

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SMT. JUSTICE SUNITA YADAV

MISC. CRIMINAL CASE No. 16492 of 2022

Between:-

**MAHESH SINGH JADON S/O VISHAL
SINGH JADON, AGED ABOUT 47 YEARS,
OCCUPATION: OWNER OF MILK DAIRY,
R/O VINAY NAGAR, SECTOR-2, BEHIND
JAIN MANDIR, KOTESHWAR ROAD,
(MADHYA PRADESH)**

....PETITIONER

(SHRI S.S. KUSHWAH-ADVOCATE)

AND

**SHRI RADHA SHARAN DUBEY S/O
RAM NIWAS DUBEY, AGED ABOUT 40
YEARS, OCCUPATION:
AGRICULTURE, R/O GARGAJ
COLONY, IN FRONT OF SAXENA
HOSPITAL BAHODAPUR, GWALIOR,
(MADHYA PRADESH)**

.....RESPONDENT

(NONE FOR RESPONDENT)

*This petition coming on for hearing this day, the court passed the
following:*

ORDER
(Passed on 19th of July, 2022)

The present petition u/S.482 of Cr.P.C. has been filed seeking quashment of the cognizance order dated 14/11/2019 and further proceedings pending before Judicial Magistrate, First Class, Gwalior (M.P.) in case No.2592/2019 (Private Complaint), arising out of private complaint made u/S.138 of Negotiable Instrument Act, 1981.

2. The necessary facts for disposal of the present petition in short are that the petitioner is an accused under the proceedings initiated u/S.138 of Negotiable Instrument Act pending in the Court of Judicial Magistrate, First Class, Gwalior (M.P.). As per the case of the complainant, a loan of Rs.11 lacs. has been taken in November, 2018 by the petitioner from the respondent/complainant. When the respondent/complainant asked to return of amount of Rs.11 lacs., then the petitioner/accused provided Rs.11 lacs. through Shri Rajendra Shukla S/o Shri Rameshwar Das Shukla to the complainant on 25/03/2019. After passing of two months, the respondent/complainant asked to return

the money from the petitioner/accused, then the petitioner/accused gave of cheque of State of Bank of India, Branch A.D.B. Joura, District Morena bearing cheque No.909210 of account No. 34170258215 for Rs.11 lacs. on 15/09/2019. When the aforesaid cheque was presented by the respondent/complainant in his bank account with HDFC Bank Ltd., Branch Bahodapur on 15/09/2019 and by the memorandum of the bank dated 23/09/2019 bank informed to the respondent/complainant that the cheque has been dishonoured on account of “Insufficient Balance”. Thereafter, as per the requirement of Section 138 of Negotiable Instrument Act, the above complaint has been filed before the competent court of jurisdiction. After service of notice, the learned Magistrate took the cognizance and issued summons against the petitioner/accused by impugned order.

3. Learned counsel for the petitioner argued that the impugned order is perverse, illegal and against the settled principles of law because the cheque in dispute has been issued in the name of firm, but the case has been filed against the petitioner in the individual

capacity, which cannot fulfill the requirement as contemplated u/S.141 of Negotiable Instrument Act, 1881 and does not constitute any offence.

4. In support of his submission counsel for the petitioner has relied upon the law laid down by the Hon'ble Supreme Court in the case of **Anita Hada Vs. M/s. Godfather Travels & Tours Pvt. Ltd.** reported in [(2012) 5 SCC 661] and argued that the cheque which has been issued by the firm cannot constitute any offence against the petitioner in an individual capacity, hence, the order of cognizance and further proceedings of learned trial Court is absolutely bad in law and deserves to be quashed.

5. Heard.

6. For ready reference and convenience, the provisions of Section 141 of Negotiable Instrument Act, 1881 are reproduced below;

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 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 attributable to, any neglect on the part of, any director, manager, secretary or other officer 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 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.]

7. The above provisions of Section 141 of Negotiable Instrument Act, 1881 are concerned with the offences by the company. It makes the other person vicariously liable for commission of an offence on the part of the company. The vicarious liability gets attracted when the condition precedent laid

down in Section 141 of the Negotiable Instrument Act stands satisfied. 'Company' means anybody corporate and includes a firm or other association of individuals.”

8. It is also clear as crystal that if a person who commits an offence under Section 138 of the Negotiable Instrument Act is a company, the company as well as other persons in charge of, are responsible to the company for the conduct of the business of the company at the time of commission of the offence shall be deemed to be guilty of the offence.

9. In the case of **Anita Hada Vs. M/s. Godfather Travels & Tours Pvt. Ltd.** reported in [(2012) 5 SCC 661], it has been held that “when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof.”

10. In the present complaint, there are averments that the petitioner/accused gave an account payee cheque bearing cheque No.909210 of Account No.34170258215 for Rs.11 lacs to the

complainant on 15/09/2019. In this case there are no averments in the complaint that the petitioner-accused signed the cheque in the capacity of the director or the person in charge of the affairs of the firm or that the transaction was with the firm. The complaint has been filed without any reference to the firm. The factum that the applicant-accused signed the cheque in the capacity of the director or the person in charge of the affairs of the firm or that the transaction was with the firm can be determined during the stage of trial otherwise also invoking the powers under the provisions of Section 319 of Cr.P.C. the Court can array the firm as an accused in the course of trial. At this juncture, the provisions of Section 319 in The Code Of Criminal Procedure, 1973 are relevant to be considered which gives court the power to proceed against other persons appearing to be guilty of offence. According to the provisions of this Section :

- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*
- (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of*

the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

11. The Delhi High Court in the case of **Sarabjit Singh Vs. State of NCT of Delhi & Ors.**, order dated 08/10/2018 held that in the case u/S.138 of Negotiable Instrument Act, the company can be arrayed as an accused u/S.319 of Cr.P.C., if the company was omitted from the array of accused earlier. The **Special Leave Petition (Crl.) No.15 of 2019 (M Tech Developers Pvt. Ltd. Vs. State of NCT of Delhi & Ors.)** preferred against the said order by company/firm was dismissed vide order dated 30/07/2019 by the Apex Court. In the present matter, the case pending before the learned trial Court is in its early stage and the trial has not yet been started. It is still open for the complainant/Court to array the firm

as an accused u/S.319 of Cr.P.C. if the complicity of the firm in the crime is found in the light of the case of **Sarabjit Singh (supra)**.

12. It is well settled that while exercising Inherent jurisdiction u/S.482 or Revision jurisdiction u/S.379 of The Code of Criminal Procedure where complaint is sought to be quashed, it is not proper for the High Court to consider the defense of the accused or embark upon an inquiry in respect of merits of the accusation.

13. In view of the above discussion and in the light of the settled principles of law in respect to the jurisdiction of High Court u/S.482 of Cr.P.C., this Court is not inclined to quash the cognizance order dated 14/11/2019 and further proceedings pending before Judicial Magistrate, First Class, Gwalior (M.P.) in case No.2592/2019 (Private Complaint), arising out of private complaint made u/S.138 of Negotiable Instrument Act.

14. Consequently, present petition is hereby **dismissed**.

(SUNITA YADAV)
JUDGE