

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRMC No. 658/2016

Reserved on: 03.03.2026
Pronounced on : 12.03.2026
Uploaded on : 12.03.2026
Whether the operative part or full
judgment is pronounced: Full

Ankur Jain

....Petitioners

Through:- Mr. G.S. Thakur, Advocate

V/s

Ashwani Khajuria

....Respondents

Through:- Mr. Gagan Kohli, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
JUDGMENT

01. The petitioner, through the medium of the present petition, has challenged the complaint filed by the respondent against him alleging commission of offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter to be referred to as "**Act**"), which is stated to be pending before the Court of learned Chief Judicial Magistrate, Udhampur (hereinafter to be referred to as "**trial Magistrate**"). Challenge has also been thrown to order dated 22.09.2016 whereby cognizance of

offence has been taken and summons have been issued to the petitioner.

02. As per the impugned complaint, the petitioner/accused is the Managing Director, incharge and responsible for the conduct of business of M/s Noida Software Technology Park Ltd, which is running the business to provide service of satellite paid channels under the name and style of “Jainhits”. It has been alleged that the respondent is a customer of the said business and the parties have business relations for the last two years. On 15.04.2016, the petitioner/accused is stated to have demanded a loan for an amount of Rs. 23,00,000/- (Rupees Twenty Three Lacs) from the respondent/complainant for carrying out his business for a period of one month and he had agreed that he will repay the loan amount along with interest of Rs. 2,00,000/- (Rupees Two Lacs).

03. The respondent/complainant is stated to have paid an amount of Rs. 23,00,000/- (Rupees Twenty Three Lacs) from his bank account maintained with UCO Bank Branch Udampur by transferring the said amount in the account of the petitioner/accused maintained with HDFC Bank, Bikaji Cama Place, New Delhi. It is alleged that on the same day i.e., on 16.04.2016, the petitioner/accused issued a cheque in favour of the respondent/complainant for an amount of

Rs. 23,00,000/- drawn on his account at HDFC Bank Branch, Bikaji Cama Place, New Delhi and its due date of honour was fixed as 15.05.2016.

04. When the respondent/complainant deposited the said cheque in his account on 29.06.2016, it was returned unpaid for the reason **“account blocked”**. On 20.07.2016, the respondent/complainant again deposited the said cheque with his banker at UCO Bank, Udhampur but it was dishonoured on 21.07.2016 for the reason **“account blocked”**.

05. A notice of demand dated 18.08.2016 was served by the respondent/complainant upon the petitioner/accused through his advocate and as per the delivery certificate, the same was received by the petitioner/accused on 22.08.2016. The petitioner did not respond to the said notice nor did he liquidate the amount of the cheque. Thus, the respondent/complainant was compelled to file the impugned complaint before the learned trial Magistrate.

06. The learned trial Magistrate after recording preliminary evidence of the petitioner/accused took cognizance of the offence and issued process against the petitioner in terms of impugned order dated 27.09.2016.

07. The petitioner has challenged the impugned complaint and the order whereby process has been issued

against him on the grounds that without arraigning the company as an accused in the impugned complaint, the same cannot be proceeded with. It has been contended that the cheque has been bounced due to account being blocked, which does not form a ground for filing a complaint under Section 138 of the Act. It has also been contended that the petitioner is not a signatory to the cheque, which is subject matter of the impugned complaint, as such, without arraigning the signatories of the cheque, the petitioner cannot be prosecuted. It has further been contended that the complaint has been filed beyond the prescribed period of limitation as the cheque was initially dishonoured on 29.06.2016 whereas, the demand notice has been issued on 18.08.2016. It has also been contended that there are no specific averments qua role of the petitioner in the impugned complaint.

08. I have heard learned counsel for the parties and perused record of the case including record of the trial court.

09. Although the petitioner has raised numerous grounds as narrated hereinbefore for challenging the impugned complaint and the proceedings emanating therefrom yet during the course of arguments, he has laid much emphasis on the ground that without impleading the company of which the petitioner is stated to be the Managing Director, prosecution against him is not sustainable.

10. In order to test the merits of the contention raised by the petitioner, it would be apt to notice the provisions contained in Section 141 of the Negotiable Instruments Act, which deals with offences by companies. It reads as under:

“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.

11. From a perusal of the aforesaid provision, it appears that when an offence has been committed by a company, every person who, at the time when the offence was committed, was incharge 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 a guilty of the offence. This provision extends the concept of vicarious liability to the person responsible for conduct of the business of the company in a case where the offence has been committed by the company. In criminal law, there is no concept of vicarious liability and it is only if there is a statute, which makes a person vicariously liable for the acts of another person, that such a person can be prosecuted for a criminal offence. Section 141 of the Act makes the person incharge of and responsible for conduct of business of the company vicariously liable for offences committed by the company. However, it has been made clear in the said provision that not only those persons, who are responsible for conduct of the business of the company but even the company would be deemed to be guilty of the offence.

12. The question, whether prosecution against the directors or persons incharge of the affairs of the company can

be launched without impleading the company as an accused in a case where the statute provides for vicarious liability of the persons incharge of the company for the offences committed by the company, was subject matter of discussion before the Supreme Court in the case of **Aneeta Hada Vs. Godfather Travels & Tours Pvt. Ltd, 2012 (5) SCC 661**. In the said case, the court has, after interpreting the provisions contained in Section 141 of the Act and after considering its earlier decisions on the subject, held as under:

“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, 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.”

13. The aforesaid position of law was relied upon by the Supreme Court in the case of **Anil Gupta Vs. Star India Private Limited and Anr (2014) 10 SCC 373** and it was observed as under:

13. In the present case, the High Court by impugned judgment dated 13th August, 2007 held that the complaint against respondent no.2-Company was not maintainable and quashed the summon issued by the Trial Court against respondent no.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](#) (supra) has been overruled by three Judge Bench of this Court in [Aneeta Hada](#) (supra), 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 13th August, 2007 passed by the High Court so far it relates to appellant and quash the summon and proceeding pursuant to complaint case No.698 of 2001 qua the appellant.”

14. From the aforesaid discussion of legal position on the subject, it is clear that without impleading the company as an accused, its Directors or Incharge officers or the persons responsible for the conduct of its day to day business cannot be prosecuted for an offence, which is deemed to have been committed by the company.

15. Turning to the facts of the present case, the cheque, which is subject matter of the impugned complaint, has been issued on behalf of the company, namely, M/s Noida Software Technology Park Limited. It is signed by two persons purported to be the authorized signatories of the company. The petitioner has specifically pleaded that the cheque in question does not bear his signatures. In the impugned complaint, the respondent has alleged that he was having business dealings with the aforesaid company. Since the petitioner is not drawer of the cheque and he has been arraigned as an accused only in his capacity as Managing Director of the company on whose behalf the cheque in question has been issued, as such, he has no individual liability. If at all the petitioner was to be impleaded as an accused, the same could have been done only if the company on whose behalf the cheque has been issued was impleaded as an accused. Without impleading the company M/s Noida Software Technology Park Limited as an accused, the

complaint against the petitioner, who is stated to be the Managing Director of the said company and who is not even the signatory to the cheque in question, is not maintainable.

16. Learned counsel for the respondent by placing reliance upon the judgment of the Supreme Court in the case of **Bhupesh Rathod Vs. Dayashankar Prasad Chaurasia and anr., (2022) 2 SCC 335** has argued that a too technical view of the matter cannot be taken. It has been contended that in the title of the impugned complaint, the name of the company is mentioned below the name of the petitioner/accused, as such, it can be stated that the company has been impleaded as an accused.

17. I am afraid, the ratio laid down in **Bhupesh Rathod's case** (supra) cannot be made applicable to the present case. In the said case, the issue involved was 'whether a complaint filed on behalf of the company by the Managing Director is maintainable'. It is in those circumstances that the Supreme Court held that when the Managing Director has filed the complaint on behalf of the company even if his name is described first, it cannot be stated that there is a fundamental defect in the complaint. In the present case, the offence is alleged to have been committed by the company, which has not been impleaded as an accused at all. It is not a case where the complaint has been filed on behalf of the company but it is

a case where the company itself is an accused. Therefore, in view of the provisions contained in Section 141 of the Act, the complaint against the Managing Director without impleading the company as an accused cannot proceed. The provisions contained in Section 141 of the Act have application in deciding as to who should be impleaded as an accused if the offence is committed by the company. The said provision has no applicability to a case where the complainant happens to be the company.

18. For what has been discussed hereinbefore, the impugned complaint as against the petitioner without impleading M/s Noida Software Technology Park ltd., as an accused, is not maintainable. The same is, therefore, liable to be quashed.

19. Accordingly, the petition is allowed and the impugned complaint and the proceedings emanating therefrom against the petitioner are quashed.

20. ***Disposed of*** accordingly.

(SANJAY DHAR)
JUDGE

JAMMU
12.03.2026
Naresh/Secy.

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**