

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1282 OF 2019

Sanjay Bohra ... Applicant
Vs
Mitesh Janak Turakhia and
Anr. ... Respondents

...

Mr. Kashyap Bhalerao for the Applicant.
Mr. Girish Kedia with Mr. Manoj Agre for R.No.1.
Smt. M.R.Tidke, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : NOVEMBER 24, 2021.

P.C. :

Applicant is facing the trial in Criminal Case No.366/MISC/2019 under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. Applicant is drawer of cheque and M/s. AVN Petrochemicals India 2 is drawee, a proprietary firm owned by Mr. Mitesh Janak Turakhia. The cheque was returned 'Unpaid' and thus, complaint was filed. Applicant would contend that

complaint was not maintainable being not filed by drawee, M/s. AVN Petrochemicals India 2. He relies on the judgment of the Apex Court in **Himanshu v. B. Shivamurthy 2019(3) SCC 797** wherein the Apex Court has held in paragraph 14 thus,

“14 The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, 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.”

2 In the case in hand, AVN Petrochemicals India 2, is a trade name of proprietary concern of the complainant. It is not a ‘Company’ or firm or Association of Persons within the meaning of Clause (a) of explanation appended to Section 141 of the Negotiable Instruments Act, 1881. In view of this fact, the ratio laid down in the cited judgment, is not applicable to this case.

3 For these reasons, the Criminal Application is
rejected.

(SANDEEP K. SHINDE, J.)