2025 INSC 493

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 438 OF 2018

S.C. GARG ... APPELLANT

VERSUS

STATE OF UTTAR PRADESH & ANR. ...RESPONDENTS

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1. Challenge in this Criminal Appeal is to the final judgment and order dated 28.04.2017 passed by the High Court of Judicature at Allahabad whereby the appellant's petition under Section 482 of the Criminal Procedure Code, 1973[1] seeking quashment of Criminal Case No. 7489 of 2002 pending on the file of Chief Judicial Magistrate, Ghaziabad for offences under

[1] 'Cr.P.C.'

Section 420 of the Indian Penal Code, 1860[2], has been dismissed.

2. Brief facts necessary for disposal of the criminal appeal are that the appellant/S.C. Garg[3] was the Managing Director of the Company Ruchira Papers Ltd.[4] which was engaged in manufacturing craft papers. The Company had business dealings with ID Packaging, a partnership concern of respondent no. 2/R.N. Tyagi[5]. In conduct of business between two entities, the parties used to maintain a running account and Tyagi used to issue cheques from time to time in favour of ID Packaging. Between 22.12.1997 to 30.01.1998, Tyagi issued 11 cheques which were initially dishonoured due to insufficiency of funds in the account. To maintain business relations, both the parties agreed to present the 11 cheques again at a later stage upon instructions from Tyagi. In relation to the liabilities other than the amount involved in the 11 cheques, Tyagi made payment by issuing 03 demand drafts in the name of the appellant's company. On 08.06.1998, 11

[2] 'IPC'
[3] 'Garg'
[4] 'Company'
[5] 'Tyagi'

cheques were again presented for encashment upon which only four cheques were cleared leaving the remaining 07 cheques to be dishonoured again. The appellant's company filed a complaint under Section 138 of the Negotiable Instruments Act, 1881[6] against ID Packaging and Tyagi in relation to the 07 dishonoured cheques.

3. On 25.10.2002, the learned Magistrate convicted Tyagi for offence under Section 138 of the NI Act. His defence, that there is no enforceable debt as the amount involved in 07 cheques has already been paid through the demand drafts, was rejected with a specific finding that the demand drafts pertained to other liabilities of Tyagi to the company and were not towards liquidating the liability arising under the cheques in question. Tyagi was sentenced to imprisonment till rising of Court and pay fine of Rs. 3,20,385/- (i.e. cumulative amount of the 7 dishonoured cheques). The appeal preferred by Tyagi challenging his conviction under Section 138 of the NI Act was dismissed by the learned Additional Sessions Judge on 17.03.2005 by affirming the finding, conviction and sentence awarded to him.

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[6] 'NI Act'

4. Tyagi and his Company/ID Packaging challenged the appellate order by preferring criminal revision and vide order dated 10.10.2012 the High Court disposed of criminal revision as well as two other proceedings between the parties basis compromise between them. When the criminal revision challenging his conviction was pending, the sentence was suspended upon deposit of R. 3,20,385/-. The High Court disposed of three different proceedings between the parties by observing thus in paragraph nos. 5 & 6 of the order:

> "**5.** When these petition/appeal/ revision were taken up today, Sh. R.N. Tyagi, who is present in Court along with his counsel Sh. Rampal Tyagi and Ashok Tyagi expressed his desire to put an end to the entire controversy on the condition that the amount deposited by him in this Court by demand draft pursuant to the orders passed in the Criminal Revision (supra) along with interest be paid to M/s Ruchira Papers in full satisfaction of all their claims, subject matter of criminal appeal No. 752 of 2002, CMPMO No. 305 of 2012 and in Civil Suit No. 47/1 of 2005/01, titled as M/s Ruchira Papers versus M/s I.D. Packings, decreed on 23.09.2005. Statement of Sh. R.N. Tyagi, who is present in Court, to this effect has been recorded separately, which statement has been accepted by Sh. Sanjeev Sood, learned counsel on behalf of M/s Ruchira Papers.
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> 6. In these circumstance, all three cases are being disposed of the following directions:
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> **a)** Criminal Appeal No.752 of 2002, titled M/s Ruchira Papers Ltd., versus M/s I.D. Packings and another is disposed of as not pressed.

b) Criminal Revision No. 52 of 2005, titled M/s I.D. Packings and another versus M/s Ruchira Papers and another is disposed of with the directions that the amount lying deposited in FDR A/c No. 042704PR00001211 dated 11.09.2012 along with interest satisfies the entire claim of the respondents M/s Ruchira Papers subject matter of the revision.

c) CMPMO No. 305 of 2012, titled R.N. Tyagi and another versus M/s Ruchira Papers ltd., is also disposed of with this direction that the decree passed in Civil Suit No.47/1 of 2005/01, titled M/s Ruchira Papers versus M/s I.D. packing shall stand fully satisfied on the FDR along with interest having been paid to respondents M/s Ruchira Papers Limited.

d) The registry is directed to remit the amount of aforesaid FDR account along with interest accrued thereon to the bank account of M/s Ruchira Papers Limited for which purpose they shall submit the photocopy of their current account to the Registry."

5. From the above extracted order of the High Court, it appears that Garg had instituted a suit for recovery of the amount involved under the 07 dishonoured cheques in which ex-parte decree was passed and that too has been compromised upon payment of Rs. 3,20,385/- by Tyagi to Garg.

6. When 138 NI Act proceedings were pending between the parties, Tyagi moved an application under Section 156 (3) Cr.P.C. seeking registration of an FIR against Garg and

company *inter alia* alleging that despite payment of amount involved in 07 dishonoured cheques, by way of separate demand drafts, Garg again presented 11 cheques and fraudulently realised the amount from 04 out of 11 cheques thereby cheating Tyagi. FIR No. 549 of 1998 (present FIR) came to be registered against Garg based upon the above allegations. However, the company was not made an accused in this FIR. The chargesheet filed against Garg on account of being the Managing Director of the Company and Mukesh Kumar Behal, director of M/s. M.V. Agency is again without joining the company. The learned Magistrate took cognizance of the alleged offence and summoned the accused persons including the appellant vide order dated 19.06.2002. Garg preferred a petition under Section 482 Cr.P.C. for quashing of the chargesheet and the summoning order dated 19.06.2002 which has been dismissed by the High Court under the impugned judgment and order.

7. Mr. Siddharth Aggarwal, learned senior counsel appearing for the appellant would vehemently urge that the appellant cannot be prosecuted for an offence allegedly committed by the company without arraying it as an accused

that too without making any specific allegation against Garg. He would submit that the impugned prosecution has been instituted as a counterblast to the concluded proceedings under Section 138 of the NI Act in which Tyagi was convicted and it eventually concluded by way of compromise before the High Court. It is also argued that the summoning order is without any reasoning showing complete non-application of mind.

8. *Per contra,* Mr. Vikas Bansal, learned counsel appearing for the respondent would submit that it is a subject matter of trial as to whether Garg encashed the amount involved in 04 cheques despite having received the amount by way of demand drafts separately given to him by Tyagi after all the cheques were dishonoured on the first occasion. According to him, it is a clear case of receiving double payment for the same dues, thus, committing cheating.

9. Having heard learned senior counsel for the parties and upon perusal of the material on record we are satisfied that the appeal deserves to be allowed, and the impugned chargesheet/criminal proceedings deserve to be quashed on the reasoning hereafter stated.

10. It is to be noted that in 138 NI Act proceedings against Tyagi, he raised a specific defence that there is no outstanding debt qua 07 cheques as the amount involved therein has already been paid by separate demand drafts. Learned Magistrate in its order dated 25.10.2002 rejected the said defence by recording a finding that no request was made by Tyagi to the complainant company to return the bounded cheques to the accused company when the demand drafts were allegedly sent by the accused persons to the complainant company. The Trial Magistrate specifically recorded a finding in paragraph No. 16 in the following manner:

> **"16**. Moreover, it may be stated that the accused company was having business dealing with the complainant company. The complainant company has also placed on record the copy of statement of account Ex. P-16 pertaining to the transaction of the accused firm with the complainant company. In the said statement of account, the impugned demand draft No. 859562 for Rs. 55,000/- D.D. No. 859879 for Rs. 50,000/- D.D. No. 859797 for Rs. 50,000/-, D.D. No. 4123761 for Rs. 1,50,000/- and D.D. No. 860060 for Rs. 1,11,357/- have been accounted for against liability of accused person and ultimately, liability of the accused firm to the tune of Rs. 3,31,151/- is shown outstanding in favour of the complainant company. From this statement of account Ex.P-16, to can be safety presumed that these demand drafts pertaining to some other liability of the accused persons and these demand drafts were not issued to

> liquidate the liability of impugned cheques Ex.P-2 to Ex.P-8."

11. The above finding of the Trial Magistrate was affirmed by the Sessions Court in its order dated 17.03.2005 by observing thus in paragraph No. 16

> "**16.** …… I have closely scrutinised the evidence of DW1 and DW2, the statement of the aforesaid witnesses does not inspire confidence particularly in view of the facts that the accused himself did not appear in the witness box to state so. From the statement of account Ext.P16 placed on record by the complainant company, it can be gathered that the demand drafts No. 859562 for Rs. 55,000/- 859797 for Rs.50,000/-, 4123761 for Rs. 1,50,000/- and 860060 for Rs.1,11,356/- have been accounted for against liability of the accused persons and ultimately, liability of the accused firm to the tune of Rs. 3,31,151/- which is shown outstanding in favour of the complainant company. Therefore, from the statement of account Ext.P16 it can be presumed that these demand drafts were pertaining to some other liability of the appellants and were not issued to liquidate the liability of the impugned cheques Ext.P2 to Ext. P8"

12. It is thus apparent that the finding recorded by the jurisdictional criminal court in 138 NI Act proceedings between the parties would be binding to both the parties in any subsequent proceedings involving the same issue.

13. The question as to the applicability of principle of *res judicata* in criminal matters have been considered by this Court in several decisions. In the matters of **Pritam Singh &**

Anr. vs. The State of Punjab[7]**, Bhagat Ram vs. State of Rajasthan**[8] **& The State of Rajasthan vs. Tarachand Jain**[9]**,** this Court has consistently laid down the principle that the principle of *res judicata* is equally applicable in criminal matters. However, in two later decisions, namely, **Devendra & Ors. vs. State of Uttar Pradesh & Anr.**[10] and **Muskan Enterprises & Anr. Vs. The State of Punjab & Anr.**[11] in which one of us was a member (Justice Prashant Kumar Mishra), this Court observed in the context of maintainability of second petition under Section 482 Cr.P.C. that principle of *res judicata* has no application in a criminal matter. Considering divergence of opinion, it would be appropriate for us to have deeper examination and reading of the law laid down by this Court in the earlier decisions.

14. In **Pritam Singh** (supra), a three Judge Bench of this Court speaking through Natwarlal Harilal Bhagwati, J. placing reliance on **Sambasivam vs. Public Prosecutor,**

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[7] AIR 1956 SC 415
[8] (1972) 2 SCC 466
[9] ((1974) 3 SCC 72
[10] (2009) 7 SCC 495
[11] (2024) INSC 1046

Federal of Malaya[12]**,** decided by a Bench of Five Judges of the Judicial Committee, opined that maxim *res judicata* is no less appliable to criminal than to civil proceedings. In the said matter, accused Pritam Singh was earlier tried for an offence under the Arms Act basing recovery of a weapon from him. In the said case Pritam Singh was acquitted. In a subsequent trial, the same recovery was again sought to be used by the prosecution as one of the circumstances in an offence of murder. In these set of facts, this Court recorded the following findings as to the applicability of principle of *res judicata* in criminal matters*:*

> "**15.** In regard to the recovery of Ex. P-14 the learned Additional Sessions Judge had not put any reliance on the acquittal of the accused by the learned Additional Sessions Judge, Faridkot, of the offence under the Arms Act, observing that any expression of opinion contained in the judgment was not only not binding on him but was irrelevant under the Indian Evidence Act.
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> On a perusal of the evidence led by the prosecution in this behalf he had held that the recovery of Ex. P-14 was proved against the accused and considered that as connecting Pritam Singh Lohara with the incident. The High Court, on the other hand, relied upon the observations of Lord MacDermott at p.479 in Sambasivam v. Public Prosecutor, Federal of Malaya, 1950 A.C. 458(A):-
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> "The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful

[12] (1950) AC 458

> trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.
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> The maxim 'res judicata pro veritate accipitur' is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial."

15. In **Bhagat Ram** (supra), a two Judge Bench of this Court speaking through H.R. Khanna, J. again applied and approved **Sambasivam (**supra**)** and **Pritam Singh** (supra).

16. Thereafter in **Tarachand Jain** (supra), this Court referred to **Bhagat Ram** (supra) and **Sambasivam (**supra**)** to hold thus:

> "**13.** …….The question as to what is the binding effect of a decision in subsequent proceedings of the same original matter was considered by this Court in the case of *Bhagat Ram* v. *State of Rajasthan*, [(1972) 2 SCC 466 : 1972 SCC (Cri) 751] and it was held that the principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. Reliance in this context was placed upon the observations of the Judicial Committee in the case of *Samba Sivam* v. *Public Prosecutor, Federation of Malaya*. [1950 AC 458] In *Bhagat Ram case* [(1972) 2 SCC 466 : 1972 SCC (Cri) 751] a Single Judge of the High Court to whom a limited question had been referred because of a difference of opinion between two Judges of the Division Bench, not only decided the question referred to him, he also interfered with the

> acquittal of the accused regarding certain offences in respect of which an order for acquittal had already been made earlier by the Division Bench. It was held that it was not within the competence of the Single Judge to reopen the matter and pass the above order of conviction in the face of the earlier order of the Division Bench for acquittal. Although *Bhagat Ram case* [(1972) 2 SCC 466 : 1972 SCC (Cri) 751] related to acquittal, the principle laid down in that case, in our opinion, holds good in a case like the present wherein the question is about the binding effect of the earlier Division Bench judgment regarding the validity of the sanction for the prosecution of the accused-respondent."

17. We shall now have a look at the subsequent matters **Devendra** (supra) and **Muskan Enterprises** (Supra) wherein it is held that principle of *res judicata* is not applicable in criminal proceedings. In **Devendra** (supra) was a case where after dismissal of first petition under Section 482 Cr.P.C. seeking quashing of the FIR, the appellants therein preferred another application under Section 482 Cr.P.C., after the Magistrate took cognizance of the matter, which was dismissed by the High Court. In this Court, it was argued by the opposite party that the first order of the High Court dismissing the petition under Section 482 Cr.P.C. would operate as *res judicata.* Negating the said argument, a two Judge Bench of this Court held in para 25 as under:

> "**25**. Mr. Das, furthermore, would contend that the order of the High Court dated 17-10-2005 would operate as res judicata. With respect, we cannot subscribe to the said view. The principle of res judicata

> has no application in a criminal proceeding. The principles of res judicata as adumbrated in Section 11 of the Code of Civil Procedure or the general principles thereof will have no application in a case of this nature."

18. In **Muskan Enterprises** (supra), similar was the position. The first petition under Section 482 Cr.P.C. was dismissed as withdrawn without liberty obtained to apply afresh, the High Court dismissed the second petition under Section 482 Cr.P.C. as not maintainable. Referring to **Devendra** (supra), a two Judge Bench of this Court of which one of us was a member (Prashant Kumar Mishra, J.) observed thus in para 17:

> "**17.** That the principle of *res judicata* has no application in a criminal proceeding was reiterated by this Court in **Devendra vs. State of U.P."**

19. Reading three earlier decisions vis-à-vis the two later decisions parallelly, we do not think that considering the context and the stage of the proceedings in which the matters stood and agitated before this Court, there is any diversion in the applicability of the principle of *res judicata.* While three earlier decisions in **Pritam Singh** (Supra), **Bhagat Ram**

(supra) and **Tarachand Jain** (supra) were decided basis acquittal in previous trial, the subsequent decision in **Devendra** (supra) and **Muskan Enterprises** (supra) have been decided at the stage of quashing petition under Section 482 Cr.P.C., thus, in both the matters, there was no final adjudication of merits. While in **Devendra** (supra), the first petition was for quashing of the FIR and the second petition was preferred after the Magistrate took cognizance of the matter; in **Muskan** (supra), the first petition was dismissed as withdrawn whereas the second petition was held not maintainable due to earlier withdrawal without any liberty. Thus, these two cases are totally distinguishable.

In addition, it is important to bear that **Sambasivam** (supra) was decided by Five Judges of the Judicial Committee and **Pritam Singh** (supra) was decided by a three Judge Bench, whereas all subsequent decisions have been rendered by the two Judges Bench. Therefore, **Pritam Singh** (supra) is binding insofar as the issue concerning the applicability of principle of *res judicata* in a criminal proceeding is concerned.

20. For the above reason it is absolutely clear that Tyagi cannot maintain a prosecution on the basis of allegations which were precisely his defence in the earlier proceedings wherein he was an accused. Thus, the present criminal proceedings deserve to be quashed on this ground alone.

21. It is also to be seen that the business relation was between the two companies. The cheques and the demand drafts, as the case may be, were issued by one company to the other company and no payment was made by Tyagi to Garg individually. In **Sharad Kumar Sanghi vs. Sangita Rane**[13] this Court held thus in paragraph 11 & 13:

> "**11.** In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. (2012) 5 SCC 661 in the context of the Negotiable Instruments Act, 1881.
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[13] (2015) 12 SCC 781

> **13.** When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant."

22. Again in the matter of **Dayle De' Souza vs. Government of India**[14] this Court held thus in para 22 to 30:

> **"22**. There is yet another difficulty for the prosecution in the present case as the Company has not been made an accused or even summoned to be tried for the offence. The position of law as propounded in State of Madras v. C.V. Parekh (1970) 3 SCC 491, reads: (SCC p. 493, para 3)
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> > "3. The learned counsel for the appellant, however, sought conviction of the two respondents on the basis of Section 10 of the Essential Commodities Act under which, if the person contravening an order made under Section 3 (which covers an order under the Iron and Steel Control Order, 1956), is a company, every person who, at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly. It was urged that the two respondents were in charge of, and were responsible to, the Company for the conduct of the business of the Company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of clause (5) of the Iron and Steel Control Order. This argument cannot be accepted, because it ignores the first condition

[14] (2021) 20 SCC 135

> for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in contravention of clause (5) of the Iron and Steel Control Order was made by the Company. In fact, the Company was not charged with the offence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the Company contravened clause (5) of the Iron and Steel Control Order, the two respondents could not be held responsible. The actual contravention was by Kamdar and Vallabhdas Thacker and any contravention by them would not fasten responsibility on the respondents. The acquittal of the respondents is, therefore, fully justified. The appeal fails and is dismissed."

23. However, this proposition was later deviated from in Sheoratan Agarwal v. State of M.P.(1984) 4 SCC 352. This case pertained to the pari materia provision under Section 10 of the Essential Commodities Act, 1955. The Court held that any one among : the company itself; every person in-charge of and responsible to the company for the conduct of the business; or any Director, manager, secretary or other officer of the company with whose consent or connivance or because of whose neglect offence had been committed, could be prosecuted alone. However, the person in-charge or an officer of the company could be held guilty in that capacity only after it has been established that there has been a contravention by the company as well. However, this will not mean that the person in-charge or an officer of the company must be arraigned simultaneously along with the company if he is to be found guilty and punished.

24. Relying upon the reasoning in Sheoratan Agarwal and limiting the interpretation of C.V. Parekh (1970) 3 SCC 491, this Court in Anil Hada v. Indian Acrylic Ltd.(2000) 1 SCC 1 had held that: (Anil Hada case, SCC pp. 7-8, para 13)

> "13. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused, and hence the prosecuted accused is not liable to be punished. The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act."

25. However, subsequent decisions of this Court have emphasised that the provision imposes vicarious liability by way of deeming fiction which presupposes and requires the commission of the offence by the company itself as it is a separate juristic entity. Therefore, unless the company as a principal accused has committed the offence, the persons mentioned in sub-section (1) would not be liable and cannot be prosecuted. Section 141(1) of the Negotiable Instruments Act, extends vicarious criminal liability to the officers of a company by deeming fiction, which arises only when the offence is committed by the company itself and not otherwise. Overruling Sheoratan Agarwal and Anil Hada, in Aneeta Hada v. Godfather Travels & Tours (P) Ltd.(2012) 5 SCC 661, a three-Judge Bench of this Court expounding on the vicarious liability under Section 141 of the Negotiable Instruments Act, has held : (Aneeta Hada case, SCC pp. 686 & 688, paras 51 & 59)

> "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 (1987) 3 SCC 684 has to be treated to be restricted to its own facts as has been explained by us hereinabove."

26. The proposition of law laid down in Aneeta Hada was relied upon by this Court in Anil Gupta v. Star India (P) Ltd.(2014) 10 SCC 373: (Anil Gupta case, SCC pp. 379-80, para 13)

> "13. In the present case, the High Court by the impugned judgment dated 13-8-2007 held that the complaint against Respondent 2 Company was not maintainable and quashed the summons issued by the trial court against Respondent 2 Company. Thereby, the Company being not a party to the proceedings under Section 138 read with Section 141 of the Act and in view of the fact that part of the

judgment referred to by the High Court in Anil Hada has been overruled by a three-Judge Bench of this Court in Aneeta Hada, we have no other option but to set aside the rest part of the impugned judgment whereby the High Court held that the proceedings against the appellant can be continued even in absence of the Company. We, accordingly, set aside that part of the impugned judgment dated 13-8-2007 passed by the High Court so far as it relates to the appellant and quash the summons and proceeding pursuant to Complaint Case No. 698 of 2001 qua the appellant."

27. In Sharad Kumar Sanghi v. Sangita Rane (2015) 12 SCC 781, this Court observed that : (SCC p. 785, paras 11 & 13)

"11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels & Tours (P) Ltd. in the context of the Negotiable Instruments Act, 1881.

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13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and

quash the criminal proceedings initiated by the respondent against the appellant."

28. This position was again clarified and reiterated by this Court in Himanshu v. B. Shivamurthy (2019) 3 SCC 797. The relevant portion of the judgment reads thus : (SCC pp. 799-802, paras 6-7 & 12-13)

> "6. The judgment of the High Court has been questioned on two grounds. The learned counsel appearing on behalf of the appellant submits that firstly, the appellant could not be prosecuted without the company being named as an accused. The cheque was issued by the company and was signed by the appellant as its Director. Secondly, it was urged that the observation of the High Court that the company can now be proceeded against in the complaint is misconceived. The learned counsel submitted that the offence under Section 138 is complete only upon the issuance of a notice of demand and the failure of payment within the prescribed period. In absence of compliance with the requirements of Section 138, it is asserted, the direction of the High Court that the company could be impleaded/arraigned at this stage is erroneous.
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> 7. The first submission on behalf of the appellant is no longer res integra. A decision of a three-Judge Bench of this Court in Aneeta Hada v. Godfather Travels & Tours (P) Ltd. governs the area of dispute. The issue which fell for consideration was whether an authorised signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 without the company being arraigned as an accused. The three-Judge Bench held thus : (SCC p. 688, para 58)
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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.'
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> In similar terms, the Court further held : (Aneeta Hada case , SCC p. 688, para 59)
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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.'
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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.

29. Applying the same proposition of law as laid down in Aneeta Hada, this Court in Hindustan Unilever Ltd. v. State of M.P. (2020) 10 SCC 751 applying pari materia provision in the Prevention of Food Adulteration Act, 1954, held that : (Hindustan Unilever case, SCC p. 762, para 23)

> "23. Clause (a) of sub-section (1) of Section 17 of the Act makes the person nominated to be in charge of and responsible to the company for the conduct of business and the company shall be guilty of the offences under clause (b) of sub-section (1) of Section 17 of the Act. Therefore, there is no material distinction between Section 141 of the NI Act and Section 17 of the Act which makes the company as well as the nominated person to be held guilty of the offences and/or liable to be proceeded and punished accordingly. Clauses (a) and (b) are not in the alternative but conjoint. Therefore, in the absence of the company, the nominated person cannot be convicted or vice versa. Since the Company was not convicted by the trial court, we find that the finding of the High Court to revisit the judgment will be unfair to the appellant-nominated person who has been facing trial for more than last 30 years. Therefore, the order of remand to the trial court to fill up the lacuna is not a fair option exercised by the High Court as the failure of the trial court to convict the Company renders the entire conviction of the nominated person as unsustainable."

30. In terms of the ratio above, a company being a juristic person cannot be imprisoned, but it can be subjected to a fine, which in itself is a punishment. Every punishment has adverse consequences, and therefore, prosecution of the company is mandatory. The exception would possibly be when the company itself has ceased to exist or cannot be prosecuted due to a statutory bar. However, such exceptions are of no

> relevance in the present case. Thus, the present prosecution must fail for this reason as well."

23. Similarly in the matter of **Delhi Race Club (1940) Ltd. & Ors. vs. State of Uttar Pradesh & Anr.**[15]**,** this Court has held that a person cannot be vicariously prosecuted, especially for offences under the IPC, merely on account of the fact that he holds a managerial position in a company without there being specific allegations regarding his involvement in the offence. The following has been held in paras 13 and 14:

> **"**13. This Court has time and again reminded that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. [See: Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749].

[15] (2024) SCC online SC 2248

> 14. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the CrPC, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of appellants Nos. 2 and 3, respectively herein who are none other than office bearers of the appellant No. 1 Company. When appellant No. 1 is the Company and it is alleged that the company has committed the offence then there is no question of attributing vicarious liability to the office bearers of the Company so far as the offence of cheating or criminal breach of trust is concerned. The office bearers could be arrayed as accused only if direct allegations are levelled against them. In other words, the complainant has to demonstrate that he has been cheated on account of criminal breach of trust or cheating or deception practised by the office-bearers. The Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that appellants Nos. 2 and 3 herein were personally liable for any offence. The appellant No. 1 is a body corporate. Vicarious liability of the office bearers would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

24. This Court in **Iqbal @ Bala & Ors. vs. State of Uttar Pradesh & Ors.**[16] has underlined the court's duty to look into the FIR closely and with care when the challenge is thrown on the ground that the prosecution is manifestly

[16] (2023) 8 SCC 734

frivolous or vexatious. The following is held in paras 9, 10 and 11:

> "**9**. At this stage, we would like to observe something important. Whenever an accused comes before the court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.
>
> **10**. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.
>
> **11**. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance,

> thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

25. For all the aforestated reasons, we unhesitatingly conclude that the present is a fit case for allowing the appeal to quash the impugned criminal proceedings instituted against the appellant for offences under Section 420 of the IPC. Accordingly, Criminal Case No. 7489 of 2002 arising out of Crime No. 13 of 1998 pending in the Court of Chief Judicial Magistrate, Ghaziabad is quashed. The appeal is allowed.

.....J.
(PANKAJ MITHAL)

.....J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
APRIL 16, 2025.