

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

Sr. No.127

**CRM-M-8737-2019 (O&M)**  
**Date of decision : 14.03.2019**

M/s Kejriwal Mining Private Limited and others

..... Petitioners

**VERSUS**

M/s Kochhar Township Private Limited

..... Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Souvhik Mitter, Advocate for  
Mr. Anshul Mangla, Advocate, for the petitioners.

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**SUDHIR MITTAL, J.**

A cheque dated 1.3.2018 for a sum of Rs.20,40,000/- was issued on behalf of petitioner No.1-M/s Kejriwal Mining Private Limited under the signatures of petitioner No.2-Mahesh Kumar Kejriwal, Director, Kejriwal Mining Private Limited, in favour of the respondent-complainant, namely, M/s Kochhar Township Private Limited. The said cheque was dishonoured and intimation was sent to the respondent-complainant, vide dishonour memo dated 7.3.2018. A legal notice dated 2.3.2018, was thus, issued on its behalf, but the cheque amount was not paid and therefore, complaint dated 5.5.2018 (Annexure P1), was filed against the petitioners and M/s Abhijit Infra Projects Limited as the accused persons. Vide order dated 25.5.2018 (Annexure P4), all the accused have been summoned to stand trial.

2. Pursuant to service of summons, an application under Section 205 Cr.P.C, was filed on behalf of petitioner No.3-Siddhartha Kumar

Kejriwal for exemption from personal appearance. The said application was dismissed vide order dated 16.1.2019, on the ground that exemption from personal appearance could not be granted until the applicant had put in appearance and had taken bail. Consequently, the present petition has been filed for quashing of criminal complaint case No.Nact/157/2018 dated 5.5.2018, filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') titled as 'M/s Kochhar Township Private Limited Vs. M/s Abhijit Infraa Projects Limited and Others' pending before Sub-Divisional Judicial Magistrate, Amloh, Patiala as well as summoning order dated 25.5.2018 (Annexure P4).

3. According to the contents of the aforementioned complaint, Mahesh Kumar Kejriwal and Siddharatha Kumar Kejriwal (accused No.3 and 4 respectively) had requested for an advance of Rs.15 lakhs on payment of interest @ 12% per annum. The request was accepted and vide transfer dated 5.3.2015, a sum of Rs.15 lakh was transferred through RTGS to the account of M/s Abhijit Infraa Projects Limited (accused No.1). The said transaction is duly recorded in the account books of the respondent-complainant and in discharge of their liability, the accused persons issued cheque dated 1.3.2018, for a sum of Rs.20,40,000/- in favour of the respondent-complainant. Since, the cheque was dishonoured, a notice dated 2.3.2018, under Section 138 of the Act was issued to the accused persons, but despite service of notice, the cheque amount was not paid. Consequently, complaint dated 5.5.2018, was filed.

4. Learned counsel for the petitioner submits that according to the contents of the complaint itself, monies were transferred to the

account of M/s Abhijit Infraa Projects Limited (accused No.1), but the cheque was issued by M/s Kejriwal Mining Private Limited and the same was signed by Mahesh Kumar Kejriwal (accused No.3-petitioner No.2). There is nothing on record to indicate that M/s Kejriwal Mining Private Limited had taken over the liability of M/s Abhijit Infraa Projects Limited or that petitioners No.2 and 3, namely, Mahesh Kumar Kejriwal and Siddharatha Kumar Kejriwal were ever Directors of the said company. In this regard reference has been made to company master data of M/s Abhijit Infraa Projects Limited, in which petitioners No.2 and 3 are not recorded as Directors. Accordingly, it has been argued that the liability, if any, was of the entity known as M/s Abhijit Infraa Projects Limited and there is nothing on record to indicate that its liability was ever taken over by the entity known as M/s Kejriwal Mining Private Limited. Thus, M/s Kejriwal Mining Private Limited and its Directors cannot be made liable for an offence under Section 138 of the Act, even though, the cheque has been issued by M/s Kejriwal Mining Private Limited and has been signed by petitioner No.2-Mahesh Kumar Kejriwal. Reliance has been placed upon a judgment passed by the Supreme Court in **'Jitendra Vora Vs. Bhavana Y. Shah and another, (2015) 16, SCC 744.'**

5. By virtue of Section 138 of the Act, a person, who issues a cheque on an account maintained by him, for discharge of a debt or other liability, if returned as dishonoured, such a person is deemed to have committed an offence under the said provision. By Section 141 of the Act, in case the drawer of the cheque is a company, vicarious liability is

imposed upon persons mentioned therein, who were incharge of and responsible to the concerned company for the conduct of its business on the date of the offence. In the fact situation prevailing in the present case, the cheque in dispute has been issued by M/s Kejriwal Mining Private Limited and on account of dishonour thereof, demand was raised upon the said company and its Directors as well as on M/s Abhijit Infraa Projects Limited. It is not disputed that family members of Mahesh Kumar Kejriwal and Siddharatha Kumar Kejriwal (petitioners No.2 and 3) are Directors of M/s Abhijit Infraa Projects Limited and the said entity is a part of the family business. Thus, whether there was an understanding between M/s Abhijit Infraa Projects Limited and M/s Kejriwal Mining Private Limited and whether M/s Kejriwal Mining Private Limited had taken over its liabilities is a matter of evidence and the complainant would be entitled to lead evidence in this regard at the trial. At this stage, it is premature to seek quashing of the aforementioned complaint and the summoning order because it cannot be said that the complaint is a mis-use of the process of the criminal Courts as there is unimpeachable evidence on record to establish that such prosecution is illegal. Even though, Mahesh Kumar Kejriwal and Siddharatha Kumar Kejriwal (petitioners No.2 and 3) are not Directors of M/s Abhijit Infraa Projects Limited, in case there is evidence to establish that its liabilities were taken over by M/s Kejriwal Mining Private Limited, the said petitioners could be made liable under Section 141 of the Act.

6. In **Jitendra Vora's case** (supra), on which strong reliance has been placed by learned counsel for the petitioners, the complainant

had supplied certain goods to an entity known as M/s Shah Agencies, but the cheques in dispute were issued by an entity known as M/s Shah Enterprises and were signed by the power of attorney holder thereof. Notice under Section 138 of the Act was issued to the proprietor of M/s Shah Enterprises as well as the power of attorney holder thereof and not to the entity known as M/s Shah Enterprises. In the affidavit submitted in lieu of examination-in-chief, the complainant stated that goods were supplied to M/s Shah Agencies and the liability was of the said entity, but it was nowhere stated that the accused persons had agreed to take over the liability of M/s Shah Agencies. Thus, trial Court held that the complaint deserved to be dismissed because the entity on whose behalf the cheque had been issued i.e. M/s Shah Enterprises had not been made an accused. This is evident from the following extract from the judgment passed in **Jitendra Vora's case** (supra):-

“The said complaint was lodged against the respondent-accused describing accused No.1 as the proprietor of M/s Shah Enterprises and accused No.2 as power of attorney holder of the said M/s Shah Enterprises. The trial Court acquitted the respondents on the ground that the appellant did not institute the case against the partnership firm i.e. M/s Shah Enterprises.’

The High Court dismissed the application for leave to appeal with the following observations:-

“It is not the specific case of the applicant made out in the complaint that the first accused in his capacity of proprietor of Shah Enterprises and the second accused in his capacity of power of attorney of Shah Enterprises had agreed to take over and discharge the liability of M/s Shah Agency. Reliance is placed by

the applicant on the letter at Exh.P-5. Apart from the fact that the said letter is no evidence to show that the liability of M/s Shah Agency was taken over by M/s Shah Enterprises, as stated earlier, the said case was never made out by the applicant in the complaint. The said case made out in the complaint is that the liability is of M/s Shah Enterprises and not of M/s Shah Agencies. The letter dated 7th December 2000 at Exh. P-5 is not signed by accused No.1 who according to the applicant is the proprietor or partner of Shah Enterprises. The letter has been sent by accused No.2 in his capacity as constituted attorney of Shah Agencies. Therefore, the letter cannot be termed as a document under which the liability of Shah Agencies was specifically agreed to be taken over by the Shah Enterprises or by the accused Nos.1 and 2.”

7. In view of the aforestated observations, the Supreme Court examined the case as follows:-

“We have heard the learned counsel appearing for the parties and we have perused the evidence placed before us. From a bare reading of [Section 138](#) of the NI Act, the first and foremost essential ingredient for attracting a liability under this Section is that the person who is to be made liable should be the drawer of the cheque and should have drawn the cheque 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 discharge, in whole or part, of any debt or other liability. In this context, this Court in the case of [Krishna Texport and Capital Markets Ltd. v. Ila A. Agrawal & Ors](#), (AIR 2015 SC 2091), has held as under-

“The notice under [Section 138](#) is required to be given to the ‘drawer’ of the cheque so as to give the drawer an opportunity to make the payment and escape the penal consequences. No other person is contemplated by [Section 138](#) as being entitled to be issued such notice. The plain language of [Section 138](#) is very clear and leaves no room for any doubt or ambiguity. There is nothing

in [Section 138](#) which may even remotely suggest the issuance of notice to anyone other than the drawer.” The learned counsel for the respondents has relied upon the case of [Anil Hada v. Indian Acrylic Ltd.](#), (2000) 1 SCC 1, wherein this Court held – “Normally an offence can be committed by human beings who are natural persons. Such offence can be tried according to the procedure established by law. But there are offences which could be attributed to juristic person also. If the drawer of a cheque happens to be a juristic person like a body corporate it can be prosecuted for the offence under [Section 138](#) of the Act. Now there is no scope for doubt regarding that aspect in view of the clear language employed in [Section 141](#) of the Act. In the expanded ambit of the word ‘company’ even firms or any other associations of persons are included and as a necessary adjunct thereof a partner of the firm is treated as director of that company.” (Emphasis supplied) “Thus when the drawer of the cheque who falls within the ambit of [Section 138](#) of the Act is a human being or a body corporate or even firm, prosecution proceedings can be initiated against such drawer. In this context the phrase ‘as well as’ used in Sub-section (1) of [Section 141](#) of the Act has some importance. The said phrase would embroil the persons mentioned in the first category within the tentacles of the offence on a par with the offending company. Similarly the words ‘shall also’ in Sub-section (2) are capable of bringing the third category persons additionally within the dragnet of the offence on an equal par. The effect of reading [Section 141](#) is that when the company is the drawer of the cheque such company is the principal offender under [Section 138](#) of the Act and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per the section. Hence the actual offence should have been committed by the company, and then alone the other two categories of persons can also become liable for the offence.”

8. Thus, it is clear that the complaint was dismissed because the entity on whose behalf the cheque had been issued, had not been made an accused and liability under Section 138 of the Act, is of the person on whose account the cheque has been issued. Only this aspect of the matter was examined by the Supreme Court as is evident from extracted portion of the judgment. Thus, the petitioners cannot draw any advantage from this judgment. The ratio of a judgment is the determination made therein on the basis of the points put in issue before the Court. Stray observations or contentions recorded elsewhere in the judgment do not constitute the ratio thereof. Thus, the judgment passed in **Jitendra Vora's case** (supra) does not help the petitioners.

9. No other points have been raised or argued.

10. The petition is accordingly, dismissed, in limine.

**(SUDHIR MITTAL)**  
**JUDGE**

**14.03.2019**

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No