

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRA 424 of 2019

**M/S Maa Durga Trading Co.
Vs.
Sujeet Kumar Jaiswal**

For the petitioners	:	Mr. Anirban Mitra Mr. Amit Halder Mr. Amit Roy Ms. Madhumita Sadhukhan
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For the respondent	:	Mr. Abhra Mukherjee Mr. Sauradeep Dutta Mr. Arpayan Mukherjee Mr. S.K. Mondal Mr. H Ghosh
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Heard on	:	12.06.2025
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Judgment on	:	02.07.2025
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Dr. Ajoy Kumar Mukherjee, J.

1. The instant case had its origin on the basis of a petition of complaint under section 138/141 of the Negotiable Instrument Act (in short N.I. Act) filed by a partnership firm namely M/S Ma Durga Trading Company through one of its partner namely Amit Sugla against the partnership firm namely M/S Shiva Steels and two of its partners namely Sujeeet kumar Jaiswal (respondent herein) and Sandeep Kumar Jaiswal alleging dishonour

of cheque being no. 334375 dated 23.12.2013 for Rs. 14,63,427/-, allegedly issued in discharge of legally enforceable debt and/or liability of the partnership firm namely M/S Shiva Steels. During trial complainant examined one Amit Sugla as PW1 and proved the relevant documents to establish commission of offence, in terms of section 138 (b) of N.I. Act. Accused also adduced two witnesses in support of their defence and also exhibited documents on their side.

2. Learned Trial court came to a finding that accused no.1 i.e. the company namely M/S Shiva Steel and accused no.3, namely aforesaid Sandeep Kumar Jaiswal, a partner of M/S Shiva Steel raised some doubt in the mind of the court and for which they were acquitted but learned Trial court specifically held that accused no.2 Sujeet Kumar Jaiswal (respondent herein), who is another partner of the Shiva Steel and signatory of the impugned cheque, has not been able to rebut the presumption in favour of the complainant and thereby the trial court convicted said accused no.2/partner of the firm.

3. Being aggrieved by the said judgment of conviction passed against accused no.2/partner/Respondent herein Sujeet Kumar Jaiswal, preferred appeal before the Appellate Court. However complainant did not prefer any appeal against the acquittal order passed in respect of accused no.1/partnership firm and accused no.3/ another partner, Sandeep Kumar Jaiswal.

4. Learned Appellate Court while disposed of the appeal came to a finding that the complainant has failed to prove that the exhibit 3 i.e. cheque in question had been issued by the appellant in discharge of a

legally existing debt or other liability and the appellant being entitled to benefit of doubt was acquitted. The appellate court specifically held that the complaint is not connected with the personal liability of the appellant but it was connected with the liability, if any, of Shiva Steel (accused no.1), of which the appellant was a partner and accordingly the first appellate court acquitted the accused no.2/partner/respondent herein also from the said proceeding.

5. Being aggrieved by the acquittal order of accused no.2/partner/respondent herein, the complainant/appellant herein contended that though Appellate Court held that there are contradictions in the evidence of complainant witnesses but they are not material or important so as to stand in the way of rebuttal the issuance of cheque which has already been admitted by the defence witnesses in their evidence and further proof of issuance of cheque by the Respondent herein does not arise at all. He further contended that the rubber stamp appearing in the challan is the rubber stamp of the accused/company but they are now trying to avoid criminal liability, and the court below heavily relied upon such defence contention. In the present case, the accused persons namely both the partners as well as the company have been arraigned as an accused and admittedly the company is a partnership firm and as such the trial court rightly convicted the accused no.2 who put his signature on the cheque.

6. Mr. Mukherjee learned counsel appearing on behalf of the opposite party submits that the issue involved in the present Application is no longer res integra. A three Judges Bench of the Apex Court in ***Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.*** reported in **AIR 2012 SC 2795**

has clearly held, 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.

7. In the said judgment supreme Court also held that in **Anil Hada's Case, (AIR 2000 SC 145)** the court did not correctly lay down the law and thereby overruled. Accordingly in view of the totality of the facts and circumstances, the impugned judgment and order of acquittal does not suffer from any illegality or impropriety or incorrectness and/or perversity as it was pronounced following the law which governs section 138 read with section 141 of the N.I. Act and as such the judgment impugned does not call for interference and the appeal is liable to be dismissed.

8. In the above background the question that falls for determination before this court is whether the court below was justified in acquitting the accused no.2/Respondent herein, who was convicted by the trial court at the end of trial. At the very outset it is to be noted that in the complaint at paragraph 3, it has been specifically stated that the accused persons in discharge of their existing liability, the accused no.2/present respondent issued a cheque on behalf of all the accused persons and in the evidence-in-chief PW1 deposed that in discharge of their existing liabilities, the cheque was issued by the respondent herein on behalf of all the accused persons.

9. In such view of the mater it is complainant's specific case that the cheque was issued by accused no.2/respondent herein on behalf of the partnership firm which got dishonoured. According to the complaint case and complainants evidence, it creates no doubt that sum and substance of complaint's allegation is that partnership firm has committed the offence

and for which the two partners namely accused no. 2 and 3 are also vicariously liable for committing the offence by accused no. 1/partnership firm.

10. Section 141 of N.I. Act reads as follows:-

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 anybody 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. In ***Aneeta Hada Vs. M/S Godfather Travels and Tours Pvt. Ltd.*** reported in **(2012) 5 SCC 661** it has been clearly held that company / partnership firm is a juristic person but it has its own respectability and when the company can be prosecuted then only the persons mentioned in other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. In para 58 the court held as follows:-

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."

12. Therefore, to hold a person guilty of offence under section 138 of the N.I. Act by virtue of section 141 of the N.I. Act, it must be required to be established, the commission of the offence by the partnership firm and until and unless it is established that the said partnership firm committed offence under section 138 of the N.I. Act, its partners cannot be convicted holding that they are vicariously liable. Commission of offence by the said juristic person namely the partnership firm is pre requisite to convict the partners referred under section 141 of the N.I. Act or to hold such partner guilty of the said offence. Section 141 makes it clear that a person referred to in section 141 of N.I. Act can be prosecuted and convicted only for an offence committed by another person i.e. the partnership firm.

13. In the present case complainant specifically averred in the complaint that the accused persons including the partnership firm in discharge of their legally enforceable debt had issued the cheque and nowhere in the complaint he has stated that accused no.2 issued the cheque in his personal capacity. If the substance of the complaint would have been that the accused no.2 issued the cheque in his personal capacity, complainant would not have arraigned the partnership firm as accused no. 1. Accordingly accused no.2/appellant herein, even if issued the cheque, he has issued the same as partner of accused no.1/partnership firm. When the partnership

firm/accused no.1 is found not guilty of the offence, the alleged partner, of the firm namely accused no.2/Respondent herein cannot be held vicariously liable for the offence committed by the partnership firm/accused no.1. It is admitted position that no appeal or revision has been preferred by the complainant against the acquittal of the accused no.1/company and as such the judgment of the trial court acquitting accused no.1 has reached its finality. There is nothing to show that accused no.2/respondent owes any amount to the complainant/appellant herein or that the impugned cheque was issued towards discharge of any personal liability of the Respondent herein. Complainant in para 3 & 4 of it's evidence has specifically stated that the accused persons on different dates purchased the goods from the complainant total valued Rs. 14,63,427/- and the accused persons in discharge of their existing liabilities, the accused no.2 issued the cheques on behalf of all the accused persons. It has not been averred that accused no.2/respondent purchased any goods from complainant in his personal capacity or he issued the cheque in his personal capacity and as such he cannot have any liability dehorse the liability of the company. Infact the liability of persons referred to section 141 of N.I. Act is co-extensive with that of the partnership firm and when in a proceeding under section 138 of the N.I. Act, it is found that the partnership firm has not committed the offence and it is acquitted and more so when it has reached its finality, the partners are not liable to be convicted for the offence for which the company has been acquitted. This is also because the vicarious liability of partners under section 141 of N.I. Act is contingent upon the partnership firm's conviction. If the firm is not found guilty, there is no principal offender for

the partners to be vicariously liable for. If the company is acquitted, it means the court has determined that the company did not commit the offence.

14. A co-ordinate Bench of Kerala High Court in ***Afsal Hussain Vs. K.S. Muhammed Ismail & another*** reported in **2023 Live Law (Ker) 693**, in a similar fact and circumstances held when it is found that the company has not committed the offence, and it is acquitted, it's directors are not liable to be convicted, for the offence for which the company has been acquitted, specially when the acquittal order passed in favour of accused/company has attained it's finality.

15. Furthermore this is an appeal against acquittal. It is well settled that a decision of acquittal is not meant to be reversed on a mere difference of opinion but what is required is an illegality or perversity in the order of the court below. Since the firm is not convicted rather acquitted, its partner cannot be held vicariously liable and thereby cannot be convicted for committing offence under section 138 of the N.I Act. In fact the presumption of innocence of the accused being primary factor, in absence of exceptional compelling circumstances and perversity in the ultimate finding of the judgment impugned, it is not open to the High Court to interfere with the judgment of the court below in a routine manner.

16. In the result I find nothing to interfere with the judgment impugned.

17. CRA 424 of 2019 thus stands dismissed. Return the records of the courts below at once, from which court records were called for.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)