

**Topic:****Vicarious Liability of Companies : Exploring the Concept of Vicarious Liability and How it applies to Companies in Cases of Dishonour of Cheques under Section 141 of Negotiable Instrument Act, 1881 with the Help of Judicial Pronouncements****Abstract**

This article aims to shed light on the corporate liability in case of dishonour of cheques under Section 141 of Negotiable Instrument Act which is to be read with Section 138 of the Act. Whether the Directors, Manager, or other officers can be held liable vicariously for the acts of the company, while acting under the course of employment or not.

**Introduction**

The Negotiable Instrument Act (26 of 1881) [Hereinafter referred as “Act” for brevity] provides a safety net for creditors (whether deemed or actual ), who are having difficulty recovering a defaulted amount due to debt or any other liability, legally enforceable by law. Section 138 of the Act imposes a criminal liability on such default for cheque(s) dishonour, which entails imprisonment for a maximum period of two years or a fine of twice of a value of cheque. As a result cheque dishonour is a criminal offence triable by no court inferior to that of a Metropolitan Magistrate or the Judicial Magistrate of First Class as provided under Clause (c) of Sub – Section (1) of Section 142 of the Act. Provided, the complaint of such offence must be filed within one month from the date when the cause of action arise, as clearly stated in Clause (b) of sub- section (1) of Section 142 of the Act. However, due to legal fiction of “juristic person” criminal culpability cannot be imposed on the chief defaulter in the case of a corporate defaulter.

As a result, Section 141 of the Act protects creditors by imposing criminal liability for default on anyone who was “in charge” and accountable for “conduct of the business” at the time of violation.

The current article goes into the jurisprudential element and scope of directors liability under Section 141 of the Act, as well as analysing the Hon’ble Courts judgements in this regard.

**Rule as to Imposition of Liability under the Act**

Section 138 of the Act deals with the Strict Liability principle i.e. cheque bouncing offences, where the court will not concern about the mens rea of the drawer of the cheque and will impose a strict liability on him if the necessary requisites of Section 138 of the Act were fulfilled and established before the court of law. No direct nexus is required between the person who committed the offence i.e. Drawer and the offence which was committed under this Section.

Where a cheque is issued by the drawer to the payee or the complainant on a bank account maintained by him, for the purpose of discharging any debt or other liability either in whole or in part, which is legally enforceable by law i.e. not any time barred debt or liability the remedy for which is already extinguished by the law. The cheque must be presented to the bank within three months (vide notification no. RBI/2011/12/251 DBOD AMLBC No. 47/19.01.0062011/12, dated 04.11.2011) from the date on which it was drawn or within the period of its validity, whichever is earlier and if the same cheque is returned by the bank unpaid on account of insufficient fund to honour the cheque or it exceed the amount arranged to be paid from that account by an agreement made with the bank. Then the demand notice is required to be served to the drawer by the payee or the holder in due course with in the period of 30 days from the date when notice as to dishonour of cheque was received by the payee or holder in due course from the bank. The drawer, from the date of receipt of such notice, is having an option to make the payment of the cheque amount within the time span of 15 days, if he fails to pay the said amount within the given time, he shall be deemed to have committed an offence and shall be held liable for the imprisonment which may extend to 2 year, or with fine which can be twice of the cheque amount, or with both.

### **Vicarious Liability and Offence Committed by Company**

Vicarious Liability is a principle of Law of Tort and it refers to the imposition of liability on one person or entity for the actions or omissions of another person or entity or in other words it refers to a legal position when the law holds one person responsible for the misconduct of another although he himself free from personal blame or fault. This arises out of certain relationship between two persons. According to Salmond, a person is responsible for his own acts but in exceptional cases the law imposes on him vicarious liability for the acts of others. This is based upon the maxim- Qui facit per alium facit per se, i.e. he who does an act through another is deemed in law as doing it himself.

Under Section 141 of the Act, if the offence is committed by the company under the Act, the Company being an Legal or Artificial entity cannot only be held liable personally for the offence committed by it, as the actual work was carried on by the Directors, Manager or other officers of the company just under the veil of the company. So every person who was in the charge of the company and was responsible to the company for the conduct of business of the company, shall also be liable vicariously and will be proceeded against and

punished under the respective legislation. Director, Manager, or other officers of the company having the charge of or responsible for the conduct of company cannot escape the liability by taking the plea of ***Corporate Veil*** , all of them will definitely be held liable for the conduct of the company unless and until they proved the circumstance of defence provided under Section 141 of the Act.

### **Corporate Liability [Section 138 read with Section 141 of the Act]**

Section 141 of the Act lays down the liability of a company and its officers for an offence under Section 138 of the Act. Sub – section (1) of Section 141 provides that if a person committing an offence under Section 138 of the Act is a company, every person who at the time the offence was committed, was in the charge of and was responsible to the company for the conduct of the business of the company, as well as the company, they all shall be deemed to be guilty of the offence under Section 138 of the Act and shall also be liable to be proceeded against and punished accordingly.

The proviso appended to this Sub- Section lays down that no such person can be held so liable if he proves that the offence was committed without his knowledge, or that he had exercised all his due diligence and put all his efforts to prevent the commission of such offence.

The second proviso attached to sub-section (1) of Section 141 further lays down 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 the State Government, as the case may be, he shall not be held liable.

Sub – Section (2) of Section 141 of the Act provides, that where any offence has been committed by a company under the act and it is also established that the particular offence has been committed with the consent or connivance of, or is directly attributable to, any neglect is their on the part of, any director, manager, secretary or other officer of the company, such the director, manager, secretary, or other officers shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The Three categories of persons that can be brought within the purview of the penal liability under Section 141 of the Act. They are :

1. The company which committed the offence;
2. Everyone who is in-charge of and is responsible for the business of the company;
3. Any other person who is a Director or a Manager or a Secretary or Officer of the company with whose connivance or due to whose negligence the company has committed the offence.

## **Judicial Pronouncements**

### ***State of Maharashtra V. Syndicate Builders and others (2007)***

In this case accused persons were directors and officials of a company that had issued post dated cheques to the complainant, but those cheques were get dishonoured on presentation. The complainant filed a case against both the company and its responsible officers. The Hon'ble Supreme Court, while interpreting Section 141 of the Act, held that the provision envisages the principle of vicarious liability. The court stated that if an offence under the Act is committed by a company, every person who was in-charge of and responsible for the conduct of company's business at the time of the offence shall be deemed guilty and liable for punishment. The court also noted that the liability of such individual arises only if they are in-charge of responsible for the conduct of the Company's business. In this case, the directors and officials were held liable under section 141 of the Act, along with the company, as the offence was committed with their consent and connivance.

### ***Avon Industries Ltd. V. Integrated Finance Company Ltd., (2001) 105 Comp Cas 259 (AP)***

When a cheque is drawn by the company, the company is the principle offender, and all other persons remaining by virtue of the legal fiction created by the legislature as per Section 141 of the Act, are also made offenders. The actual offence should be committed by the company, and then only the other two categories would also become liable for the offence.

### ***Mohd. Isaq Gulsani V. Rajamouli, (Criminal Petition No. 3464 of 2000)***

Decided by Hon'ble Supreme Court on 17-11-2000, it was held by the Hon'ble Supreme Court that the prosecution of a company is sine qua non or of utmost importance for the prosecution of other persons, but actual offence should have been committed by the company and then alone the other two categories of persons could be held liable for the offence.

### ***United Prophesis Ltd. V. Saiteja Fertilizers and Pesticides, (2003) 113 Comp Cas 587***

The liability of Directors, Manager, Secretary or other Officers of the company is vicarious and will flow from the liability of the company, firm. Therefore, the company / firm which has committed the offence has essentially to be impleaded as a party accused in the complaint, otherwise the complaint will be rendered defective and liable to be dismissed.

### ***S. Krishnamoorthy V. B.S. Kesavan, (1994) 80 Comp Cas 755***

When the commission of the offence was done by the company, the persons responsible for the conduct of business of the companys alone cannot be prosecuted leaving alone the company.

***G. Ramesh V. Kanike Harish kumar Ujwal, AIR (2019) SC 2595***

The Hon'ble Supreme Court held that the expression "company" used in Section 141 of the Act includes a partnership firm, or associations of persons.

***AR Radha Krishna V. Dasari Deepthi, AIR (2019) SC 2518***

The Hon'ble Supreme Court held that a cheque bounce complaint against a company and its directors, must contain a specific averment that the director was in-charge of, and responsible for, the conduct of the company's business at the time when the offence under Section 138 of the Act read with Section 141 of the Act was committed.

***Bhupesh Rathod V. Dayashankar Prasad Chaurasia and Another, (2021)***

The Hon'ble Supreme Court held that when a complaint is made under Section 138 of the Act on behalf of a company, the same will not get dismissed for the only reason that it states the name of the managing director first which was followed by the name of the company.

***Standard Chartered Bank V. State of Maharashtra & Another (2016)***

The Hon'ble Supreme Court observed that the prosecution under Section 141 of the Act requires the identification of the persons who are in charge of and responsible for the conduct of the company's business. The court emphasized that the liability of such person is strict liability and burden lies on them to prove that they had no knowledge of and were not responsible for the commission of the offence.

***National Small Industries Corporation V. Harmeet Singh Paintal (2010)***

The Hon'ble Court held that the liability under Section 141 of the Act can extend to non – executive directors if they are actively involved in the affairs of the company and were in a position where they could have prevented the commission of the offence. The court emphasized that the determination of liability should be based on the facts and circumstances of each particular case.

**Conclusion**

By these aforementioned Statutory provisions and the Ratio Decidendi of the Hon'ble Supreme Court Judgements, the scope and ambit of Section 141 of the Act has been well defined, whereby the persons who are responsible for the conduct and affairs of the business or hold position such as director, manager, secretary, and so on can be held vicariously criminally liable for the company's cheque dishonour cases.