



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 4766 of 2012

Rajiv Gupta Complaint Case

.....Applicant(s)

Versus

The State Of U.P And Anr.

.....Opposite

Party(s)

| | |
|-------------------------------|----------------------------------|
| Counsel for Applicant(s) | : R.P Shukla, A.K Shukla |
| Counsel for Opposite Party(s) | : Govt. Advocate, Nadeem Murtaza |

Along with :

1. **Application U/s 482 No. 4762 of 2012:**
Rajiv Gupta Complaint Case
Versus
The State of U.P and Anr.
2. **Application U/s 482 No. 4763 of 2012:**
Rajiv Gupta Complaint Case
Versus
The State of U.P and Anr.
3. **Application U/s 482 No. 4764 of 2012:**
Rajiv Gupta Complaint Case
Versus
The State of U.P and Anr.
4. **Application U/s 482 No. 4765 of 2012:**
Rajiv Gupta
Versus
The State of U.P and Anr.
5. **Application U/s 482 No. 4767 of 2012:**
Rajiv Gupta Complaint Case
Versus
The State of U.P and Anr.
6. **Application U/s 482 No. 4768 of 2012:**
Rajiv Gupta
Versus
The State of U.P and Anr.
7. **Application U/s 482 No. 4769 of 2012:**
Rajiv Gupta Complaint Case
Versus
The State of U.P and Anr.
8. **Application U/s 482 No. 4770 of 2012:**
Rajiv Gupta Complaint Case
Versus
The State of U.P and Anr.

- 9. Application U/s 482 No. 4569 of 2022:**
Santosh Kumar Bajpayi
Versus
State of U.P. Thru. Addl. Chief Secy. Home Lko. and another
- 10. Application U/s 482 No. 4570 of 2022:**
Santosh Kumar Bajpayi
Versus
State of U.P. Thru. Addl. Chief Secy. Home and another
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Reserved on: 23.02.2026
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HON'BLE BRIJ RAJ SINGH, J.

1. Since these applications raise common questions of law and fact, therefore, the same are being decided by a common judgment.
2. Application U/s 482 Cr.P.C. Nos.4766 of 2012, 4762 of 2012, 4763 of 2012, 4764 of 2012, 4765 of 2012, 4767 of 2012, 4768 of 2012, 4769 of 2012 and 4770 of 2012 were filed by the applicant-Rajiv Gupta, seeking quashing of the orders dated 23.1.2012, 10.7.2012, 23.1.2012, 23.1.2012, 23.1.2012, 23.1.2012, 19.3.2012, 28.2.2012 and 23.1.2012 respectively passed by the Additional Chief Judicial Magistrate, Court No.28, District Lucknow in Complaint Case nos.41 of 2012, 1109 of 2012, 28 of 2012, 3044 of 2011, 40 of 2012, 29 of 2012, 372 of 2012, 347 of 2012 and 30 of 2012 respectively by means of which, cognizance was taken and summons were issued to the applicant under Section 138 of Negotiable Instrument Act (N.I. Act) as well as entire proceedings of the aforesaid cases.
3. Application U/s 482 Cr.P.C. Nos.4569 of 2022 and 4570 of 2022 were filed by the applicant-Santosh Kumar Bajpayi, seeking quashing of the entire criminal proceeding of Complaint Case Nos.5424 of 2017 and 5425 of 2017 respectively, filed under Section 138 of Negotiable Instrument Act, at Police Station-Gomti Nagar, District- Lucknow, including impugned summoning order dated 06.01.2018, and bailable warrant issued on 24.02.2022, pending before the Additional Court, Court no.1, Lucknow.
4. It is the case of the applicant-Rajiv Gupta that opposite party no.2 filed a complaint case against the applicant under Section 138 of the N.I. Act,

stating therein that he is carrying on business under the name and style of Approach Advertising and Exhibitors Pvt. Ltd. The complainant advertised the products of the accused, against which he made payment through cheques in order to discharge his liabilities. It has been further mentioned in the complaint that the accused has made payment of Rs.1 lac on 30.10.2011 through cheque of Vijaya Bank, Kamala Nagar Branch. The cheque issued by the accused was presented to his banker Canara Bank, Hazratganj Branch, Lucknow for clearance and the same cheque was sent to the banker of the accused, but was returned back with the remark that the amount was insufficient. The complainant sent legal notices through his counsel on 29.11.2011, 12.4.2012, 24.11.2011, 5.11.2011, 28.11.2011, 25.11.2011, 27.1.2012, 3.1.2012 and 26.11.2011, calling upon the accused-Rajiv Gupta to make payment of the amount mentioned in the cheque within fifteen days of receipt of the legal notice. However, the accused refused to accept the legal notices.

5. It has been submitted by learned counsel for the applicant that the applicant-Rajiv Gupta is the Director of the Company, namely, M/s Slim Care Harbal Product Pvt. Ltd. and the same is registered with the Registrar of the Companies vide Registration no.55-103910/1999-2000. The work of the advertisement of the product of the company was given to the opposite party no.2 who had realized more than Rs.1,30,00000/- (one crore thirty lacs) from the year 2000 till the end of 2011 on the different dates. It has been submitted that sometimes the advertisements were issued without any release order issued by the authorized signatory of the Company. Sometimes the cheques were also taken by the opposite party no.2 in advance on the pretext of some urgency. The opposite party no.2 has not even whispered in the complaint that he had already realized huge amount from the Company. It has been submitted that no offence under Section 138 read with Section 141 of the N.I. Act is made out against the applicant and there is stipulation under Section 138 of the N.I. Act that there should be enforceable liability of invoking the provisions of Section 138 of the N.I. Act. It has been submitted that no release order was issued and no publication of the advertisement was made by the opposite party no.2 against which he is claiming the amount in question and without release order, the opposite party no.2 had no authority to publish the advertisement and if it has not been published, the Company

is not liable to make any payment.

6. It has been further stated that there is a complete violation of Section 141(2) of the N.I. Act for the reason that from a bare perusal of sub-section (2) of Section 141 of the Act, it is clear 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 the business of the company at the time of commission of the offence is deemed to be guilty of the offence. It has been submitted that the criminal liability on the applicants cannot be fastened because the company has not been made party in the complaint and no notice has been served upon the company.

7. It has been further submitted by learned counsel for the applicants that Section 141 of the Act uses the term "person" and refers 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 or company and it is so evident from the language employed under Section 141 of the Act. It is worth to note that the present enactment is one where the company itself and certain categories of officers in certain circumstances are deemed to be the guilty of the offence. It is thus obvious that the company can have criminal liability and further, if a group of persons guiding the business of the companies have the criminal intent, which would be imputed to the body corporate. In this back drop, Section 141 of the Act has to be understood. It has been submitted that by applying the doctrine of strict construction, the commission of the 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 person mentioned in the other category could be liable for the offence subject to the averments in the complaint and proof thereof.

8. In support of his argument, learned counsel for the applicants has further relied upon the cheques issued by the company, which are placed on record along with the supplementary affidavit. The said cheques were issued by the company and signed by the authorized person. Thus, the offence is committed by the company whereas the applicants are one of

the Managing Directors of the company, therefore, the liability cannot be fastened upon them. He has placed reliance upon the judgment of *Aneeta Hada vs. Godfather Travels and Tours Private Ltd. (2012) 5 SCC 661*, *D.B. Mehta and others vs. State of U.P. and another, 2012(2) JIC 923 (All)* and *Sanjay Singh vs. State of U.P. and another (Application U/s 482 Cr.P.C. No.2162 of 2016)*, decided on 10.2.2021.

9. The two cases filed by the applicant-Santosh Kumar Bajpayi i.e. Application U/s Nos.4569 of 2022 and 4570 of 2022 are also having similar kind of factual and legal aspects and two cheques bearing nos.140328 of Rs.9 lacs and 140327 of Rs.3 lacs have been dishonoured and the cheques were issued by the company and company has not been made party in the complaints filed under Section 138 of N.I. Act. The applicant-Santosh Kumar Bajpayi, a Managing Director of the company has been made party. It has been submitted by learned counsel for the applicant-Santosh Kumar Bajpayi that the case of the applicant-Santosh Kumar Bajpayi is covered by the judgment of *Aneeta Hada vs. Godfather Travels and Tours Private Ltd. (2012) 5 SCC 661*. He submits that legal notices for dishonour of both the cheques were given on 22.7.2017 and thereafter summons were issued on 6.1.2018 in both the cases. He submits that the case of the applicant-Santosh Kumar Bajpayi is similar to the case of applicant-Rajiv Gupta.

10. On the other hand, learned counsel for opposite party no.2 has filed a counter affidavit stating therein that the applicants have given a MOU mentioning the total outstanding of Rs.12,20,927/- regarding the advertisement of the product of the applicants wherein opposite party no.2 has received cheques of an amount of Rs.1 lac each vide cheques no.314981 to 314991 from 30.4.2011 to 31.3.2012 and one cheque of Rs.1,20,927 is also given against all the dues of the advertisement done by opposite party no.2. It has been further stated that the work of the advertisement of the product of the company was given to opposite party no.2 and the same has been advertised by him, pursuant to which the applicants have entered into M.O.U. It has been submitted that legal notices have been served upon the applicants and the same have not been replied and thereafter, the complaints have been filed. He has submitted that notices were issued to the applicant Rajiv Gupta in the capacity of

Director of M/s. Slim Care Harbal Produce Pvt. Ltd. and, therefore, it cannot be said the the legal notices were not served upon the company. He has submitted that a Manager or Managing Director ordinarily by the very nomenclature can be taken to be the person Incharge of the affairs of the Company for its day-to-day management and within the activity would certainly be calling the act of approaching the court either under civil law or criminal law for setting the trial in motion. Learned counsel for opposite party no.2 has placed reliance upon the judgment of the Supreme Court in *Bhupesh Rathod vs. Dayashankar Prasad Chaurasia and another (2022) 2 SCC 355*.

11. Sri Rao Narendra Singh, learned AGA assisted by Ms. Tanvi Jain, has submitted that the applicants are the Managing Directors of the company, therefore, liability can be fastened upon them. He submits that the applicants have represented the company, therefore, in view of the judgment of the Supreme Court in *Dhanasingh Prabhu vs. Chandrasekar and another, 2025 SCC OnLine SC 1419*, liability can be fastened upon the applicants who are the Managing Directors and the names of the company are also mentioned in the memo of complaint, therefore, there is no illegality or infirmity in the summons issued by the court below.

12. I have heard Sri R.P. Shukla along with Sri A.K. Shukla, learned counsel for applicant-Rajiv Gupta, Sri Rao Narendra Singh, learned AGA-I assisted by Ms. Tanvi Jain, learned AGA for the State and Sri Parth Anand holding brief of Sri Nadeem Murtaza, learned counsel for opposite party no.2 in Application U/s 482 Nos.4766 of 2012, 4762 of 2012, 4763 of 2012, 4764 of 2012, 4765 of 2012, 4767 of 2012, 4768 of 2012, 4769 of 2012 and 4770 of 2012 and Sri Satya Prakash Mishra, learned counsel for the applicant-Santosh Kumar Bajpayi in Application U/s 482 Nos.4569 of 2022 and 4570 of 2022. However, none is present on behalf of opposite party no.2 and perused the record.

13. The issue relating to Sections 138 and 141 of the N.I. Act has been considered by the Supreme Court in the case of *Aneeta Hada* (supra). It has been observed by the Supreme Court that there is no trace of doubt that the company is a juristic person. The concept of corporate criminal liability is attracted to a corporation or company and it is so luminescent

from the language employed under Section 141 of the Act. A plain reading of Section 138 read with Section 141 of the N.I. Act would indicate that if a person who commits 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. Paras 20, 22, 23, 24, 25, 26, 32, 38, 39, 58 and 59 of the said judgment are quoted hereinbelow:

"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.

....

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.

23. Section 139 of the Act creates a presumption in favour of the holder. The said provision has to be read in conjunction with Section 118(a) which occurs in Chapter XIII of the Act that deals with special rules of evidence. Section 140 stipulates the defence which may not be allowed in a prosecution under Section 138 of the Act. Thus, there is a deemed fiction in relation to criminal liability, presumption in favour of the holder, and denial of a defence in respect of certain aspects.

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.

26. In 19 Corpus Juris Secundum, in Para 1358, while dealing with liability in respect of criminal prosecution, it has been stated that a corporation shall be liable for criminal prosecution for crimes punishable

with fine; in certain jurisdictions, a corporation cannot be convicted except as specifically provided by the statute.

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32. We have referred to the aforesaid authorities to highlight that the company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a company commits an offence, then certain categories of persons in charge as well as the company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain. As is perceptible, the provision makes the functionaries and the companies to be liable and that is by deeming fiction. A deeming fiction has its own signification.

.....

38. From the aforesaid pronouncements, the principle that can be culled out is that it is the bounden duty of the court to ascertain for what purpose the legal fiction has been created. It is also the duty of the court to imagine the fiction with all real consequences and instances unless prohibited from doing so. That apart, the use of the term “deemed” has to be read in its context and further, the fullest logical purpose and import are to be understood. It is because in modern legislation, the term “deemed” has been used for manifold purposes. The object of the legislature has to be kept in mind.

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.

.....

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 Supreme Court has categorically held that the 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 complaint and proof thereof.

15. A coordinate Bench of this Court has also relied upon the judgment of *Aneeta Hada* (supra) in the case of *Sanjay Singh* (supra) and has held that unless the company is made a party, no vicarious liability can be imposed on the Managing Director and the complaint cannot proceed. Para-44 of the said judgment reads as under:

"44. In view of the above, this court is satisfied that as the complaint has not been filed against the company; as the company has not been made a party accused; no vicarious liability can be imposed on the accused applicant. The complaint cannot proceed against the applicant in his personal capacity as the cheque was issued by the company and the applicant had signed the cheque as its authorized signatory. Any offence, even prima facie, is not made out against the applicant under Section 138 N.I. Act read with Section 141 of the Act."

16. On the other hand, learned counsel for opposite party no.2 has relied upon the judgment of *Bhupesh Rathod* (supra) wherein the Supreme Court in Paras 21, 22 and 26 held as under:

"21. If we look at the format of the complaint which we have extracted aforesaid, it is quite apparent that the Managing Director has filed the complaint on behalf of the Company. There could be a format where the Company's name is described first, suing through the Managing Director but there cannot be a fundamental defect merely because the name of the

Managing Director is stated first followed by the post held in the Company.

22. It is also relevant to note that a copy of the Board Resolution was filed along with the complaint. An affidavit had been brought on record in the trial court by the Company, affirming to the factum of authorisation in favour of the Managing Director. A Manager or a Managing Director ordinarily by the very nomenclature can be taken to be the person in-charge of the affairs of the Company for its day-to-day management and within the activity would certainly be calling the act of approaching the court either under civil law or criminal law for setting the trial in motion [Credential Finance Ltd. v. State of Maharashtra, 1998 SCC OnLine Bom 515 : (1998) 3 Mah LJ 805] . It would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation. The artificial person being the Company had to act through a person/official, which logically would include the Chairman or Managing Director. Only the existence of authorisation could be verified.

....

26. In our view, one of the most material aspects is, as stated aforesaid, that the signatures on the cheques were not denied. Neither was it explained by way of an alternative story as to why the duly signed cheques were handed over to the Company. There was no plea of any fraud or misrepresentation. It does, thus, appear that faced with the aforesaid position, the respondent only sought to take a technical plea arising from the format of the complaint to evade his liability. There was no requirement of a loan agreement to be executed separately as any alternative nature of transaction was never stated."

17. It is relevant to be mentioned that in the case of **Bhupesh Rathod** (supra), it is apparent that the Managing Director had filed the complaint on behalf of the company. There could be a format where the company's name is described first, suing through the Managing Director but there cannot be a fundamental defect merely because the name of the Managing Director is stated first followed by the post held in the company. In the said case, Board resolution by the company was filed along with the complaint affirming to the factum of authorization in favour of the Managing Director. A Manager or Managing Director ordinarily by the very nomenclature can be taken to be the person Incharge of the affairs of the Company for its day-to-day management and within the activity would certainly be calling the act of approaching the court either under civil law or criminal law for setting the trial in motion. In the aforesaid case, the company had to act through a person/official, which logically would include the Chairman or Managing Director.

18. The facts of the case of *Bhupesh Rathod* (supra) is to be looked into in the perspective of the judgment of *Aneeta Hada* (supra). It is quite clear that in the case of *Aneeta Hada* (supra), one of the Managing Directors was made accused without impleading the company as a party. There is statutory requirement under Section 141 read with Section 138 of the N.I. Act that 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 and in case the complaint is allowed, then the compensation would be paid by the company and not by the Managing Director, but in the present case, company is not made a party.

19. The facts of the case of *Bhupesh Rathod* (supra) is quite distinguishable for the reason that in the case of *Bhupesh Rathod* (supra), it is the company who had authorized the Managing Director through Board resolution to file complaint, whereas in the present case, company is the accused but the same is not given legal notice or made party in the complaint.

20. The judgment in the case of *Dhanasingh Prabhu* (supra) relied upon by the learned AGA is also not applicable in the present case for the reason that in the absence of partnership firm being named as an accused, if the partners of the partnership firm are proceeded against, they being jointly and severally liable along with the partnership firm as well as inter-se the partners of the firm, the complaint is still maintainable. The said case is pertaining to partnership firm, therefore, it is not applicable in the present case, which is pertaining to Section 138 read with Section 141 of the N.I. Act.

21. In view of the aforesaid discussions, it is held that the complaints filed against the applicants cannot sustain because the company is not made an accused and no vicarious liability can be imposed upon the applicants. The complaints cannot proceed against the applicants in their personal capacity as the cheques were issued by the company.

22. Accordingly, these applications are *allowed* and the entire as well as all consequential proceedings of Complaint Case nos.41 of 2012, 1109 of 2012, 28 of 2012, 3044 of 2011, 40 of 2012, 29 of 2012, 372 of 2012, 347

of 2012, 30 of 2012, 5424 of 2017 and 5425 of 2017, pending against the applicants before the court below, are hereby quashed. It is, however, open for opposite party no.2 to seek legal remedies as available under law to recover the amount, if so advised.

(Brij Raj Singh,J.)

March 11, 2026

Sachin