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ANIL SACHAR & ANR.

v.

M/S SHREE NATH SPINNERS P. LTD. & ORS. ETC.
(Criminal Appeals Nos. 1413-1414 of 2011)

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*JULY 19, 2011 AND AUGUST 17, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

Negotiable Instruments Act, 1881:

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ss. 138 and 139 – Presumption in favour of holder of cheque – Cheques issued by one of the two sister concerns for dues towards the goods supplied to the other of the said concerns – Dishonour of cheques – Complaints – Acquittal of accused on the ground that goods had been supplied to one company while cheques were issued by the other and there was no liability of the company issuing the cheques – HELD: The complainants had established before the trial court that there was an understanding among the complainants and the accused that in consideration of supply of goods to one company, the other was to make the payment – This understanding was on account of the fact that both the companies were sister concerns and their Directors were common – In the circumstances, it has been proved that in consideration of supply of goods to one sister concern, the other had made the payment – The trial court ought to have considered provisions of s.139 of the Act, which make it clear that there is a presumption with regard to consideration when a cheque has been issued by the drawer of the cheque – Of course, the presumption referred to in s.139 is rebuttable – In the instant case, no effort was made for rebuttal of the presumption and, therefore, the presumption must go in favour of the holder of the cheques – Accused held guilty of the offence punishable u/s 138 – On the date of hearing the

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** Conviction recorded on 19.7.2011 and sentences passed on. 17.8.2011.*

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accused on question of sentence, the records indicated that one of the accused had died – Therefore, appeal as regards him stands abated – In the circumstances, imposition of a fine of Rs.10,00,000/- on the other accused payable to the complainants as compensation would meet the ends of justice – Ordered accordingly – Code of Criminal Procedure, 1973 – s.235(2).

The appellants filed complaints against the respondents for offences punishable u/s 138 of the Negotiable Instruments Act, 1881 for dishonour of cheques issued by respondent no. 3, as Director of M/s 'ATO' Ltd. towards the dues of M/S 'SNS' P. Ltd. It was the case of the complainants that both M/s SNS P. Ltd. and M/s ATO Ltd. were sister concerns with common directors and respondent no. 3 who signed the cheques as Director of M/s 'ATO' Ltd. was also the director of M/s 'SNS' P. Ltd. One of the accused died pending trial. The trial court acquitted the accused holding that the goods had been supplied by the complainants to M/s 'SNS' P Ltd., but cheques had been issued by M/s 'ATO' Ltd. and not by 'SNS' P. Ltd. and as M/s 'SNS' P. Ltd. and M/s 'ATO' Ltd. were two distinct entities, there was no liability of M/s 'ATO' Ltd. and, therefore, dishonour of the cheques in question would not make the signatory of the cheques from the account of M/s 'ATO' Ltd. liable under the provisions of the Act. The appeals having been dismissed by the High Court, the complainants filed the instant appeals.

Recording the conviction, the Court

HELD: 1.1. The complainants had established before the trial court that there was an understanding among the complainants and the accused that in consideration of supply of goods to M/s. 'SNS' P. Ltd., M/s. 'ATO' Ltd. was to make the payment. This understanding was on account of the fact that both the companies were sister

A concerns and their Directors were common. In the circumstances, it has been proved that in consideration of supply of goods to M/s. 'SNS' P. Ltd., M/s. 'ATO' Ltd. had made the payment. These facts are very well reflected in the statement made in the complaints and in the evidence by the complainants which have not been controverted. The trial court, therefore, was not right when it came to the conclusion that there was no reason for M/s. 'ATO' Ltd. to give the cheques to the complainants. [para 14] [336-F-H; 337-A-B]

C *Indowind Energy Ltd. v. Wescare (India) Ltd. and Anr.* 2010 (5) SCR 284 = 2010 (5) SCC 306; and *Rahul Builders v. Arihant Fertilizers & Chemicals and Anr.* 2007 (11) SCR 951 = 2008(2) SCC 321 – relied on

D 1.2 The trial court materially erred while coming to a conclusion that in criminal law no presumption can be raised with regard to consideration as no goods had been supplied by the complainants to M/s. 'ATO' Ltd. The trial court ought to have considered provisions of s.139 of the Act, which makes it clear that there is a presumption with regard to consideration when a cheque has been paid by the drawer of the cheque. In the instant case, M/s. 'ATO' Ltd. paid the cheque which had been duly signed by one of its Directors. The said person is also a Director in M/s. 'SNS' P. Ltd. and both are sister concerns having common Directors. Extracts of books of accounts had been produced before the trial court so as to show that both the companies were having several transactions and they used to pay on behalf of each other to other parties or their creditors. This fact strengthens the presumption to the effect that M/s. 'ATO' Ltd. had paid the cheques to the complainants, which had been signed by the Director, in consideration of goods supplies to M/s 'SNS' P. Ltd. [paras 15 and 16] [337-E-H; 338-A-B]

H 1.3 It is true that a limited company is a separate legal

entity and its directors are different legal persons. However, in view of the provisions of s. 139 of the Act and the understanding which had been arrived at among the complainants and the accused, one can safely come to a conclusion that the cheques signed by respondent no. 3 had been given by M/s. 'ATO' Ltd. to the complainants in discharge of a debt or a liability, which had been incurred by M/s 'SNS' P. Ltd. [para 17] [338-E-F]

ICDS Ltd. v. Beena Shabeer and Anr. 2002 (1) Suppl. SCR 488 = 2002(6) SCC 426; *K.K. Ahuja v. V.K. Vora and Anr.* 2009(10) SCC 48; and *K.N. Beena v. Muniyappan and Anr.* 2001 (4) Suppl. SCR 374 = 2001(8) SCC 458 – relied on.

1.4 Looking to the facts of the case and law on the subject, this Court is of the view that all the four cheques referred to in both the complaints are presumed to have been given for consideration. The presumption u/s 139 of the Act has not been rebutted by the accused and, therefore, the trial court wrongly acquitted the accused by taking a view that there was no consideration for which the cheques were given by respondent no. 3 to the complainants. The said incorrect view was wrongly confirmed by the High Court. Thus, the accused especially ought to have been held guilty. Therefore, the accused in both the cases, are held guilty and convicted of the offence punishable u/s 138 of the Act. The order of acquittal is set aside. [para 19-21] [340-A-E]

2.1 While hearing the accused on the question of sentence, as provided by s. 235(2) of the Code of Criminal Procedure, 1973 the records revealed that the accused-respondent no. 3 has died. Therefore, the appeal as against him stands abated. [para 1 of order] [340-G-H]

2.2 Apart from the company, there is yet one more Director of the Company accused in the case, i.e.

A respondent no. 4. The Court heard the counsel appearing for the parties on the question of sentence. Considering the provisions of s.138 of the Act, imposition of fine of Rs. 10,00,000/- on the accused and payable to the complainants as compensation would meet the ends of justice. The drafts amounting to Rs. 10,00,000/-, payable to the appellants/complainants, have been handed over to their counsel. [para 2-4 of order] [341-A-D]

Case Law Reference:

C	2002 (1) Suppl. SCR 488	relied on	para 10
	2009(10) SCC 48	relied on	para 10
	2001 (4) Suppl. SCR 374	relied on	para 10
D	2010 (5) SCR 284	relied on	para 12
	2007 (11) SCR 951	relied on	para 12

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1413-1414 of 2011.

E From the Judgment & Order dated 16.12.2008 of the High Court of Punjab & Haryana at Chandigarh in CrI. Appeal No. 379-MA & 381-MA of 2007.

Nidesh Gupta, Tarun Gupta, S. Janani for the Appellants.

F Manoj Swarup, Ankit Swarup, Ashok Anand, Shivendra Swarup, Ajay Kumar, Devurat, Harish Pandey for the Respondents.

The Judgment of the Court was delivered by

G ANIL R. DAVE, J. 1. Leave granted.

H 2. Being aggrieved by the common Judgment delivered in Criminal Appeal Nos.379-MA of 2007 and 381-MA of 2007 dated 16th December, 2008 by the High Court of Punjab and

Haryana at Chandigarh, the original complainants have filed these appeals. By virtue of the aforesaid judgment and order, the High Court has confirmed the Orders dated 4th May, 2007 passed in Criminal Complaint Nos. 46 and 99 of 1999 by the Judicial Magistrate, First Class, Ludhiana whereby the accused in the aforesaid complaints had been acquitted of the charges levelled against them.

3. The facts leading to the present litigation in a nut shell are as under:

4. On 23rd February, 1999, Respondent no.4 - Munish Jain, a Director of M/s. A.T. Overseas Ltd. had given in all four cheques for different amounts to Anil Sachar, partner of M/s. Rati Woolen Mills who are appellant Nos. 1 and 2 respectively. According to the case of the complainants, the said cheques were given to M/s. Rati Woolen Mills, of which appellant no.1 is a partner, in consideration of supply of goods to M/s. Shree Nath Spinners Pvt. Ltd.

5. The aforesaid cheques, which had been given by Munish Jain as Director of M/s. A.T. Overseas Ltd., had not been honoured and due to dishonour of the said cheques, the complainant, namely, Anil Sachar, as a partner of M/s. Rati Woolen Mills had issued notice as required under the provisions of Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'). In spite of the said notice, the complainant was not paid the amount covered under the aforesaid cheques and, therefore, complaints had been filed against the present respondents.

6. The case of the present respondents before the trial court as well as before the High Court was that the dispute was of a civil nature and with an oblique motive it was given a colour of criminal litigation. The said reply had been given especially in view of the fact that the complaint had also been filed making out a case against the accused under the provisions of Sections 406 & 420 of the Indian Penal Code.

A 7. The case of the complainants was that M/s. A.T. Overseas Ltd. is a sister concern of M/s. Shree Nath Spinners Pvt. Ltd. and the aforesaid cheques were given by Munish Jain towards dues of M/s. Shree Nath Spinners Pvt. Ltd. as a Director of M/s. A.T. Overseas Ltd. After considering the
B evidence adduced and the arguments made before the trial court, the trial court acquitted the accused for the reason that the goods had been supplied by the complainants to M/s. Shree Nath Spinners Pvt. Ltd. and the cheques had not been given by M/s. Shree Nath Spinners Pvt. Ltd. but they had been given
C by M/s. A.T. Overseas Ltd. As M/s. Shree Nath Spinners Pvt. Ltd. and M/s. A.T. Overseas Ltd. are two different legal entities and as there was nothing on record to show that the cheques were given by M/s. A.T. Overseas Ltd. in consideration of goods supplied by the complainants to M/s. Shree Nath Spinners Pvt. Ltd., the conclusion was that there was no liability of M/s. A.T.
D Overseas Ltd. and, therefore, dishonour of the aforesaid cheques would not make signatory of the cheques from the account of M/s. A.T. Overseas Ltd. liable under the provisions of the Act.

E 8. Being aggrieved by the orders passed by the learned Judicial Magistrate, First Class, Ludhiana, dated 4th May, 2007, criminal appeals were filed before the High Court of Punjab and Haryana at Chandigarh, but the said appeals have been dismissed and, therefore, the original complainants have
F approached this Court by way of these appeals.

9. It may be noted here that during the pendency of the proceedings, Mohinder Jain, accused/respondent no.3 expired and, therefore, deleted from the array of parties.

G 10. Mr. Nidhesh Gupta, learned Senior Counsel appearing for the complainants mainly submitted that the learned Judicial Magistrate as well as the High Court committed an error by
H acquitting the accused simply because the goods had been supplied to M/s. Shree Nath Spinners Pvt. Ltd. whereas the cheques were given by M/s. A.T. Overseas Ltd. He submitted

that both the concerns, referred to hereinabove, are sister concerns having common Directors and, therefore, the courts below ought to have lifted the corporate veil so as to find out the realities. He also submitted that Munish Jain, who had signed the aforesaid cheques was Director in both the sister concerns viz. M/s. Shree Nath Spinners Pvt. Ltd. and M/s. A.T. Overseas Ltd. Moreover, he submitted that once the cheques had been issued by the accused, as per provisions of Section 139 of the Act, burden was on the accused to show that there was no consideration. So as to substantiate his aforestated submission, the learned counsel relied upon the Judgments delivered by this Court in *ICDS Ltd. v. Beena Shabeer and Anr.* [2002(6) SCC 426], *K.K. Ahuja v. V.K. Vora and Anr.*, [2009(10) SCC 48] and *K.N. Beena v. Muniyappan and Anr.* [2001(8) SCC 458].

11. For the aforestated reasons, the learned counsel strenuously submitted that the High Court had erred in confirming the orders of acquittal because upon lifting the corporate veil, the correct position could have been revealed and the correct position according to the learned counsel was that the cheques had been given by a sister concern, namely, M/s. A.T. Overseas Ltd. in consideration of the goods supplied to M/s Shree Nath Spinners Pvt. Ltd. The learned counsel also drew our attention to the fact that there were several inter se transactions between the above-named two sister concerns and, therefore, the courts below ought to have believed that the payment had been made by one company for another company and the courts below ought to have believed that there was a consideration behind issuance of the aforestated two cheques. He also draw our attention to the relevant evidence which was adduced by the complainants to establish the aforestated facts.

12. On the other hand, the learned counsel appearing for the respondents supported the reasons recorded by the courts below while acquitting the accused. He mainly submitted that the cheques had been issued by M/s. A.T. Overseas Ltd. to

A whom no goods had been supplied by the complainants and, therefore, there was no consideration. In absence of any consideration, according to the learned counsel, the accused could not have been held guilty and, therefore, the courts below
B upon the judgments delivered in *Indowind Energy Ltd. v. Wescare (India) Ltd. and Anr.* [2010(5) SCC 306] and in *Rahul Builders v. Arihant Fertilizers & Chemicals and Anr.* [2008(2) SCC 321]. According to him, even if two companies are having common Directors, both companies would remain different
C legal entities and, therefore, the submission made on behalf of the appellants that both the companies are sister concerns and, therefore, one company should be made liable for the dues of another company cannot be sustained. He further submitted that there was nothing to substantiate the submission that M/s.
D A.T. Overseas Ltd. had made payment in consideration of goods supplied to M/s. Shree Nath Spinners Pvt. Ltd. He, therefore, submitted that the appeals be dismissed.

13. Upon hearing the learned counsel appearing for the parties and upon perusal of the record pertaining to the cases
E and the impugned judgment delivered by the High Court confirming the order passed by the trial court and upon considering the judgments cited by the learned counsel, we are of the view that the decision rendered by the courts below cannot be sustained.

F 14. Upon perusal of the record, we find that the complainants had established before the trial court that there was an understanding among the complainants and the accused that in consideration of supply of goods to M/s. Shree
G Nath Spinners Pvt. Ltd., M/s. A.T. Overseas Ltd. was to make the payment. The aforesaid understanding was on account of the fact that directors in both the aforesaid companies were common and the aforesaid companies were sister concerns. In the circumstances, it can be very well said and it has been
H proved that in consideration of supply of goods to M/s. Shree

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Nath Spinners Pvt. Ltd., M/s. A.T. Overseas Ltd. had made the payment. In view of the above fact, in our opinion, the trial court was not right when it came to the conclusion that there was no reason for M/s. A.T. Overseas Ltd. to give the cheques to the complainants. The aforestated facts are very well reflected in the statement made in the complaint and in the evidence by the complainant which have not been controverted. Paras 2 and 3 of the complaint are reproduced herein below:

"2. That the accused had business dealings with the complainant and supply of the goods which duly supplied by my client vide separate bills from time to time which was duly acknowledged by the accused no. 5 Varun Jain director of the accused no. 1.

3. That in order to discharge the liability of making the payment, the accused issued following two cheques in favour of the complainant through their sister concern M/S A.T. Overseas Ltd. i.e. Accused No. 1 and the cheques were duly signed by Mr. Munish Jain one of its directors"

15. The trial court materially erred while coming to a conclusion that in criminal law no presumption can be raised with regard to consideration as no goods had been supplied by the complainants to M/s. A.T. Overseas Ltd.. The trial court ought to have considered provisions of Section 139 of the Act, which reads as under:-

"139. Presumption in favour of holder – It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

16. According to the provisions of the aforestated section, there is a presumption with regard to consideration when a cheque has been paid by the drawer of the cheque. In the instant case, M/s. A.T. Overseas Ltd. paid the cheque which

A had been duly signed by one of its Directors, namely, Munish Jain. Munish Jain is also a Director in M/s. Shree Nath Spinners Pvt. Ltd.. As stated hereinabove, both are sister concerns having common Directors. Extracts of books of accounts had been produced before the trial court so as to
B show that both the companies were having several transactions and the companies used to pay on behalf of each other to other parties or their creditors. The above fact strengthens the presumption to the effect that M/s. A.T. Overseas Ltd. had paid the cheques to the complainants, which had been signed by
C Munish Jain, in consideration of goods supplies to M/s Shree Nath Spinners Pvt. Ltd. Of course, the presumption referred to in Section 139 is rebuttable. In the instant case, no effort was made by Munish Jain or any of the Directors of M/s. A.T. Overseas Ltd. for rebuttal of the aforestated presumption and,
D therefore, the presumption must go in favour of the holder of the cheques. Unfortunately, the trial court did not consider the above facts and came to the conclusion that there was no consideration for the cheques which had been given by M/s. A.T. Overseas Ltd. to the complainants.

E 17. It is true that a limited company is a separate legal entity and its directors are different legal persons. In spite of the aforestated legal position, in view of the provisions of Section 139 of the Act and the understanding which had been arrived at among the complainants and the accused, one can
F safely come to a conclusion that the cheques signed by Munish Jain had been given by M/s. A.T. Overseas Ltd. to the complainants in discharge of a debt or a liability, which had been incurred by M/s Shree Nath Spinners Pvt. Ltd.

G 18. We may also refer to the judgment delivered by this Court in the case of *ICDS Ltd.* (*supra*). In the said judgment this Court has referred to the nature of liability which is incurred by the one who is a drawer of the cheque. If the cheque is given
H towards any liability or debt which might have been incurred even by someone else, the person who is a drawer of the

cheque can be made liable under Section 138 of the Act. The relevant observation made in the aforesaid judgment is as under: A

"The words "any cheque" and "other liability" occurring in Section 138 are the two key expressions which stand as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the statute. These expressions leave no manner of doubt that for whatever reason it may be, the liability under Section 138 cannot be avoided in the event the cheque stands returned by the banker unpaid. Any contra-interpretation would defeat the intent of the legislature. The High Court got carried away by the issue of guarantee and guarantor's liability and thus has overlooked the true intent and purport of Section 138 of the Act. B C D

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The language, however, has been rather specific as regard the intent of the legislature. The commencement of the section stands with the words "where any cheque". The above noted three words are of extreme significance, in particular, by reason of the use of the word "any" - the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment." E F G H

A 19. Looking to the facts of the case and law on the subject,
 we are of the view that all the four cheques referred to in both
 the complaints are presumed to have been given for
 consideration. The presumption under Section 139 of the Act
 has not been rebutted by the accused and, therefore, we are
 B of the view that the trial court wrongly acquitted the accused
 by taking a view that there was no consideration for which the
 cheques were given by Munish Jain to the complainants. The
 aforesaid incorrect view was wrongly confirmed by the High
 Court. We, therefore, set aside the acquittal order and convict
 C accused Munish Jain under Section 138 of the Act.

20. In view of the aforestated facts and legal position, in
 our opinion, the accused ought to have been held guilty,
 especially accused no. 4, Munish Jain who had signed all the
 cheques for M/s A.T. Overseas Ltd. We, therefore, hold Munish
 D Jain, accused no. 4 and respondent no. 4 herein, in both the
 cases guilty of the offence under Section 138 of the Act.

21. Accused Munish Jain was acquitted by the trial court
 and the High Court has confirmed the acquittal, which is being
 E set aside by this Court by allowing these appeals. In the
 circumstances, as per the provisions of Section 235(2) of the
 Criminal Procedure Code, this Court will have to give an
 opportunity of being heard to him on the question of sentence.
 We, therefore, adjourn the case to 2-8-2011 for hearing the
 F accused Manish Jain on the question of sentence. If on that day
 he fails to appear before this Court, we shall hear his counsel
 on the question of sentence.

ORDER

G 1. We have heard the learned counsel appearing for the
 parties on the question of sentence. Having gone through the
 records, we find that Mr. Munish Jain, against whom the notice
 was issued on the question of sentence had died. Accordingly,
 so far he is concerned, the matter stands abated.

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2. There is yet one more accused in the case, apart from the company, who was also impleaded as a party in the present proceedings. The said Director of the company is Mr. Varun Jain. A

3. We have heard the learned counsel appearing for the parties on the question of sentence. Considering the provisions of Section 138 of the Negotiable Instruments Act, we consider that imposition of fine of an amount of Rs. 10,00,000/- (Rupees ten lacs only) would meet the ends of justice in the present case. Considering the facts and circumstances of the case, we, therefore, impose a fine of Rs. 10,00,000/- (Rupees ten lacs only) on the respondent payable to the appellants/complainants by way of compensation. B C

4. At this stage, the counsel appearing for the respondent has handed over drafts amounting to Rs. 10,00,000/- payable to the appellants/complainants, to the counsel appearing for the appellants/complainants, who receives the said amount which is imposed as fine and payable to the appellants. Fine having been paid and received the litigation to an end. D

5. In that view of the matter, nothing further survives in these appeals, which stand disposed of. E

R.P.

Appeals disposed of.