**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 10TH DAY OF JULY, 2026**

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**BEFORE**

**THE HON'BLE MR. JUSTICE H.P.SANDESH**

**CRIMINAL REVISION PETITION NO.603 OF 2023**

**BETWEEN:**

SRI. SHANMUGAM
AGED ABOUT 67 YEARS
MANAGING DIRECTOR
SREE SHANMUGA MODERN
RICE MILLS PVT. LTD.
DESHIHALLI
BANGARPET-563114

PETITIONER

(BY SRI. S. BALAKRISHNAN, ADVOCATE)

**AND:**

SRI. K. THANGAVELU
S/O M. KANNAPPA NAIDU
AGED ABOUT 73 YEARS
R/AT KASTURI NIVAS
3RD CROSS ROAD, DOWN
ROBERTSONPET POST
KGF-563115.

...RESPONDENT

(BY SRI. N. MURALI, ADVOCATE A/W
SRI. KUMAR S.J., ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION PASSED IN C.C.NO.259/2018 DATED 03.12.2022 BY HONBLE COURT OF THE PRINCIPLE CIVIL JUDGE AND ADDL. JMFC, KGF AND CONFIRMED IN CRIMINAL APPEAL NO.88/2022 BY HONBLE III ADDITIONAL DISTRICT AND SESSION JUDGE AT KOLAR SITTING AT KGF, ON 20.04.2023

FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENT ACT AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

**CAV ORDER**

This revision petition is filed against the judgment of conviction and sentence dated 03.12.2022 passed in C.C.No.259/2018 by the Trial Court and also against the judgment of confirmation dated 20.04.2023 passed in Crl.A.No.88/2022 by the Appellate Court and prayed this Court to acquit the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act ('N.I. Act' for short).

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of case of the complainant while invoking Section 138 of N.I. Act is that the complainant has invested an amount of Rs.4,00,000/- with the accused in the month of September 2016 and accused has acknowledged the same and paid interest for two months at the rate of 1.10% per month. Due to demonetization in the year 2016, accused

stopped to pay the interest and also not paid the principal amount to the complainant. Hence, the complainant requested the accused for refund of his deposited amount and accused was giving false promise to repay the same and finally, in the month of March 2018, accused has issued the subject matter of cheque dated 19.03.2018 towards his liability. When the said cheque was presented, the same was returned with an endorsement 'funds insufficient' on 31.03.2018. Thus, the complainant has issued legal notice and the same was served on the accused and accused given the reply denying the very transaction. Hence, complaint was filed and cognizance was taken. The accused was secured before the Trial Court and he did not plead guilty.

4. In order to prove the case of the complainant, he himself examined as PW1 and got marked the documents at Ex.P1 to P6. On closure of the complainant's evidence, accused was subjected to 313 statement and put the incriminating circumstances against him, but he denies the same and he did not choose to lead any defence evidence. The Trial Court having considered both oral and documentary evidence placed on record and also taking note of defence which was taken in the cross-examination of PW1 comes to the conclusion that the

burden of proving the Cheque that the same has not been issued for any debt or liability is on the accused and mere plausible explanation is not sufficient to disprove the case of the complainant where the presumption is in favour of the complainant. The Trial Court having considered the material on record comes to the conclusion that complainant has lent the amount of Rs.4,00,000/- to the accused and in repayment of the same, accused has issued Ex.P1-cheque and the said cheque was dishonored. The overall evidence of the accused during the course of cross-examination of PW1 cannot be accepted when the documentary evidence stand in higher pedestal compared to the ocular evidence. Hence, the Trial Court convicted the accused and sentenced to pay fine of Rs.5,10,000/-.

5. Being aggrieved by the judgment of the Trial Court, an appeal was preferred by the accused before the Appellate Court. The Appellate Court having taken note of grounds which have been urged in the appeal memo, framed nine points for consideration and answered all the points as negative in coming to the conclusion that appellant/accused has not substantiated his defence placing any preponderance of probabilities. In paragraph 17, the Appellate Court held that the accused has

not made any efforts to substantiate his defence and even he did not enter into the witness box and he need not enter into the witness box does not mean that he should not have to produced any documents in support of his defence. The defence of accused is that cheque was lost and the same is not substantiated by leading any rebuttal evidence. When the ground was taken that the company was not made as a party and only the Managing Director has been made as a party and without making the Directors and company as parties, the complaint is not sustainable under law was also taken note of by the Appellate Court in paragraph 34 of the judgment and also discussed Section 141 of N.I. Act in paragraph 35 and also in paragraphs 36 to 38, taken note of the defence and comes to the conclusion in paragraph 43 which reads as follows:

> "43. The legal position on this aspect is very clear that, the person who is responsible for the company can be made as an accused and the payee can array the company or its directors or managing directors or both as party to the proceedings. Ex.P1 cheque is signed by accused as Managing Director of Sree Shanmuga Modern Rice Mills Pvt., Ltd., and the accused being the Managing Director of the company is responsible for the administration of the company and he has issued cheque on behalf of the company and in view of law laid down in the above referred decisions and Section.141 of Negotiable Instruments Act, the accused being Managing

Director of the company can be prosecuted and there is no legal hindrance in prosecuting the accused. Hence, contention raised by the Learned Counsel for Accused is not acceptable."

6. Hence, the Appellate Court considering both oral and documentary evidence placed on record comes to the conclusion that the Trial Court has not committed any error while convicting the appellant/accused and confirmed the judgment of the Trial Court.

7. Being aggrieved by the concurrent finding of both the Courts, the present revision petition is filed before this Court.

8. The learned counsel for the petitioner mainly relied upon the very complaint itself and contended that without arraigning the company as a party to the proceedings, the complaint is not maintainable. The counsel in his arguments would vehemently contend that the cheque was issued by the petitioner in the name of the company being a Managing Director. The counsel also would submit that notice was issued to the petitioner - Shanmugam i.e., in his individual capacity but notice was not issued to the company. The counsel in support of his argument would vehemently contend that Ex.P1

- cheque in question indicates that the drawer is the company registered under the Companies Act, named as Sree Shanmugam Modern Rice Mill Private Limited and signed by its Managing Director. But the company is not made as necessary party, therefore, there is non-compliance of Section 141 of N.I. Act which disentitles the relief.

9. The counsel for the petitioner in support of his arguments relies upon judgment of the Apex Court in respect of the principles laid down in respect of Section 141 of N.I. Act in the case of **ANEETA HADA vs GODFATHER TRAVELS AND TOURS PRIVATE LIMITED** reported in **(2012) 5 SCC 661**. The counsel referring this judgment would vehemently contend that the Apex Court in detail discussed with regard to non-arraying of the company as a party and brought to notice of this Court paragraph 21 wherein Section 141 of N.I. Act is extracted. The counsel referring this judgment categorically contend that when the company is not made as party, question of proceedings against the Managing Director does not arise. The counsel brought to notice of this Court paragraph 59 of the judgment which reads as follows:

> "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's* case ([1970] 2 SCC 491) which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwalls'*s case ([1984] 4 SCC 352) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada* ([2000] 1 SCC 1) is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery's* case ([1987]3 SCC 684) has to be treated to be restricted to its own facts as has been explained by us herein above."

10. The counsel also relies upon the judgment reported in **(2019) 3 SCC 797** in the case of **HIMANSHU vs B SHIVAMURTHY AND ANOTHER**. The counsel referring this judgment would contend that in the absence of the company being arraigned as an accused, a complaint against the Managing Director of the company is not maintainable. The counsel brought to notice of this Court paragraph 13 of the judgment which reads as follows:

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

11. The counsel also relies upon the judgment reported in **2021 SCC ONLINE UTT 745** in the case of **RAMESH NAGARKOTI vs KEDAR DATT PUROHIT**. The counsel referring this judgment would vehemently contend that in this judgment also the judgments of **Aneeta Hada** and **Himanshu** was taken note of by the High Court of Uttaranchal and comes to the conclusion that without the company, there cannot be any proceedings against its Managing Director. The counsel brought to notice of this Court paragraphs 32 wherein discussion was made with regard to the principles laid down in the **Aneeta Hada**'s case and extracted paragraphs 21, 22, 23, 24, 53 and 59 of the said judgment wherein analysing the material comes to the conclusion that 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.

12. The counsel also relies upon the judgment of this Court passed in **Criminal Appeal No.1011/2010 dated 29.07.2021** in the case of **K GOPAL vs T MUKUNDA** and contend that **Aneeta Hada** case also discussed in the said judgment and brought to notice of this Court paragraph 9, wherein this Court held that if cheques are issued by the company, none other than the company should be arrayed as accused and not its Director. Because Section 141 of the Act fastens vicarious liability on the Director or other Officers of the company who were responsible for the affairs of the company, they are made as parties. It is not as though that the Directors or Officers are personally liable for dishonour of cheque. In this case company is not arrayed as an accused. The cause title of the complaint clearly discloses the presence of only one accused i.e., T Mukunda, who might have been described as Managing Director of Span Floritech Private Limited.

13. The counsel referring these judgments would vehemently contend that these judgments are aptly applicable to the case on hand since the notice at Ex.P3 was issued in the name of a individual person who is a Managing Director of a company and company was not made as party. In the absence of company as a party, there cannot be any proceedings

against the Managing Director of a company i.e., the petitioner herein.

14. Per contra, the counsel appearing for the respondent would vehemently contend that the defence of the revision petitioner is one of total denial. Though it is contended that cheque was lost, no complaint was given stating that he has lost the cheque. Even with regard to misusing of the cheque by the complainant also, no complaint was lodged. The counsel would vehemently contend that when the amount was invested, interest was paid for two months by the accused, but subsequently, did not pay the interest as well as principal amount. But on several requests and demands, accused had issued the subject matter of cheque in 2018. While issuing the Cheque, he had collected on demand promissory note which was executed in favour of the complainant and having collected the same, the subject matter of cheque was given. The counsel would vehemently contend that Section 141 of N.I. Act is not applicable to the facts of the case on hand as the company is also mentioned in the cause title since the name of the Managing Director mentioned first in the complaint. The counsel also would vehemently contend that for the first time, the said ground was taken in the appeal. The Appellate Court

discussed the same in detail in paragraphs 33 to 43 and comes to the conclusion that the contention of the revision petitioner cannot be accepted to invoke Section 141 of N.I. Act. The counsel would vehemently contend that amount was paid to the Managing Director and Managing Director in turn paid the interest for a period of two months and thereafter, did not make the payment of interest or principal amount. Both the Courts have rightly given finding in respect of the transaction is concerned. The counsel also vehemently contend that accused did not choose to enter into the witness box to substantiate his defence with regard to the loss of cheque and misuse of the cheque. The counsel would vehemently contend that if complaint was given in 2016 with regard to the loss of cheque, what made him to give cheque in 2018. The counsel would vehemently contend that at this juncture, the revision petitioner cannot raise the technical ground and the same cannot be considered.

15. The counsel for the respondent in support of his arguments relies upon the judgment passed by this Court dated **23.08.2018** in **Crl. P. No.4533/2018 connected with other cases**. The counsel would contend that this Court already discussed the similar issue when the same was raised in

connection with the cases filed against the present petitioner and this Court comes to the conclusion that do not find any justifiable reason to interfere with the action initiated by the complainants for dishonour of the cheque issued by the petitioner as a Managing Director of M/s Sree Shanmuga Modern Rice Mills Pvt. Ltd. and the same will be a curable defect and such a mis-description of the accused could be rectified by effecting necessary amendment to bring it in line with the averments made in the complaint. This Court also taken note that description of the accused are available in the body of the complaints as well as in the cause title thereto and referred the judgment of the Apex Court in the case of S**. R. Sukumar vs S. Sunaad Raghuram** passed in **SLP (Crl) No.4813/2012** wherein the Apex Court held that no specific provision in the Code is available to amend either a complaint or a petition filed under the provisions of the Code and the amendment to correct curable infirmities can always be allowed in the larger interest of justice.

16. In reply to this arguments, the counsel appearing for the petitioner would contend that legal notice was issued in the name of Shanmugam as Managing Director and not in the

name of the company but there was no any individual transaction since the transaction is in favour of the company.

17. Having heard the counsel appearing for the petitioner and also the counsel appearing for the respondent and also considering the principles laid down in the judgments referred supra which are relied upon by both the counsels and also considering the averments made in the complaint as well as defence which was taken, the Points that would arise for the consideration of this petition are:

1. Whether a Managing Director of a company would be liable for prosecution under Section 138 of N.I. Act without the company being arraigned as an accused?

2. Whether a complaint under Section 138 of N.I. Act would be liable to be proceeded against the Managing Director of the company without there being any averments in the complaint that the Managing Director arraigned as an accused was in charge of and responsible for the conduct and the business of the company without making the company as an accused?

3. Whether the Trial Court and the Appellate Court have committed an error in convicting and sentencing the accused for the offence punishable

under Section 138 of N.I. Act without pressing into the Section 141 of the said Act, a company could have been made liable for the prosecution without being impleaded as an accused and whether it requires interference of this Court exercising the revisional powers?

4. What Order?

**Point Nos.1 to 3:**

18. Having heard the counsel appearing for the respective parties and also on perusal of the material on record, this Court would like to take note of contents of the complaint wherein it discloses that the complainant has stated that he has invested the amount with the accused for a sum of Rs.4,00,000/- as the accused has been giving interest at 1.10% per month to the investors. Hence, the complainant had invested the amount of Rs.4,00,000/- in September, 2016 and accused also paid the interest for two months. In view of the demonetization, the accused stopped to pay the interest to the complainant and at the insistence of the complainant, cheque was given in March 2018 with an assurance that the same would be honored. But the said cheque was dishonored with an endorsement 'funds insufficient' and legal notices were exchanged and an accusation is made that accused has issued

the said cheque intentionally, fraudulently, willfully without arranging the amount in his bank account with a mala fide intention and knowingfully well that if cheque is presented the same would be dishonored.

19. Having perused the averments of the complaint, it discloses that nowhere stated in the complaint with regard to the existence of the company and company is also incorporated under the Companies Act. But it is only stated that he has invested the money with the accused. No doubt, the cheque which is marked as Ex.P1 was dishonored. This Court has to take note of the entries made in the Cheque at Ex.P1, which discloses that the same was issued in the name of Sree Shanmuga Modern Rice Mills Private Limited and signed by the Managing Director i.e., the petitioner herein. Hence, it is very clear that cheque was issued in the name of the company.

20. It is also important to note that Ex.P3 - legal notice was issued in the name of Sri Shanmugam, Managing Director of Sree Shanmuga Modern Rice Mills Private Limited and in paragraph 2 of the notice, it is stated that complainant has invested the amount with the Shanmugam to the tune of Rs.4,00,000/- and he was giving interest at 1.10% per month.

On coming to know about the payment of interest, the amount was invested. The notice was also served in the name of Shanmugam and reply was given in terms of Ex.P6 stating that there was no such investment or borrowed an amount of Rs.4,00,000/- and he never invested an amount of Rs.4,00,000/-. But contend that he has given stop payment to his banker in the month of November 2016 as he had lost/ misplaced certain signed and unsigned cheque leaves. He indeed approached police for necessary action and he never issued any cheques to anyone during the year 2017 and 2018 and there was a total denial of transaction of the complainant by the accused.

21. The first main limb of argument of the counsel appearing for the petitioner is relying upon the judgment of **Aneeta Hada**'s case referred supra wherein the Apex Court discussed particularly invoking Section 141 of N.I. Act with regard to the criminal liability for dishonour of cheque drawn by company, Officers of company when may be implicated, extent of deeming fiction in Section 141 also taken note of and mandatory requirement of impleading company as one of the accused, Director or authorized signatory of Cheque and prosecution against the Director without arraigning of company

as accused held not maintainable. In the case of **Himanshu** referred supra, the Apex Court referred Section 138 and 141 of N.I. Act and held that necessary conditions to be complied with for constituting offence under Section 138 in general, and against company and its Directors/Officers, where necessary conditions under Section 138 not complied with, company cannot subsequently be arraigned as accused in proceedings under Section 138. Where cheque is issued by Director of company, prosecution under Section 138 not maintainable without arraigning company as accused. The Uttaranchal High Court also referring these two judgments comes to the very same conclusion and the **Aneeta Hada**'s case was extracted in paragraph 32. This Court also in the case of **K Gopal** referred supra also referred the judgment of **Aneeta Hada** and comes to the conclusion in paragraph 9 that it is not as though that the Directors or Officers are personally liable for dishonour of cheques. If the company is not arraigned as an accused, the question of invoking Section 138 does not arise.

22. No doubt, the counsel appearing for the respondent relied upon the judgment of this Court and the same was considered at the time when approach was made before this Court invoking Section 482 of Cr.P.C and comes to the

conclusion that it was a curable defect. But admittedly even after the proceeding was initiated before this Court under Section 482, the complaint was not amended.

23. Having taken note of principles laid down in the judgments referred supra, this Court also would like to rely upon the judgment reported in **2022 SCC ONLINE SC 1598** in the case of **PAWAN KUMAR GOEL vs STATE OF U.P. AND ANOTHER**, wherein considering the material on record, a similar question was framed. That is, two main issues which falls for the consideration: whether the Director of a company would be liable for prosecution under Section 138 of N.I. Act without the company being arraigned as an accused. The Apex Court also in paragraph 19 extracted Section 138 of N.I. Act and also in paragraph 20 extracted Section 141 of the said Act. Apex Court also taken note of the grounds which have been urged and in paragraph 21 held that while Section 141 extends such criminal liability in case of a company to every person who at the time the offence was committed, was in charge of, and was responsible for the conduct of the business of the company. The Apex Court also taken note of the judgment of **K. K. Ahuja vs V. K. Vora** [(2012) 5 SCC 661] in the said judgment and also taken note of the judgment of **Aneeta**

**Hada**'s case and also **SMS Pharmaceuticals Ltd. vs Neeta Bhalla** and in detail discussed the same and extracted paragraph 16 of the judgment of **K. K. Ahuja**. This Court would like to extract paragraph 25 of the said judgment. In paragraph 26, the Apex Court referred the judgment of **Himanshu'**s case and extracted paragraphs 11 to 13 of the said judgment and also referred **Aneeta Hada**'s case in paragraph 27 particularly referring paragraphs 58 and 59 of the said judgment and the said discussions is extracted herein:

> "25. This Court has been firm with the stand that if the complainant fails to make specific averments against the company in the complaint for the commission of an offence under Section 138 of NI Act, the same cannot be rectified by taking recourse to general principles of criminal jurisprudence. Needless to say, the provisions of Section 141 impose vicarious liability by deeming fiction which pre-supposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-Section (1) and (2) would not be liable to be convicted on the basis of the principles of vicarious liablity.
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> 26. Reference in this connection may also be made to another judgment of the two-Judge Bench of this Court in Himanshu Vs. B. Shivamurthy and Another (Supra), the facts wherein have a stark similarity to the facts of the present case, considering the issue where the complaint

was lodged only against the director without arraigning the company as an accused and whether the company could be subsequently arraigned as an accused, it was observed as under:-

> "11. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. The complaint was lodged only against the appellant without arraigning the company as an accused.
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> 12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, 4 (2018) 13 SC 663 every person, who at the time when the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.
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> 13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section

> 138, the High Court was in error in holding that the company could now be arraigned as an accused."

27. This issue stands concluded by a decision of three-Judge Bench of this Court in the case of Aneeta Hada Vs. Godfather Travels & Tours (P) Ltd. (Supra), wherein it has been held that for maintaining the prosecution under Section 141 of NI Act, arraigning of the company as an accused is imperative and non-impleadment of the company would be fatal for the complaint. It may be relevant to extract the following from the said judgment :-

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

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

24. Having considered the principles laid down in the judgments referred supra, it discloses that as on today also, the very same judgment of **Aneeta Hada** and **Himanshu** which were referred by the counsel appearing for the revision petitioners, still holds good, so also the judgment of **SMS Pharmaceuticals Ltd**.

25. This Court also would like to rely upon the recent judgment of the Apex Court reported in **(2025) 10 SCC 96** in the case of **DHANASINGH PRABHU vs CHANDRASEKAR AND ANOTHER** wherein also the Apex Court distinguished with regard to the proceedings initiated by the partnership firm as well as the company under Section 141 and explanations (a) and (b) read with Section 141(2) and Section 138 was discussed and held that maintainability of the complaint, when cheque in question issued/signed by one of the partners of the

partnership firm, but neither statutory notice issued to the firm nor the firm arraigned as an accused in the complaint. So also discussed with regard to interpretation of 'company' and 'Director' in Section 141 explanation in the context of the partners of the partnership firm, law also clarified and held that in terms of the explanation to Section 141, the expression "company", held, defined to mean any body corporate and to include a firm or other association of individuals, as per Section 141(1), where an offence is committed under Section 138 by a company, the company as well as every person who, at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business, held, shall be deemed to be the guilty of the offence. Though a director of a company, can be held vicariously liable for an offence committed by a company, when offence is committed by a partnership firm, the offence, held, is committed by the partners of the firm and not just the firm per se. Further held that unlike a company which is a separate juristic entity from its Directors thereof, a partnership firm comprises of its partners who are the persons directly liable on behalf of the partnership firm and by themselves. Further distinguished with regard to the proceeding against the company and also against the partnership. In this judgment in paragraph 12 held that extending the above argument, he submitted that the expression "person" would also include a partnership firm, as Section 141 of the Act deems a partnership firm to be a company and hence, point was raised that whether the High Court was right in dismissing the complaint on the ground that the name of the partnership firm was not mentioned in statutory notice issued by the appellant-complainant to the respondents under Section 138 of the Act and was also not arraigned as an accused in the complaint filed by the appellant-complainant. Wherein also discussion was made in respect of the **Aneeta Hada**'s case in paragraph 17 and in paragraph 20, extracted paragraph 17 of **Aneeta Hada**'s case and so also in paragraph 24, the explanation of Section 141 also taken note of and comes to the conclusion that in a case of partnership, there cannot be a complaint against the firm without their partners. But in respect of offences by the company, under Section 141, if the person committing an offence under Section 138 representing the company, every person who, at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be the guilty of the offence and shall be liable to be proceeded against and punished accordingly. In paragraph 25 also reiterated in respect of Section 141. If a company is a borrower, hence, allowed the appeal as distinguished in this judgment invoking Section 141 of the N.I. Act.

26. Having perused the principles laid down in the judgments referred supra and also considering the factual aspects of the case on hand, it discloses that Ex.P1-cheque was issued in the name of the company and the same is signed by the Managing Director, but the company is not made as an accused. This Court also in the beginning taken note of contents of the complaint wherein it is stated that complainant had invested the money with the accused. On perusal of the complaint, it discloses that nowhere in the complaint it is mentioned with regard to the persons who are at the helm of affairs of the company and in charge of affairs of the company. Thus, with regard to the company is concerned, nothing is stated. But when the instrument at Ex.P1 is issued in the name of the company signed by the Managing Director, ought to have been made the company as accused No.1 and thereafter Managing Director would have been shown as accused No.2

and the same is not mentioned in the complaint and complaint is found in the individual capacity of Shanmugam as a Managing Director. No doubt, the name of the company is also mentioned but not arraigned as an accused. In the judgments referred supra all these factors were taken note of as the company was not made as an accused since when the cheque was issued in the name of the company, the company ought to have been made as the accused. When such being the case, the Trial Court as well as the Appellate Court fails to take note of Section 141 of N.I. Act and also the principles laid down in the judgments of the petitioner referred supra.

27. Having taken note of the judgments referred by the petitioner counsel and also the judgments referred by this court, it is very clear that company ought to have been made as an accused. On perusal of the complaint, it discloses that nothing is stated with regard to the affairs of the company which was managed by the Managing Director. But the fact is that Shanmugam is the Managing Director of Sree Shanmuga Modern Rice Mill Private Limited and the same is not in dispute. The cheque was also issued in the capacity of Managing Director on behalf of the company. Though Appellate Court in detail discussed with regard to Section 141 of the Act is

concerned and this Court also extracted paragraph 43 of the reasoning of the Appellate Court, wherein the Appellate Court comes to the conclusion that accused being the Managing Director of the company is responsible for the administration of the company and he has issued the cheque on behalf of the company, thus, the accused being a Managing Director of the company can be prosecuted and there is no legal hindrance in prosecuting the accused and the said reasoning of the Appellate Court is erroneous for the reason that when the Appellate Court comes to the conclusion that cheque was issued on behalf of the company, ought to have been made company as an accused. Hence, there is a force in the contention of the counsel appearing for the revision petitioner that without arraigning the company as an accused there cannot be any proceedings against its Managing Director and the same is also mandatory as held by the Apex Court in the judgment of **Aneeta Hada'**s case and thereafter in **SMS Pharmaceuticals Ltd'**s case as well as in **Himanshu'**s case and also the recent judgments of Apex Court in a case of **Pawan Kumar Goel** as well as in **Dhanasingh Prabhu** case referred supra. Hence, this Court answered all the Points as affirmative in coming to the conclusion that there cannot be a proceeding against the

Managing Director of a company without arraigning the company as an accused as contemplated under Section 141 of N.I. Act.

**Point No.4**

28. In view of the discussions made above, I pass the following:

**ORDER**

(i) The revision petition is allowed.

(ii) The impugned judgment of conviction and sentence dated 03.12.2022 passed in C.C.No.259/2018 by the Trial Court and also the judgment of confirmation dated 20.04.2023 passed in Crl.A.No.88/2022 by the Appellate Court are set aside.

(iii) The revision petitioner is acquitted for the offence punishable under Section 138 of N.I. Act.

(iv) The bail bond, if any, executed by the revision petitioner stands cancelled.

Sd/-
**(H.P.SANDESH)**
**JUDGE**

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