IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

1. **Crl. Misc. No. M-23886 of 2014**
Date of Decision: 01.9.2015.

Ashok Sharma ....Petitioner

Vs.

Aas Mohammed ......Respondent

2. **Crl. Misc. No. M-23887 of 2014**

Ashok Sharma ....Petitioner

Vs.

Aas Mohammed ......Respondent

3. **Crl. Misc. No. M-23888 of 2014**

Ashok Sharma ....Petitioner

Vs.

Aas Mohammed ......Respondent

4. **Crl. Misc. No. M-23889 of 2014**

Ashok Sharma ....Petitioner

Vs.

Aas Mohammed ......Respondent

5. **Crl. Misc. No. M-23890 of 2014**

Ashok Sharma ....Petitioner

Vs.

Aas Mohammed ......Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Shailender Mohan, Advocate
for the petitioner.

Mr. Samina Dhir, Advocate
for the respondent.

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SABINA, J.

Vide this order, above mentioned petitions would be disposed of as question of law involved in all the cases is the same.

Petitioner has filed these petitions under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the complaints in question.

Learned counsel for the petitioner has submitted that as per the case of the complainant, there were business dealings between the complainant and company Mihir Builder Private Limited and the cheques in question were issued on behalf of the company. Complainant had filed the complaints under Section 138 of the Negotiable Instruments Act, 1881 ('*Act*' for short) against the petitioner without arraying the company as an accused. The complaints were not maintainable against the petitioner without impleading the company as an accused. In support of his arguments, learned counsel has placed reliance on ***'Aneeta Hada versus M/s Godfather Travels and Tours Pvt. Ltd., 2012(2) R.C.R. (Criminal) 854,*** wherein it was held as under:-

> *"We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and*

a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others, (1987)1 SCC 424 it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in Deewan Singh and others v. Rajendra Prasad Ardevi and others, (2007)10 SCC 528 and Sarabjit Rick Singh v. Union of India (2008) 2 SCC 417. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" *appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.*

In 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. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove."

Learned counsel for the petitioner has next placed reliance on '***Anil Gupta versus Star India Pvt. Ltd. and another 2014(3) R.C.R. (Criminal) 587***', wherein it was held as under:-

> *"In the present case, the High Court by impugned judgment dated 13th August, 2007 held that the complaint against respondent no.2-Company was not maintainable and quashed the summon issued by the Trial Court against respondent no.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 (supra) has been overruled by three Judge Bench of this Court in Aneeta Hada (supra), we have no other option but to set aside the rest part of the impugned judgment 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 13th August, 2007 passed by the High Court so far it relates to appellant and quash the summon and proceeding pursuant to complaint case No.698 of 2001 qua the appellant. "*

Learned counsel for the respondent, on the other hand, has opposed the petitions.

Case of the complainant, in brief, was that he had supplied building material to the accused. The cheques issued by the accused were presented for encashment but they were dishonoured with remarks "insufficient funds".

A perusal of cheques in dispute reveal that the same have been issued on behalf of the company Mihir Buildcon Private Limited. However, the complainant has not filed the complaints against the company but has only filed the same against the proprietor of the company-petitioner. The present cases are squarely covered by the decision given by the Apex Court in *Aneeta Hada*'s case (supra) and *Anil Gupta*'s case (supra). Since the complainant had failed to array the company as an accused, the prosecution of the petitioner who was the proprietor of the company, is liable to be quashed without impleadment of the company. It has transpired during the course of arguments that the respondent has filed suit for recovery of the amount in question. However, petitioner cannot be criminally prosecuted qua commission of offence punishable under Section 138 of the Act without impleading the company as an accused.

Accordingly, all these petitions are allowed. Complaint Nos. CC No. 54 RBT dated 28.10.2011, CC No. 55 RBT dated 28.10.2011, CC No. 187/RU dated 28.10.2011, CC No. 188/RU dated 28.10.2011 and CC No. 189/RU dated 28.10.2011 titled 'Aas Mohammed versus Ashok Sharma' and all the consequential proceedings, arising therefrom, including the orders dated 18.2.2012 and 11.6.2014, are quashed.

(SABINA)
JUDGE

September 01, 2015
Gurpreet