

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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 7th OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 24274 of 2023

BETWEEN:-

**SHRIDHAR MUNDRA S/O MURLIDHAR MUNDRA,
AGED ABOUT 70 YEARS, OCCUPATION: BUSINESS 15
UTTAM NAGAR IN FRONT OF MAHAKAL CAMPUS,
ARVIND NAGAR, AGAR ROAD, DISTRICT UJJAIN
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI VIVEK SINGH, ADVOCATE)

AND

**DINESH BIYANI S/O SHRI BHAGWAN BIYANI, AGED
ABOUT 60 YEARS, OCCUPATION: BUSINESS 04
MUSADDIPURA, GALI NO. 2 SATI MARG, DISTRICT
UJJAIN (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI A.S. PARIHAR, PANEL LAWYER)

*This application coming on for admission this day, the court
passed the following:*

ORDER

01] This petition has been filed by the petitioner under Section 482 of the Criminal Procedure Code, 1908 (hereinafter to be referred

to as “Cr.P.C.”) against the order taking cognizance dated 20.2.2023 under Section 138 of the Negotiable Instrumental Act 1881 (hereinafter to be referred to as Act of 1881) in complaint no. 177/2023 pending before Judicial Magistrate First Class (JMFC), Ujjain.

02] In brief, facts of the case are that the petitioner is one of the partners of a firm “Giriraj Construction”. Admittedly, the aforesaid firm had some business deal with the complainant and was required to pay a sum of Rs.1.25 Crores, and towards the same a cheque dated 20.11.2022 bearing a sum of Rs.50,00,000/- was issued by the firm to the complainant, however, as the same was dishonoured, a legal notice dated 29.12.2022 was issued by the complainant only to one of the partners namely, the petitioner- Shridhar Mundra, and thereafter, the complaint under Section 138 of the Act of 1881 was also filed in the Court of JMFC Ujjain against the present petitioner only. In the aforesaid complaint, cognizance of the offence under Section 138 of the Act of 1881 has already been taken by the learned Judge vide order dated 20.2.2023, and being aggrieved of the same, this petition has been filed.

03] Counsel for the petitioner has submitted that the entire proceedings of the criminal case is vitiated on account of non-compliance of section 141 of the Act of 1881.

04] Counsel for the petitioner has also drawn attention of this Court to Section 141 of the Act of 1881, which provides that if an offence is committed by a company, and if 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. And, as per the explanation appended to the aforesaid section, “company” means any body corporate and includes a firm or other association of individuals; and “Director”, in relation to a firm, means a partner in the firm.

05] Thus, it is submitted that since the notice was not issued to the firm but only to one of the partners; whereas the complaint has also been filed only against one of the partners, who happens to be the present petitioner, in the absence of the arraignment of the partnership firm-Giriraj Construction, Ujjain in the complaint, and prior to that, non-issuance of notice under Clause (b) of Section 138 of the Act of 1881 to Giriraj Construction, the entire proceedings under the Act of 1881 have been vitiated, and thus, the cognizance, which has been wrongly taken by the learned JMFC, deserves to be set aside.

06] In support of his submission, Shri Singh, learned counsel for the petitioner has also relied upon the decision rendered by the Supreme Court in the case of *Aneeta Hada Vs. Godfather Travesk and Tours Private Limited* reported as (2012) 5 SCC 661. Relevant para 59 of the same reads as under:-

“59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining

the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agrawal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 51. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

(emphasis supplied)

07] Counsel for the respondent, on the other hand, has opposed the prayer and although it is not denied that the notice was not issued to the partnership firm, but it is submitted that at least it was issued to one of the partners, who was responsible for the issuance of the cheque. Thus, it is submitted that no case for interference is made out.

08] Counsel for the respondent has also relied upon a decision rendered by the Hon'ble Supreme Court in the case of *S.P. Mano and Mohan Dairy Vs. Dr. Snehlatha Elangovan* reported as 2022 Live Law (SC) 772 and the decision rendered by the High Court of Jharkhand at Ranchi in the case of *Pramod Shankar Dayal Vs. State of Jharkhand and another* passed in Cr.M.P. 926/2014 dated 10/10/2023.

09] Having considered the rival submissions and on perusal of the documents filed on record, this Court finds that so far as Section 141 of the Act of 1881 is concerned, the same reads as under:-

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.

(emphasis supplied)

10] A perusal of the aforesaid Section clearly reveals that legislation has, in no uncertain terms provided that in the case also a company or a partnership firm involved in the case of dishonor of cheque, the said company or partnership firm is a necessary party as the offence is committed by a Company, and such other Director or partner of the company or firm, as the case may be, would also liable for the affair of the company or partnership firm. In the present case, admittedly, the amount was obtained by the partnership firm-Giriraj Construction, Ujjain, but the notice of dishonour of cheque under Section 138 of the Act of 1881 was issued by the complainant to the petitioner-Shridhar Mundra, who was one of the partners of the firm; not to the firm Giriraj Construction, whereas the other partner is not even made a party, and subsequently the complaint has also been filed against the present petitioner only and not the Firm.

11] In view of the same, and in the light of the decision rendered by the Supreme Court in the case of *Anita Hada* (supra), this Court has no hesitation to hold that the complaint in the present form cannot proceed further as the mandatory provisions of section 141 of the Act of 1881 have not been followed. Thus, when the complaint itself is

misconceived, there are no chances that the present petitioner being convicted in the present case even assuming the averments made in the complaint against the petitioner to be true. In such circumstances, the petition stands **allowed**, and the impugned order dated 22.02.2023 taking cognizance under Section 138 of the Act of 1881 is hereby set aside and the complaint bearing registration No.177/2023 pending before J.M.F.C. Ujjain is also hereby quashed.

With the aforesaid, the M.Cr.C. stands *allowed*.

(SUBODH ABHYANKAR)

J U D G E