

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO.243 OF 2022

IN

CRIMINAL APPEAL (ST.) NO.8570 OF 2021.

(Dr. Rajesh Dagduji Manwar .**Vs.** Dipankar Suryabhan Telgote))

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S. D. Chande, Advocate for Applicant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 28th JUNE, 2022.

1. Heard Shri Chande, learned Counsel for the Applicant.

2. The Appeal challenges the judgment dated 10.02.2020 passed by the learned Appellate Court, whereby the judgment of the learned Magistrate dated 10.09.2013, convicting the accused under Section 138 of the Negotiable Instruments Act, 1881 (for Short, "the said Act"), has been set aside by allowing the appeal.

3. The short question involved is, whether the Accused, who was not the drawer of the cheque would be entitled to be prosecuted for the offence punishable under Section 138 of the said Act. It is not in dispute, that the cheque in question bearing no.080478 dated 25.01.2011 has been issued by Sarvatrik Shikshan Sallagar Parishad, Akola on its account with Janata Commercial Co-operative Bank

Ltd. Branch Gaurakshan Road, Akola in favour of the complainant. It is an admitted position, that Sarvatrik Shikshan Sallagar Parishad, Akola is not made a party before the learned Magistrate in proceedings under Section 138 of the said Act. The Respondent/Accused-Dipankar Suryabhan Telgote has been made an Accused on the plea, that the aforesaid cheque was issued by Sarvatrik Shikshan Sallagar Parishad, Akola, for the liability of the Accused. Though, the learned Magistrate has convicted the Accused, however, in my considered opinion, the Accused was not the drawer of the cheque, neither was the account with Janata Commercial Co-operative Bank Ltd. Branch Gaurakshan Road, Akola on which, cheque no.080478 dated 25.01.2011 was drawn, was of the Accused, considering which, the complaint itself was not maintainable. The learned Appellate Court has rightly relied upon *Aneeta Hada ..Vrs.. Godfather Travels & Tours Pvt. Ltd., 2012 (5) SCC 661*. The position, has been further explained by the Hon'ble Apex Court in *Alka Khandu Avhad ..Vrs.. Amar Syamprasad Mishra and Another, 2021 (4) SCC 675*, in the following words :

- “9. On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:

- 9.1. That the cheque is drawn by a person and on an account maintained by him with a banker.
- 9.2. For the 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.
- 9.3. The said cheque 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.
10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.”

4. That being the position, in my considered opinion, no fault can be found with the judgment of the Appellate Court, which takes the correct legal position in consideration, while allowing the Appeal. I, therefore, do not find any merit in the Appeal. The criminal application as well as the criminal appeal stand **dismissed**.

5. At this juncture, Shri Chande, learned Counsel for the Applicant by inviting my attention to *Charanjit Pal Jindal ..Vrs.. L. N. Metalics, 2015 (15) SCC 768* submits, that in case it is legally permissible for the complainant/Applicant to claim benefit of Section 14 of the Limitation Act, 1963 and file appropriate proceedings, the same be kept open. In my considered opinion, if it is otherwise legally permissible for the complainant to approach an appropriate Forum by invoking provisions of Section 14 of the Limitation Act, there is no necessity of any leave from this Court.

JUDGE

TAMBE.