

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

**BEFORE
HON'BLE SHRI JUSTICE VISHAL MISHRA**

ON THE 15th OF MARCH, 2024

MISC. CRIMINAL CASE No. 19594 of 2014

V.K. JAIN

Versus

***RAKESH AGRAWAL (DEAD) THROUGH LRS. SMT VANDANA
AGRAWAL AND OTHERS***

Appearance :

Shri Vimal Kant Jain – Advocate for petitioner.

Shri Sharad Gupta – Advocate for respondent No.1.

Shri P.P. Budhuliya – Advocate for respondents No.2, 3 and 4.

AND

MISC. CRIMINAL CASE No. 19595 of 2014

V.K. JAIN

Versus

PRANISH JASATHI AND OTHERS

Appearance :

Shri Vimal Kant Jain – Advocate for petitioner.

Shri Sharad Gupta – Advocate for respondent No.1.

Shri P.P. Budhuliya – Advocate for respondents No.2, 3 and 4.

ORDER

1. This common order shall govern disposal of both these petitions preferred, under Section 482 of the Criminal Procedure Code, 1973, for

setting aside impugned order dated 01.10.2014 and for quashing of the complaints filed by respective complainants.

2. The facts and question of law involved herein are similar, however, in order to effectively address the issue involved in the said petitions, the facts relevant for adjudication are being culled out and taken from MCrC No.19594 of 2014.

3. Being aggrieved by the order dated 01.10.2014 passed in Cri. Complaint Case No.27846 of 2006 whereby learned trial Court has rejected the petitioner's application seeking for adding the partnership firm as a party to the proceedings.

4. It is the case of the petitioner that a complaint has been filed by respondent No.1 under Section 138-A of the Negotiable Instruments Act, 1881 (for short 'NI Act') in the court of JMFC Jabalpur against petitioner and respondents No.2 to 4. The allegation in the complaint is that the petitioner and respondents No.2 to 4 were partners in the firm namely M/s Central India Dairy Product, Jabalpur (M.P.) at the relevant time when the alleged transaction took place as mentioned therein. The transaction relating to sale of land of M/s Central India Dairy Product, Jabalpur, a partnership firm to the complainant through one of its partners. The matter relates to dishonour of cheque. Thereafter, the petitioner filed an application before the trial Court for adding the partnership firm as a party to the proceedings. Reliance was placed on the judgments passed by the Hon'ble Supreme Court in Aneeta Hada vs Godfather Travels & Tours Pvt. Ltd. reported in AIR 2012 SC 2795 as well as in Adalat Prasad vs Rooplal Jindal reported in AIR 2004 SC 4674. The said application was orally objected to by the complainant.

The learned trial Court relying upon the provisions of Section 468 of CrPC proceeded to reject the petitioner's application due to limitation period. Therefore, this petition has been filed seeking quashing of the impugned order and for quashing of complaint as the partnership firm was not made a party to the proceedings.

5. *Per contra*, the counsel for the respondent No.1 has opposed the contentions and submitted that due to mistake, the partnership firm could not be made a party to the proceedings. However, in terms of provisions of Section 319 of CrPC, a party can be impleaded at any stage of proceedings. The complaint is maintainable and a party can always be impleaded at any stage of proceedings.

6. Heard the counsels of the parties and perused the record.

7. The only point for consideration before this Court is as to whether the complaint proceedings under the NI Act for an instrument issued on behalf of a company or firm is maintainable in absence of notice being issued to the company or the company being made a party to the proceedings.

8. The aforesaid aspect is no more *res integra* and has been finally decided by a three-Judge of Hon'ble Supreme Court in the case of Aneeta Hada (supra) and the said decision was subsequently followed in the case of Charanjit Pal Jindal vs L.N. Metalics reported in (2015) 15 SCC 768. And, recently Hon'ble Supreme Court has again considered the similar issue in the case of Himanshu vs B. Shivamurthy and another reported in (2019) 3 SCC 797 and held as under :

4. *The appellant submitted that the cheque was issued by a Director of Lakshmi Cement and Ceramics Industries Ltd., a public limited company. In other words, the cheque was not*

issued by the signatory in his personal capacity. Hence, it was urged that the complaint ought to have been instituted against the company and its Directors and not against the appellant.

5. *The High Court by its order dated 24-1-2006 [Himanshu v. B. Shivamurthy, 2006 SCC OnLine Kar 880] dismissed the petition. The High Court rejected the submissions urged on behalf of the appellant on the ground that the complainant had pleaded ignorance about the existence of the company. Moreover, in the view of the High Court, it would not be difficult for the complainant to take steps to proceed against the company as well as against other persons who are responsible for the affairs of the company.*

6. *The judgment of the High Court has been questioned on two grounds. The learned counsel appearing on behalf of the appellant submits that firstly, the appellant could not be prosecuted without the company being named as an accused. The cheque was issued by the company and was signed by the appellant as its Director. Secondly, it was urged that the observation of the High Court that the company can now be proceeded against in the complaint is misconceived. The learned counsel submitted that the offence under Section 138 is complete only upon the issuance of a notice of demand and the failure of payment within the prescribed period. In absence of compliance with the requirements of Section 138, it is asserted, the direction of the High Court that the company could be impleaded/arraigned at this stage is erroneous.*

7. *The first submission on behalf of the appellant is no longer res integra. A decision of a three-Judge Bench of this Court in Aneeta Hada v. Godfather Travels & Tours (P) Ltd. [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] governs the area of dispute. The issue which fell for consideration was whether an authorised signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act, 1881 without the company being arraigned as an accused. The three-Judge Bench held thus : (SCC p. 688, para 58)*

“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.”

In similar terms, the Court further held : (SCC p. 688, para 59) 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.”

8. The judgment of the three-Judge Bench has since been followed by a two-Judge Bench of this Court in Charanjit Pal Jindal v. L.N. Metalics. There is merit in the second submission which has been urged on behalf of the appellant as well. The proviso to Section 138 contains the preconditions which must be fulfilled before an offence under the provision is made out. These conditions are : (i) presentation of the cheque to the bank within six months from the date on which it is drawn or within the period of its validity, whichever is earlier; (ii) a demand being made in writing by the payee or holder in due course by the issuance of a notice in writing to the drawer of the cheque within thirty days of the receipt of information from the bank of the return of the cheques; and (iii) the failure of the drawer to make payment of the amount of money to the payee or the holder in due course within fifteen days of the receipt of the notice.

9. In MSR Leathers v. S. Palaniappan, this Court held thus :

“12. The proviso to Section 138, however, is all important and stipulates three distinct conditions precedent, which must be satisfied before the dishonour of a cheque can constitute an offence and become punishable. The first condition is that the cheque ought to have been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The third condition is that the drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice. It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the person issuing the cheque.”

(emphasis supplied)

10. The importance of fulfilling these conditions has been adverted to in a recent judgment of a two-Judge Bench of this Court in N. Harihara Krishnan v. J. Thomas. Adverting to the ingredients of Section 138, the Court observed as follows:

“26. ... Obviously such complaints must contain the factual allegations constituting each of the ingredients of the offence under Section 138. Those ingredients are : (1) that a person drew a cheque on an account maintained by him with the banker; (2) that such a cheque when presented to the bank is returned by the bank unpaid; (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier; (4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and (5) such a notice of payment is

made within a period of 30 days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid.”

11. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. The complaint was lodged only against the appellant without arraigning the company as an accused.

12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, every person, who at the time when 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.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.

9. From a perusal thereof, it is apparently clear that if the cheque has been issued on behalf of a company/firm by its Director/Partner then the Company/Partnership Firm is required to be made a party to the proceedings, failing which the complaint itself will not be maintainable.

10. In the present case, the cheque has been issued by the petitioner in the capacity of one of the partners of M/s Central India Dairy Product, Jabalpur (M.P.) which can be seen from the cause title of the complaint itself and the instrument. The petitioner has been shown as

an accused as a partner of M/s Central India Dairy Product, Jabalpur. Paragraph 1 of the complaint clearly mentions that the accused is serving as a partner of the firm. When the payments were stopped by the company or firm, the complainant demanded refund for which the cheque in question was issued in the capacity of a partner of the firm. The same was returned on the ground of 'payment stopped by the drawer', against which the complaint under Section 138-A of the NI Act was filed against the petitioner and others. The firm was never issued notice asking for refund of money in lieu of cheque and the proposed action to be taken against the firm.

11. The law on the subject is settled by the Hon'ble Supreme Court in the case of Aneeta Hada (supra) which was recently followed in the Himanshu (supra). In absence of any controversy of the aforesaid and once the legal issue has been put to rest by the Hon'ble Supreme Court in aforesaid cases, the complaint filed against the petitioner could not be permitted to be continued.

12. Under these circumstances, both the petitions deserve to be and are hereby allowed. The complaints filed under Section 138 of the NI Act against the petitioner and the consequential proceedings in the aforesaid complaint cases are hereby quashed.

13. The petitions stand allowed and disposed off finally.

(VISHAL MISHRA)
JUDGE