NEUTRAL CITATION NO. 2025:MPHC-IND:13052

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S. KALGAONKAR

ON THE 16th MAY, 2025

MISC. CRIMINAL CASE No. 49866 of 2024

KANHAIYALAL

Versus

PANKAJ JAJU

Appearance:

Ms Megha Jain - Advocate for the petitioner.

Shri Mukesh Sinjonia – Advocate for the respondent.

ORDER

This petition under Section 528 of BNSS, 2023 is filed assailing the order dated 21.10.2024 passed by the learned Judicial Magistrate First Class, Tarana Distt. Ujjain in Case No. SCNIA 14/2021, whereby the application assailing the cognizance of the offence punishable u/S 138 of Negotiable Instrument Act(referred to as 'N.I. Act' hereinafter) against the petitioner/accused - Kanhaiyalal Patidar alleging dishonor of cheque issued by Kanhaiyalal, was rejected.

2. The exposition of facts, in brief, giving rise to the present petition are as under:

Pankaj Jaju filed a complaint for offence punishable u/S 138 of the N.I. Act against – Kanhaiyalal Patidar alleging dishonor of cheque issued by Kanhaiyalal Patidar- Proprietor and owner of M/S Umiya Traders in

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favour of his proprietary firm – M/s Pankaj Krishi Sewa Kendra has been rejected. It is stated in the complaint that accused has requested for Rs. 10 lakhs in relation to some business need. Complainant has transferred Rs. 10 lakhs from the account of his Proprietary Firm – Pankaj Krishi Sewa Kendra, Tarana to the account of M/S Umiya Traders on 28.12.2018. Petitioner/accused has issued the cheque in question for repayment of the said amount of Rs. 10 lakhs. The learned trial Court *vide* order dated 29.05.2024 took cognizance of the offence and directed issuance of process against the petitioner/accused – Kanhaiyalal Patidar. The trial is pending for evidence of the complainant.

3. The petitioner/accused has filed an application dated 15.10.2024 requesting for quashing of the complaint for the reason that the alleged transaction was between M/S Pankaj Krishi Sewa Kendra and M/s Umiya Traders, but both the firms were not added as party in the complaint. Therefore, the complaint is not maintainable.

4. Learned JMFC *vide* impugned order dated 21.10.2024 rejected the application relying on the judgment of the Apex Court in the case of ***Adalat Prasad Vs. Rooplal Jindal [Cr.A. No. 91/2002 dated 25.08.2004]*** stating that once cognizance is taken, the Court of Magistrate cannot review its order and quash the complaint.

5. The impugned order is assailed in the present petition on the following grounds:

(i) The trial Court committed error in rejecting the application only on the ground that summons have already been issued. The complaint suffers from legal infirmity. The notice was issued to the petitioner without impleading the firm as a party. The complaint has already

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been filed without impleading the firm as complainant. Therefore, the complaint was not maintainable.

(ii) The trial Court failed to consider that cheque has been issued from the account of the firm and not from the personal account of the petitioner. Therefore, the complaint is not maintainable without adding the firm as a party. As per the averments made in the complaint, the accused is essentially the firm not the Proprietor or the owner of the firm.

On these grounds, it is requested that the impugned order deserves to be set aside and the application deserves to be allowed.

6. Learned counsel for the petitioner referring to the judgment passed in the case of ***Aneeta Hada Vs. Godfather Travels and Tours Private Ltd***. reported in ***(2012) 5 SCC 661*** contends that it is mandatory to implead the firm/company/society as an accused in terms of the provisions contained u/S 141 and 138 of the N.I. Act. In absence of the firm being impleaded as a party, complaint is not maintainable.

7. *Per contra*, learned counsel for the respondent referring to the reply of the petitioner to the statutory notice (Annexure P-4) submits that the petitioner Kanhailal Patidar has specifically admitted that M/s Umiya Traders is Proprietary Firm. Further, he did not deny that the complainant is the owner and Proprietor of M/S Pankaj Krishi Sewa Kendra. Therefore, both parties are owner and proprietor of their respective proprietary firms. The interdict contained u/S 141 of the N.I. Act does not apply in the case of Proprietary firm. Learned counsel relied on the judgment passed in the case of ***Raghu Lakshminarayan Vs. Fine Tubes*** reported in ***(2007) 5 SCC 103*** and in the case of ***L.K.Chauhan Vs. Munija W/o Mohammad Akeel***

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reported in ***2023(4) MPLJ 33*** contends that the interdict contained in Section 141 of N.I. Act does not apply in the case of a Proprietary firm.

8. Learned counsel further contends that the particulars of offence were explained to the petitioner/accused on 29.05.2024. Thereafter, the petitioner/accused sought adjournment on four occasions. Therefore, the application was filed on 15.10.2024. Considering all these aspects of the matter, learned trial Court committed no error in rejecting the application filed by the petitioner/accused. The petition is meritless and deserves to be dismissed.

9. Heard, learned counsel for the parties and perused the record.

10. Section 141 of the Negotiable Instruments Act, 1881 provides 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 <u>a firm or other association of individuals</u>; and**

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

(emphasis supplied)

11. Thus, if the "person" committing the offence is a "company", every person involved in its affairs, "as well as the company", shall be deemed guilty of the offence. The explanation takes into the fold of a company, by a legal fiction, even a partnership firm, which is otherwise a non-legal entity. For the offence punishable under Section 138 of NI Act, a partnership firm is a company and its partner is a deemed director. Indeed, Section 141 is so expansive as to include even an "association of individuals" in the fold of a company. However, a sole proprietary concern remains beyond its reach which is neither a firm nor an association of persons.

12. In case of ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*, (2012) 5 SCC 661,** it was held that-

> 58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear 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. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.
>
> 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 drag-net 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* [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal* [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada* [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery* [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.

13. In case of ***Raghu Lakshminarayanan v. Fine Tubes*, (2007) 5 SCC 103**, it was observed that-

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13. The distinction between partnership firm and a proprietary concern is well known. It is evident from Order 30 Rule 1 and Order 30 Rule 10 of the Code of Civil Procedure. The question came up for consideration also before this Court in *Ashok Transport Agency* v. *Awadhesh Kumar* [(1998) 5 SCC 567] wherein this Court stated the law in the following terms :

> "*6*. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Partnership Act, 1932. Though a partnership is not a juristic person but Order 30 Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order 30 which make applicable the provisions of Order 30 to a proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order 30 have no application to such a suit as by virtue of Order 30 Rule 10 the other provisions of Order 30 are applicable to a suit against the proprietor of proprietary business 'insofar as the nature of such case permits'. This means that only those provisions of Order 30 can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

14. We, keeping in view the allegations made in the complaint petition, need not dilate in regard to the definition of a "company" or a "partnership firm" as envisaged under Section 34 of the Companies Act, 1956 and Section 4 of the Partnership Act, 1932 respectively, but, we may only note that it is trite that a proprietary concern would not answer the description of either a company incorporated under the Companies Act or a firm within the meaning of the provisions of Section 4 of the Partnership Act.

15. A Constitution Bench of this Court in *S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla* [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975 : AIR 2005 SC 3512] furthermore categorically stated that the complaint petition must contain the requisite averments to bring about a case within the purview of Section 141 of the Act so as to make some persons other than the company vicariously liable therefor. (See also *Sabitha Ramamurthy* v. *R.B.S. Channabasavaradhya* [(2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621 : AIR 2006 SC 3086] and *S.M.S. Pharmaceuticals Ltd.* v. *Neeta Bhalla* [(2007) 4 SCC 70 : (2007) 2 SCC (Cri) 192 : (2007) 3 Scale 245] .)

14. The averments of the complaint and the statement in reply to the statutory notice dated 29.12.2020 (Annexure P-4) make it clear that the complainant as well as the accused are owners and proprietors of respective

sole proprietary concerns. Therefore, the complainant or the accused does not fall within the purview of a company, a firm or an association of individuals. Hence, it was not imperative for the complainant to implead the proprietary firms as party in the complaint. The complaint in present form is maintainable. The learned trial Court has committed no error in rejecting the application assailing the maintainability of the complaint and issuance of process against the accused. The material defect in procedure, apparent impropriety or manifest illegality is not made out, therefore, there is no occasion to invoke the inherent jurisdiction in exercise of powers Section 528 of BNSS, 2023.

15. Consequently, the present petition filed u/S 528 of BNSS, 2023 is hereby dismissed.

(SANJEEV S KALGAONKAR)
JUDGE

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SEHAR HASEEN