

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1675 OF 2019

S. Selvakumari Perulmal

Age : 43 years, Occ.: Housewife

R/o. Flat no.107, 'B' Wing,

Building no.19, Audumber CHS Ltd.,

Shastri Nagar, Goregaon – West,

Mumbai – 400 104.

.... Appellant

Versus

1. Kaushal Realtors Pvt. Ltd.

having office at 104, 1st Floor,

Heritage Apartment, Near V.V.F. Ltd.,

Behind Nirmal Industrial Estate,

Sion – east, Mumbai – 400 022.

2. Rajendra M. Rajan

having address at :

(i) 104, 1st Floor, Heritage Apartment,

Near V.V.F. Ltd., Behind Nirmal –

Industrial Estate, Sion – east,

Mumbai – 400 022.

(ii) Flat no.204, 2nd Floor, 'A' Wing,

Whispring Palms CHS Ltd.,

Lokhandwala Township, Akurli Road,

Kandivali – east, Mumbai – 400 101.

3. State of Maharashtra

Through the Public Prosecutor,

High Court, Bombay.

... Respondents

Mr. Vikas T. Khanchandani, Advocate for the Appellant.

Mr. Muruga Seelan Perumal a/w Mr. Vaibhav Kadam, Advocate for the Respondents.

Mr. H.J. Dedhia, APP for Respondent – State.

CORAM : S. M. MODAK, J.

DATE : 7th MARCH 2024

ORAL JUDGMENT :-

1. The Court of Metropolitan Magistrate, 43rd Court, Borivali, Mumbai as per judgment dated 5th February 2019 has acquitted Accused No.2 - Director of Accused No.1 for the offence under Section 138 of Negotiable Instruments Act, 1881. The complaint was filed against Kaushal Realtors Pvt. Ltd. - Respondent No.1 being the Company and Rajendra M. Rajan - Respondent No.2 being its Director. Though in the judgment and more specifically in paragraph 10, the learned Magistrate had given few reasonings about lapses of the complainant while writing down the final decision by way of operative order, he has not said anything about outcome of the case against Respondent No.1 – Company. This judgment of acquittal is challenged by the complainant.

2. Leave was granted and the Appeal was admitted on 2nd December 2019. Issues involved in this appeal are :-

a. whether the statutory notice was issued to proper

person ?

- b. whether the trial court erred in acquitting the respondent no.2 ?
- c. whether '*not giving findings by the trial court*' will affect the outcome of the case ?

Prima facie view of this Court.

3. There is a reason to believe that there is some misunderstanding in the mind of the learned Judge about the provisions of the Companies Act. Though learned Judge was aware that the Company is managed by the Directors, in the first paragraph of the judgment and the operative order, he has made certain references which indicates the learned Judge was dealing with only against Accused No.2 (as a director) and has not dealt with Accused No.1 – Company. It is a settled law that any company is an artificial entity in the eyes of law and its business is managed and run by natural persons. Even as per Explanation (a) to Section 141 of the Negotiable Instruments Act, 1881, the meaning of the word “Company” is given as “any body corporate and includes a firm or other association of individuals”.

4. These basic terminologies were overlooked by the learned trial court judge. There is one more aspect wherein according to me the learned trial court judge has failed to perform his duties. And it is in respect of giving findings on all relevant points. Even though in appellate jurisdiction, I have made an attempt to correct those mistakes however my endeavour was not enough to convert judgement of acquittal into judgement of conviction. Because there was basic flaw in the requirement of issuance of notice to drawer. Though the cheque was signed by accused/respondent no. 2, it was as director of accused/respondent no.1 company.

Judgment of Trial Court

5. On this background, I have heard learned Advocate Shri Vikas Khanchandani for the Appellant – Complainant and Advocate Muruga Seelan Perumal for the Respondents and learned APP Shri Dedhia. Learned Magistrate acquitted the Respondent Nos.2 mainly on the following reasons:-

- (i) The complainant is a housewife and she has failed to file Income-Tax returns.(para 7)

- (ii) There are improvements in the averments in the complaint on one hand and averments in the notice on the other hand (paragraph No.9). It is on the point of role of Accused No.2 and the background in which accused demanded the amount of Rs.5 Lakhs.
- (iii) There are defects in the notice. So to say the status of Accused No.1 was not mentioned and role of Accused No.2 is not mentioned (para 7).
- (iv) Failure of the complainant to prove the existence of legally enforceable debt against Accused No.2 (para 10).

Complainant's Case

6. The case of the complainant from the evidence can be deciphered as follows:-

- (a) Husband of the complainant and the Accused No.2 were knowing each other. In the month of May 2014, Accused No.2 was in need of financial help and he came to the house of the complainant. The complainant advanced him hand-loan totally amounting to Rs.5 Lakhs. The complainant has also explained how she has raised that

money. It is in following manner:--

Raising of money

- (i) In the month of June 2014, she has pledged gold ornaments with Federal Bank and raised Rs.45,000/-.
- (ii) There was a personal saving of Rs.44,000/-.
- (iii) Rs.4,11,000/- was raised in 2014 again by pledging gold ornaments with the Federal Bank.

7. Two receipts were issued by the Federal Bank. They were produced before the trial Court on pages 31 and 32 mentioned about financing Rs.45,000/- and Rs.4,11,000/- to the complainant.

Issuance of cheques

8. It is her further case that towards discharge of that liability accused issued the following 5 cheques. They were drawn on Bassein Catholic Co-operative Bank Ltd. Their details are as follows:-

Sr. No.	Cheque No.	Date	Amount
1.	386228	6 th October 2014	1,00,000/-
2.	386229	8 th October 2014	1,00,000/-
3.	386230	10 th October 2014	1,00,000/-
4.	386231	13 th October 2014	1,00,000/-
5.	386232	16 th October 2014	1,00,000/-

Dishonour

9. All these cheques were deposited by the complainant in the joint account standing in her name and in the name of her husband Shiva Perumal in Federal Bank Ltd., Goregaon Branch. Witness No.2 - Mayur Satyanarayan Dusaj, Manager of the Federal Bank has also given evidence to that effect (page 84). It shows that there was a joint account in the name of complainant and her husband. As such, she was justified in depositing those cheques in that account because she was one of the joint account holder.

10. Those cheques were dishonoured by the drawee Bank. There are 5 cheques return memos issued by the Federal Bank being the collecting bank. They are on page 38 to 43. All are dated 18th October 2014 and reason is **account is closed**. On the aspect of proving the reason of dishonour, the grievance of the complainant is 'there is no finding'. It is correct.

11. The witness from Federal Bank was cross-examined on behalf of the accused. The Accused had made an attempt to deny issuance of those memos on behalf of the Federal Bank, however, the Bank witness denied the said suggestion (page 84). The complainant was put to

certain questions during cross-examination about her knowledge of closure of the account (para 9). She has expressed ignorance that account was closed by the accused in the year 2007. Except this suggestion, accused has not adduced any evidence. If he want to suggest that account was closed much earlier to issuance of the cheque, it was for him to prove it. **This evidence is sufficient to believe reason for dishonour is ‘account closed’.**

Statutory notice

12. The complainant adduced evidence about issuance of a statutory notice. The notice is dated 31st October 2014 (page 44). The main dispute about this notice is:

“it was not given to the drawer of the cheque in the sense the cheque was drawn by one Rajendra Rajan – Accused No.2 not in his individual capacity but as a Director of Accused No.1 – Company and as such, it was mandatory to issue notice to him as a Director and to Accused No.1 also”.

There is also contention that there is no reference in the notice about the involvement of Accused No.2. The admission given by the complainant during cross-examination are as follows :--

- a. She was not having any idea about relations in between Rajendra Rajan - Accused No.2 with Accused No.1.
- b. She also admits that there is no reference in the notice about Accused No.2 issued cheques of Accused No.1.
- c. She also admits about non-disclosure by Accused No.2 being Director of Accused No.1 (para 3).

Whereas, the trial Court in the impugned judgment in paragraph 10, has made certain observations. The trial Court observed as under :--

Observations of trial Court

- a. other Directors of the Company have not been impleaded.
- b. amount was alleged to be given to Accused No.2 in his personal capacity and disputed cheques were issued on an account maintained in the name of Accused No.1.
- c. existence of legally enforceable debt against Accused No.2 is not proved.

Submission

13. According to learned Advocate Shri Khanchandani, these findings are perverse and against the provisions of Section 138 of the Negotiable Instruments Act. He also relied upon few judgments. I will deal with them subsequently.

Receipt of Notice

14. The complainant also gave evidence about the receipt of notice, Postal receipt at page 47 and the tracking report is on page 48. The postal receipt was marked as Exhibit whereas tracking report was marked as article. It was pointed out to me by Mr. Khanchandani that there is no finding on the issue of receipt of notice. He is right.

15. It is true that the trial Court is bound to give findings on compliance of the mandatory procedure. The complainant was cross-examined on this aspect. The relevant answers find place in paragraph No.2. The question was put to her:-

“why you have not issued demand notice to Accused No.1

– Kaushal Realtors Pvt. Ltd.”.

She gave answer:-

“my Advocate Shri Vijay Shukla had told me that name of

Kaushal Realtors Pvt. Ltd. will be added in the complaint”.

16. She was also cross-examined on the point of address of her Advocate office. I do not think that if the complainant is cross-examined on this line it will help the accused. Nowhere it is pleaded that the address mentioned in the demand notice is a wrong address of the accused. I hold notice is served on Accused No.2.

Filing in time

17. Last requirement is about filing the complaint in time from the date of cause of action. On this issue also there is no finding. I do not think any serious grievance is raised on this aspect before the trial court.

18. After hearing both the sides and going through the evidence and findings, what I find is the learned Magistrate has not given findings on certain issues. (which I have referred)

19. Even though there is a denial by the Accused on all aspects, their main thrust on argument is of non-compliance of the provisions of proviso (b) to Section 138 of the Negotiable Instruments Act. Factual

aspect are as follows:-

- (i) Issuance of notice by payee or holder in due course (no doubt in this case, the complainant is a payee).
- (ii) There has to be specific demand for payment of the amount of money by giving a written notice (in this case, it is given but to wrong person according to the accused) and further contention is about not mentioning of the facts pleaded in the complaint in the statutory notice.
- (iii) Notice has to be given to the drawer of the cheque (in this case cheques are drawn on behalf of the Respondent No.1- Company and signed by Respondent No.2).
- (iv) It has to be given within 30 days from the knowledge of this **order**.

20. It is true that in entire chain of events:-

- a) there are few facts which need to be proved prior to issuance of a notice and
- b) there are few facts which are to be proved from the date of

notice till filing of the complaint.

According to the accused the main contention is notice was issued to wrong person. But still the earlier ingredients needs to be proved and there has to be findings about the reason of dishonour and existence of liability.

Legally enforceable debt/ liability

21. The trial Court opined that no Income-Tax returns for the financial year 2013-2014 and 2014-2015 were filed. My attention is invited to **Income-Tax returns for the Assessment Year 2014-2015 and 2016-2017** on page 85 to 87. They were not filed initially. But they were filed in pursuance to the questions put to the complainant in cross-examination (para 4/page 80). The Respondents contention is the returns are not for the period when the money is alleged to be advanced. Whereas on the point of existence of legally enforceable debt the trial Court observed in paragraph 10 that “*cheques were not issued in discharge of legally enforceable debt against Accused No.2*”.

22. It is true presumption can be drawn under Section 139 of the Negotiable Instruments Act. The presumption relates to receipt of cheques by the holder and it is for discharge of debt or other liability.

This presumption can be rebutted by proving contrary. It is contended on behalf of the accused that the account was closed in the year 2007 whereas, cheques were of the year 2014. There is one more contention raised on the point of issuance of a blank cheque and there is difference in signature of the ink and contents of the cheque. The signature of the accused is in blue ink whereas rest of the matter on cheque is in black ink. It is admitted during the cross-examination by the complainant (para 7/page 82).

23. The complainant was also put certain questions about the business relationship in between her husband and of accused. Though her husband is an Electrical Contractor, she is not aware that her husband has taken electric contract work for Accused No.2 in the year 2002. Even she is not aware about the nature of business of construction of Accused No.2.

Rebuttal of presumption

24. On the point of the rebuttal of presumption, both the learned Advocates have relied upon few of the judgments. The Appellant relied upon the following judgments:--

- (i) *Rajaram S/o Sriramulu Naidu (since deceased) through L.Rs vs. Maruthachalam (since deceased) through L.Rs. (Criminal Appeal No.1978 of 2013).*
- (ii) *Rajesh Jain Vs. Ajay Singh*¹.

Whereas, the Respondents relied upon the following judgments:--

- (ii) *Baslingappa Vs. Mudibasappa (Criminal Appeal No.636 of 2019).*
- (iii) *S. Murugan Vs. M.K. Karunakaran (Criminal Appeal No.--- of 2023) (arising out of SLP (Crl.) 7618/2023).*
- (iv) *C. Antony Vs. K. G. Raghavan Nair (Criminal Appeal No.1748 of 1996).*

25. After reading them what is relevant is the principles laid down in those judgments. They can be culled out as follows :-

- (a) If drawer of cheque admits the execution, the presumption under Section 139 of NI Act comes into picture.
- (b) The onus is on accused to rebut it. The test is not of 'proof beyond reasonable doubt' but 'preponderance of

1 AIR 2023 SC 5018

probabilities’.

- (c) During that exercise accused may rely upon the materials submitted by the complainant or may rely upon independent material. It is not necessary for the accused to enter into witness box.

26. Both the learned Advocates tried to differentiate the facts of the respective judgments from the facts of the present Appeal. It is true that the entire facts may not be true in two cases. The interpretation of law on the basis of facts is important. First of all the law interpreted in those judgments needs to be considered and needs to be applied to the facts of the present appeal. In a given case where the accused is successful to raise probable defense or not depends upon the facts and circumstances. That is the reason why I have not gone into the factual aspects from the judgments relied upon by both the sides on the point of drawing of presumption and its rebuttal.

27. One inference can very well be drawn and it is the accused has not entered into witness box. Though the accused attempted to put up a case of issuing blank cheque to the husband of the complainant towards execution of a contract and its misuse by the complainant, the

complainant has not given any favourable answers to the accused to support that plea. On this background, if the accused was desirous of persuading the Court to believe that the cheques were not issued towards discharge of liability he ought to have examined any witness. He has not done that. Merely because there is a difference in ink of the signature and contents, it will not help the accused. The signature is admitted, issuance is admitted, so presumption has to be drawn. The accused has failed to rebut that presumption also.

Raising of Finance

28. For proving the liability whether it is really required for the complainant to show how the money is raised, I do not think that it is required. There were two materials relied upon by the complainant. One is the receipt issued by the Federal Bank for pledging of gold ornaments and another is Income-Tax returns. What is the relevance of Income-Tax returns? It can show how much is the total income and how much is the tax paid. One can plead that he is having a particular income from the sources shown in the return but whether income tax returns are really an answer to prove the liability, I do not think that they are required. There are reasons. Person may be earning income

but he is not accounting that income. If it is so then the Department of Income-Tax is there to initiate action. It may also happen that a particular person has shown income in the accounts but for some reason or other he has not produced those documents in the Court. These documents relates to the financial standing of the complainant. Here I must add one thing. For prosecution under Section 138 of the NI Act what is important is issuance of cheque for discharge of legally enforceable debt. What is important is whether the debt in between the complainant and the accused is proved or not. For ascertaining this issue, I do not think that Court should inquire whether the complainant is having sufficient income or not and whether it is reflected in the accounts or not because in a given situation, it may happen that the person may not have accounted the income but still he is having documents and evidence to show the creation of liability in between the complainant and the accused. In that case what is relevant for prosecution under Section 138 of the NI Act is the evidence on the point of liability. **The Court need not do the exercise of ascertaining from where the complainant has raised money.**

29. If we consider various judgments given by the Hon'ble Supreme

Court we may find that the view taken is “in favour of fulfilling the intention of the legislature behind incorporating Section 138 of the NI Act as an offence and any interpretation which advances the mischief sought to be curtailed for making it as an offence is not to be favoured”. So I disagree with the trial Court that Income-Tax returns are necessary for proving the liability.

30. The documents showing the gold loans is sufficient to infer that the complainant has raised amount of Rs.5 Lakhs. The complainant has not produced any documents in the form of receipt by the accused or promissory note. It cannot be inferred that there is no liability once execution is admitted by the accused. Fundamental facts for drawing presumption have to be considered. So I conclude that the complainant has proved the liability incurred towards her by the Accused.

Reasons for dishonour

31. Five cheque return memos and the evidence of witness from Federal Bank are sufficient to infer that cheques were dishonoured for closing of account even though the complainant has stated that there was a dishonest intention on the part of the accused to issue such

cheques, the trial is conducted only for offence under Section 138 of the NI Act. **These materials are sufficient to conclude that closure of account is a reason for dishonour.**

Issuance of notice and its receipt

32. As stated above, accused has not come with the defense that the address is wrong. No doubt, tracking report is not exhibited but there is a receipt showing that notice is posted. Presumption under General Clauses Act comes into picture. What is important is issuance of notice. The complainant has fulfilled that responsibility.

Improvements in the case

33. **The complainant was cross-examined at length in respect of the improvements to show the facts stated in the complaint were not mentioned in her demand notice.** This cross-examination find place in paragraph No.5. On various particulars, questions were put to the complainant. She has also admitted that those particulars are not mentioned in the demand notice. Even learned Advocate for the Respondent has produced one chart showing differences in the contents of the notice on one hand and contents of the complaint on

the other hand. I have perused it. If the complainant might have mentioned all the particulars in the statutory notice, this ground could not have been available to the Accused but **the issue is whether these particulars needs to be statutorily mentioned in the notice or not.**

34. When I have perused **clause (b)** of Section 138 of Negotiable Instruments Act, 1881, it indicates that notice should be given in writing to the drawer of the cheque. If we read **clause (c)**, what we find is if there is failure to make payment of the amount of money within the time limit, the offence is committed. **It indicates that the drawer of the cheque should be aware how much amount he has to pay and it should be in writing.** What are the basic requirements of notice:-

- a) Cheque details should be there.
- b) The amount demanded should be there and
- c) There should be period mentioned for the payment.

35. **These basic requirements are satisfied in the statutory notice.**

There is a mention about how liability was accrued. It is by way of friendly loan. What is not there is when both of them met each other and interacted about giving hand-loan, how the complainant has raised that money. **Even if those details are pleaded subsequently, I do not**

think that notice becomes defective.

Issuance of notice to wrong person

36. This is material issue for deciding this Appeal. The outcome of this Appeal will depend upon the findings on this issue. Though not expressively but implicitly the trial Court has emphasized on absence of averments on certain particulars in the notice. Learned advocate for the appellant invited my attention to one circumstance. It is signatures put on the form of plea. Accused No.2 appeared before the trial Court and his plea was recorded. My attention is invited to the form of the plea (on page 67). I have perused it. There are two signatures. The complainant contend that they are put one for Accused No.1 – Company and another by Accused No.2 himself.

37. Whereas, there is strong reliance on not referring about Company – Accused No.1 in the statutory notice and in fact, cheques were issued on behalf of the Company by Accused No.2. Learned Advocate Shri Muruga Perumal has also invited my attention to the process issued order (on page 66) dated 10th April 2015. It is submitted that there is only reference of Section 138 of the Negotiable Instruments Act and no reference of Section 141 of the Negotiable

Instruments Act. He is right but in the title clause of complaint (on the page 49), there is a reference of both sections.

38. It is not required to join all the Directors of Respondent No.1 – Company because the complainant can only join those representatives of the Company which fall within the purview of Section 141(1) and 142(2) of the Negotiable Instruments Act. The learned Advocate Shri Khanchandani invited my attention to the following provisions of NI Act:-

- (a) Meaning of “drawer” given in Section 7 of the NI Act is “*the maker of a bill of exchange or cheque is called drawer*”.
- (b) The initial wording of Section 138 of NI Act and one of the requirement is “*drawing of a cheque by a person and on an account maintained by him with the banker*”.
- (c) Proviso (b) to Section 138 mentions the person to whom notice is to be issued. It is to be issued “*to the drawer of the cheque*”.
- (d) If ingredients of Section 138 of the N.I. Act are

fulfilled then such person shall be deemed to have committed an offence.

39. To buttress his submissions, he relied upon the following judgments:-

(A) *C.C. Alavi Haji Vs. Palapetty Muhammed and Anr.*²

It was held that issuance of mandatory notice is a clear departure from the rule of criminal law which does not contemplates giving of a notice before filing of a complaint. It gives an opportunity to the drawer to make payment.

(B) *Mainuddin Abdul Sattar Shaikh Vs. Vijay D. Salvi*³

Wherein the cheques were issued by the Accused – Respondent in his personal capacity for repaying the booking amount towards flat in favour of the complainant. In fact, construction was undertaken by the Company and the money is accepted by the Company. However, the Respondent issued cheques in his personal capacity.

All the Courts below have acquitted the accused however, it is reversed by the Hon'ble Supreme Court. What is important is

2. (2007) 6 SCC 555

3. AIR 2015 SC 2579

complaint is filed against the drawer of the cheque irrespective of the fact the liability is with third person. In that case, liability was of the Company and in a personal capacity cheques were issued. It was held maintainable (para 10 and 11).

(C) ***Bilakchand Gyanchand Co. Vs. A. Chinnaswami***⁴.

In that case Managing Director of the Company issued cheques which were dishonoured. The individual was made as a accused without Company. The proceedings were quashed. It was confirmed by Hon'ble Supreme Court.

(D) ***Aneeta Hada Vs. M/s. Godfather Travels & Tours Pvt. Ltd.***⁵

with connected matters.

Wherein the Hon'ble Supreme Court dealt with the issue whether Company needs to be joined as Accused when the cheques are issued on behalf of the Company. It was held in the affirmative.

40. According to Mr. Khanchandani, the judgment in the case of ***Bilakchand Gyanchand Co.*** (supra) is confirmed by the Hon'ble

4. (1999) 5 SCC 693

5. AIR 2012 SC 2795

Supreme Court, in para 12 (iv) of *Aneeta Hada*. It cannot be said that the observations in *Bilakchand Gyanchand Co.* are accepted by the Hon'ble Supreme Court. Reference had come only by way of submission. If we read conclusion drawn in *Aneeta Hada's Case*, in fact it is otherwise.

41. There is a discussion in *Annetta Hada's case* about interpretation of the provisions of Section 141 of NI Act. What is the meaning of word "deemed" is also discussed in paragraph 32. Section 141 lays down the principle of vicarious liabilities in case the cheque is issued by an artificial entity like Company The principle is "*artificial entity works through natural persons. So for issuance of a cheque there has to be some natural person but such person issues a cheque not in his individual capacity but on behalf of the Company. It may also happen that "such person may issue a cheque in his individual capacity on account maintained by him for discharging the liabilities of Company".* In that eventuality, it is the "*person who has issued a cheque will be responsible and not the Company which owns that amount*".

42. When the question of issuing a cheque on behalf of the Company arises, such cheques can be issued only when there is Bank

Account in the name of the Company. The person who is signing the cheque on behalf of the Company is not expected to have a Bank account even though as per Section 7 a person who draws a cheque is a drawer. These provisions have to be interpreted harmoniously along with the provisions of Section 138 of the NI Act. Why the legislators have used a phrase “*cheque drawn by person on account maintained by*”. Because it may happen that cheque may be issued by an artificial entity. The wording “*such person shall be deemed to have committed an offence*” is also important. Because in the proviso (b) to Section 138, it contemplates to whom the notice is to be issued. It has to be issued to a person who has drawn the cheque. So when Company issued cheque on an account maintained by it and signed by natural person, the Company and such signatory have deemed to have committed the offence. Even such natural person is not having bank account in his personal person, the legal fiction comes into existence.

Facts

43. In this case, admittedly the cheques are issued on a Bank account maintained by the Company with the Federal Bank. It was not a Bank Account in the name of Respondent No.2. He has signed as a Director

of Respondent No.1. The issue in *Anceta Hada's* case is slightly different. It is on the point of necessity of joining Company when the cheques are drawn on an account maintained by the Company. The Company has to be joined.

44. In this case, Company is joined as an Accused along with the signatory who is its Director. The issue is different. The issue is about issuance of a notice to proper person. The proviso (b) contemplates issuance of a notice to a drawer. In this case, cheques are drawn by Respondent No.2 as a Director of Respondent No.1 and that too on an account standing in Bank's record in the name of Respondent No.1. It is not in dispute that notice is not issued to the Company and Respondent No.2 as Director of Respondent No.1.

45. I have concluded that there is a liability in between the complainant and Accused No.1. But he has not issued the cheques in his personal capacity on an account maintained by him in his person but he has chosen to draw the cheques on a Bank account maintained by his Company. The complainant has failed to issue notice to Company and Respondent No.1 as Director. The provisions of clause (b) of Section 138 are mandatory. When the consequences of a

particular Act are deterrent, the provisions have to be followed and interpreted strictly.

46. On this aspect, the complainant has failed to adhere to the provisions of the proviso (b) of Section 138 of the NI Act. So even though I have given finding in favour of the complainant on the other aspect, I am unable to accept the contention of learned Advocate Shri Khanchandani. Respondent No.2 is a Director in Respondent No.1 Company but law recognizes both these entities as separate. So I am unable to interfere in the judgment of acquittal. So there is no merit in the Appeal and it is dismissed.

[S. M. MODAK, J.]