**IN THE HIGH COURT OF MADRAS**

Crl. O.P. Nos. 12630 & 12661 of 2012 & M.P. Nos. 1, 1, 2 & 2 of 2012

Decided On: 07.08.2012

Appellants: **Abraham Memorial Educational Trust, Nos. 1 & 2, Basement, Cotton Complex, Residency Road, Bangalore-560025 and Ors.**
**Vs.**
Respondent: **C. Suresh Babu**

**Hon'ble Judges/Coram:**
S. Nagamuthu, J.

**ORDER**

**S. Nagamuthu, J.**

1. Whether a Public Charitable Trust is a juristic person and a company in terms of Section 141 of the Negotiable Instruments Act, 1881 is the issue involved in these petitions. The petitioners are the accused Nos.1 and 3 to 9 in S.T.C No.71 of 2012 as well as in S.T.C. No.68 of 2012 on the file of the learned Judicial Magistrate (Fast Track Court), Hosur. Seeking to quash the said cases, the petitioners have come up with these Criminal Original Petitions. The common respondent in these Criminal Original Petitions is the complainant in both the cases before the Trial Court.

2. Since common issues have been raised in both these Criminal Original Petitions, they have been heard together and they are disposed of by means of this common order.

3. The facts of the cases would be as follows:

(i) The first accused is a public charitable trust known as "M/s.Abraham Memorial Educational Trust". The said Trust is running a school in the name and style of "Ebenezer International School" in Bangalore. The common second accused in both these cases by name Abraham Ebenezer was its Chairman and Managing Trustee. The other petitioners herein are the Trustees of the first accused Trust.

(ii) It is alleged that for the purpose of developing the school run by the first accused Trust, the second accused borrowed a sum of Rs. 7,00,00,000/- on behalf of the first accused from the respondent complainant. Assuring repayment of the above loan amount, the first accused had executed a registered Deed of Mortgage dated 06.10.2008 itself. Apart from that, the second accused has also executed two other registered Deeds of Mortgage dated 06.10.2008 in favour of the complainant mortgaging land and building where the school is housed and also mortgaging the agricultural land in Survey No.45/1 at Gottamaranahalli village. The first accused also agreed to pay interest at the rate of 21% p.a. on the above said sum.

(iii) In discharge of the above debt, the first accused has issued 20 post-dated cheques each for Rs. 36,75,000/- in favour of the complainant drawn on Vijaya Bank, Bangalore. As per the Memorandum of Understanding between them, these post dated cheques could be pressed into service for recovery of the amount due from the first accused, if the loan together with interest was not repaid promptly by the first accused. But the first accused did not clear the above loan amount, both principal as well as the interest.

(iv) In those circumstances, the complainant presented the cheque bearing No.443513 for collection. That cheque for Rs. 36,75,000/-, representing the interest amount for the period between 08.10.2011 to 07.01.2012, was presented for collection on 21.03.2012 and the same was dishonoured for want of sufficient funds. Legal Notice under Section 138 of the Negotiable Instruments Act was issued to all the accused and since the money demanded was not paid, the case in S.T.C.No.68 of 2012 was instituted.

(v) Similarly, the post-dated cheque bearing No.443514 was presented for collection on 07.04.2012. That cheque is for Rs. 36,75,000/- representing the interest amount for the period between 08.01.2012 to 07.04.2012. The same was dishonoured for want of sufficient funds. Legal Notice was issued to all the accused under Section 138 of the Negotiable Instruments Act demanding the cheque amount. The accused did not pay the same. Therefore, the complainant instituted the case in S.T.C.No.71 of 2012.

4. According to the complainant, the first accused is a company in terms of Section 141 of the Negotiable Instruments Act and therefore it is liable for punishment under Section 138 of the Act in both the cases. So far as the accused Nos.3 to 9 are concerned, according to the complainant, they were the Trustees of the first accused Trust and they were in-charge of the day-to-day affairs of the first accused Trust and so, by virtue of Section 141 of the Act, they are also liable for punishment under Section 138 of the Negotiable Instruments Act.

5. In this petition, the foremost contention of the petitioners is that the first accused is neither "a person" nor "a company" as referred to in Section 141 of the Act. According to the petitioners, the first accused is only a Public Charitable Trust, which means, it is only an obligation attached to the Trust properties. The Trust by itself is not a juridical person and so, the prosecution of the first accused Trust is not maintainable.

6. The second contention of the petitioners is that since the first accused is neither a person nor a company as defined in Section 141 of the Act, the accused Nos.3 to 9 who are only the Trustees cannot be prosecuted for the offence said to have been committed by the first accused Trust.

7. The third contention of the petitioners is that assuming that the first accused Trust is a company in terms of Section 141 of the Act, even then, the prosecution of the accused Nos.3 to 9 is not maintainable since there are no sufficient averments to prima-facie show that these accused Nos.3 to 9 were actually involved in the management and day-to-day affairs of the first accused Trust.

8. Since the legal issues involved in these petitions are very complex in nature and the answer to which is likely to have larger impact, this Court requested Senior Counsel Mr. N.R.Elango and Mr. P.N.Prakash to assist the Court as Amicus Curiae. I have heard the learned counsel appearing on either side and the Amicus Curiae and perused the records carefully.

9. The learned senior counsel Mr. A.Ramesh, appearing for the petitioners would submit that a Trust is only an obligation annexed to the ownership of property, 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 and thus, it is not a person. In order to draw support to this contention, the learned Senior Counsel has relied on the meaning of the term "Trust" as defined in Section 3 of the Indian Trusts Act, 1882, which reads as follows:

Section 3. 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 willful abstention from inquiry or gross negligence, lie 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, Section229; 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.

10. But, the learned senior counsel Mr. K.S. Dinakaran appearing for the respondent would submit that the provisions of the Indian Trust Act, 1882 cannot be made applicable to the first accused Trust since the said Act is applicable only to Private Trusts and not to Public Charitable Trusts. He would further submit that a Trust is certainly an artificial person who can either sue or be sued and may prosecute or be prosecuted.

11. Now, let us have a quick look into the history of the concept of an "Artificial Person". Every human being is a person in the eye of law. When a person is ordinarily understood to be a natural person, it only means a human being. But a person is also artificially created and recognised in law as such. Such persons are called in different names, such as "juristic person", "juridical person", "legal entity" etc., In some countries, even human beings were not treated as persons in law, for example, in Roman Law, a slave was not a person and he had no right to a family. In other words, he was treated like an animal. In French colonies also, before slavery was abolished, the slaves were not treated as legal persons. They were given legal status of person only through statute during later period. With the development of Society, cooperation among various sections of people became absolutely necessary for the well being of the humanity. Therefore, it became a natural necessity for formation of institutions like corporations and companies, etc. These institutions like corporations, companies etc., were given legal status of a person. By virtue of the statutory recognition, these artificial persons came to own property and enjoy various statutory rights and even some constitutional rights. As the society started growing more and more, there came more number of fictional personalities viz., juristic persons in different names enjoying different kinds of rights and liabilities as recognized under various laws. In the words of the Hon'ble Supreme Court in Shiromani Gurdwara Prabandhak Committee Vs. Som Nath Dass reported in  : (2000) 4 SCC 146 in paragraph 19:

19. Thus, it is well settled and confirmed by the authorities on jurisprudence and courts of various countries that for a bigger thrust of socio-political-scientific development evolution of a fictional personality to be a juristic person became inevitable. This may be any entity, living, inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the courts to recognise it. This recognition is for subserving the needs and faith of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person, whose acts are processed within the ambit of law. When an idol was recognised as a juristic person, it was known it could not act by itself. As in the case of minor a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf. In that sense, relation between an idol and Shebait is akin to that of a minor and a guardian. As a minor cannot express himself, so the idol, but like a guardian, the Shebait and manager have limitations under which they have to act. Similarly, where there is any endowment for charitable purpose it can create institutions like a church, hospital, gurudwara etc. The entrustment of an endowed fund for a purpose can only be used by the person so entrusted for that purpose in as much as he receives it for that purpose alone in trust. When the donor endows for an idol or for a mosque or for any institution, it necessitates the creation of a juristic person. **The law also circumscribes the rights of any person receiving such entrustment to use it only for the purpose of such a juristic person. The endowment may be given for various purposes, may be for a church, idol, gurdwara or such other things that the human faculty may conceive of, out of faith and conscience but it gains the status of juristic person when it is recognised by the society as such**.

(Emphasis added)

12. In the above judgment, the Hon'ble Supreme Court has referred to the judgment in Yogendra Nath Naskar Vs. Commissioner of Income Tax, Calcutta reported in  : 1969 (1) SCC 555 with approval. That case was decided by the a Coram of three Hon'ble Judges. The main question before the Hon'ble Supreme Court was whether a Hindu deity can be treated as a unit of assessment under Sections 3 and 4 of the Income Tax Act, 1922. While analysing the said question, the Hon'ble Supreme Court had referred to a case in Manohar Ganesh Vs. Lakshmiram reported in ILR 12 Bom 247 which is also popularly known as "Dakor temple case", wherein, two Hon'ble English Judges by name "West" and "Birdwood", JJ have held as follows:

The Hindu Law, like the Roman Law and those derived from it, recognises not only incorporate bodies with rights of property vested in the corporation apart from its individual members but also juridical persons called foundations. A Hindu who wishes to establish a religious or charitable institution may according to his law express his purpose and endow it and the ruler will give effect to the bounty or at least, protect it so far at any rate as is consistent with his own Dharma or conception or morality. A trust is not required for the purpose; the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English Law. In early law a gift placed as it was expressed on the altar of God, sufficed it to convey to the Church the lands thus dedicated. It is consistent with the grants having been made to the juridical person symbolised or personified in the idol.

13. The same view was expressed by the Madras High Court in Vidyapurna Tirtha Swami Vs. Vidyanidhi Tirtha Swami and others reported in ILR 27 Mad 435, which reads as follows:-

It is to give due effect to such a sentiment, widespread and deep-rooted as it has always been, with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned the creation of a fictitious person in the matter as is implied in the felicitous observation made in the work already cited "Perhaps the oldest of all juristic persons is the God, hero or the saint" (Pollock and Maitland's History of English Law, Volume 1, 481)."

14. In ***Yogendra Nath Naskar's case*** (cited supra), the Hon'ble Supreme Court while examining the issue as to how an artificial person in the form of a Trust came into being has held as follows:-

*The legal position is comparable in many respects to the, development in Roman Law. So far as charitable endowment is concerned Roman Law-as later developed recognised****two kinds of juristic persons****. One was a corporation or aggregate of persons which owed its juristic personality to State sanction. A private person might make over property by way of gift or legacy to a corporation****already in existence****and might at the same time prescribe the particular purpose for which the property was to be employed e.g. feeding the poor or giving relief to the poor distressed. The recipient corporate would be in a position of a trustee and would be legally bound to spend the funds for the particular purpose.****The other alternative was for the donor to create an institution or foundation himself. This would be a new juristic person which depended for its origin upon nothing else but the will of the founder provided it was directed to a charitable purpose****. The foundation would be the owner of the dedicated property in the eye of law and the administrators would be in the position of trustees bound to carry out the object of the foundation*.

(emphasis added)

15. Keeping in mind the above judgments, if we look into the definition of the term "Trust", as made in Indian Trusts Act, the word 'Trust' denotes only an obligation attached to the property. In other words, Trust is nothing but a confidence reposed on the person whether natural or artificial. Such artificial person, upon whom trust is reposed, may even be founded by the creator of the Trust. As held by the Hon'ble Supreme Court, the trust obligation can be imposed on a person already in existence or the founder himself can create an artificial person upon whom the trust obligation can be imposed.

16. In this regard, we may also look into the dictionary meaning of the word 'Trust' to know as to how the said term is understood in common parlance. As per Concise Oxford English Dictionary (Eleventh Edition) the word Trust means :

An arrangement whereby a person (a trustee) holds property as its nominal owner for the good of one or more beneficiaries".

"An organisation managed by Trustees.

As per P.Ramanatha Aiyer's The Law Lexicon 2nd Edition the term 'Trust' means

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.

As per Black's Law Dictionary (Eight Edition) the term 'Trust' means

The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title, a property interest held by one person (the trustee) at the request of another (the settlor) for the benefit of a third party (the beneficiary).

17. As we have seen above, as per the dictionary meaning, Trust means an obligation annexed to the ownership of the property as well as an organisation. If this is understood in the light of the Judgment of the Hon'ble Supreme Court in Yogendra Nath Naskar's case (cited supra), it is crystal clear that a Trust (an organisation) can be created by the founder of the Trust and such Trust (organisation) is an artificial person having legal status.

18. As has been held by the Hon'ble Supreme Court in Shiromani Gurdwara Prabandhak Committee's case (cited supra), referred to above, to make an artificial person as a juristic person, such artificial person requires recognition by law or the society at large as a juristic person. So far as the Trusts, either public or private, which are created by the founder/founders, there can be no controversy that such Trusts have been recognised by law and the society as juristic persons.

19. Mr. P.N.Prakash, learned Amicus Curiae has brought to my notice All India Council for Technical Education - Approval Process Handbook (2011-2012). As per the All India Council for Technical Education Act, the All India Council for Technical Education has been empowered to grant approval for setting up new institutions and improvement of existing ones. While dealing with the eligibility for application and requirements, it has been prescribed that the following persons are eligible for making applications viz.,

*2.2(a): A Society registered under the Registration of Societies Act 1860 through the Chairman or Secretary of society or*

***(b) A Trust registered under the Charitable Trusts Act, 1950 or any other relevant Acts through the Chairman or Secretary of the trust****or*

*(c) A company established under Section 25 of Companies Act, 1956.*

*(d) Central or State Government / UT Administration or by a Society or a Trust registered by them.(Emphasis supplied)*

20. This is only an illustration to show that a Trust founded for a charitable purpose or for a private purpose has been recognised as a juristic person by the Government. Thus, a Public Charitable Trust is an organisation and the same enjoys legal status having rights, liabilities and obligations.

21. Now, let us examine the question as to whether such a Public Charitable Trust has been recognised as a juristic person for the purpose of Negotiable Instruments Act. The term person has not been defined in the Negotiable Instruments Act. Therefore, one has to again look for the definition in the General Clauses Act. Section2(42) of the General Clauses Act defines the term 'person' as follows:

"person" shall include any company or association or body of individuals, whether incorporated or not."

Similarly Section 11 of the Indian Penal Code also defines the term 'person' as follows:

Section 11. "Person":- The word "person" includes any Company or Association or body of persons, whether incorporated or not.

22. Undoubtedly, in both the enactments, the definition is inclusive. It is a well settled law, if the Legislature has used only an inclusive definition, the list enumerated in the definition clause shall not be treated as exhaustive. Applying the doctrine of "ejusdem generis" and going by the purpose and context, while interpreting the definition clause, it is for the Court to bring in any other similar artificial person into the ambit of the term 'person' as made in Section 3(42) of the General Clauses Act and Section 11 of the I.P.C. It is, of course true, that the term 'Trust' has not been expressly included in Section 2 of the General Clause Act. As we have already noticed, a Trust enjoys various rights and discharges various obligations like that of other institutions enumerated under Section2(42) of the General Clauses Act, as well as, Section 11 of the Indian Penal Code. Therefore, applying the doctrine of ejusdem generis, I have no hesitation to hold that a Public Charitable Trust falls within the definition of the term 'person' as defined in Section 11 of the Indian Penal Code and Section 3(42) of the General Clauses Act.

23. Now turning to the provisions of the Negotiable Instruments Act, Section 26 deals with capacity to make, etc. Promissory notes, etc. which reads as follows:

26. Capacity to make, etc. promissory notes, etc.-- Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor. Where such an instrument is made, drawn or negotiated by a minor, the making, drawing or negotiating entitles the holder to receive payment of such instrument and to enforce it against any party thereto other than the minor.

Nothing herein contained shall be deemed to empower a corporation to make, endorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

24. A cursory reading of the above provision would go to show that it refers to "every person capable of contracting". Undoubtedly, a Public Charitable Trust is capable of contracting under the Negotiable Instruments Act. A Trust is competent to issue cheques drawn as against the account maintained by the Trust. Thus, the Negotiable Instruments Act has recognised a Public Charitable Trust as a person capable of contracting and that is why the banking institutions, the Government and the customers have recognised such a Public Trust as a juristic person. Thus, Section 26 of the Negotiable Instruments Act obviates doubts, if any, and makes it crystal clear that a Public Trust is capable of contracting and thus capable of making a cheque or Bill of Exchange and so it is a juristic person for the purpose of the said Act.

25. At this juncture, we may notice that all the enactments including Negotiable Instruments Act, herein above referred to/dealt with are pre Constitutional enactments which came into being during colonial period, but adopted subsequently. The Constitution of India, which is a vibrant document under whose authority and recognition these enactments have to march forward, tacitly, has recognised an artificial person like a Public Trust as a juristic person. This is evident from the fact that certain Constitutional rights have been given to such artificial persons. For example, Article 300A speaks of right to property as follows:

Article 300A: Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law.

Under This Article, right to own property has been given to all persons, which include a Public Trust as well. Under the Transfer of Property Act, right to transfer of such property by a Public Trust has been recognised. Thus, in the post Constitutional scenario, a Public Charitable Trust has been unequivocally recognised as a juristic person.

26. From the foregoing discussions, it is manifestly clear that the moment a Trust (organisation) is formed with an obligation attached to the same, an artificial person is born and because such artificial person is recognised by law, conferring upon such artificial person right to own property, to enjoy certain other rights and also to discharge certain obligations, it attains the status of a "juristic person". Thus, a Trust, whether private or public, is a juristic person who can sue/be sued or prosecute/be prosecuted.

27. To add strength to the above conclusion, we may also look into the term 'drawer' in Section 7 of the Act, which reads as follows:

7. "Drawer" The marker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee." "Drawee in case of need," When in the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need".

"Acceptor" After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf he is called the "acceptor."

"Acceptor for honour."--- When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts is supra protest for honour of the drawer or of any one of the endorsers, such person is called an "acceptor for honour."

"Payee."---The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid is called the "payee".

28. Here again, the drawer is the one who makes a cheque. Under Section 138 of the Negotiable Instruments Act, if a drawer fails to pay the cheque amount as demanded under a Notice, he is liable for punishment. Therefore, it is undoubtedly clear that a public charitable trust, being a drawer, is liable for punishment.

29. When the Trust (an artificial person) is prosecuted, though there is compulsory sentence of imprisonment prescribed under Section 138 of the Act, a Trust can be imposed only with fine or compensation. As a matter of fact, there were conflicting views prior to the Constitution Bench Judgment of the Hon'ble Supreme Court in Standard Chartered Bank Vs. Directorate of Enforcement reported in  : 2005 (3) C.T.C. 39. Some Courts had taken the view that in cases where there is compulsory sentence of imprisonment prescribed, artificial person cannot be prosecuted. But this conflict was once and for all settled in a crystallised form by majority judgment in Standard Chartered Bank case (cited supra), wherein, the Hon'ble Supreme Court has held that there is no immunity to such artificial persons from prosecution, merely because the prosecution is in respect of an offence for which punishment is mandatory imprisonment and fine. The Hon'ble Supreme Court has held that such artificial person can be prosecuted, but on conviction, it would be lawful for the Court only to impose fine or compensation. Thus a Public Charitable Trust can be punished for the offence committed under Section 138 of the Negotiable Instruments Act, but only with fine or by imposing compensation.

30. Now, let us examine the question as to whether the Trust, either private or public, is a company in terms of Section 141 of the Act. Section 141 of the Act reads as follows:

Section 141 : Offences by companies:

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and proceeded against and punished accordingly];

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

"Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attribute to, any neglect on the part of, any director, Manager, secretary, or other office of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation: For the purpose of this section. -

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director", in relating to a firm, means a partner in the firm." [Emphasis supplied]

31. Admittedly, a Trust is neither a Body Corporate nor a Firm as enumerated in Section 141 of the Act. According to the learned Senior Counsel appearing for the petitioners, a Trust is not an Association of Individuals also, as envisaged in Explanation (a) to Section 141(2) of the Act. In this regard, I may state as to what actually the Legislature intends to mean by the term 'Association of Individuals' came up for consideration before various Courts on number of occasions. But, there is no uniformity in the opinion between various High Courts. The Andhra Pradesh High Court in Jagadish Rai Agarwal and others Vs. State of Andhra Pradesh and others, reported in 2005 (2) BC 497, while considering the scope of Section 141 of the Negotiable Instruments Act, held as follows:

....Since the dishonoured cheque was issued by the 1st petitioner as Kartha of the HUF, petitioners 2 to 4, being the sons of 1st petitioner and member of HUF, in view of the Explanation of Section 141 of the Act, like Directors of a Company, can be made liable for the offence under Section 138 of the Act.

32. Similar question arose before the Bombay High Court in the case of The Dadasaheb Rawal Co-op Vs. Ramesh reported in  : 2009 (2) Mh. L.J. 558. That was also a case where the High Court was called upon to resolve the controversy as to whether a Hindu Undivided Family business will be a Company as explained in Section 141 of the Negotiable Instruments Act. In paragraph 9 of the judgment, the Bombay High Court has held as follows:

9. A plain reading of the expression "company" as used in sub-clause (a) of the Explanation is that it is inclusive of any body corporate or "other association of individuals". The term "association of individuals" will include club, trust, HUF business, etc. It shall have to be construed ejusdem generis along with other expressions "company" or "firm". Therefore, a joint family business must be deemed as a juristic person like a company or firm. When it is specifically alleged that the respondent Nos.1 and 2 are the joint proprietors/owners of the business of M/s New Sheetal Traders, which is a joint family business of themselves and their son- Sheetal, prima facie, they are covered under section 141 of the Negotiable Instruments Act in view of the Explanation appended thereto.

33. I had an occasion to deal with a similar question relating to HUF in Arpit Jhanwar Vs. Kamalesh Jain reported in2012 (4) CTC 177. The question precisely before this Court was as follows:

1. A "Hindu Undivided Family - (HUF)" is an "Association of Individuals"; so it is a "company" in terms of Section 141 of the "Negotiable Instruments Act" and thus, every member of the HUF is vicariously liable for punishment for the offence under Section 138of the Negotiable Instruments Act committed by the "Kartha" of the HUF. This is precisely the stand of the complainant, in these cases, which is seriously refuted by the accused. This question is the basis for the instant petitions.

34. The judgment of the Andhra Pradesh High Court and Bombay High Court referred to above were also placed before me by the learned Counsel. But, after having scientifically analyzed the provisions of the Act and by having regard to the context in which Section 141 was incorporated, I had to express my inability to agree with the above views expressed by the Andhra Pradesh High Court and the Bombay High Court. According to me, a HUF is not an "Association of Individuals". The said conclusion is based on the judgment of the Hon'ble Supreme Court in Ramanlal Bhailal Patel Vs. State of Gujarat reported in  : 2008 (5) SCC 449. wherein, in paragraph 29 of the said judgment the Hon'ble Supreme Court has held as follows:

29. Normally, where a group of persons have not become co-owners by their volition with a common purpose, they cannot be considered as a 'person'. When the children of the owner of a property succeed to his property by testamentary succession or inherit by operation of law, they become co-owners, but the co-ownership is not by volition of parties nor do they have any common purpose. Each can act in regard to his/her share, on his/her own, without any right or obligation towards the other owners. The legal heirs though co-owners, do not automatically become an 'association of persons/ body of individuals'. When different persons buy undivided shares in a plot of land and engage a common developer to construct an apartment building, with individual ownership in regard to respective apartment and joint ownership of common areas, the co-owners of the plot of land, do not become an 'association of persons/body of individuals', in the absence of a deeming provision in a statute or an agreement. Similarly, when two or more persons merely purchase a property, under a common sale deed, without any agreement to have a common or joint venture, they will not become an 'association of persons/body of individuals'. Mere purchase under a common deed without anything more, will not convert a co-ownership into a joint enterprise. Thus when there are ten co-owners of a property, they are ten persons and not a 'body of individuals' to be treated as a 'single person'. But if the co-owners proceed further and enter into an arrangement or agreement to have a joint enterprise or venture to produce a common result for their benefit, then the co-owners may answer the definition of a 'person'.

35. In the above judgment, the Hon'ble Supreme Court has made it very clear that a mere combination of individuals will not constitute an "Association of Individuals". To make it as an "Association of Individuals", in terms of Section 141 of the Act, it is absolutely necessary that the combination of individuals must be on their own volition. Secondly, it is also necessary that such combination of individuals must be with a common purpose. In an HUF, both the above essential requirements are absent inasmuch as an individual becomes a member of the HUF, not on his own volition but by birth. Similarly, there is no common purpose to be carried forward by a HUF. It is for these reasons, I had to hold that a HUF is not a Company in terms of Section 141 of the Negotiable Instruments Act.

36. Turning back to the Trust, the learned senior counsel for the petitioners would submit that a Trust cannot be brought within the sweep of Explanation 'a' appended to Section 141(2) of the Act at all. Had it been the intention of the Legislature to bring in the term "Trust" also within the sweep of Section 141 of the Act, the Legislature would not have omitted to expressly enumerate the same in the Statute itself, he contended. The absence of specific inclusion by express word the term 'Trust' within the sweep of Section 141 of the Act, according to the learned senior counsel, would only go to show that the Legislature has consciously kept the 'Trust' out of the purview of Section 141 of the Act.

37. In order to substantiate this contention, the learned senior counsel has brought to my notice various penal statutes wherein the term 'Company' has been defined. He would point out that in all these statutes, the term 'Trust' has been enumerated in the list of institutions falling within the definition of the term 'Company'. Let us now consider them one after the other.

38. In "Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984," as envisaged in Section 8 of the said Act, if a person committing an offence under the said Act is a Company, besides the Company, the other office bearers like Director etc., shall also be deemed to be guilty for that offence and shall also be liable to be punished. In this statute, the term "Company" is explained as follows:

8(2)(a) - 'company' means any body corporate and includes a trust, a firm, a society or other association of individuals.

(Emphasis added)

39. Similarly in Section 8(2)(a) of The Prohibition of Capitation Fee Act, 1987 (Government of Maharashtra); Section 13(2)(a) of The Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001; Section 13(2)(a) of The Goa Coaching Classes (Regulation) Act, 2001; Section 17(2)(a) of The Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003; Section 23(2)(a) of The Tamil Nadu Groundwater (Development and Management) Act, 2003; Section 10(1)(a) of The Tamil Nadu Schools (Regulation of Collection of Fee) Rules, 2009; and Section 12 of The Tamil Nadu Uniform System of School Education Act, 2010 while making certain office bearers of a company liable for punishment for the offences committed by the Company, the term 'Company' is explained as follows:

"Company" means any body corporate and includes a trust, a firm, a society or other association of individuals.

(Emphasis added)

40. The learned senior counsel Mr. A.Ramesh would submit that in all the above enactments the Legislatures have consciously included the the term 'Trust' within the meaning of the term 'Company', whereas, in the Negotiable Instruments Act, the Legislature has not expressly included the term 'Trust' within the meaning of the term 'Company' and such omission cannot be said to be an inadvertent omission. On the contrary, according to him, the Legislature has consciously omitted the same.

41. But, this contention, in my considered opinion, deserves only to be rejected for more than one reason. First of all, all the enactments referred to above are all State enactments. Therefore, it is difficult to compare the definition of the term 'company' made in these enactments with the definition of the term 'company' as made in the Negotiable Instruments Act which is a Central Statute. Therefore, let us now see as to how the term 'company' has been defined in similar Central penal Statutes.

42. In the "Explosives Act, 1884 Section 9C deals with 'offences by companies', which reads as follows:

9C. Offences by companies. -

(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where as offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary of other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

This is in pari materia to Section 141 of the Negotiable Instruments Act.

43. Similarly, in almost all the Central Statutes which also make the Director of the Companies liable for punishment for the offences committed by the Companies, the term 'Company' has been explained verbatim as has been done in Section 141 of The Negotiable Instruments Act.

44. To illustrate, we may refer to Section 10 of the Essential Commodities Act, 1955, Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970, Section 22C of the Minimum Wages Act, 1948, Section 33 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 85of the Information Technology Act, 2000, Section 149 of the Electricity Act, 2003, Section 47 of the Water (Prevention and Control of Pollution) Act, 1974, Section 278B of the Income Tax Act, 1961. Section 14A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Section 34 of the Drugs and Cosmetics Act, 1940 etc., In all these enactments, the definition of the term 'Company' is in pari materia with the term 'Company' as defined in Section 141 of the Negotiable Instruments Act. Thus, in all the Central enactments, while dealing with the offences committed by companies, the term 'Company' is explained in one and the same manner. No Central enactment, has been brought to my notice where the term 'Trust' has been specifically enumerated in the definition of the term 'Company'.

45. In view of the above, I find it difficult to agree with the learned senior counsel Mr. A.Ramesh that the term 'Trust' has been consciously omitted in Section 141 of the Negotiable Instruments Act alone. It cannot be said that the Parliament was not aware of the existence of 'Trusts' and their activities. It only gives the irrevocable impression that the Parliament would have been satisfied that the definition of the term 'Company' as made in all these enactments will very well take into its ambit the term 'Trust' also and so, there is no need to specifically incorporate the term 'Trust'. That is the reason why, I firmly believe, the term 'Trust' has not been included explicitly in the definition of the term 'Company'.

46. Now, we may examine, whether a Trust will fall within the ambit of 'Association of Individuals' as enumerated in Section 141 of the Negotiable Instruments Act.

47. As we have already extracted in the earlier paragraphs, in Ramanlal Bhailal Patel Vs. State of Gujarat reported in  : 2008 (5) SCC 449, the Hon'ble Supreme Court has laid down two important elements for a group of persons to constitute an 'Association of Individuals' as defined in Section 141 of the Act. To repeat, the combination of individuals should have been on their own volition and secondly the said combination is for a common purpose. If both the above elements are available, then combination of such persons will be an 'association of individuals' in terms of Section 141 of the Negotiable Instruments Act.

48. So far as a Trust having more than one Trustee, there is combination of individuals. The said combination of individuals is on their own volition. If an individual agrees to be one of the Trustees, either by nomination or by election etc., then the combination is on his own volition. Apart from that, there will be at least a minimum of one common purpose in every Trust, which is the obligation imposed on the Trust. Thus, the Trust, being a combination of individuals, is an 'association of individuals' in terms of Section 141 of the Negotiable Instruments Act. Thus, there can be no difficulty in holding that a Trust, having two or more trustees, is undoubtedly a "company" for the purposes of Sections 138 and 141 of The Negotiable Instruments Act.

49. But difficulty will arise in respect of a Trust where there is a single Trustee. If there is a single trustee, obviously there is no combination of individuals and therefore, it will not fall within the ambit of 'association of individuals' so as to constitute a 'company' in terms of Section 141 of the Negotiable Instruments Act. If it is eventually held that a Trust, having a single Trustee, is not a 'company', then the said Trustee cannot be prosecuted, whereas the Trust alone can be prosecuted for the offence committed by the Trust under Section138 of the Negotiable Instruments Act. But, on the contrary, if there are two or more Trustees, for the offence committed by the Trust, as we have concluded above, the Trustees can also be prosecuted provided they were in-charge of the day-to-day affairs and conduct of the Trust. If this interpretation is adopted, then it will lead only to absurdity. It is the basic principle of interpretation that an enactment cannot be interpreted so as to result in absurdity. To avoid such absurdity, we have to make purposive interpretation of the provisions of the Act so as to take forward the object of the Act.

50. In this regard, Mr. P.N.Prakesh, the learned Amicus Curiae would submit that the above interpretation sought to be made by the learned senior counsel for the petitioners does not reflect the intention of the Legislature behind incorporation of Section 141 to the Act. He would point out that Chapter XVII of the Negotiable Instruments Act was inserted in the Act w.e.f 01.04.1989, by amending the Act by means of Amendment Act 66 of 1988. This Chapter has been inserted with a view to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalty in case of bounce of cheque due to insufficiency of funds in the account or for the reason that it exceeds the arrangement made by the drawer with adequate safeguards to prevent harassment of honest drawer.

51. According to the learned Amicus Curiae, the explanation of the term 'Company' as made in Section 141 of the Act has to be understood in the context in which the said Chapter was inserted and the purpose which is sought to be achieved by the same. The learned Amicus Curiae would further submit that if the interpretation which is sought to be made by the learned senior counsel for the petitioners is accepted, then, it will only defeat the very object of introduction of Chapter XVII in the Act. The learned Amicus Curiae would, therefore, submit that purposive construction alone would be appropriate in the given circumstances.

52. The learned Amicus Curiae would refer to a text book on "Principles of Statutory Interpretation" by Mr. Guru Prasanna Singh, sixth edition, where the author has observed as follows:

Rule in Heydon's case; purposive construction : mischief rule ---When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words "of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)" is the rule laid down in Heydon's case which has "now attained the status of a classic". The rule which is also known as 'purposive construction' or 'mischief rule', enables consideration of four matters in construing an Act : (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy.

53. This Rule was explained by the Hon'ble Supreme Court in Bengal Immunity Co. Vs. State of Bihar reported in: AIR 1955 SC 661, wherein, the Constitution Bench speaking through the then Acting Chief Justice S.R.Das has held in paragraph 23 as follows:

It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case was decided that for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st- What was the common law before the making of the Act,

2nd - What was the mischief and defect for which the common law did not provide,

3rd - What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th - The true reason of the remedy;

and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.

54. In the instant case, therefore, while interpreting the word 'Company', as explained in Section 141 of the Act, necessarily, the Court has to apply the above Rule and accordingly construe the said term.

55. Before proceeding further with our discussion, let us have a look into yet another judgment of the Hon'ble Supreme Court in M/s.Mahalakshmi Oil Mills Vs. State of Andhra Pradesh reported in  : (1989) 1 SCC 164. That was a case where the Hon'ble Supreme Court was called upon to interpret the clause "means and includes" as employed in Andhra Pradesh General Sales Tax Act, 1957. In that judgment, the question was whether tobacco seed oil and tobacco seed cake will fall within the meaning of tobacco as contained in item 4 of the First Schedule of the Act, which reads as follows:

Tobacco means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth.

The Hon'ble Supreme Court was mainly concerned with the phrase "means and includes". The contention before the Hon'ble Supreme Court on behalf of the State was that the definition, which covers both the expressions means as well as what it includes, is exhaustive. Since there is no mention of tobacco seed within the definition, it was contended before the Hon'ble Supreme Court that tobacco seed would not fall within the definition. In paragraph 12 of the said judgment, the Hon'ble Supreme Court has held as follows:

12. Looking, therefore, at the terms of the definition more closely, it is quite clear that tobacco seeds do not fall within the second or inclusive part of the definition. This part of the definition is important. It specifically excludes from the definition any part of the tobacco plant so long as it is still attached to the earth. It makes mention only of parts of the plant after it is severed from the earth. It is common knowledge that when a plant is severed from the earth, its parts will comprise of not only the leaves, stalks and stems but also the seeds. Yet the inclusive part of the definition enumerates only the leaves, stalks and stems and, deliberately one should think, avoids mention of seeds.

56. In Bharat Coop. Bank (Mumbai) Ltd. Vs. Coop. Bank Employees Union reported in  : 2007 4 SCC 685, again the phrase "means and includes" came up for consideration as used in Section 2(bb) of the Industrial Disputes Act, 1947 which reads as follows:

Section 2(bb):- "Banking company" means a banking company as defined in section 5 of the Banking Companies Act, 1949, (10 of 1949) having branches or other establishments in more than one State, and includes [ the Export-Import Bank of India] [the Industrial Reconstruction Bank of India,] [the Industrial Development Bank of India,] [the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 19891 the Reserve Bank of India, the State Bank of India, [a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) [a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, and any subsidiary bank], as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959).

While interpreting the said phraseology, in paragraph 23, the Hon'ble Supreme Court has held as follows:

23. Section 2(bb) of the ID Act as initially introduced by Act 54 of 1949 used the word "means... and includes" and was confined to a "Banking Company" as defined in Section 5of the Banking Companies Act, 1949, having branches or other establishments in more than one province and includes Imperial Bank of India. Similarly, Section 2(kk), which was also introduced by Act 54 of 1949, defines Insurance Company as "an Insurance Company defined in Section 2 of the Insurance Act, 1938 (IV of 1938), having branches or other establishments in more than one province". It is trite to say that when in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the phrase "means" is used in the definition, to borrow the words of Lord Esher M.R. in Gough vs. Gough, it is a "hard and fast" definition and no meaning other than that which is put in the definition can be assigned to the same. On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition; makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb)of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other.

57. It is the contention of the learned senior counsel Mr. A.Ramesh that as has been held by the Hon'ble Supreme Court in the above two referred to judgments, the phrase "means" and "includes" will clearly indicate the Legislature's intention that the definition is exhaustive and would only cover those institutions as enumerated in Section 141 of the Act. In other words according to the learned senior counsel, the term "Trust" has been consciously omitted to be included within the term "Company" as explained in Section 141 of the Act. Since the phrase "means" and "includes" indicates that the list is exhaustive, the Court, by means of judicial interpretation cannot incorporate the term "Trust" into the definition of the term "Company" as it will amount to virtually amending Section 141 of the Act. The learned senior counsel pointed out that the power to legislate is with the Legislature and it is for the Court to only interpret and enforce but not to legislate.

58. In this regard, I wish to mention that a particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that the definition is a hard and fast definition, and no other meaning can be assigned to the expression that is put down in the definition. The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes', on the other hand, indicate 'an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.

59. It is needless to point out that if the words "means and includes" are used, then the expression 'means' used in the first part (means clause) shall carry its ordinary natural meaning and the same shall not be controlled by the list of things enumerated in the later inclusive clause. Thus, the expression which is defined by 'means' clause shall carry its fullest natural meaning and bring into its ambit everything that falls within the ordinary natural meaning of the expression. If the Legislature wants to bring any other thing within the definition which does not otherwise fall within the ordinary natural meaning of the expression in the 'means' clause then the Legislature will normally enumerate such things in the later 'inclusive' clause. As has been held by the Hon'ble Supreme Court, the said list is exhaustive and in general by means of judicial interpretation, no other thing which does not fall within the natural meaning of the expression may be included by the Court.

60. Section 141 of The Negotiable Instruments Act defines the term 'company' by using the words "means and includes". As per the explanation a company means a body corporate and includes a firm or association of individuals. Therefore, any person who falls within the ordinary natural meaning of the expression "body corporate" will be undoubtedly a company. In the later inclusive clause, the Legislature has enumerated two persons viz., 'a firm' or 'association of individuals' which will not fall within the ordinary natural meaning of the expression 'body corporate'. As per the Rule of Interpretation, which we have referred to above, the intention of the Legislature is not to include any other person within the meaning of the term 'company' as the list in the inclusive clause is exhaustive.

61. A Trust, admittedly does not fall within the ordinary natural meaning of the expression body corporate. Similarly, it does not fall within the ambit of a firm also. But as we have already concluded, a Trust having two or more persons will fall within the ambit of 'association of individuals' and thus such a Trust is a company. But a Trust having a single trustee will not fall within the ambit of 'association of individuals' and thus, it may appear that such a Trust is likely to escape from the clutches of Section 141 of the Negotiable Instruments Act.

62. It is the submission of the learned Advocate Mr. P.N.Prakash that such omission of the term 'Trust' in the definition clause of Section 141 is a casus omissus. Indisputably, what is not intentionally omitted by the Legislature and what the Legislature would have intended to mean but not expressly included falls within the concept of casus omissus.

63. After making a scientific analysis and a comparative study of various enactments, I have already held in the earlier paragraphs of this order that the omission of the expression 'Trust' in the definition clause of Section 141of the Act is not with an intention to keep the trust out of the purview of Sections 138 and 141 of the Act. In my considered opinion, going by the purpose for which Section 138 and Section 141 were brought into being by means of amendment to the Negotiable Instruments Act and going by the very fact that a Trust having two or more trustees squarely falls within the ambit of Section 141 of the Act, I have no option but to hold that the Legislature's intention is to have the Trust also to fall within the meaning of the expression 'company', but it has omitted to expressly say so in Section 141 of the Act, which according to me is only a casus omissus.

64. When there is omission to expressly mention the expression 'Trust' within the meaning of the term 'company', by applying the principle of casus omissus, whether this Court could fill up the said gap by reading the expression 'Trust' into the interpretation clause of Section 141 of the Act. In this regard, I may refer to the Constitution Bench Judgment of the Hon'ble Supreme Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh reported in  : 1990 (3) SCC 682, wherein the Hon'ble Supreme Court has held as follows:-

However, a judge facing such a problem of interpretation can not simply fold his hands and blame the draftsman. Lord Denning in his Discipline of Law says at p. 12: "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsman of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be lettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.

65. Applying the above law laid down by the Constitution Bench of the Hon'ble Supreme Court, as I have already concluded, considering the intention of the Legislature while bringing in Chapter- XVII of the Negotiable Instruments Act and the fact that a Trust having two or more trustees will squarely fall within the ambit of 'association of individuals' which in turn will fall within the meaning of the term 'company', I am of the view that a Trust having a single trustee should also be brought within the definition of the term 'company' and thus the expression 'Trust' should be read into the Explanation 'a' to Section 141 of the Negotiable Instruments Act. If this interpretation is not given, certainly Sections 138 and 141 of the Act will not have force and life, so far as they relate to a Trust having a single Trustee. Further, if one holds that a Trust having two or more trustees is a 'company' falling within the sweep of Sections 138 and 141 of the Act, at the same time a Trust having a single trustee will not fall within the ambit of Sections 141 and 138 of the Act, the result, as I have already concluded is only an absurdity. In order to avoid the said absurdity and in order to give force and life to the provisions of Sections 138 and 141 of the Act, I hold that the expression 'company' as explained in Section 141 of the Act takes into its ambit a Trust having a single trustee also. In view of this interpretation, I firmly hold, that a Trust, having either a single trustee or two or more trustees, is a 'company' in terms of Section 141 of the Negotiable Instruments Act.

66. My conclusions are summed up as follows:-

(i) 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.

(ii) 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.

(iii) 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.

67. Now turning to the facts of the case on hand, it should be examined as to whether the petitioners 2 to 8 who are the accused 3 to 9 were in-charge of the day-to-day affairs of the Trust during the relevant point of time. A perusal of the complaint would go to show that there are sufficient averments to the effect that these petitioners being the trustees of the Trust (Company) were in-charge of running of the Trust along with the second accused and they all entered into a Memorandum of Understanding on 06.10.2008, with the respondent in which they agreed to honour the cheques in question. The Memorandum of Understanding dated 06.10.2008, filed before the lower Court is found in page Nos.69 to 88 of the typed set of papers filed by the petitioners. A reading of the above Memorandum of Understanding would go to show that the issuance of the said cheques in question on behalf of the first accused has been admitted by the petitioners and that they have assured that the cheques will be honoured on presentation. The above averments in the complaint together with the Memorandum of Understanding would go to prima facie show that they were in-charge of the day-to-day affairs of the Trust (Company) and, therefore, the prosecution is maintainable as against them also. At this juncture, I wish to add that it is not my conclusive finding that these petitioners 2 to 8 are liable for punishment under Section 138 of the Negotiable Instruments Act by applying vicarious liability as envisaged in Section 141 of the Negotiable Instruments Act. I only say that as of now, there are prima facie materials to make out a prima facie case so as to maintain the prosecution. It is for the Trial Court to decide on evidence as to whether these petitioners 2 to 8 were really in-charge of the day-to-day affairs of the Trust (company) and so whether they are liable for punishment vicariously for the offences committed by the first accused Trust.

68. In view of the foregoing discussions, I hold that these petitions deserve only to be dismissed and accordingly, they are dismissed. Consequently, the connected miscellaneous petitions are closed. Before parting with this order, I would like to place on record the enormous efforts put in by Mr. A.Ramesh, the learned Senior Counsel for the petitioners who has raised complex questions of law and argued the same in an eloquent manner. Equally so did Mr. K.S.Dinakaran, the learned Senior Counsel for the respondent. I would like to place on record my deep appreciation for the excellent assistance rendered by the learned Senior Counsel Mr. N.R.Elango and the learned counsel Mr. P.N.Prakash who have exhibited their erudition and excellence in respect of the complex legal issues involving interpretation of laws dealt with in this order.