

Sankar Padam Thapa Vs. Vijaykumar Dineshchandra Agarwal

Criminal Appeal No. _____ of 2025 @ Special Leave to Appeal (Criminal) No. 4459/2023 · Supreme Court of India
· 2025-10-09 · Ahsanuddin Amanullah · Prashant Kumar Mishra · F2J-C-1461

Full judgment text

Sankar Padam Thapa Vs. Vijaykumar Dineshchandra Agarwal

[Criminal Appeal No. _____ of 2025 @ Special Leave to Appeal (Criminal) No. 4459/2023]

Ahsanuddin Amanullah, J.

1. Leave granted.

2. The question for consideration in the instant appeal is as to whether in the absence of a Trust being made an accused in a complaint under the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act'), when a Cheque has been issued on behalf of a Trust, the said complaint would be maintainable against the Chairman/a Trustee of the said Trust?

THE IMPUGNED JUDGMENT:

3. The instant appeal arises from the Final Judgment and Order dated 21.11.2022 (hereinafter referred to as the 'Impugned Judgment') [2022 SCC OnLine Megh 624 | (2023) 1 GLT 344], passed by a learned Single Judge of the High Court of Meghalaya, Shillong (hereinafter referred to as the 'High Court') in Criminal Petition No.31/2019, wherein the High Court quashed and set aside the proceedings in Criminal Case No.44(S)/2019 pending before the Court of the learned Judicial Magistrate, Shillong (hereinafter referred to as the 'Trial Court') and the Summoning Order dated 11.02.2019 passed against the Respondent.

4. The William Carey University (hereinafter referred to as the 'University'), a recognized Private University, owned and sponsored by the Agriculture Crafts Trades and Studies Group of Institutions (hereinafter referred to as the 'ACTS Group'), was facing a severe financial crisis. The ACTS Group entered into a Memorandum of Understanding with Orion Education Trust (hereinafter referred to as 'Orion') on 12.10.2017 to hand over the management and administration of the University to Orion.

The Respondent is the Chairman of Orion. As Chairman of Orion, the Respondent issued authorization letters to all concerned, duly entrusting the Appellant with the task of liaising with governmental authorities and to undertake such activities to facilitate the effective transition of all administrative control of the University from the hands of the ACTS Group to Orion.

5. The Appellant alleged that pursuant to the above, upon such transition being effected, the Respondent issued a Cheque dated 13.10.2018, bearing number 000013 for Rs.5,00,00,000/- (Rupees Five Crores Only), drawn on Kotak Mahindra Bank, Vadodara Branch in his favour for the services rendered by him under the signature of the Respondent as authorized signatory of Orion. When presented by the Appellant at his ICICI Bank Branch at Laitumkhrah, Shillong, East Khasi Hills on 07.12.2018, the Cheque was dishonoured with the endorsement 'insufficient funds'.

6. Notice under Section 138 of the NI Act was addressed by the Appellant to the Respondent on 19.12.2018, which was received by the Respondent on 27.12.2018. Response thereto was sent by the Respondent vide Letter dated 28.12.2018. Subsequently, the Appellant filed a complaint case No.44(S)/2019 before the Trial Court against the Respondent for offences under Sections 138 and 142 of the NI Act as well as under Section 420 of the Indian Penal Code, 1860. On receipt of summons, as per the Trial Court's Order dated 11.02.2019, the Respondent entered appearance and challenged the complaint case on the issue of maintainability for non-joinder of necessary parties.

7. The Respondent, thereafter, preferred Criminal Petition No.31/2019 under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') before the High Court seeking to quash the complaint case and the proceedings before the Trial Court, on the ground, inter alia, that Orion - a juristic entity and a necessary party being a Trust - not having been added as a party, the complaint case was non-maintainable, and consequently, no vicarious liability could be placed on the

Respondent.

8. Allowing the Criminal Petition in the Respondent's favour, the High Court has, by way of the Impugned Judgment, quashed the complaint case and the Summoning Order dated 11.02.2019 passed by the Trial Court. Assailing the same, the present appeal has been preferred by the Appellant.

APPELLANT'S SUBMISSIONS:

9. The arguments put forth by the learned counsel for the Appellant were basically two-fold - (i) the ineligibility of a Trust to be sued, and; (ii) no mandate to make specific averments with regard to the accused's responsibility in conducting the day-to-day business of the Trust. For the first proposition, learned counsel placed reliance on the decision of this Court in *Pratibha Pratisthan v Manager, Canara Bank*, (2017) 3 SCC 712, where, in the context of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Consumer Protection Act'), it was held that a Trust is not a person and therefore, could not be a consumer.

10. Next, in support of his argument that a Trust is not capable of being sued or suing in a court of law, learned counsel drew the attention of this Court to the decision of the Kerala High Court in *K P Shibu v State of Kerala*, 2019 SCC OnLine Ker 7585, holding that in the context of the NI Act, it is the Trustees who can maintain and defend a suit to protect the Trust property, and the Trust itself cannot sue or be sued in a court of law, therefore, a Trust is not a juristic person or a legal entity, as a juristic person has a legal existence of its own and hence is capable of suing and being sued in a court of law.

It was further held that a Trust would not fall within the term 'association of individuals' as used in the NI Act. The High Court held that since Trustees do not join together for a common action to achieve some common benefit for themselves as Trustees, a Trust cannot be said to be an 'association of persons/body of individuals'.

11. Learned counsel for the Appellant submitted that a Trust, as defined under the Indian Trusts Act, 1882 (hereinafter referred to as the 'Trusts Act'), is an obligation and not a legal entity. Learned counsel for the Appellant placed reliance on the decision of the Kerala High Court in *K R Rajan v Cherian K Cherian*, 2019 SCC OnLine Ker 4699; the decision of the Delhi High Court in *Duli Chand v M/s M P T C Charitable Trust*, 1983 SCC OnLine Del 270; decisions by the Madras High Court in *V Chandrasekaran v Venkatanaicker Trust*, 2016 SCC OnLine Mad 33745 and *Narayana Iyer v Anandammal Adheena Trust*, (2021) 3 CTC 776; decision of the Gujarat High Court in *Kansara Abdulrehman Sadruddin v Trustees of the Maniar Jamat Ahmedabad*, AIR 1968 Guj 184 and; the decision by the Calcutta High Court in *Vijay Sports Club v State of Bengal*, 2019 SCC OnLine Cal 2331.

12. With regard to the second limb of his argument, learned counsel submitted that in the case at hand, the Respondent, being the Chairman/Authorized Representative of Orion, had signed the cheque in question and thus, it was prima facie evident that he was responsible for the day-to-day business of the Trust. To support his contention, learned counsel relied upon the decision of this Court in *SMS Pharmaceuticals Ltd. v Neeta Bhalla*, (2005) 8 SCC 89 [3-Judge Bench], wherein it was held that a position of a Managing Director would suggest responsibility of the person holding the said position, in the day-to-day affairs of the Company, which in the present case, urged learned counsel, is akin to the position of the Chairman/Authorized Representative of the Trust viz. Orion. The relevant portion from *SMS Pharmaceuticals Ltd.* (supra) is quoted below:

'19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.'

(emphasis supplied)

13. To further support his contentions, learned counsel for the Appellant placed reliance on the decision of this Court in *K K Ahuja v V K Vora*, (2009) 10 SCC 48; *Sunita Palita v Panchami Stone Quarry*, (2022) 10 SCC 152; *D Purushotama Reddy v K Sateesh*, (2008) 8 SCC 505 and the decision of the Gauhati High Court in *Pranab Jyoti Dutta v Chief Branch Manager, SBI*, 2023 SCC OnLine Gau 243. It was urged that the appeal deserved to be allowed.

RESPONDENT'S SUBMISSIONS:

14. Au contraire, learned senior counsel for the Respondent submitted that a Trust is a juristic person, capable of suing and being sued in a court of law. He placed reliance on the decision of the High Court of Kerala in *Prana Educational and Charitable Trust v State of Kerala*, 2023 SCC OnLine Ker 8449, where it was held that the expression 'company' used in sub-clause (a) of the Explanation to Section 141 of the NI Act includes 'any body corporate' or 'other association of individuals', and the said term, by applying the principle of *ejusdem generis* would include a club, a Trust (emphasised by learned senior counsel), and a Hindu Undivided Family within the expression 'company' or 'firm'. The High Court further held that a Trust, either private or public/charitable is a juristic person liable to prosecute or be prosecuted for the offence punishable under Section 138 of the NI Act.

In this regard, reliance was also placed on the decisions of the Bombay High Court in *Dadasaheb Rawal Co-op. Bank of Dondaicha Ltd. v Ramesh s/o Jawrilal Jain*, 2008 SCC OnLine Bom 794 and *Mukund s/o Manohar Wazalwar v Eknath s/o Bajirao Hatwar (Dead) through his L.R. Durwas Eknath Hatwar*, 2023 SCC OnLine Bom 3015 and the decision by the Orissa High Court in *Bijaya Manjari Satpathy v State of Orissa*, 2022 SCC OnLine Ori 4092. Attention was also drawn to a decision of the High Court of Madras in *Abraham Memorial Educational Trust v Suresh Babu*, 2012 SCC OnLine Mad 2986, where that High Court held that a Trust is a juristic person which can sue or be sued for offence punishable under the NI Act.

15. Learned senior counsel supported the Impugned Judgment, submitted that the appeal merited dismissal and advanced that the High Court had not erred.

ANALYSIS, REASONING AND CONCLUSION:

16. We have heard respective learned counsel for the parties and perused the materials on record. The question for consideration, as indicated in Paragraph 2 supra, is as to whether in the absence of a Trust being made an accused in a complaint under the NI Act, when a cheque has been issued on behalf of the Trust, the said complaint would be maintainable against the Chairman/a Trustee of the said Trust?

17. On the issue that it is not mandatory to make substantive averments pertaining to the responsibility of the Respondent in the conduct of the day-to-day business of the Trust, reliance was rightly placed on the decision of a 3-Judge Bench of this Court in *SMS Pharmaceuticals Ltd.* (supra) by learned counsel for the Appellant.

18. We need only reiterate the view espoused by this Court in *SMS Pharmaceuticals Ltd.* (supra) and *K K Ahuja* (supra). As such, a person designated as 'Managing Director' or 'Joint Managing Director', by virtue of the office held, would be in charge of and responsible for the daily conduct or business of the company, and thus, be covered under Section 141 of the NI Act. Further, as far as the signatory of a cheque which is dishonoured be concerned, he is responsible for the incriminating act and will be covered under Section 141 of the NI Act. Support for the above from *K K Ahuja* (supra) can be traced as under:

'22. Section 141 uses the words "was in charge of , and was responsible to the company for the conduct of the business of the company".

(emphasis supplied)

It is evident that a person who can be made vicariously liable under sub-section (1) of Section 141 is a person who is responsible to the company for the conduct of the business of the company and in addition is also in charge of the business of the company. There may be many Directors and secretaries who are not in charge of the business of the company at all. The meaning of the words "person in charge of the business of the company" was considered by this Court in *Girdhari Lal Gupta v. D.H. Mehta* [(1971) 3 SCC 189: 1971 SCC (Cri) 279] followed in *State of Karnataka v. Pratap Chand* [(1981) 2 SCC 335: 1981 SCC (Cri) 453] and *Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd.* [(2002) 7 SCC 655: 2003 SCC (Cri) 151] This Court held that the words refer to a person who is in overall control of the day-to-day business of the company.

This Court pointed out that a person may be a Director and thus belongs to the group of persons making the policy followed by the company, but yet may not be in charge of the business of the company; that a person may be a manager who is in charge of the business but may not be in overall charge of the business; and that a person may be an officer who may be in charge of only some part of the business.

27. The position under Section 141 of the Act can be summarised thus:

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.'

(emphasis supplied)

19. The position in law was further elucidated in *Sunita Palita* (supra), where the following was observed: '36. The High Court also rightly held that the Managing Director or Joint Managing Director would admittedly be in charge of the company and responsible to the company for the conduct of its business by virtue of the office they hold as Managing Director or Joint Managing Director. These persons are in charge of and responsible for the conduct of the business of the company and they get covered under Section 141 of the NI Act. A signatory of a cheque is clearly liable under Sections 138/141 of the NI Act.'

(emphasis supplied)

20. Further, in *S P Mani and Mohan Dairy v Dr Snehalatha Elangovan*, (2023) 10 SCC 685, it was laid down that for an accused to escape criminal liability, the accused would have to demonstrate that he/she was not in charge or in control, as under:

'58. Our final conclusions may be summarised as under:

58.1. The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

58.2. The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the Court that at the relevant point of time they were not in charge of the affairs of the company.

Advertence to Sections 138 and Section 141, respectively, of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

58.3. Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners "qua" the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

58.4. If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.'

(emphasis supplied)

21. On the issue of whether a Trust is capable of suing or being sued, though in the context of the Consumer Protection Act, in *Pratibha Pratisthan* (supra), it was observed that a Trust is not a 'person' and 'therefore not a consumer'. The Court went on to hold that a Trust 'cannot be a complainant and cannot file a consumer dispute under the provisions' of the Consumer Protection Act, as it would not fall under the definition of 'person' as per Section 2(m) of the Consumer Protection Act. Referring to the said provision from the Consumer Protection Act, in *Pratibha Pratisthan* (supra), the Court opined:

'4. A reading of the definition of the words "complaint", "complainant" and "consumer" makes it clear that a trust cannot invoke the provisions of the Act in respect of any allegation on the basis of which a complaint could be made. To put this beyond any doubt, the word "person" has also been defined in the Act and Section 2(1)(m) thereof defines a "person" as follows:

"2. (1)(m) "person" includes-

(i) a firm whether registered or not;

(ii) a Hindu undivided family;

(iii) a cooperative society;

(iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;"

5. On a plain and simple reading of all the above provisions of the Act it is clear that a trust is not a person and therefore not a consumer. Consequently, it cannot be a complainant and cannot file a consumer dispute under the provisions of the Act.'

(emphasis supplied)

22. Sections 3 and 13 of the Trusts Act read thus:

'3. Interpretation-clause-"Trust".- A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner; the person who reposes or declares the confidence is called the "author of the trust"; the person who accepts the confidence is called the "trustee"; the person for whose benefit the confidence is accepted is called the "beneficiary"; the subject-matter of the trust is called "trust-property" or "trust money"; the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust"; a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust"; and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force; a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, Section 229; and all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

13. Trustee to protect title to trust-property.- A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trustproperty and the assertion or protection of the title thereto .'

(emphasis supplied)

23. To our mind, the above-extracted Sections of the Trusts Act would also favour the view we are taking, as the obligation to 'maintain and defend' suits is placed on the shoulders of a Trustee and not the Trust itself. It is clear that only a Trustee has the obligation to file, maintain and defend any suit on behalf of the Trust. Meaning thereby, that a Trust does not have a separate legal existence of its own, making it incapable of suing or being sued. A learned Single Judge of the Kerala High Court, relying on Pratibha Pratisthan (supra), in K P Shibu (supra), noted:

'16. Thus, it is clear from the above provisions that all the trustees are the owners of the property, but they are obliged to use the same in a particular manner. If a number of trustees exist, they are the joint owners of the property. The trustees are bound to maintain and defend all suits, for the preservation of the trust-property and the assertion or protection of the title thereto.

Thus, it appears that the "Trust" is not capable of suing and being sued in a court of law, even though the trustees can maintain and defend suits for the preservation and protection of the trust-property. Therefore, a "Trust" is not a juristic person or a legal entity, as the juristic person has a legal existence of its own and hence it is capable of suing and being sued in a court of law. Thus, it appears that a "Trust" is not like a body corporate, which has a legal existence of its own and therefore can appoint an agent. The above discussion would make it clear that a "Trust" is not a body corporate.'

(emphasis supplied)

24. The same proposition has been reiterated by the Delhi High Court in Duli Chand (supra), the Madras High Court in V Chandrasekaran (supra) and Narayana Iyer (supra), the Gujarat High Court in Kansara Abdulrehman Sadruddin (supra), the Calcutta High Court in Vijay Sports Club (supra) and the Karnataka High Court in Chikkamuniyappa Memorial Trust v State, ILR 1997 Kar 2460.

25. We find substance in the reasoning assigned by the High Courts of Kerala, Delhi, Madras, Gujarat, Calcutta and Karnataka that a Trust is not a 'legal entity' or 'juristic person'. A Trust is also not like a corporation which has a legal existence of its own and therefore can appoint an agent. A Trust operates through its Trustees, who are legal entities. We may gainfully refer to the decision of the Kerala High Court in K R Rajan (supra), where the said Court has rightly held:

'7. The legal status of a trust, is thus well discernible. Trust not being a legal person, and the Code of Civil Procedure not providing any enabling provision for the Trust to sue or for being sued in its name, there is no merit in the contention that the Trust is to be arrayed as a co-nominee party. The arraying of the trust in its own name is otiose or redundant. It is the trustees who are to be impleaded to represent the trust. Therefore, the contention of the petitioner on the ground of non-joinder, also fails.'

(emphasis supplied)

26. Ergo, it is clear that though a Trust may act or even be treated as an entity for certain legal purposes and not all legal purposes, a Trust is an obligation imposed on the ostensible owner of the property to use the same for a particular object - for the benefit of a named beneficiary or charity, and it is the Trustee(s) who are bound to maintain and defend all suits and to take such other steps with regard to the nature, land or the value of the Trust property, that may be reasonably required for the preservation of the Trust property, and the assertion of protection of title thereto, subject to the provisions of the instructions of Trust to take such other steps.

27. There exists no ambiguity about there being no legal requirement for a Trust to be made a party in a proceeding before a Court of Law since it is only a/the Trustee(s) who are liable and answerable for acts done or alleged to have been done for and on behalf of the said Trust. From a perusal of Orion's Deed of Trust, of which the Respondent is the Chairman/Authorized Signatory, it emerges clearly that the relevant clauses deal with the Trustee insofar as administering and holding the funds and properties of the Trust are concerned.

Which is to say that the Trust (i.e., Orion) operates only through the Trustee(s) and that the objects thereof were for charitable purposes. The Deed of Trust also provides for permitting one or more Trustees to operate a bank account. It becomes all the more apparent that it is the Trustees alone, through whom the Trust funds/property(ies) are managed and dealt with. The Trust itself is without any independent legal status.

28. Though we have delved into the issue of whether a Trust can sue or be sued on its own, we would make it amply clear (and as would also become evident from what follows *infra*) on this point, that our view is confined to examination of the subject in the context of the NI Act alone, in *praesenti*. We were called upon to consider only as to whether without making a Trust an accused, a complaint would be maintainable against a Trustee in the eye of law under the NI Act.

29. Hence, the question posed is answered in the affirmative. When a cause of action arises due to an alleged dishonour of cheque and a complaint is initiated under the NI Act, the same is maintainable against the Trustee who has signed the cheque, without the requirement to array the Trust also as an accused.

30. As far as the judgments pressed into service by the Respondent be concerned, we have bestowed thoughtful consideration thereto. We are unable to concur with the propositions they purport to propound.

31. In *Prana Educational and Charitable Trust (supra)*, a learned Single Judge of the Kerala High Court held:

'20. Analyzing the decision rendered by the Madras High Court, it could be gathered that after elaborately considering the relevant statutory provisions, the learned Single Judge held as above. The High Courts of Bombay and Gujarat interpreted the explanation appended to Section 141 of the N.I. Act with reference to "inclusive of any body corporate" or "other association of individuals" and construed the above terms by applying the principle of *eiusdem generis* and held that the term "association of individuals" will include club, trust, Hindu Undivided Family Business.

21. Coming to *K.P. Shibu's case (supra)*, it is discernible that the said decision is not so elaborative and the interpretation of the term "association of individuals" not done by applying the ratio of *eiusdem generis*. The principle of *eiusdem generis* intended for the construction of constitutional and statutory provisions means "of the same kind" and this doctrine provides that the general words which follow the specified words will be restricts to the same class of the specified words.

While applying this principle, (1) the general words must follow the specific words and the specific words must necessarily constitute, a genus/class (2) the legislative intention of the statute to be born in mind for restricting the general word to the genus/class of the specified words if follows and (3) this principle has to be used by the Courts properly and apply where it is necessary and not use this

principle where it is not necessary so as to defeat the purpose of the statute and to cause miscarriage of justice are the conditions to be satisfied. Thus, it appears that the High Courts of Madras, Bombay and Gujarat correctly interpreted the various provisions and the law emerges from the said judgments are as under:

(i) The expression "company" used in sub-clause (a) of explanation appended to Section 141 of the N.I. Act includes any body corporate or other "association of individuals" and the term "association of individuals" to be interpreted by applying the principle of ejusdem generis. To be construed so, the term "association of individuals" will include club, trust and Hindu undivided family business along with the expression "company" or "firm".

(ii) A Trust, either private or public/charitable or otherwise, is a juristic person who is liable for punishment for the offence punishable under Section 138 of the Negotiable Instruments Act. (iii) A Trust, either private or public/charitable or otherwise, having either a single trustee or two or more trustees, is a company in terms of Section 141 of the Negotiable Instruments Act.

(iv) For the offence under Section 138 of The Negotiable Instruments Act, committed by the Trust, every trustee, who was in-charge of the day-to-day affairs of the Trust shall also be liable for punishment besides the Trust.

22. Therefore, following the legal principles set forth above, it has to be held that the challenge raised by the accused on the ground that no prosecution under Section 138 read with Section 141 of the N.I. Act against the Trust would lie, cannot be sustained and the same stands repelled.'

(emphasis supplied)

32. We do not approve of the manner in which the learned Single Judge in Prana Educational and Charitable Trust (supra) decided to ignore binding precedent in K P Shibu (supra), which was a judgment rendered by another learned Single Judge of the same Court, earlier in point of time, merely by noting 'it is discernible that the said decision is not so elaborative and the interpretation of the term "association of individuals" not done by applying the ratio of ejusdem generis.' It was not open to the learned Judge in Prana Educational and Charitable Trust (supra) to prefer the view expressed by other High Courts in preference to the view of a Bench of the own High Court of equal strength expressed previously.

At the most, recording his disagreement with the view in K P Shibu (supra), the learned Judge in Prana Educational and Charitable Trust (supra) ought to have referred the matter to the learned Chief Justice of the High Court seeking constitution of a larger Bench. The only other way Prana Educational and Charitable Trust (supra) could have gotten over K P Shibu (supra) despite being a co-equal Bench would have been by undertaking an analysis via the principles of per incuriam and/or sub-silentio, as undertaken by a 3-Judge Bench recently in A Raja v D Kumar, 2025 SCC OnLine SC 1033.

We say this illustratively. Not as a matter of routine can a later Bench of equal strength refuse to follow an earlier decision of a Bench of equal strength. The law hereon was stated in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 680 and Union Territory of Ladakh v Jammu and Kashmir National Conference, 2023 SCC OnLine SC 1140. Therefore, while not disturbing Prana Educational and Charitable Trust (supra) interparties, we declare the statement of law therein incorrect to the extent it rules on the issue before us, on account of failure to adhere to binding precedent.

33. Dadasaheb Rawal Co-op. Bank of Dondaicha Ltd. (supra) and Abraham Memorial Educational Trust (supra) were decided by the Bombay and Madras High Courts respectively, prior to Pratibha Pratisthan (supra) and need not detain us further. Mukund (supra) was decided by a learned Single Judge of the Bombay High Court, Bench at Nagpur, where the learned Judge held:

'10. The controversy in this case is required to be addressed in the backdrop of the above stated facts. At this stage, it would be necessary to consider the legal position. There are number of reported decisions, wherein it has been held that the phrase, "association of individuals" has to be read along with the word "company and firm" occurring in the explanation appended to section 141 of the N.I. Act. It is also settled legal position that the expression, "association of individuals" is intended to cover the cases of societies, trusts etc, who have a legal and juristic personality. Reference can be made to the decision in the cases of Shri Banwarilal L. Saini. (supra), Bijaya Manjari Satpathy v. State of Orissa, 2022 LiveLaw (Ori) 158, and Abraham Memorial Educational Trust v. C. Suresh Babu, Cri. OP Nos.

12630 and 12661 of 2012 decided on 7-8-2012.

11. The primary question arisen in these cases was whether the Trust either public or private is a company covered in terms of section 141 of the N.I. Act and as such a juristic person, liable for punishment for the offence punishable under section 138 of the N.I. Act. It is to be noted that the specific question as above fell for consideration of the Madras High Court in the case of Abraham Memorial Educational Trust. (supra).

The learned Single Judge of the Madras High Court, after considering the length and breadth of the subject in this erudite decision, has held that the Trust either public or private/charitable or otherwise is a juristic person and is liable for punishment for offence punishable under section 138 of the N.I. Act. It is further held that a Trust either private or public/charitable or otherwise having either a single trustee or two or more trustees, is a company in terms of section 141 of the N.I. Act. It is further held that for the offence under section 138 of the N.I. Act, committed by the Trust, every trustee, who were the in-charge of the day-to-day affairs of the Trust shall also be liable for punishment besides the Trust.

12. On going through the record and proceedings and also the dicta laid down in the above decisions, I am of the opinion that the Trustee is a juristic person. The Trust, being an association of persons, would be a company in terms of section 141 of the N.I. Act. In this case, the cheque was issued by or on behalf of the Trust. The Trust is, therefore, the principal offender in this case. It is further pertinent to mention that by a legal fiction created under section 141 of the N.I. Act, all the persons who are the Office bearers of the Trust being in-charge of the day-to-day affairs of the Trust, shall also be liable for punishment besides the Trust.

13. In this background, it would be necessary to consider the settled position on the important point as to the effects and consequences of not arraigning the Trust as a principal accused or the effects and consequences of deletion of the name of Trust from the complaint during the pendency of the complaint. In my view, this situation would be required to be addressed in the backdrop of the law laid down in the cases of Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd., (2012) 5 SCC 661: (2012) 4 Mah LJ (SC) 527: (2012) 3 Mah LJ (Cri) (SC) 249, Himanshu v. B. Shivamurthy, (2019) 3 SCC 797: 2019 Mah LJ OnLine (Cri) (SC) 126 and Pawan Kumar Goel v. State of U.P., 2022 SCC OnLine SC 1598: (2023) 2 Mah LJ (SC) 456: (2023) 2 Mah LJ (Cri) (SC) 1.

The exposition of the law in these decisions clearly states that if a cheque is issued by the company or on behalf of the company, then the Company is the principal offender. It is further held that apart from the company being a principal offender, every person who at the time when the offence was committed was in-charge or was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty of offence and shall be liable to be proceeded against and punished. It is held that in the absence of company being the principal accused in the complaint, the prosecution against the remaining persons, being vicariously liable by deeming fiction, gets vitiated.'

(emphasis supplied)

34. Clearly, Mukund (supra) principally proceeded on equating a Trust with a 'company', which is a fallacy. If we trace our steps back to over a century ago, in the locus classicus *Salomon v A Salomon and Co. Ltd.*, [1897] AC 22, Lord Macnaghten of the House of Lords opined:

'The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act. That is, I think, the declared intention of the enactment. If the view of the learned judge were sound, it would follow that no common law partnership could register as a company limited by shares without remaining subject to unlimited liability.'

(emphasis supplied)

35. In *Tata Engineering and Locomotive Co. Ltd. v State of Bihar*, (1964) 34 COMP CAS 458, this Court, in a composition of 5 learned Judges, commented:

'The true legal position in regard to the character of a corporation or a company which owes its incorporation to a statutory authority, is not in doubt or dispute. The Corporation in law is equal to a

natural person and has a legal entity of its own. The entity of the Corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the Corporation.

This position has been well established ever since the decision in the case of *Salomon v. Salomon and Co.* was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. However, in the course of time, the doctrine that the Corporation or a Company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the Corporation can be lifted and its face examined in substance.

The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the Corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more.'

(emphasis supplied)

36. Therefore, Mukund (supra) does not lay down the correct position of law having wrongly assigned equivalence between a 'company' and a Trust, besides running counter to our exposition qua Sections 3 and 13 of the Trusts Act. The legal status accorded to a 'company' cannot be imported to a Trust, in the eyes of law, in the case at hand.

37. Turning to the Orissa High Court's verdict in *Bijaya Manjari Satpathy* (supra), we find as under:

(a) The Orissa High Court relied on *Aparna A Shah v Sheth Developers Private Limited*, (2013) 8 SCC 71, which related to a company and *Dilip Hariramani v Bank of Baroda*, 2022 SCC OnLine SC 579, which concerned a partnership firm - both of which cannot be equated with a Trust;

(b) The High Court also relied on *Pawan Kumar Goel v State of Uttar Pradesh*, 2022 SCC OnLine SC 1598. However, this case also concerned a company but the purpose for which the High Court considered the same has no nexus with the question we have answered. Likewise, *National Small Industries Corporation Limited v Harmeet Singh Paintal*, (2010) 3 SCC 330 concerned a company and the pleadings/averments which would be required to assign vicarious liability to the concerned accused.

(c) The Orissa High Court altogether omitted to consider the relevant provisions of the Trusts Act.

38. The views expressed by the respective High Courts in *Prana Educational and Charitable Trust* (supra); *Dadasaheb Rawal Co-op. Bank of Dondaicha Ltd.* (supra); *Abraham Memorial Educational Trust* (supra); *Mukund* (supra), and; *Bijaya Manjari Satpathy* (supra) run counter to what we have held above. The same do not commend themselves to us and are overruled in law, without disturbing their effect(s) inter-parties.

39. The Impugned Judgment accorded reliance to *SMS Pharmaceuticals Ltd.* (supra) and *Pawan Kumar Goel* (supra) while acceding to the Respondent's prayer(s) before it. Again, *Pawan Kumar Goel* (supra) was in the context of a company and the principles laid down could not be made applicable straightaway to a Trust, moreso in light of the reasoning by us hereinabove. The extracts from *SMS Pharmaceuticals Ltd.* (supra) cited in the Impugned Judgment are distinguishable as they related to the averments necessary in a complaint to invoke vicarious liability and not the factum of impleadment or lack thereof, specifically, a Trust in a complaint. Concededly, neither party urged submissions based on the Trusts Act before the High Court.

40. Accordingly, for reasons aforesaid, taking a holistic view in the entirety of the extant facts and circumstances as also the submissions canvassed by the learned counsel for the parties, we find the Impugned Judgment to be unsustainable. We have no hesitation in quashing and setting aside the Impugned Judgment. Resultantly, the subjectproceeding in Criminal Case No.44(S)/2019 stands restored to its original file and number, to be proceeded with by the Court concerned in accordance with law. As the matter traces its origin to the year 2019, we expect the Court concerned to take steps with due expedition.

41. The appeal stands allowed. This Judgment shall not affect any other contentions of law and fact, which may be raised before the Trial Court, at the appropriate stage.

THE PENDING REFERENCE AND ITS EFFECT IN LAW:

42. We are conscious that Pratibha Pratisthan (supra) has been doubted and referred to a Larger Bench vide Order dated 04.10.2019 in Tara Bai Desai Charitable Ophthalmic Trust Hospital v Supreme Elevators India (P) Ltd., Special Leave Petition (Civil) No.18636/2019 [since reported as (2025) 3 SCC 80]. In fact, one of us (Ahsanuddin Amanullah, J.) was nominated by Hon'ble the then Chief Justice of India to be part of the 3-Judge Bench constituted to hear the afore-noted reference.

As the learned Judge presiding over that 3-Judge Bench has since demitted office, it would entail nomination of a new coram. However, till the reference is decided one way or the other, the law as declared in Pratibha Pratisthan (supra) continues to hold the field as no order has been passed in Special Leave Petition (Civil) No.18636/2019 requesting other Benches to await the outcome thereof. There is no doubt on this, given the clear dicta in Union Territory of Ladakh (supra) [2-Judge Bench], which after surveying the law, held:

'35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be.

It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680 [See Paragraphs 27 and 28 in the report on this point.]. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.'

(emphasis supplied)

43. We have noticed a judgment by a Coordinate Bench in A P Electrical Equipment Corporation v Tahsildar, 2025 SCC OnLine SC 447 stating:

'35. If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in *Quinn v. Leathern*, [1901] A.C. 495 and reiterated by the Privy Council in *Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore* AIR 1940 PC 230:

"every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found." and follow that decision whose facts appear more in accord with those of the case at hand.'

(emphasis supplied)

44. The decision rendered in A P Electrical Equipment Corporation (supra) does not whittle down the enunciation in Union Territory of Ladakh (supra). A 5-Judge Bench of this Court in Pranay Sethi (supra) has laid down that an earlier decision of a co-equal Bench must be followed by a later Bench of co-equal strength, which has been restated in Union Territory of Ladakh (supra).

In any event, Union Territory of Ladakh (supra) lays down that when following an earlier decision in the face of a later conflicting decision by a co-equal Bench, the said exercise is to be done 'with careful regard to the facts and circumstances of the case.' A P Electrical Equipment Corporation (supra) expresses the principle slightly differently by urging to 'follow that decision whose facts appear more in accord with those of the case at hand.'

Undoubtedly, on the facts of a case, it is always open to a Court to follow the most applicable precedent, as per its understanding. Yet, the principle has long been settled that for questions of law, in the case of a conflict between equal Bench-strength judgments, the earlier view alone should be followed, as conclusively stated in *Pranay Sethi (supra)* and taken note of in *Union Territory of Ladakh (supra)*.

MISCELLANEOUS:

45. The Registry may seek suitable orders from Hon'ble the Chief Justice of India apropos constitution of an appropriate Bench to decide the pending reference in Special Leave Petition (Civil) No.18636/2019. We clarify that the instant appeal is disposed of and not tagged with the reference.

.....J. [Ahsanuddin Amanullah]

.....J. [Prashant Kumar Mishra]

New Delhi

October 09, 2025

[Back](#)

[Back to October 2025 Judgements](#)

[Browse years](#)

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

Disclaimer: General information only. Verify the current legal position and obtain professional advice before acting.