complainant of cheque being handed over towards a legally enforceable debt, but the witnesses have also been examined to corroborate the defence raised by the accused. She has pointed out from the evidence of Kamabhai Ramabahi Chachia at Exh. 68, who has categorically stated in his deposition that the complainant was that the Petrol Pump in the name of Vachhraj Petrol Pump in partnership was started in the year 2010 between the complainant and the accused and in this regard he has been witnessed to the partnership deed deal which had taken place between the parties. He has also deposed before the Magistrate that the complainant had invested in the business of partnership and had sought security from the accused in this regard. The said witness has also stated in his deposition that the transaction between the parties had taken place at his house and it is in regard to this investment of amount that the accused had issued five blank signed cheques towards security. At that stage, the accused had categorically stated to the complainant that such cheques have been handed over as security and may not be used for realization, which was agreed by the complainant. In his cross-examination, the question was put to the said witness as to how much investment has been made by the parties in said Petrol Pump, to which, the witness has shown his ignorance. He has also shown his ignorance with regard to any amount of Rs.30 Lakhs being paid to the accused in installment to run the Petrol Pump. He has also denied the fact that the transaction of the amount had taken place at Village Bardia. He has refused to identify the signature of the accused. He has admitted the fact that in the year-2010, the accused was working at the Petrol Pump.

6.2 As regards the specific question put to the said witness as to whether the accused had handed over five cheques towards the borrowed amount from the complainant, the said witness has stated that on the basis the accused had given him cheque. He has further admitted the fact that the accused had handed over five cheques in his presence and such cheques were given at village Chhaya.

6.3 She has further drawn my attention to the fact that the defence with regard to non-service of legal notice was also raised before the learned Magistrate inasmuch as, though legal notice and the postal slips have been brought on record by the complainant; however, admittedly it does not bear the signature of the accused. She has, therefore, submitted that the learned Magistrate committed grave error in holding that the complainant was duly served the legal notice and had fulfilled the requirement of Section 138 of the N.I. Act, 1881.

She has further submitted that the learned Judge has committed error in observing that there is no challenge to the address on which the statutory notice was attempted to be served by the complainant. In this regard, she has invited my attention to the evidence of a witness namely Ramabhai Lilabhai Khara examined at Exh. 67, who was the Manager of M/s. Tulsi Pharma Distributors at the relevant point of time. The said witness in his deposition has categorically stated that the accused is no more attached with M/s. Tulsi Pharma firm. In 2011, the accused shifted his residence to Village Chhaya. The said witness has also deposed on oath that when the attempt was made to serve the legal notice, he had reported to the Officer from the Postal Department about Rajshibhai Rana (accused) having shifted and being not available at the address. He has denied the fact of having refused to accept the notice as endorsed by the Postal Department. The attention of this Court was further invited to the cross examination of the said witness to submit that no contradictions have been brought on record with regard to the aforesaid deposition made by the said witness.

6.4 Learned advocate has further invited my attention to the defence of security cheque, once again, to point out that the firm was actually constituted as evident from the document produced on record at Exh. 74 in the name of Vrachraj Petrol Pump, wherein the present complainant has also signed across. Such document was executed before the notary on 24.02.2010, whereas the cheque as alleged to have been handed over towards the borrowed amount of so-called Rs.30 Lakhs is concerned, bears the date of issuance as 01.01.2011, which is almost after a period of one year. She has, therefore, submitted that the aforesaid factor can be treated as a probable defence to believe the case of the accused that the cheques were handed over as security cheques and were not issued towards any amount borrowed.

6.5 In order to substantiate her arguments, learned advocate has further invited my attention to the defence of the accused on the ground of financial capacity of the complainant being challenged. She has once again emphasized on the fact that the complainant, who is a small agriculturist claims to have handed over a cash amount of Rs.30 Lakhs to the accused in different installments. In his cross examination, a specific question was put to him of any payment of income tax, to which, he has fairly submitted that no income tax returns are filed by him. The bank statement has also not been brought on record to suggest in what way the huge amount in cash was handed over to the accused. She has further drawn my attention to the averments made in the original complaint to point out that there is no clarity with regard to the date, the place at which disputed five cheques were handed over to the complainant. She has invited my attention to the fact that as per the case of the complainant cash amount of Rs.30 Lakhs was handed over in different installments, whereas, considering the five complaints lodged, the five cheques were presented each of Rs.5 Lakhs in all Rs.25 Lakhs. There is no explanation on record with regard to the remaining Rs.5 Lakhs amount of the alleged Rs.30 Lakhs borrowed by the accused.

6.6 Referring to the aforesaid circumstances, learned advocate has submitted that the learned Magistrate as well as learned Sessions Judge failed to appreciate the aforesaid circumstances though being brought on record, to be treated as a probable defence and has discarded the defence of financial ability by recording that the complainant has categorically stated before the learned Magistrate at the time of recording of evidence that he along with his family holds 100 acres of agriculture land. She has further pointed out that except for the aforesaid statement recorded, no evidence worth to indicate about holding of agriculture lands by the complainant has been placed on record. She has therefore submitted that strong circumstances are there on record to accept the defence raised by the accused to be a probable defence so as to shift the burden upon the complainant to prove his case as alleged in the complaint.

6.7 She has also touched on the aspect of legally enforceable debt, by contending that merely because a partnership firm is not registered, in view of Section 69 of the Partnership Act, 1932, would not lead to complaint to be competent under the provisions of N.I. Act, 1881. She has emphasized on the terms and conditions of the partnership firm, more particularly, the fact that both the partners were equally entitled to share of profit and loss, which may arise from such business. She has, therefore, submitted that in absence of any evidence to suggest about the cheques being issued towards such legally enforceable debt, no offence under Section 138 of N.I. Act, 1881 has been attracted. She has, therefore, urged this Court to quash and set aside the impugned judgment and order of conviction and to record the acquittal of the present applicant for the offence under Section 138 of N.I. Act, 1881.

7. On the other hand, learned advocate Mr. M. S. Padaliya, appearing for the respondent -heirs and legal representatives of the original complainant, has forcefully opposed the aforesaid submissions made by the learned advocate for the applicant. At the outset, learned advocate has invited my attention to the pursis submitted on record at Exh. 19, wherein the original accused - present applicant, along with the complainant, had prayed before the learned Magistrate to place the matter in the Lok Adalat to bring out an

amicable settlement. At that stage, the accused had admitted about the payment of outstanding dues of Rs.30 Lakhs and, had further shown his willingness to repay the amount in installments of Rs.50,000/-. The aforesaid pursis was recorded and the parties were relegated to Lok Adalat, but no amicable resolution could be brought between them, and therefore, the matter was decided on merits. However, the very fact that the accused had admitted to the outstanding dues of Rs.30 Lakhs, no further evidence was required to be brought by the complainant on record to establish the element of a legally enforceable debt.

7.1 According to the learned advocate, once such admission of the accused has transpired on record, the rebuttal goes. He has mainly relied upon the findings and reasons assigned by the learned Magistrate and, as upheld by the learned Sessions Judge convicting the accused. It was submitted that there are concurrent findings on the various issues raised by the accused and considering the scope of revisional jurisdiction of this Court, this court may not interfere with the aforesaid order of conviction. Learned advocate has disputed the arguments of the learned advocate for the applicant on the issue of service of notice by submitting that the learned Judge has mainly followed the guiding principles laid down by the Hon'ble Supreme Court in the cases of **C.C. Alavi Haji vs Palapetty Muhammed & Anr** reported in **2007 (6) SCC 555** and in the case of **K. Bhaskaran vs. Sankaran Vaidhyan Balan and others** reported in **(1999) 7 SCC 510.** He has further submitted that, on bare comparison of the address of the accused as reflected in the cause title of the complaint and the address at which the statutory notice was attempted to be served, they are the same. In such circumstances, the learned Judge has rightly invoked Section 27 of the General Clauses Act, 1897, and has rightly arrived at a conclusion that the requirement of Section 138(b) of the N.I. Act, 1881, has been fulfilled. He has further submitted that though the witness Ramabhai Lilabhai has been examined at Exh. 67 in this regard, it is required to be noted that the accused has appeared before the learned Magistrate being served with the summons of the Court at the same address at which the statutory notice was sent.

7.2 As regards the contention raised by the learned advocate for the applicant- original accused on the issue of misuse of the cheque as being handed over as a security cheque is concerned, learned advocate has once again invited my attention to the findings and reasons assigned by the learned Magistrate. He has pointed out that the learned Judge has rightly placed the burden upon the accused to prove his defence. Though, the witness named Kamabhai Alabhai Chachia has been examined at Exh. 68, the learned Judge has noted that he is the nephew of the accused and though, in his deposition he claims to be the witness of the deal of partnership having taken place between the parties, in his cross-examination he has pleaded ignorance about the actual transaction of Rs.30 Lakhs having taken place. The learned Magistrate has also appreciated the partnership deed produced on record at Exh. 74. It was submitted that the aforesaid document was proved and admitted as evidence upon examination of witness viz. Purnachandrasingh Jasuba Jadeja, whose evidence has been recorded at Exh. 73. The attention of this Court was invited to the fact that he was a Police Constable discharging his duty with the CBI office at Gandhinagar, and his evidence suggests that the accused was also involved in some bank fraud, whereby the CBI was investigating the case.

7.3 It was, therefore, submitted that the aforesaid conduct of the accused is also required to be taken into consideration before accepting his case for revision. He has drawn my attention to the document produced on record at Exh. 64 and pointed out that the learned Judge has taken into consideration the fact that such partnership deed document was executed on 24.02.2010, whereas the disputed cheque bears the date of issuance as 01.01.2011. The very fact that the disputed cheque has been issued almost after a period of one year implies that if the defence of the security cheque being issued towards security has to be accepted, then such cheque was to be issued at the time of execution of such agreement. However, such facts are not emerging on record. It is in light of these events, the learned Judge has rightly considered that mere plea of defence of a security cheque itself was not sufficient. The learned Judge has, therefore, rightly discarded the defence raised by the accused regarding the security cheque.

7.4 Learned advocate has further disputed the arguments laid by the learned advocate on the issue of financial capacity by submitting that in the cross-examination of the complainant, at the instance of the accused, the evidence has come on record that the complainant holds 100 acres of agricultural land and owns a huge parcel of land at Village Bardia. Even otherwise, right from the inception of lodging the complaint, it is the case of the complainant that he earns his livelihood through agricultural lands. Merely because income tax returns were not filed, no error can be found with the approach of the Court below in holding that both these laws operate in different fields. He has, therefore, submitted that having appreciated the evidence of the complainant, in absence of any contradictions being brought on record, the learned Judge has rightly believed the complainant to be financially sound as well as the debt being incurred by the accused and the cheque being issued towards such legally enforceable debt. Having been satisfied with the ingredients of the offence, no error can be found with the Courts below convicting the applicant for the offence punishable under Section 138 of the N.I. Act, 1881. It may also be noted that the two witnesses examined by the accused are related to the accused and therefore, no evidentiary value can be attached to their evidence.

8. Learned advocate for the complainant has submitted that on the pursis, the applicant-accused had agreed to the dues of Rs.30 Lakhs to be paid in installment of Rs.50,000/- and urged the place this matter before the Lok Adalat, it is required to be noted that merely because the parties have made an attempt to resolve the issue amicably and the accused had shown his willingness to deposit the amount of Rs.30 Lakhs as outstanding dues to the complainant itself, cannot be treated as a fatal to the case of the accused and would not bind the accused or the court to decide the case on merits. Learned advocate for the complainant has stated that, appreciating the entire evidence on record, there is no challenge to the signature of the accused on the disputed cheque, and therefore, the presumption provided under Section 118 read with Section 139 of the Act, has rightly been raised by the courts below. He has therefore urged this Court to dismiss the present Revision Application and to uphold the impugned judgment and order passed by the Courts below.

9. I have heard the learned advocates appearing for the respective parties at length. I have carefully considered their arguments in light of the findings and reasons assigned by the Courts below. In order to appreciate their legal contentions, I have carefully gone through the original records and proceedings of the Courts below.

10. Considering the arguments raised by the learned advocates appearing on record, the principal defence raised by the accused, as can be gathered from their submissions and the impugned judgment and order, includes: (1) the service of statutory notice, (2) the cheques being handed over to the complainant as security and not towards any debt; the issue of misuse of the cheque; (3) the financial capacity of the complainant.

Having noted the aforesaid defense raised by the accused, admittedly there is no challenge to the case of prosecution as regards maintainability of complaint against the accused.

11. Having appreciated the findings and reasons assigned by both the courts, unfortunately, none of the Courts have noticed that the cheque in dispute is issued from the account of 'R. R. Enterprise' under authorised signature of the accused. Also, none of the learned advocates on record for the respective parties have made any submissions on the aforesaid aspect. During the course of dictation of

this order, this Court while appreciating the arguments noted that the cheque in dispute is issued from the account of drawer 'R.R. Enterprise through authorised signatory'. In such circumstances, the learned advocates for respective parties were called upon to clarify as to whether the complaint was maintainable in absence of the said proprietorship concern / Firm being joined as party respondent. The learned advocates on record have failed to assist this Court on the said issue. Having appreciated the arguments of both the sides and having noted absence of the drawer of the cheque, namely the proprietorship concern, being joined as accused , this Court has proceeded to examine the revision application on merits.

12. The question which therefore arises for consideration is whether the authorised signatory of an enterprise in his individual capacity be treated as a drawer of the cheque to hold him liable for offence under section 138 of the Negotiable Instrument Act, 1881 ?. Whether both the Courts have committed error in invoking the provisions of section 138 of the Negotiable Instrument Act, 1881, in the facts of the case and evidence on record, by entertaining complaint against the sole accused , without joining the actual drawer?.

13. Before examining the aforesaid points for determination touching

the issue of maintainability of complaint, this Court finds it appropriate to first consider the legal position as regards the liability of the drawer who otherwise owns no legal debt as explained by the Hon'ble Supreme Court in the case of **Bijoy Kumar Moli vs. Paresh Manna and others,** reported in **(2026) 5 SCC 380**. The relevant observations are as under:

> "**35**. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order.
>
> ***(i). Section 138 of the NI Act***
>
> **36**.Section 138 of the NI Act is contained in the Chapter XVII which was inserted vide Section 4 of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988. Chapter XVII of the NI Act, which consists of Sections 138 to 147, inter alia provides for penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts. Paragraph (xi) of the Statement of the Objects and Reasons specifies the legislative intent behind introduction of Chapter XVII to the NI Act in the following words:
>
> "(xi) to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the

accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers."

37. Section 138 of the NI Act reads as under:

"***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."

38. This Court in Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd. and Others reported in (2000) 2 SCC 745 explained the ingredients which are to be satisfied for making out a case under Section 138 of the NI Act in the following manner:

"10. On a reading of the provisions of Section 138 of the NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that 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;

(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the 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 the bank;

(iv) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice."

39. In the case on hand, the cheque in question came to be signed by the accused, in his capacity as the Director and Authorised Signatory of the Company Shilabati Hospital Pvt. Ltd., on the account maintained by the Company with the Standard Chartered Bank. Hence, the question that falls for our determination is whether the accused could be said to be covered by the expression "account maintained by him" as it appears in Section 138 of the NI Act. In other words, could it be said that the accused was "maintaining" the bank account upon which the dishonoured cheque had been drawn.

40. Section 6 of the NI Act inter alia defines a "cheque" as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Section

7 defines the "drawer" as the maker of a bill of exchange or cheque and "drawee" as the person thereby directed to pay. Sections 30 and 31 of the NI Act respectively define the liability of the drawer and the drawee of a cheque as follows:

"**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."

41. The proviso (b) to Section 138 provides that the payee or the holder of the cheque which has been dishonoured must give a written notice to the drawer of the cheque within 30 days of the receipt of information from the bank that the cheque has been returned as unpaid. Further proviso (c) provides that if the drawer of the cheque makes the payment of the amount mentioned in the cheque within 15 days of receiving the notice mentioned in proviso (b), then he cannot be held liable under Section 138.

42. What invariably follows from a perusal of the aforesaid provisions is that it is only the drawer of the cheque who can be held liable under Section 138. Section 141 is an exception to this scheme of the NI Act and provides for vicarious liability of persons other than the drawer of the cheque in cases where the drawer of the cheque under Section 138 is a corporate person.

43. The question as to whether a person who was not the drawer of the cheque upon an account maintained by him could be held to be liable for an offence under Section 138 of the NI Act fell for the consideration of this Court in the case of P.J. Agro Tech Ltd. and Others v. Water Base Ltd. reported in (2010) 12 SCC 146. The Court construed the provision strictly and answered the question in the negative. The relevant observations are reproduced hereinbelow:

"11. From the submissions made on behalf of the respective parties, it is quite apparent that the short point for decision in this appeal is whether a complaint under Section 138 of the 1881 Act would be maintainable against a person who was not the drawer of the cheque from an account maintained by him, which ultimately came to be dishonoured on presentation.

* * *

13. From a reading of the said section, it is very clear that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the 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. It is only such a cheque which is dishonoured

which would attract the provisions of Section 138 of the above Act against the drawer of the cheque.

14. In the instant case, the cheque which had been dishonoured may have been issued by Respondent 11 for discharging the dues of Appellant 1 Company and its Directors to Respondent 1 Company and the respondent Company may have a good case against Appellant 1 Company for recovery of its dues before other fora, but it would not be sufficient to attract the provisions of Section 138 of the 1881 Act. The appellant Company and its Directors cannot be made liable under Section 138 of the 1881 Act for a default committed by Respondent 11. An action in respect of a criminal or a quasi-criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence." (Emphasis supplied)

44. In Jugesh Sehgal v. Shamsher Singh Gogi reported in (2009) 14 SCC 683, this Court emphasised on the importance of the dishonoured cheque having been drawn by the accused person on an account held in his name for the offence to be made out and held thus:

"22. As already noted hereinbefore, in Para 3 of the complaint, there is a clear averment that the cheque in question was issued from an account which was non- existent on the day it was issued or that the account from where the cheque was issued "pertained to someone else". As per the complainant's own pleadings, the bank account from where the cheque had been issued, was not held in the name of the appellant and therefore, one of the requisite ingredients of Section 138 of the Act was not satisfied. Under the circumstances, continuance of further proceedings in the complaint under Section 138 of the Act against the appellant would be an abuse of the process of the court. In our judgment, therefore, the decision of the High Court cannot be sustained." (Emphasis supplied)

45. The aforesaid discussion makes it clear that as per the legislative scheme it is only the drawer of the cheque who is sought to be made liable for the offence punishable under Section 138 of the NI Act. Thus, the next question that requires consideration is whether a Director of a company, who is also the authorised signatory, to sign and issue cheques on its behalf could be said to be the drawer of a cheque drawn upon the bank account held in the name of the company. In other words, whether such an authorised signatory could be said to "maintain" the bank account upon which the dishonoured cheque has been drawn for the reason that such a person has the authority to enter into transactions using the bank account of the company and also look after the day-to-day functioning of the bank account of the company.

(ii) ***Whether authorized signatory of a company falls within the ambit of the expression "drawer"?***

46. This Court in one of its recent decisions in the case of Shri Gurudatta Sugars Marketing (P) Ltd. v. Prithviraj Sayajirao Deshmukh and Others reported in 2024 SCC OnLine SC 1800 had the occasion to consider the issue of whether the authorised signatory of a company who had signed a cheque drawn on the bank account of the company and which got dishonoured subsequently could be held to be liable for the payment of interim compensation under Section 143A of the NI Act. This Court while answering the issue in the negative, applied the doctrine of separate corporate personality and held that it is only the drawer of the cheque who could be held to be liable for the payment of interim compensation under Section 143A of the NI Act and the authorised signatory of a company cannot be said to be the drawer of the cheque.

47. The relevant observations made by the Court are reproduced hereinbelow:

"12. The appellant has challenged the judgment and order of the High Court dated March 29, 2023 as well as the relied upon judgment and order dated March 8, 2023. The present appeal is filed assailing the correctness of these orders vis-a-vis the larger question of law, as framed by the High Court:

"1. ....*(i) Whether the signatory of the cheque, authorised 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 leaving aside the company?"*

* * *

39. 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.*

40. 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 emphasised that liability under section 141 arises from the conduct or omission of the individual involved, not merely their position within the company.

41. The distinction between legal entities and individuals acting as authorized signatories is crucial. Authorised 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 authorised 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 authorised signatories.

42. The principle of statutory interpretation, particularly in relation to sections 143A and 148, was also correctly applied by the High Court. The court emphasised that when statutory language is clear and unambiguous, it should be given its natural and ordinary meaning. The legislative intent, as discerned from the plain language of the statute, aims to hold the drawer accountable. The appellants' argument for a broader interpretation to include authorised signatories under section 143A contradicts this principle and would lead to an unjust extension of liability not supported by the statutory text." (emphasis supplied)

48. In yet one another decision of this Court in the case of N. Harihara Krishnan v. J. Thomas reported in (2018) 13 SCC 663, while dealing with the issue of commission of an offence under Section 138 of the NI Act by a company, the Court observed that Section 138 only contemplates the drawer of the cheque to be responsible for the commission of the offence. It is only by virtue of Section 141 that certain persons other than the drawer of the cheque can be made liable for the offence in cases where the offence under Section 138 is committed by a company and not an individual person. The Court, in the facts of the case before it, further held that the identity of the drawer of the cheque was apparent from the cheque itself and thus it was not open to the payee/complainant to seek impleadment of the company, that is, the drawer of the cheque, at a belated stage by filing an impleadment application when it had instituted the complaint only against the authorised signatory who had signed the cheque on behalf of the company. The Court also held that the offence under Section 138 is person specific and in the absence of applicability of the principles of the Code of Criminal Procedure, 1973, the magistrate cannot take cognizance of the complaint unless it is made against the drawer of the cheque, as it is only the drawer who can be an accused under Section 138.

49. The relevant observations are reproduced hereinbelow:

"*20. The offence under Section 138 of the Act is capable of being committed only by the drawer of the cheque.* The logic of the High Court that since the offence is already taken cognizance of, there is no need to take cognizance of the offence against Dakshin is flawed. Section 141 stipulates the liability for the offence punishable under Section 138 of the Act when the person committing such an offence happens to be a company—in other words when the drawer of the cheque happens to be a company. *[...]*

* * *

22. The High Court failed to appreciate that the liability of the appellant (if any in the context of the facts of the present case) is only statutory because of his legal status as the Director of Dakshin. 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. Such a signatory is only a person duly authorised to sign the cheque on behalf of the company/drawer of the cheque. If Dakshin/drawer of the cheque is sought to be summoned for being tried for an offence under Section 138 of the Act beyond the period of limitation prescribed under the Act, the appellant cannot be told in view of the law declared by this Court in Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] that he can make no grievance of that fact on the ground that Dakshin did not make any grievance of such summoning. It is always open to Dakshin to raise the defence that the initiation of prosecution against it is barred by limitation. Dakshin need not necessarily challenge the summoning order. It can raise such a defence in the course of trial.

* * *

27. By the nature of the offence under Section 138 of the Act, the first ingredient constituting the offence is the fact that a person drew a cheque. The identity of the drawer of the cheque is necessarily required to be known to the complainant (payee) and needs investigation and would not normally be in dispute unless the person who is alleged to have drawn a cheque disputes that very fact. The other facts

required to be proved for securing the punishment of the person who drew a cheque that eventually got dishonoured is that the payee of the cheque did in fact comply with each one of the steps contemplated under Section 138 of the Act before initiating prosecution. Because it is already held by this Court that failure to comply with any one of the steps contemplated under Section 138 would not provide "cause of action for prosecution". Therefore, in the context of a prosecution under Section 138, the concept of taking cognizance of the offence but not the offender is not appropriate. Unless the complaint contains all the necessary factual allegations constituting each of the ingredients of the offence under Section 138, the Court cannot take cognizance of the offence. Disclosure of the name of the person drawing the cheque is one of the factual allegations which a complaint is required to contain. Otherwise in the absence of any authority of law to investigate the offence under Section 138, there would be no person against whom a court can proceed. There cannot be a prosecution without an accused. The offence under Section 138 is person specific. Therefore, Parliament declared under Section 142 that the provisions dealing with taking cognizance contained in the Cr.PC should give way to the procedure prescribed under Section 142. Hence the opening of non obstante clause under Section 142. It must also be remembered that Section 142 does not either contemplate a report to the police or authorise the Court taking cognizance to direct the police to investigate into the complaint.

iii. ***Meaning of the expression "on an account maintained by***

him" used in Section 138 of the NI Act

50. It is of vital importance to understand the import of the expression "on an account maintained by him with a banker" used in Section 138 of the NI Act. The expression, in our considered opinion, describes the relationship between the account holder and the banker. This relationship is fundamental to the application of Section 138. The act of maintaining an account is exclusively tied to the account holder and does not extend to any third party whom the account holder may authorize to manage the account on its behalf. Therefore, any delegation of authority to manage the account does not alter the intrinsic relationship existing between the account holder and the banker as envisaged under the NI Act. Corporate persons like companies, which are mere legal entities and have no soul, mind or limb to work physically, discharge their functions through some human agency recognised under the law to work. Therefore, if some function is discharged by such human agency for and on behalf of the company it would be an act of the company and not attributable to such human agent. One such instance of discharge of functions could be the authority to manage the bank accounts of the company, issue and sign cheques on its behalf, etc. which may be delegated to an authorised signatory. However, such authorisation would not render the authorised signatory as the maker of those cheques. It is the company alone which would continue to be the maker of these cheques, and thus also the drawer within the meaning of Section 7 of the NI Act.

51. The authorised signatory is merely the physical limb that signs and makes the cheque on behalf of the company's incorporeal personality. The company, for all purposes, continues to remain the drawer of the cheques. If the interpretation as being canvassed by the complainant is accepted then even an employee of the Company, who on account of his being an authorized signatory signs a cheque issued by the Company towards discharge of the debt or other liability of the Company, would be liable to prosecution and conviction under Section 138 of NI Act even after he resigns from the company and is no more in its employment. This certainly could not have been the intention of the legislature. Even the vicarious liability created under Section 138 of NI Act would not be attracted in respect of a Director or an employee of the Company who resigns and severs his connections with the company, unless the complainant is able to bring his case within the purview of sub-Section 2 of Section 141, by proving that the offence had been committed with his consent or connivance or was otherwise attributable to any neglect on his part.

52. We would hasten to add that the above interpretation should not in any manner be misconstrued to affix liability upon the joint account holder of an account unless the cheque is shown to have been made/drawn jointly by such joint account holder. A company vis-à-vis its authorised signatory stands on a completely different footing as compared to account holders of a joint account. In the former, it is only the company which holds an account with the banker, whereas in the latter, each joint account holder can be said to hold an account with the banker. Thus, while in the case of a cheque drawn on the account of the company the authorised signatory cannot be held to be the drawer, in the case of a cheque drawn upon a joint account, each account holder affixing his signature to the cheque may be said to have drawn such a cheque.

53. The position of law on this issue has been settled by this Court in the case of Aparna A. Shah v. Sheth Developers (P) Ltd. reported in (2013) 8 SCC 71, wherein it was observed thus:

"28. We also hold that under Section 138 of the NI Act, in case of issuance of cheque from joint accounts, a joint account-holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account-holder. The said principle is an exception to Section 141 of the NI Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as arm-twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to the dishonour of a cheque can, in no case "except in case of Section 141 of the NI Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. [...]" (Emphasis supplied)

54. The expression "on an account maintained by him" has been construed by a learned Single Judge of the Kerala High Court in the case of P.N. Salim v. P.J. Thomas & Another reported in 2004 SCC Online Ker 269 to also include those cases where the cheque was issued by the drawer after the closure of the account maintained by him with the bank. The High Court said so having regard to the underlying object behind the enactment of Section 138. A similar view was taken by the Gujarat High Court in the case of Hashmikant M. Seth v. State of Gujarat & Anr. reported in 2004 SCC Online Guj 300. We are in agreement with both the High Courts on the understanding of the expression "on an account maintained by him".

55. We are in seisin of the fact that in the case at hand, the accused had allegedly borrowed the amount from the complainant on the pretext that he was in need of financial help regarding some infrastructure development project he was undertaking. Nothing was brought on record during the course of the trial which would suggest that there was some sort of an understanding between the complainant and the accused that the debt of the accused would be discharged by the Shilabati Hospital Pvt. Ltd. A perusal of the notice issued by the complainant to the accused as well as a reading of the complaint filed by the complainant before the magistrate clearly brings out that the complainant was under the impression that the cheque was drawn by the accused in personal capacity upon a bank account maintained by him with the Standard Chartered Bank. Further, the defence that the bank account upon which the cheque was drawn was held in the name of Shilabati Hospital and not in the name of the accused was taken for the first time in the appeal filed by the accused before the Sessions Court. Although it can be understood that the complainant had no occasion to believe that the cheque was drawn upon the bank account of Shilabati Hospital as the debt was one which was taken by the accused in his personal capacity, yet a bare perusal of the cheque shows that the cheque was signed by the accused in the capacity of the Director of the Shilabati Hospital Pvt. Ltd. as the same bears both the stamp of the director as well as the hospital.

56. A catena of decisions of this Court have settled the position of law that in case of a cheque issued on behalf of a company by its authorised signatory, prosecution cannot proceed against the such authorised signatory or other post-holders of the company as described under Section 141 of the NI Act, unless the company who is the drawer of the cheque is arraigned as an accused in the complaint case filed before the magistrate. Further, vicarious liability can only be affixed against the directors, authorised signatories, etc. of the company after the company is held liable for the commission of offence under Section 138.

57. It is not the case of the complainant that the cheque in question was drawn by the accused on a bank account maintained by him, rather the case is that the cheque was issued in discharge of the personal liability of the accused towards the complainant, and hence there was no occasion for it to implead the company as an accused.

(iv.) ***Scope of the expression "any debt or other liability" appearing in Section 138 of the NI Act***

58. Section 138 of the NI Act does not envisage that only those cases where a cheque issued towards the discharge of the personal liability of the drawer towards the payee gets dishonoured would come within the ambit of the provision. The expression "of any debt or other liability" appearing in Section 138 when read with the Explanation to the provision is wide enough to bring any debt or liability which is legally enforceable within its fold. Thus, the requirement under the provision is that the debt or any other liability has to be legally enforceable and the emphasis is not on the existence of such debt or other liability between the drawer and the payee. A number of decisions of this Court have clarified that even those cases where a person assumes the responsibility of discharging the debt of some other person, and in furtherance thereof draws a cheque on an account maintained by him, which subsequently gets dishonoured upon being presented before the drawee, would be covered by Section 138 if the payee is able to establish that there was some sort of an arrangement by way of which the debt was assumed by the drawer.

59. This Court in the case of Anil Sachar and Another v. Shree Nath Spinners Private Limited and Others reported in (2011) 13 SCC 148 observed thus:

"15. Upon perusal of the record, we find that the complainants had established before the trial court that there was an understanding among the complainants and the accused that in consideration of supply of goods to M/s Shree Nath Spinners (P) Ltd., M/s AT Overseas Ltd. was to make the payment. The aforestated understanding was on account of the fact that Directors in both the aforestated companies were common and the aforestated companies were sister concerns. In the circumstances, it can be very well said and it has been proved that in consideration of supply of goods to M/s Shree Nath Spinners (P) Ltd., M/s AT Overseas Ltd. had made the payment. In view of the above fact, in our opinion, the trial court was not right when it came to the conclusion that there was no reason for M/s AT Overseas Ltd. to give the cheques to the complainants.

* * *

17. The trial court materially erred while coming to a conclusion that in criminal law no presumption can be raised with regard to consideration as no goods had been supplied by the complainants to M/s AT Overseas Ltd. The trial court ought to have considered the provisions of Section 139 of the Act, which reads as under:

"1***39.Presumption in favour of holder.***—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

18. According to the provisions of the aforestated section, there is a presumption with regard to consideration when a

cheque has been paid by the drawer of the cheque. In the instant case, M/s AT Overseas Ltd. paid the cheque which had been duly signed by one of its Directors, namely, Munish Jain. Munish Jain is also a Director in M/s Shree Nath Spinners (P) Ltd. As stated hereinabove, both are sister concerns having common Directors. Extracts of books of accounts had been produced before the trial court so as to show that both the companies were having several transactions and the companies used to pay on behalf of each other to other parties or their creditors. The above fact strengthens the presumption to the effect that M/s AT Overseas Ltd. had paid the cheques to the complainants, which had been signed by Munish Jain, in consideration of goods supplies to M/s Shree Nath Spinners (P) Ltd. Of course, the presumption referred to in Section 139 is rebuttable. In the instant case, no effort was made by Munish Jain or any of the Directors of M/s AT Overseas Ltd. for rebuttal of the aforestated presumption and, therefore, the presumption must go in favour of the holder of the cheques. Unfortunately, the trial court did not consider the above facts and came to the conclusion that there was no consideration for the cheques which had been given by M/s AT Overseas Ltd. to the complainants." (Emphasis supplied)

60. In another judgment delivered by this Court in ICDS Ltd. v. Beena Shabeer and Another reported in (2002) 6 SCC 426, reference was made to the nature of liability which is incurred by the one who is a drawer of the cheque and observed that if the cheque is given towards any liability or debt which might have been incurred even by someone else, the person who is the drawer of the cheque can be made liable under Section 138 of the Act. The relevant observations made therein are reproduced hereinbelow:

"10. The language, however, has been rather specific as regards the intent of the legislature. The commencement of the section stands with the words "Where any cheque". The abovenoted three words are of extreme significance, in particular, by reason of the user of the word "any" — the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment.

11. The issue as regards the coextensive liability of the guarantor and the principal debtor, in our view, is totally out of the purview of Section 138 of the Act, neither the same calls for any discussion therein. The language of the statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of

any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act. "Any cheque" and "other liability" are the two key expressions which stand as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the statute. Any contra-interpretation would defeat the intent of the legislature. The High Court, it seems, got carried away by the issue of guarantee and guarantor's liability and thus has overlooked the true intent and purport of Section 138 of the Act. The judgments recorded in the order of the High Court do not have any relevance in the contextual facts and the same thus do not lend any assistance to the contentions raised by the respondents." (Emphasis supplied)

61. A perusal of the above two decisions indicates that even if the cheque might have been issued for the discharge of personal liability of the accused towards the complainant, had the company Shilabati Hospital Pvt. Ltd. been arraigned as an accused in the complaint case before the Trial Court, it would have remained open to the complainant to establish with the aid of the presumption under Section 139 that the cheque issued by the company was in discharge of a legally enforceable debt. However, in the absence of the drawer of the cheque having been arraigned as an accused, it was rightly held by the High Court that no prosecution could have proceeded against the accused in his personal capacity. The only way by which the accused could be held liable was under Section 141 of the NI Act, however the same could not have been done in the absence of the company being arraigned as an accused. This position of law has been explained by a number of decisions of this Court.

62. A three-Judge Bench of this Court in Aneeta Hada v. Godfather Travels and Tours Private Limited reported in (2012) 5 SCC 661 observed thus:

"17. The gravamen of the controversy is whether any person who has been mentioned in Sections 141(1) and 141(2) of the Act can be prosecuted without the company being impleaded as an accused. To appreciate the controversy, certain provisions need to be referred to.

* * *

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

59. In view of our aforesaid analysis, we arrive at the

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

63. As specified in paragraph 59 of the aforesaid decision, the only exception to the general rule as laid above is embodied in the doctrine of lex non cogit ad impossibilia which means that the law doesn't compel the impossible. Thus, it is only in those cases where the impleadment of the company is not possible due to some legal impediment that this general rule can be exempted. In the facts on hand, it cannot be said that there was any legal difficulty in impleading Shilabati Hospital Pvt. Ltd. as an accused in the complaint case filed by the complainant. Thus, even the benefit of the exception cannot be extended to the complainant in the present case.

64. In Himanshu v. B. Shivamurthy (supra), the Court was examining the legality and validity of the order quashing a complaint passed by the High Court in exercise of its inherent powers under Section 482 of the CrPC in a case where the Director of the company was arraigned as the sole accused for the dishonour of a cheque drawn upon the bank account held in the name of the company. Reiterating the principles laid down in Aneeta Hada (supra), this Court upheld the decision of the High Court in quashing the complaint case.

65. In yet another decision of this Court in Mainuddin Abdul Sattar Shaikh v. Vijay D. Salvi reported in (2015) 9 SCC 622, the facts interestingly were virtually opposite to the facts of the case on hand. In the said case, the accused, who was the Managing Director of a company had issued a cheque drawn on his personal account in discharge of the liability of the company. The cheque later came to be dishonoured and a private complaint was lodged against the accused under Section 138 of the NI Act. Both the trial court and the High Court acquitted the accused on the ground that the company was not made a party to the proceedings. However, this Court set aside the order of acquittal and held the accused liable for the offence under Section 138. It was observed by this Court that as the cheque was drawn by the accused on an account maintained by him, the Company or any of its directors could not be made liable for the offence, even if the cheque was issued by the accused towards the discharge of the debt of the company.

66. The relevant observations made by the Court are reproduced hereinbelow:

10. In the present case, it is an admitted fact that the drawer of the cheque was the respondent, who had drawn the cheque, bearing No. 075073 for Rs 74,200 on a bank account maintained by him towards the refund of the booking amount. Therefore, he was the drawer of the cheque. The case of the appellant, apart from being supported by the provision of Section 138 of the NI Act, also gets buttressed by the judgment in P.J. Agro Tech Ltd. v. Water Base Ltd. [(2010) 12 SCC 146 : (2010) 4 SCC (Civ) 588 : (2011) 2 SCC (Cri) 164] , where this Court has dealt with the scope of Section 138 and held that : (SCC p. 150, para 13)

"13. … it is very clear that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the 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. It is only such a cheque which is dishonoured which would attract the provisions of Section 138 of the above Act against the drawer of the cheque."

11. About the liability under Section 138 of the NI Act, where the cheque drawn by the employee of the appellant Company on his personal account, even if it be for discharging dues of the appellant Company and its Directors, the appellant Company and its Directors cannot be made liable under Section 138. Thus, we observe that in the abovementioned case, the personal liability was upheld and

the Company and its Directors were absolved of the liability. The logic applied was that the section itself makes the drawer liable and no other person. […]" (Emphasis supplied) v.

(v)Section 141 of the NI Act

67. In Aneeta Hada (supra), this Court fortified the view that criminal liability on account of dishonor of cheque primarily falls on the drawer company and then extends to its officers only when the conditions incorporated in Section 141 of the NI Act are satisfied. While explaining the import of the words "as well as the company" occurring in the provision, the Court observed that the commission of an offence by the company is an express condition precedent and only when the prosecution is maintainable against the Company that the persons mentioned in the other categories under Section 141 can be vicariously made liable for the offence committed under Section 138 of the NI Act. The relevant observations are reproduced hereinbelow:

"53. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.

* * *

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."

(Emphasis supplied)

68. Following the rationale in Aneeta Hada (supra), this Court in Anil Gupta v. Star India Private Limited and Another reported in (2014) 10 SCC 373 held that the guilt for the offence under Section 138 is only deemed upon the other persons who are connected with the Company as a consequence of Section 141 of the NI Act. Herein, since the complaint against the respondent Company was not maintainable, the High Court had quashed the summons issued by the trial court against the respondent Company. This Court opined that since the Company was not a party to the proceedings under Section 138 read with Section 141 of the Act, the proceedings against the appellant Managing

Director also could not be continued with. The relevant observations are reproduced hereinbelow:

"13. In the present case, the High Court by the impugned judgment dated 13-8-2007 [Visionaries Media Network v. Star India (P) Ltd., Criminal Misc. Case No. 2380 of 2004, decided on 13-8-2007 (Del)] held that the complaint against Respondent 2 Company was not maintainable and quashed the summons issued by the trial court against Respondent 2 Company. Thereby, the Company being not a party to the proceedings under Section 138 read with Section 141 of the Act and in view of the fact that part of the judgment referred to by the High Court in Anil Hada [Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1 : 2001 SCC (Cri) 174] has been overruled by a three-Judge Bench of this Court in Aneeta Hada [Aneeta Hada v. Godfather Travels and Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] , we have no other option but to set aside the rest part of the impugned judgment [Visionaries Media Network v. Star India (P) Ltd., Criminal Misc. Case No. 2380 of 2004, decided on 13-8-2007 (Del)] whereby the High Court held that the proceedings against the appellant can be continued even in absence of the Company. We, accordingly, set aside that part of the impugned judgment dated 13-8-2007 [Visionaries Media Network v. Star India (P) Ltd., Criminal Misc. Case No. 2380 of 2004, decided on 13-8-2007 (Del)] passed by the High Court so far as it relates to the appellant and quash the summons and proceeding pursuant to Complaint Case No. 698 of 2001 qua the appellant." (Emphasis supplied)

69. This Court's decision in Ashok Shewakramani and Others v. State of Andhra Pradesh and Another reported in (2023) 8 SCC 473 acknowledged the normal rule that there cannot be any vicarious liability under a penal provision but however, held that Section 141 of the NI Act is an exception to this rule. It further stated that vicarious liability would only be fastened when the person who is sought to be held vicariously liable was "in charge of" and "responsible to the Company" for the conduct of the business of the Company at the time when the offence under Section 138 was committed. In circumstances where such persons are indeed found vicariously liable, those persons as well as the Company shall be deemed to be guilty of the offence under Section 138 of the NI Act.

70. The relevant observations made by the Court are reproduced hereinbelow:

"21. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section (1) of Section 141 are satisfied. The section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company shall be deemed to be guilty of the offence under Section 138 of the NI Act." (Emphasis supplied)

71. It follows from a conspectus of the aforesaid decisions that it is the drawer Company which must be first held to be the principal offender under Section 138 of the NI Act before culpability can be extended, through a deeming fiction, to the other Directors or persons in-charge of and responsible to the Company for the conduct of its business. In the absence of the liability of the drawer Company, there would naturally be no requirement to hold the other persons vicariously liable for the offence committed under Section 138 of the NI Act.

72. Before we part with the matter, we deem it necessary to address the argument advanced by the counsel appearing for the accused that the object of Section 138 of the NI Act would be defeated if cases like the present one are held to be excluded from the ambit of the provision. The counsel placed reliance on a decision rendered by a learned Single Judge of the Madras High Court in the case of P. Sarvana Kumar v. S.P. Vijaya Kumar reported in 2022 SCC Online Mad 1387. The said decision was rendered in a petition filed under Section 482 of the Cr.P.C. for quashing of the private complaint filed against the petitioner therein for the offence under Section 138 of the NI Act. The petitioner therein, who was arraigned as the second accused in the complaint, had filed the petition seeking quashing of the complaint qua him on the ground that the cheque, which came to be dishonoured, was signed by him in his capacity as an authorized signatory acting on behalf of the owner of a proprietorix concern, and thus he could not be said to have drawn the cheque on an account maintained by him, and the liability under Section 138 could only be affixed on the owner of the proprietorix concern. It was also contended by the petitioner therein that the provisions of Section 141 of the NI Act would have no applicability to a case involving a proprietorship concern as the same is not owned by a collection of individuals but a single person.

73. The High Court while rejecting the contention of the petitioner therein, adverted to the object of Section 138 of the NI Act to hold that the authorized signatory could be said to be the drawer of the cheque as he was "maintaining" the account held in the name of the proprietorix concern and thus could be held liable under Section 138 of the NI Act.

74. We find it difficult to subscribe to the view taken by the High Court in the aforesaid decision. The High Court referred to an extract from the 11th Edition of the commentary on the NI Act by Bhashyam and Adiga wherein the liability of the principal for the acts of the agents has been discussed and erroneously relied upon it to attribute liability to the petitioner therein, who was the agent acting on behalf of the proprietorix concern.

75. The position of law as has been settled by this Court and reiterated in a legion of decisions is that it is only the drawer of the cheque who can be held liable for an offence under Section 138 of the NI Act. Further, this Court has also declared through several pronouncements on the subject that an authorised signatory acting on behalf of the principal cannot be said to be the "drawer" of the cheque "on an account maintained by him with a banker" under Section

138.

76. It is also pertinent to note that the High Court in the aforesaid decision also referred to the decision of this Court in Raghu Lakshminarayanan v. Fine Tubes reported in (2007) 5 SCC 103 wherein it was categorically held by this Court that Section 141 of the NI Act will have no application to proprietorship concerns as they are owned by individuals and do not have a separate corporate identity. However, the High Court distinguished the said decision by holding that although the signatory of a cheque issued on behalf of a proprietorship concern cannot be said to be vicariously liable under Section 141 yet he could be held liable in his capacity as the drawer of the cheque under Section 138 of the NI Act.

77. We find it difficult to approve the line of reasoning adopted by the High Court in relying upon the object behind the enactment of Section 138 of the Act to liberally interpret the language of Section 138 of the NI Act so as to include even an authorized signatory within its ambit. Section 138 of the NI Act being penal in nature has to be strictly construed and advertence to the object behind its enactment can only be made to supplement the language employed in the text of the statute and not to supplant it or render it overly broad and susceptible to misuse.

78. This Court in P.J. Agro Tech (supra) noted as under:

14. … An action in respect of a criminal or a quasi- criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in

such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence."

E. ***Conclusion***

79. As discussed above, in the case on hand, the accused was prosecuted in his individual capacity and not in his capacity of being the Director of the Shilabati Hospital Pvt. Ltd. Although it is undisputed that the accused signed the cheque in question, yet as the cheque was drawn not on an account maintained by him with a Banker but was issued on an account maintained by the hospital, the requirement of Section 138 of the Act cannot be said to have been complied with.

80. It would have been altogether a different situation if the accused was prosecuted in his capacity as a Director of the Shilabati Hospital. In such a scenario, the cheque drawn by him on an account maintained by the Company would have satisfied the requirement of Section 138 of the Act but as the accused has been proceeded against for an offence under Section 138 of the Act in his individual capacity and inasmuch as the cheque dishonoured for insufficiency of funds was drawn on the account maintained by the Company, namely, Shilabati Hospital Pvt. Ltd., and not by the accused herein, no offence could be said to have been committed under Section 138 of the Act. The High Court rightly held that in the absence of the principal offender having been arraigned as an accused, prosecution for the commission of an offence under Section 138 of the NI Act could not have proceeded against the accused.

81. As is evident from the discussion in the preceding parts of this judgment, the requirement of Section 138 of the NI Act is that for fastening criminal liability on the accused, the cheque which was dishonoured for insufficiency of funds etc., must have been drawn on an account maintained by the accused. The mere fact that the cheque signed by the accused in his capacity as a "Director" of the Company would in the normal course be honoured by the Bank to which it was presented does not satisfy the statutory requirement of Section 138 of the Act.

82. Section 138 of the Act exposes the person who has drawn the cheque and which has been returned for insufficiency of funds to criminal liability. The provision, therefore, must be construed strictly. However, such a strict construction should not result in defeating the very purpose for which the provision has been enacted as held by this Court in the case of NEPC Micon Limited and Others v. Magma Leasing Limited reported in (1999) 4 SCC 253. At the same time, the statutory provisions creating penal liability cannot be stretched too far to embrace the persons and situations patently excluded from its purview as discernible from clear and unequivocal language used in the provision.

83. Section 138 of the NI Act clearly postulates that the cheque returned for insufficiency of funds should have been drawn by a person on an account maintained by him. It will amount to doing violence to the language of the statute if Section 138 of the Act is interpreted to mean that even if a person draws a cheque on an account not maintained by him, he shall be liable if the cheque is returned for insufficiency of funds. Such an interpretation will lead to absurd and wholly unintended results.

84. However, the peculiar factual situation of the present case and the plight of the complainant is not lost upon us. We are conscious of the fact that the option of bringing civil action against the accused or the hospital will be of no avail to the complainant as the claims are hopelessly time barred. Further, it is also not open for the complainant to initiate proceedings under Section 138 of the NI Act afresh by impleading Shilabati Hospital Pvt. Ltd. as an accused as the time period prescribed for issuance of statutory notice under Section 138 has long expired.

85. It is trite law that an act may constitute an offence under more than one statute. The encashment of the cheque for an amount of Rs 7,00,000/- issued by the complainant in favour of the accused stood proved during the course of the trial. Further, the conduct of the accused in not replying to the statutory notice of dishonour of cheque issued by the lawyer for the complainant and in not taking the plea of the cheque having been drawn on the account of the company in his capacity as a Director during the course of trial undoubtedly raises questions as regards his dishonest intention in not repaying the amount borrowed by him from the complainant.

86. In such circumstances, although it is not possible to hold the accused liable for the offence under Section 138 of the NI Act, yet the possibility of him having committed the offence of cheating cannot be ruled out. Prima facie, the mens rea (guilty mind) of the accused speaks for itself.

87. We leave it open to the complainant to approach the jurisdictional police station and lodge an appropriate FIR against the accused. If the complainant lodges an FIR, the concerned police officer in-charge of the police station shall investigate the same in accordance with law."

14. Thus the Hon'ble Supreme Court has considered the term 'drawer' as defined under section 7 of the Act as maker of the b ill of exchange or cheque and drawee as the person thereby directed to pay ZTe Court has also considered section 30 and section 31 of the Act, defining the liability of the drawer and the drawee of the cheque. The Court has followed the ratio laid down in the case of Kusum In gots (supra), P.J. Agro (supra) and Jugesh Sehgal (supra) and has held that considering provision of section 138 , the persons who have drawn cheque are exposed to criminal liability. Therefore the said statutory provisions cannot be stretched too far to embrace persons and situations patently excluded from its purview as discernible from clear and unequivocal language. The Court has also further considered the expression ' on an account maintained by him with a banker' and has held that in case of an authorised signatory acting on behalf of the

Company cannot be said to be a drawer of the cheque 'on account maintained by him with a banker' under section 138 of the Act. The Court has also considered section 141 of the Act and the well settled principles as laid down in the case of Aneeta Handa (supra) and has observed that a cheque issued by its authorised signatory, prosecution cannot be proceeded against such authorized signatory or other post holders of the company unless the company who is drawer of the cheque is arraigned as an accused in complaint filed before the Magistrate. It is required to be noted that the facts of the case in the case of Bijoy kumar (supra) suggest that the debt was incurred by the accused in his personal capacity whereas the cheque was signed by the accused in the capacity of the Director of the company. In this peculiar facts of the case, the Court has further considered the scope of section 138 of the Act and has held that the said provision does not envisage that only those cases where cheque issued towards the discharge of the personal liability of the drawer towards the discharge of the personal liability of the payee gets dishonored would come with the ab it of the provision. However, the Court has also considered the expression 'of any debt or other liability' and has ruled that it has to be established by the complainant that the drawer had assumed the responsibility of discharging the debt of some other person, and in furtherance thereof has drawn cheque on an account maintained by him, which subsequently got dishonoured. Thus, the burden is on the complainant to plead and establish on record to establish that there was some sort of arrangement by which the debt was assumed by the drawer.

15. Applying the aforesaid broad principles in the facts of the present case, it is required to be noted that the complainant at the stage of lodging of complaint has made an averment that the amount of Rs.30 Lakhs was handed over in cash to the accused on different dates , who had lured him to invest by offering him to be introduced as partner in the partnership firm in the business of Vachraj Petrol Pump. It is further contended that the amount though being handed over to the accused no share was given to the complainant from such business. On the other hand, the accused had produced on record the partnership deed at Exh.74 which suggests that the parties have mutually agreed to constitute a firm under the name of Vachraj Petrol Pump to run the Petrol Pump business at Porbandar. Such document is an unregistered document executed before the Notary on 24.02.2010. The terms and conditions of the partnership firm suggest that the investment towards the capital of the firm was to be made as per mutual understanding. The profit which may be accrued on such investment was to be realized annually with interest at the rate of 12%. It was further agreed between the parties that the audit of the account shall

be conducted at the end of the year and payments of profit/loss were to be examined as per their share in the partnership firm.

16. It is required to be noted that the property of the firm belonged to the firm and was not treated to be any individual partner; it was agreed between the parties that the parties were bound by the provisions of the Indian Partnership Act, 1932, and were bound to act accordingly. In Clause 10, it has been agreed between the parties that at the end of the year, after undertaking the auditing of the accounts and after payment of amounts towards any interest and wages, the share of profit and loss was to be settled between the respective parties in equal proportion.

17. At this juncture, in order to appreciate the core element of legally enforceable debt, which is required to be established so as to attract the offence under Section 138 of the N.I. Act, gathering the surrounding circumstances appearing on record in light of the admission of the complainant about the deal of him being introduced as a partner in the Vajraj Petrol Pump partnership business, and the deed of 2010 being also brought on record by the accused at Exh. 74, dated 24th February 2010, it is an admitted fact that the parties have entered into a valid contract, whereby the complainant had been inducted as a partner and therefore, the investment was made by him

towards such business. In view of the provisions of Section 14 of the Partnership Act, once the amount was contributed to the partnership firm, it had become the assets of the firm. The question arises as to whether the claim of share in the said partnership could be brought within purview of 'legally enforceable debt' so as to attract offense under section 138. It is required to be noted that the claim was against the Vachraj petrol pump firm in which the accused was one of the partners. The cause title does not mention about him being joined as a partner of such a firm. Again, as agreed between the parties, at the end of the year, the partners were at the most entitled to seek profits and losses in equal share. Merely by the fact that the firm was not registered, the validity of such contract cannot be doubted in absence of any challenge being made. But at the same time, so far as lodging of the criminal complaint is concerned, the same is not a bar on the ground that the firm was not registered. The courts have consistently held that a penal provision which intends to punish in the case of financial fraud so as to maintain the trust of the people in banking and is, therefore, not required to be treated as a simple civil suit for recovery. The courts have, therefore, accepted that even in cases of an unregistered firm, the issue as to whether the debt was illegal or unenforceable under criminal law does not arise. In this regard, it would be appropriate to refer to the judgment of the Hon'ble

Supreme Court in the case of **BSI limited and another vs Gift holding private limited**, reported in **(2000) 2 SCC 737**. However, the fact remains that the specific case put forward by the complainant for enforcement of debt is against the accused and not against the Firm. In view of section 25 of the Partnership Act, the partner in his individual capacity shall be answerable to the obligations of the firm towards outgoing partners.

18. Having noted the aforesaid facts, the question arises as to whether the complainant had satisfied the basic requirements of Section 138 of the Act, 1881. It is required to be noted that the cheque produced on record at Exh.33 clearly suggests that the cheque was issued from the account of 'R.R. Enterprise' through its authorized signatory. This Court has closely appreciated the cause title of the original complaint, and it clearly transpires that the complaint has been lodged against 'Rajshibhai Ranabhai Chachiya' in his individual capacity. The complainant has, for the reasons best known to him, failed to join "R.R. Enterprises" as the accused in the complaint. This Court had called upon the learned advocate for the complainant to explain the aforesaid aspect; however, in absence of any arguments being raised by either of the parties before the courts below, learned advocate was unable to dispute the aforesaid fact.

19. In view thereof, in my view, the learned Judge committed grave error in arriving at a conclusion that the basic ingredients under Section 138 of the N.I. Act, 1881, that the cheque was drawn by a person on an account maintained by him with a banker for payment of any amount of money to the complainant from out of that account for the discharge of any debt or liability, have been fulfilled. Having appreciated the case of the complainant as emerging from the original complaint, there is no averment being made with regard to any transaction being entered into with "R.R. Enterprises" or having assured the responsibility to discharge the debt. What is pleaded before the court is the transaction being entered with Rajshibhai Ranabhai Chachiya with whom he had agreed to invest in the partnership business under the name of Vrachraj Petrol Pump.

20. Considering surrounding circumstances, a probable defence can be said to have been brought on record by the accused with regard to misuse of cheques, as being alleged on the ground that the cheques were furnished towards security. It appears that the accused namely Rajshibhai Ranabhai Chachiya, in his name was also running a firm under the name of R.R. Enterprises, and from the account of R.R. Enterprises, he being the authorized signatory, had drawn the cheques, which were handed over to the complainant for security purposes. However, this is merely on presumption as no such facts or

any averments in this regard has been made by the complainant in the original complaint. It is also required to be noted that as per complainant, the amount of Rs. 30 Lakhs was borrowed by the accused on assurance to introduce him as partner, however, the fact of partnership deed being already executed has not been stated by complainant and the said fact has been disclosed for the first time by the accused by placing on record the partnership deed on record. It is also required to be noted that the cheque in question though signed by the accused however, the same has been drawn from the account of 'R.R. enterprise', with whom there is no case of the complainant having any legally enforceable dues to be recovered. In the absence of the necessary averments in the complaint as regards liability of the drawer of the cheque and also being not joined as a party to the proceedings, the requirements of Section 138 are not fulfilled and therefore the complaint itself is not found maintainable.

21. For the reasons assigned, this Court finds that the courts below have committed palpable error in passing the impugned judgment and order of conviction in absence of the basic ingredients of the offence under Section 138, being fulfilled. Since the complaint itself is not found maintainable , the grounds raised by learned advocates on various issues is not examined.

22. In view thereof, the impugned judgment and order dated 30.12.2016 passed by the learned Judicial Magistrate First Class, Dwarka in Criminal Case Nos.568 of 2011, 570 of 2011, 571 of 2011, 569 of 2011 and 572 of 2011 and as confirmed vide order dated 13.12.2018 by the learned 2nd Additional Sessions Judge, Jam Khambaliya, Devbhoomi Dwarka in Criminal Appeal Nos. 01 of 2017, 03 of 2017, 04 of 2017, 02 of 2017 and 05 of 2017, are quashed and set aside. The applicant is acquitted from the offence alleged to have been committed under Section 138 of the N.I. Act.

23. With these observations, the captioned Revision Applications stands allowed. Records and proceedings are directed to be sent back to the concerned courts.

(NISHA M. THAKORE,J)

SUYASH SRIVASTAVA