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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29th January, 2024

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CRL.A. 289/2017

M/S SHALIMAR PAINTS LTD.

..... Appellant

Through: Mr. Avneet Singh Sikka, Advocate

versus

NATIONAL MARBLE & SANITARY STORE & ANR

..... Respondents

Through: Mr. Sanjay Vashishtha and
Mr. Vishal Kumar, Advocates**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. Present appeal has been filed by the Appellant under Section 378 Cr.P.C. assailing order dated 22.11.2013 passed by learned MM (South)-01, NI Act, Saket Courts, Delhi in CC No. 550/1 titled '*M/s Shalimar Paints Ltd. v. M/s National Marble & Sanitary Store*'. Appellant/M/s. Shalimar Paints Ltd. was the Complainant before the Trial Court while Respondent No.1/M/s. National Marble & Sanitary Store was the accused. Respondent No.2 herein/M/s. National Marble & Sanitary Store VV was not arrayed as a party before the Trial Court. For the sake of convenience Complainant is referred to as the Appellant while accused is referred to as the Respondent hereinafter and Respondent No.2 is referred to as M/s. National Marble & Sanitary Store VV.

2. Appellant Company M/s. Shalimar Paints Ltd., which is a limited company and Respondent/M/s. National Marble & Sanitary Store, which is a



partnership firm, of which Anil Khosla is a partner, entered into a business transaction, whereby Appellant supplied some paint products to Respondent. Appellant is in the business of manufacturing paints and other products and Respondent was one of its distributors, to which products were sold on credit basis. It is the case of the Appellant that in order to discharge its part liability, Respondent issued two cheques dated 18.11.2008 (Ex. CW/B1) and 28.11.2008 (Ex. CW1/B2) for Rs.1,00,000/- and Rs.1,04,124/- respectively, both drawn on Canara Bank, Malviya Nagar Branch, New Delhi and when the cheques were presented for encashment, they were dishonoured and returned back vide return memo dated 24.05.2009, (Ex.CW1/C), with the remark 'Exceeds Arrangement'. Legal notice (Ex.CW1/D) dated 18.05.2009 was sent by the Appellant, which was duly served on the Respondent through speed post (Ex.CW1/D), but Respondent failed to make payment within the statutory period of 15 days from the date of receipt of the notice, leading to filing of the complaint by the Appellant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act').

3. After summons were served on the Respondent, notice was framed on 13.05.2011 and on plea of 'not guilty', the trial commenced. Authorized Representative ('AR') of the Appellant examined himself as CW-1 on 09.11.2011 and tendered his evidence by way of affidavit, reiterating the contents of the complaint and relying upon documents filed at the stage of pre-summoning evidence. In his cross-examination, CW-1 admitted that neither the statement of account nor any bill or invoice had been placed on record to support the transaction between the parties *albeit* he denied the suggestion that Respondent had to recover Rs.16,24,038.56/-. Appellant's evidence was thereafter closed and statement of Accused was recorded



under Section 313 Cr.P.C. on 13.01.2012, wherein he stated that the cheques in question were issued towards advance payment against purchase orders and that it was the Appellant, who owed money to M/s. National Marble & Sanitary Store VV to the tune of Rs.16.24 lacs. Appellant misused the cheques and filed a false and frivolous complaint.

4. Anil Khosla examined himself as defence witness (DW-1) on 04.05.2012, wherein he stated that Respondent Firm i.e. 'National Marble & Sanitary Store' was functional till March, 2006, after which 'National Marble & Sanitary Store VV' was dealing with the Appellant Company. He deposed that no amount was due to the Appellant and this was reflected in the statements of accounts Exs. D-3, D-4 and D-5. In cross-examination, DW-1 testified that he had been a Partner with Devinder Khosla in National Marble & Sanitary Store, which firm was, however, dissolved on 08.03.2006. A civil suit was pending between the parties for recovery of the amounts allegedly due and despite requesting the Appellant not to present the cheques, the same were presented for encashment. Examining the evidence on record and the respective stands of the parties, Trial Court acquitted accused Anil Khosla of the offence under Section 138 of the NI Act and his personal bond as well as surety bond were cancelled.

5. The two-fold reasons that weighed with the learned Trial Court to conclude in favour of the Respondent were : (a) National Marble & Sanitary Store and National Marble & Sanitary Store VV were two separate entities and no material was placed on record by the Appellant to show that the cheques in question were issued in its favour against discharge of an enforceable debt by National Marble & Sanitary Store; and (b) the cheques in question were issued in the year 2008 and were signed by Authorized



Signatory of National Marble & Sanitary Store VV, but said entity being a drawer was not arraigned as an Accused.

6. Arguing on behalf of the Appellant, Mr. Avneet Singh Sikka, learned counsel argues that the Trial Court failed to appreciate that both the Firms i.e. National Marble & Sanitary Store and National Marble & Sanitary Store VV were one and the same entities, being operated by same persons and from the same addresses. Anil Khosla was the common partner in the two firms and had admitted in his statement under Section 313 Cr.P.C. that he had issued the cheques and therefore, the Trial Court ought to have lifted the veil to ascertain the liability and convicted the Accused Anil Khosla. At no stage, Respondent had informed about the dissolution of National Marble & Sanitary Store and constitution of National Marble & Sanitary Store VV.

7. It was further argued that all necessary ingredients of Section 138 of the NI Act were satisfied and Trial Court erred in acquitting the Accused. Respondent had a running account with the Appellant in the name of M/s. National Marble & Sanitary Store and he never disclosed that the two firms were separate entities or that there was any dispute between the partners of the two Firms. Applying the provisions of Sections 25, 26 and 27 of the Partnership Act, 1932, the Firm National Marble & Sanitary Store and Anil Khosla as a partner are both liable for the acts of National Marble & Sanitary Store VV. Respondent had two accounts with the Appellant, one in the name of National Marble & Sanitary Store, which was settled by way of settlement letter dated 21.04.2008 and the other in the name of National Marble & Sanitary Store VV, whereunder new transactions took place.

8. *Per contra*, counsel for the Respondent argues that the Firm National Marble & Sanitary Store had dealings with the Appellant but the Firm was



dissolved in 2006 and the cheques were issued by National Marble & Sanitary Store VV only in the year 2008. Therefore, for the sake of argument, if the Appellant had any cause of action, it was against National Marble & Sanitary Store VV, the drawer of the cheques and not National Marble & Sanitary Store. No material was brought on record by the Appellant in the form of statements of account/invoices etc. to show that National Marble & Sanitary Store was liable in any manner and admittedly, the said firm was not the drawer of the cheques in question. In these facts, the Trial Court rightly acquitted the Accused.

9. I have heard the learned counsels for the parties and examined their respective contentions.

10. Indisputably, the cheques in question bearing Nos. 299620 and 299621 were issued on 18.11.2008 and 28.11.2008, respectively. On presentation, the cheques were dishonoured vide return memo dated 24.05.2009 *albeit* Appellant was unable to bring forth the dates on which the cheques were presented for encashment. In order to appreciate the arguments of the Appellant, it would be first relevant to allude to the provisions of Sections 138 and 141 of NI Act and the judicial precedents on the subject. For ready reference, Sections 138 and 141 of NI Act are extracted hereunder:

“138. Dishonour of cheque for insufficiency, etc. of funds in the account.—Where any cheque drawn by a person 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 the discharge, in whole or in part, of any debt or other liability, 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 by an arrangement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with



imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, ‘debt or other liability’ means a legally enforceable debt or other liability.”

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141. Offences by companies. — (1) *If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and 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 accordingly:*

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) *Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*



Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

11. The Supreme Court in ***Jugesh Sehgal v. Shamsher Singh Gogi, (2009) 14 SCC 683***, held that for constituting an offence under Section 138 of NI Act, the following ingredients are required to be fulfilled:-

“(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.”

12. Referring to the judgment in ***Jugesh Sehgal (supra)***, the Supreme Court in ***Aparna A. Shah v. Sheth Developers Private Limited and Another, (2013) 8 SCC 71***, observed that considering the language used in Section 138 of NI Act, it is only the ‘drawer’ of the cheque who can be made liable for penal action under the provisions of NI Act and strict



interpretation is required to be given to penal statutes. Relevant passages from the judgment are as follows:

“17. As rightly pointed out by the learned Senior Counsel for the appellant, the interpretation sought to be advanced by the respondents would add words to Section 141 and extend the principle of vicarious liability to persons who are not named in it.

18. In the case on hand, we are concerned with criminal liability on account of dishonour of a cheque. It primarily falls on the drawer, if it is a company, then drawer company and is extended to the officers of the company. The normal rule in the cases involving criminal liability is against vicarious liability. To put it clear, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. For example, Section 141 of the NI Act is an instance of specific provision that in case an offence under Section 138 is committed by a company, the criminal liability for dishonour of a cheque will extend to the officers of the company. As a matter of fact, Section 141 contains conditions which have to be satisfied before the liability can be extended. Inasmuch as the provision creates a criminal liability, the conditions have to be strictly complied with. In other words, the persons who had nothing to do with the matter, need not be roped in. A company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, the officers of the company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the acts which result in criminal action being taken against the company. In other words, it makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. It is true that the proviso to sub-section (1) of Section 141 enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability under Section 141 of the NI Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability.

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25. In Bandeep Kaur v. Avneet Singh [(2008) 2 PLR 796], in a similar situation, the learned Single Judge of the Punjab and Haryana High Court held that in case the drawer of a cheque fails to make the payment on receipt of a notice, then the provisions of Section 138 of the Act could be attracted against him only. The learned Single Judge further held that



though the cheque was drawn to a joint bank account which is to be operated by anyone i.e. the petitioner or by her husband, but the controversial document is the cheque, the liability regarding dishonouring of which can be fastened on the drawer of it. After saying so, learned Single Judge accepted the plea of the petitioner and quashed the proceedings insofar as it relates to her and permitted the complainant to proceed further insofar as against others.

26. In the light of the principles as discussed in the earlier paragraphs, we fully endorse the view expressed by the learned Judges of the Madras [Devendra Pundir v. Rajendra Prasad Maurya, 2008 Cri LJ 777 (Mad)], Delhi [Gita Berry v. Genesis Educational Foundation, (2008) 151 DLT 155] and Punjab and Haryana [(2008) 2 PLR 796] High Courts.

27. In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains the name of the appellant and her husband, the fact remains that her husband alone had put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.

28. We also hold that under Section 138 of the NI Act, in case of issuance of cheque from joint accounts, a joint account-holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account-holder. The said principle is an exception to Section 141 of the NI Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as arm-twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to the dishonour of a cheque can, in no case "except in case of Section 141 of the NI Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage."



13. In *Aneeta Hada and Others v. Godfather Travels and Tours Private Limited*, (2012) 5 SCC 661, the core issue before the Supreme Court was whether an authorized signatory of a company would be liable for prosecution under Section 138 of NI Act, without the Company being arraigned as an accused. After extensively examining the provisions of Sections 138 and 141 of NI Act and alluding to the earlier judgments of the Supreme Court as well as Section 7 of NI Act, which defines ‘drawer’ to mean the maker of a bill of exchange or cheque, the Supreme Court held that applying the doctrine of strict construction, commission of offence by the Company is an express condition precedent to attract the vicarious liability of others. Only when the Company is prosecuted, the other persons mentioned in the other categories could be held vicariously liable for the offence, subject to averments in the petition and proof thereof. One cannot be oblivious of the fact that Company is a juristic person with its own respectability and therefore for maintaining prosecution under Section 141 of the Act, arraigning of a Company as an accused is imperative. Other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability. Relevant passages from the judgment are as follows:-

“19. The main part of the provision can be segregated into three compartments, namely, (i) the cheque is drawn by a person, (ii) the cheque drawn on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of a debt or other liability, is returned unpaid, either because the amount of money standing to the credit of that account is insufficient to honour the cheque or it exceeds the amount arranged to be paid from that account by an arrangement made with the bank, and (iii) such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of the Act, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both. The proviso to the said section postulates under what circumstances the



section shall not apply. In the case at hand, we are not concerned with the said aspect. It will not be out of place to state that the main part of the provision deals with the basic ingredients and the proviso deals with certain circumstances and lays certain conditions where it will not be applicable. The emphasis has been laid on the factum that the cheque has to be drawn by a person on the account maintained by him and he must have issued the cheque in discharge of any debt or other liability.

20. *Section 7 of the Act defines “drawer” to mean the maker of a bill of exchange or a cheque. An authorised signatory of a company becomes a drawer as he has been authorised to do so in respect of the account maintained by the company.*

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22. *On a reading of the said provision, it is plain as day that if a person who commits the offence under Section 138 of the Act is a company, the company as well as every person in charge of and responsible to the company for the conduct of business of the company at the time of commission of offence is deemed to be guilty of the offence. The first proviso carves out under what circumstances the criminal liability would not be fastened. Sub-section (2) enlarges the criminal liability by incorporating the concepts of connivance, negligence and consent that engulfs many categories of officers. It is worth noting that in both the provisions, there is a “deemed” concept of criminal liability.*

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24. *Section 141 uses the term “person” and refers it to a company. There is no trace of doubt that the company is a juristic person. The concept of corporate criminal liability is attracted to a corporation and company and it is so luminescent from the language employed under Section 141 of the Act. It is apposite to note that the present enactment is one where the company itself and certain categories of officers in certain circumstances are deemed to be guilty of the offence.*

25. *In Halsbury's Laws of England, Vol. 11(1), in Para 35, it has been laid down that in general, a corporation is in the same position in relation to criminal liability as a natural person and may be convicted of common law and statutory offences including those requiring mens rea.*

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39. *The word “deemed” used in Section 141 of the Act applies to the company and the persons responsible for the acts of the company. It crystallises the corporate criminal liability and vicarious liability of a person who is in charge of the company. What averments should be required to make a person vicariously liable has been dealt with in S.M.S. Pharmaceuticals Ltd. [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] In the said case, it has been opined that the criminal liability on account of*



dishonour of cheque primarily falls on the drawee (sic drawer) company and is extended to the officers of the company and as there is a specific provision extending the liability to the officers, the conditions incorporated in Section 141 are to be satisfied.

40. *It has been ruled as follows: (S.M.S. Pharmaceuticals Ltd. case [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , SCC pp. 95-96, para 4)*

“4. ... It primarily falls on the drawer company and is extended to officers of the company. The normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in the statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence under Section 138 is committed by a company, extends criminal liability for dishonour of a cheque to officers of the company. Section 141 contains conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable.”

41. *After so stating, it has been further held that while analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. In para 18 of the judgment, it has been clearly held as follows: (S.M.S. Pharmaceuticals Ltd. case [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , SCC p. 102)*

“18. ... there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability.”

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53. *It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict*



construction of the provision would be necessitous and, in a way, the warrant.

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56. *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.*

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58. *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.*

59. *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 drag-net 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 [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery [(1987) 3 SCC 684 : 1987 SCC*



(Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove”.

14. The present case involves two partnership firms i.e. National Marble & Sanitary Store and National Marble & Sanitary Store VV. Indisputably, National Marble & Sanitary Store was dissolved in 2006 and National Marble & Sanitary Store VV was registered under the Indian Partnership Act, 1932 on 23.04.2009. Therefore, it would be crucial to look at the law under Sections 138 and 141 of the NI Act in the context of a partnership firm. In ***Dilip Hariramani v. Bank of Baroda, 2022 SCC OnLine SC 579***, one of the issues for consideration before the Supreme Court was “*whether a partner can be convicted and held to be vicariously liable when the partnership firm is not an accused tried for the primary/substantive offence.*” On examination of the provisions of Sections 138 and 141 NI Act, the Supreme Court held that provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires commission of the offence by the company or the firm and therefore, unless the company or firm has committed the offence as a principal accused, persons mentioned in sub-Sections (1) and (2) would not be liable. Relevant passages from the judgment are as follows:

“2. The issues raised in this appeal by the appellant, Dilip Hariramani, challenging his conviction under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, are covered by the decisions of this Court on the aspects of (i) vicarious criminal liability of a partner; and (ii) whether a partner can be convicted and held to be vicariously liable when the partnership firm is not an accused tried for the primary/substantive offence.

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8. Before we refer to the pertinent legal ratio in the case of *Aneeta Hada v. Godfather Travels and Tours Private Ltd.*, we would like to refer to an earlier apposite judgment of this Court in *State of Karnataka v.*



Pratap Chand, in which case prosecution had been initiated under the Drugs and Cosmetics Act, 1940 against a partnership firm and its partners. Reference was made to Section 34 of the Drugs and Cosmetics Act, which is pari materia to Section 141 of the NI Act. Therefore, for the sake of convenience and for deciding the present appeal, we will reproduce Section 141 of the NI Act:

“141. Offences by companies.—(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and 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 accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

9. Sub-section (1) to Section 141 of the NI Act states that where a company commits an offence, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business, as well as the company itself, shall be deemed to be guilty of the offence. The expression ‘every person’ is wide and comprehensive enough to include a director, partner or other officers or persons. At the same time, it follows that a person who does not bear out the requirements of ‘in charge of and responsible to the company for the



conduct of its business' is not vicariously liable under Section 141 of the NI Act. The burden is on the prosecution to show that the person prosecuted was in charge of and responsible to the company for conduct of its business. The proviso, which is in the nature of an exception, states that a person liable under subsection (1) shall not be punished if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. The onus to satisfy the requirements and take benefit of the proviso is on the accused. Still, it does not displace or extricate the initial onus and burden on the prosecution to first establish the requirements of sub-section (1) to Section 141 of the NI Act. The proviso gives immunity to a person who is otherwise vicariously liable under sub-section (1) to Section 141 of the NI Act.

10. *Sub-section (2) to Section 141 of the NI Act states that notwithstanding anything contained in sub-section (1), where a company has committed any offence under the Act, and it is proved that such an offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officers of the company, then such director, manager, secretary or other officers of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Sub-section (2) to Section 141 of the NI Act does not state that the persons enumerated, which can include an officer of the company, can be prosecuted and punished merely because of their status or position as a director, manager, secretary or any other officer, unless the offence in question was committed with their consent or connivance or is attributable to any neglect on their part. The onus under sub-section (2) to Section 141 of the NI Act is on the prosecution and not on the person being prosecuted.*

11. *In Pratap Chand (supra), specific reference was made to the Explanation to Section 34 of the Drugs and Cosmetics Act, which states that for Section 34, a 'company' means a body corporate and includes a firm or association of individuals, and a 'director' in relation to a firm means a partner in the firm. Thereafter, the conviction of the second respondent, one of the partners in the firm therein, was quashed on the ground that he cannot be convicted merely because he has the right to participate in the firm's business in terms of the partnership deed. Thus, notwithstanding the legal position that a firm is not a juristic person, a partner is not vicariously liable for an offence committed by the firm, unless one of the twin requirements are satisfied and established by the prosecution. This Court gave the following reasoning:*

"7. It is seen that the partner of a firm is also liable to be convicted for an offence committed by the firm if he was in charge of, and was responsible to, the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the



partner concerned. In the present case the second respondent was sought to be made liable on the ground that he along with the first respondent was in charge of the conduct of the business of the firm. Section 23-C of the Foreign Exchange Regulation Act, 1947 which was identically the same as Section 34 of the Drugs and Cosmetics Act came up for interpretation in *G.L. Gupta v. D.H. Mehta*, (1971) 3 SCC 189 where it was observed as follows:

“What then does the expression ‘a person in-charge and responsible for the conduct of the affair of a company’ means? It will be noticed that the word ‘company’ includes a firm or other association, and the same test must apply to a director in-charge and a partner of a firm in-charge of a business. It seems to us that in the context a person ‘in-charge’ must mean that the person should be in overall control of the day to day business of the company or firm. This inference follows from the wording of Section 23-C(2). It mentions director, who may be a party to the policy being followed by a company and yet not be in-charge of the business of the company. Further it mentions manager, who usually is in charge of the business but not in overall charge. Similarly the other officers may be in charge of only some part of business.”

12. We would also refer to the summarisation of law on Section 141 by this Court in *National Small Industries Corporation Limited v. Harmeet Singh Paintal*, to the following effect:

“39. From the above discussion, the following principles emerge:

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.



(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.

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(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”

13. In the present case, we have reproduced the contents of the complaint and the deposition of PW-1. It is an admitted case of the respondent Bank that the appellant had not issued any of the three cheques, which had been dishonoured, in his personal capacity or otherwise as a partner. In the absence of any evidence led by the prosecution to show and establish that the appellant was in charge of and responsible for the conduct of the affairs of the firm, an expression interpreted by this Court in *Girdhari Lal Gupta v. D.H. Mehta* to mean ‘a person in overall control of the day-to-day business of the company or the firm’, the conviction of the appellant has to be set aside. The appellant cannot be convicted merely because he was a partner of the firm which had taken the loan or that he stood as a guarantor for such a loan. The Partnership Act, 1932 creates civil liability. Further, the guarantor's liability under the Indian Contract Act, 1872 is a civil liability. The appellant may have civil liability and may also be liable under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. However, vicarious liability in the criminal law in terms of Section 141 of the NI Act cannot be fastened because of the civil liability. Vicarious liability under sub-section (1) to Section 141 of the NI Act can be pinned when the person is in overall control of the day-to-day business of the company or firm. Vicarious liability under sub-section (2) to Section 141 of the NI Act can arise because of the director, manager, secretary, or other officer's personal conduct, functional or transactional role, notwithstanding that the person was not in overall control of the day-to-day business of the company when the offence was committed. Vicarious liability under sub-section (2) is attracted when the offence is committed with the consent, connivance, or is attributable to the neglect on the part of a director, manager, secretary, or other officer of the company.

14. The demand notice issued on 04th November 2015 by the Bank, through its Branch Manager, was served solely to Simaiya Hariramani, the authorised signatory of the Firm. The complaint dated 07th December 2015 under Section 138 of the NI Act before the Court of Judicial Magistrate, Balodabazar, Chhattisgarh, was made against Simaiya Hariramani and the appellant. Thus, in the present case, the Firm



has not been made an accused or even summoned to be tried for the offence.

15. The judgment in *Dayle De'souza v. Government of India* through Deputy Chief Labour Commissioner (C), answered the question of whether a director or a partner can be prosecuted without the company being prosecuted. Reference in this regard was made to the views expressed by this Court in *State of Madras v. C.V. Parekh* on the one hand and the divergent view expressed in *Sheoratan Agarwal v. State of Madhya Pradesh* and *Anil Hada v. Indian Acrylic Ltd.* This controversy was settled by a three Judge Bench of this Court in *Aneeta Hada (supra)*, in which, interpreting and expounding the difference between the primary/substantial liability and vicarious liability under Section 141 of the NI Act, it has held:

“51. We have already opined that the decision in *Sheoratan Agarwal* runs counter to the ratio laid down in *C.V. Parekh* which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in *Anil Hada* has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted.

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59. 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 drag-net 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* which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal* does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada* is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery* has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

16. The provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, which person(s) then, by



*deeming fiction, is made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender. This view has been subsequently followed in **Sharad Kumar Sanghi v. Sangita Rane**, **Himanshu v. B. Shivamurthy**, and **Hindustan Unilever Limited v. State of Madhya Pradesh**. The exception carved out in **Aneeta Hada (supra)**, which applies when there is a legal bar for prosecuting a company or a firm, is not felicitous for the present case. No such plea or assertion is made by the respondent.*

17. *Given the discussion above, we allow the present appeal and set aside the appellant's conviction under Section 138 read with Section 141 of the NI Act. The impugned judgment of the High Court confirming the conviction and order of sentence passed by the Sessions Court, and the order of conviction passed by the Judicial Magistrate First Class are set aside. Bail bonds, if any, executed by the appellant shall be cancelled. The appellant is acquitted. However, there would be no order as to costs."*

15. The issue of prosecuting a partner of a partnership firm under Sections 138 and 141 of the NI Act in the absence of impleading the partnership firm came up for consideration before the High Court of Uttarakhand in **Ramesh Nagarkoti v. Kedar Datt Purohit, 2021 SCC OnLine Utt 745**. Following the judgments of the Supreme Court in **Aneeta Hada (supra)** and **Himanshu v. B. Shivamurthy and Another, (2019) 3 SCC 797**, wherein the Supreme Court held that in the absence of a company being arraigned as an accused, prosecution of Director of the Company for cheque bouncing under Section 138 was not maintainable, the Uttarakhand High Court observed that if the cheque has been issued by the partnership firm, which was subsequently dishonoured, a partner of the firm would not be liable for prosecution under Section 138, without the firm being arraigned as an accused. The issue again came up before the High Court of Jharkhand in **Binay Prasad v. State of Jharkhand and Ors., Cr. Rev. Nos. 830 and 833 of 2012**, decided on 26.07.2021, wherein the partnership firm was not impleaded and the complainant had arraigned only the partner as an accused.



The High Court observed as follows:

“41. This judgment has been followed in the case of *Anil Gupta Vs. Star India Private Limited and Another* reported in (2014) 10 SCC 373 wherein at para 8 and 9 it has been held that from Section 138 of the Act it is clear that only the drawer of the cheque falls within the ambit of Section 138 of the Act whether human being or a body corporate or even a firm. The guilt for offence under Section 138 will be deemed to be upon other persons connected with the Company in view of Section 141 of the Act. In the said judgment following the judgement of *Aneeta Hada (supra)*, the part of the impugned judgment whereby the High Court held that the proceedings against the appellant Managing Director can be continued even in absence of the Company, was set aside.

42. In the case decided by Hon’ble Supreme Court, *G Ramesh Vs. Kanike Harish Kumar Ujwal and Anr.* in Criminal Appeal No.603 of 2019, it has been held in para 10, 11 and 12 as under:

“10. In terms of the explanation to Section 141, the expression “company” has been defined to mean anybody corporate and to include a firm or other association of individuals. Sub-section (1) of Section 141 postulates that where an offence is committed under Section 138 by a company, the company as well as every person who, at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business shall be deemed to be guilty of the offence.

11. In determining as to whether the requirements of the above provision have been fulfilled, it is necessary to bear in mind the principle of law that a partnership is a compendious expression to denote the partners who comprise of the firm. By the deeming fiction in Explanation (a) the expression company is defined to include a firm.”

43. In the case of *Himanshu v. B. Shivamurthy* reported in (2019) 3 SCC 797 the appellant submitted that the cheque was issued by a Director of a public limited company and not issued by the signatory in his personal capacity. Hence, it was urged that the complaint ought to have been instituted against the company and its directors and not against the appellant. However, the records indicated that the cheque was drawn by the appellant for the company as its director and the notice of demand was served only on the appellant. The complaint was lodged only against the appellant without arraigning the company as an accused. In the said background it was held as under: -

“12. 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.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.”

44. It is an admitted case on record that the cheques in both the complaint cases were issued under the signature of the accused, in the capacity of the partner of the partnership firm namely Mehta Transport Company i.e. for and on behalf of the said partnership firm; the Legal Notices in connection with the bouncing of cheques were also issued in the name of the accused being the partner of the said firm; the complaint case was also filed against the accused being the partner of the said firm.

45. It is also an admitted fact on record that the specific case of the complainant in both the cases was that the accused being partner of Mehta Transport Company and on behalf of the partnership firm entered into hire purchase agreement for purchase of vehicle and the loan was to the extent of Rs. 12,00,000/- was extended to the partnership firm. In discharge of the said debt, the accused handed over two cheques in favour of the complainant which had bounced on account of ‘insufficient fund’. The cheques were issued from the account of the said partnership firm and the petitioner had signed the cheques as a partner.

46. It is also not in dispute that the partnership firm has not been made accused in both the complaint cases and cognizance of the offence was taken only under Section 138 of the Negotiable Instruments Act, 1881.

*47. In view of the aforesaid judgements passed by the Hon’ble Supreme Court, in the absence of the partnership firm being arraigned as an accused, both the complaint petitions against the petitioner (partner of the firm) for offence under Section 138 of the Negotiable Instruments Act, 1881 were not maintainable. No bar or impediment, legal or otherwise, has been reflected from the records of the two cases in making the partnership firm as an accused in the complaint cases and accordingly the doctrine of *lex non cogit ad impossibilia* is not attracted. The petitioner had signed the cheque in both the cases as a partner of the partnership firm, for and on its behalf.*

48. In the aforesaid view of the matter, the issue no. (b) is decided in favour of the petitioner in both the cases. It is held that it was imperative on the part of the complainant company to make the partnership firm of



the accused as a co-accused in the complaint cases and on account of failure to do so, the petitioner could not be convicted for offence under Section 138 of Negotiable Instruments Act, 1881 as complaint only against the petitioner in both the cases was itself not maintainable.”

16. From the conspectus of the aforementioned judgments, it is clear as day that it is the drawer of the cheque who can be prosecuted for dishonour of cheque under Section 138 of NI Act as also that in the absence of the partnership firm being arraigned as an accused, where the cheque has been issued by the partnership firm, partner cannot be made liable and the complaint must fail.

17. Coming to the facts of this case, a bare perusal of the cheques in question shows that they were issued by the partnership firm National Marble & Sanitary Store VV and therefore, it is this firm which is the ‘drawer’ of the cheque. Admittedly, National Marble & Sanitary Store VV is not arraigned as an accused in the complaint filed by the Appellant. For some strange reason, Appellant chose to array National Marble & Sanitary Store as an accused, despite being aware of the fact that the drawer of the cheque was National Marble & Sanitary Store VV and the partnership firm National Marble & Sanitary Store stood dissolved in 2006, much before the cheques were issued on 18.11.2008 and 28.11.2008. Respondent had placed on record certified copies of the Statements of Account and the payments made by National Marble & Sanitary Store VV to the Appellant between 2007-2009 as well as the demand notice to the Appellant seeking recovery of Rs.16,24,038.56 and its registration certificate dated 23.04.2009, to evidence that Appellant was well aware of both, the dissolution of National Marble & Sanitary Store in 2006 and its dealings with National Marble & Sanitary Store VV, post-2007. Significantly, no Statements of Account/bills/



invoices etc. were filed by the Appellant with respect to National Marble & Sanitary Store, which could point to its liability to discharge an enforceable debt. While it is true that Anil Khosla was a common partner in the two firms but that by itself is not enough to sustain the present complaint, since the partnership firm National Marble & Sanitary Store VV, which was the drawer of the cheques was not impleaded. Statements of Account placed on record reflect that Appellant had been dealing with National Marble & Sanitary Store VV since 2006 and both the firms were separate entities. Following the observations in the judgments in **Ramesh Nagarkoti (supra)** and **Binay Prasad (supra)**, Appellant ought to have also arraigned National Marble & Sanitary Store VV as an accused. There is no doubt that Section 25 of the Partnership Act, 1932, may make a continuing partner liable in civil proceedings but these provisions of law cannot be imported to determine liability under a penal statute, such as Section 138 NI Act, particularly, in the light of the judgment of the Supreme Court in **Aneeta Hada (supra)**, that for maintaining prosecution under Section 141 NI Act, arraigning of a company as an accused is imperative. There is no doubt that this judgment would apply to the present case by virtue of Explanation to Section 141 NI Act, which provides that for the purposes of this Section, ‘Company’ means any body corporate and includes a firm or other association of individuals. In **Steel Authority of India Ltd. v. State & Ors., 2014 SCC OnLine Del 6524**, this Court has observed that Section 25 of the Partnership Act, 1932 has to be read with Section 141 of NI Act in the context of dishonour of cheques and relevant passages are as follows:

“23. On the question of liability of the partner of a firm that has issued the dishonoured cheque, no doubt a statutory presumption is attracted in terms of Section 141 of the NI Act. The decision in *Pratima*



Sharma (supra) also proceeds on the footing that as long as it is shown that a person has continued as a partner of the firm then it must be presumed that such a partner would be responsible for the conduct of the business of the firm. However, Section 25 of the Partnership Act has to be read together with Section 141 of the NI Act in the context of dishonour of a cheque. Section 141 of the NI Act spells out penal consequences and requires to be strictly interpreted. The presumption that gets attracted under Section 139 read with Section 141 of the NI Act is a rebuttable presumption. An individual who is arraigned as accused in his capacity as a partner of the firm that issued the dishonoured cheque can rebut the statutory presumption by leading evidence and proving such defence on a preponderance of probabilities.

24. The Court, therefore, agrees with the submission of the learned counsel for Mr. Dinesh Vij that Section 25 of the Partnership Act cannot be applied in isolation to fasten criminal liability on the partner of a firm and that in terms of Section 141 of the NI Act the partner can rebut the statutory presumption. Secondly, although the Supreme Court in its decision in Rallis India Ltd. (supra), observed that the burden will be on the partners to show that they were not in charge of the affairs of the firm, the standard of proof would be on a preponderance of probabilities and not beyond reasonable doubt."

18. The learned Trial Court has, upon examination of the evidence, noted as follows:

"18. On the perusal of the present case, it is seen that the date on the impugned cheques is 18.11.2008 and 28.11.2008. A copy of return memo has been placed on record where the date of cheque in question has been mentioned as 28.11.2009 and 28.01.2009 respectively. It is also seen copy of memo that the date of return is not mentioned clearly and there appears to be overwriting on the same. However, the complainant has in his complaint stated that he received information from his bank vide return memo dated 24.05.2009. However, the date reflected on the legal demand notice is clearly mention to be 18.05.2009. It appears that the complainant is not clear as to when the cheques in question were present for encashment and has not been able to placed on record or show as to how prior to the date of return memo, which was allegedly received by him, the legal notice was framed by it and dispatched.

19. The AR of complainant in his evidence has clearly stated that no statement of account or bill or invoice with respect to National Marble & Sanitary Store and the complainant has been placed on record. However, the complainant has not clearly answered any question as to when was the last transaction between the parties. The accused had put statement of



account Mark CW1/D1 to the AR during cross examination by the AR neither admitted nor denied the same nor did he admit or deny the signature of the AR of the complainant, who appeared in the court on 05.11.2011. The complainant also could not answer the question as to whether the accused used to make the payment on account and that the accounts were later on settled. The AR, however, admitted to have received a demand notice of Rs. 16,24,038.56 from the complainant. The AR as CW-1 neither admitted nor denied the copy of letters sent by National Marble & Sanitary Store VV dated 10.04.2010 and 25.08.2010 to the complainant, which are marked as Mark X and XI respectively, wherein it has been stated that the business has been started in the trade name of M/s National Marble & Sanitary Store VV on 01.04.2006.

20. The accused on the other hand during his evidence placed on record certified copies of the statement of account and the payment made by National Marble & Sanitary Store VV to the complainant from the period 2007 to 2009. The accused has also placed on record the certified copy of the recovery suit filed against the complainant by it alongwith its annexure. On perusal of the aforesaid document annexed, it is seen that National Marble & Sanitary Store VV has been registered under the Indian Partnership Act Form A, Registrar of Firm maintained under section 59 (4) 1 of the Indian Partnership Act and the date of registration has been stated to be 23.04.2009. A partnership deed has also been placed on record wherein it has been stated that the earlier partnership has been dissolved in 2006 and all the assets and liabilities of the earlier firm had been transferred to National Marble & Sanitary Store VV.

21. From the above said fact and document placed on record, it is clear that National Marble & Sanitary Store has been dissolved. It is matter of record that the complainant is also dealing with National Marble & Sanitary Store VV and therefore it cannot be said by the complainant that it was not aware that National Marble & Sanitary Store and National Marble & Sanitary Store VV are two separate entities. The complainant has alleged that it maintained a running account with the complainant but except at the stage of final arguments, no ledger or statement of account was produced nor any document has been placed on record by the complainant to show that the accused had issued the cheques in favour of the complainant against discharge of its liability.

22. The National Marble & Sanitary Store dissolved in the year 2006. The cheques in question have been issued in the year 2008 and it is clearly seen from the impugned cheques that the same has been signed by the authorized signatory of National Marble & Sanitary Store VV. The statement of account placed on record are all with respect to National Marble & Sanitary Store VV, whereas the complaint has been specifically filed against National Marble & Sanitary Store. It is correct that the



address both the concerns is the same, however, they are distinct identities.

23. The defence on the other hand has placed on record documents to show that they are partner of National Marble & Sanitary Store VV and have produced statements of account and other documents to show that this partnership firm also had dealings with the complainant and that on the dissolution of the earlier partnership concern, National Marble & Sanitary Store had written various correspondence to the complainant for settlement of previous accounts. It is also clear from the fact of the present case that Anil Khosla is a partner in both the firms i.e. National Marble & Sanitary Store and National Marble & Sanitary Store VV. However, the complainant should clearly stated that they intended to prosecute National Marble & Sanitary Store VV and Mr. Anil Khosla under section 138 NI Act in the present case. National Marble & Sanitary Store cannot be made an accused for the reason that Mr. Anil Khosla is a common partner. It is seen from the statement of account placed on record between the parties that the complainant Shalimar Paints had been dealing with National Marble & Sanitary Store VV since 2006 and this is reflected even from the statement of account placed on record by the complainant which mentions the customer name to be National Marble & Sanitary Store VV. Therefore, it cannot be said that both National Marble & Sanitary Store and National Marble & Sanitary Store VV.

24. Therefore, in view of the aforesaid facts and discussions, it is seen that the complainant is not clear as to whom he wishes to prosecute u/s 138 NI Act as the cheques in question were issued by National Marble & Sanitary Store VV and in the array of parties National Marble & Sanitary Store has been made an accused. Also the complainant in his examination was not aware about any fact of the case and has not placed on record any document to show that the accused has issued the cheques in question towards or in discharge of their liability.

25. Accordingly, this court exonerates the accused under Section 138 of Negotiable Instrument Act. The accused - Anil Khosla is hereby acquitted of the offence. Bail bond and surety bond, if any, stands cancelled. File be consigned to Record Room."

19. From a reading of the impugned judgment conjointly with the evidence on record, it is clear that the Appellant impleaded National Marble & Sanitary Store as an accused, which firm was not the drawer of the cheques and failed to implead National Marble & Sanitary Store VV, the drawer of the cheques. No document was placed on record by the Appellant



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to indicate the liability of National Marble & Sanitary Store to pay the amounts under the cheques as an enforceable debt. In fact, the Trial Court observed and rightly so that Appellant's witness in his examination was not even aware of the facts of the case and had not placed any document to show that National Marble & Sanitary Store had issued the cheques in question towards discharge of any liability. In his cross-examination, CW-1 admitted that neither the statement of account nor any bill or invoice had been placed on record to support the transaction between the parties.

20. For all the aforesaid reasons, this Court finds no infirmity in the impugned judgment and the appeal is accordingly dismissed.

JYOTI SINGH, J

JANUARY 29, 2024/kks/shivam