

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

BEFORE

HON'BLE SMT. JUSTICE ANJULI PALO

ON THE 27th OF FEBRUARY, 2023

MISC. CRIMINAL CASE No. 8210 of 2023

BETWEEN:-

**L.K CHAUHAN S/O LATE SHRI SHER SINGH CHAUHAN,
AGED ABOUT 54 YEARS, OCCUPATION: PROPRIETOR
REL CANSTRACSAN R/O A 23 ARYANIVAS NIRUPAM
STATE HOSHANGBAD ROAD BHOPAL (MADHYA
PRADESH)**

.....APPLICANT

(BY SHRI JUBIN PRASAD - ADVOCATE)

AND

**MUNIJA AKEEL W/O SHRI MOHAMMAD AKEEL R/O D-
206 NEW MINAL RESIDENCY J.K ROAD (MADHYA
PRADESH)**

.....RESPONDENT

(NONE FOR THE RESPONDENT)

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

ORDER

This petition has been filed by the applicant invoking the extraordinary jurisdiction of this Court under Section 482 of Cr.P.C. challengin the order dated 13.12.2022 passed by Seventeenth Additional Sessions Judge, Bhopal in Criminal Revision No. 472 of 2022.

Briefly stated facts of the case are that the respondent had filed a complaint case under Section 142 of the Negotiable Instruments Act, 1981 against the applicant alleging an offence under Section 138 of the Negotiable Instruments Act. It was stated in the complaint by the respondent that she is the

proprietor of M/s Fluid Tech and and applicant is the proprietor of Jayshree Rail Construction. An agreement for sale dated 9.7.2018 was entered into between them to the effect that the respondent shall purchase the property of the applicant for a consideration of Rs.65,00,000/-. It was further stated by the respondent that in lieu of the agreement for sale, the respondent had transferred an amount of Rs.46,00,000/- between 18.7.2018 to 31.10.2018. Subsequently, agreement for sale dated 9.7.2018 was cancelled by the parties by mutual agreement and the applicant had issued a cheque of Rs.45,00,000/- bearing No. 130511 dated 20.4.2019 drawn on Union Bank of India, Arera Colony, Bhopal in favour of the respondent. When the respondent present the aforesaid cheque in the Bank, the same got dishonoured by the Bank stating that the instrument "exceeds arrangement" hence the applicant sent a legal notice to the applicant. Despite that, the applicant did not pay the aforesaid amount to the respondent, therefore, respondent filed a complaint case. In the said complaint case, learned JMFC vide order dated 5.9.2022 had taken cognizance and framed charge against the applicant under Section 138 of the Negotiable Instruments Act. Being aggrieved thereby the applicant filed a criminal revision before Seventeenth Additional Sessions Judge, which has been dismissed vide order dated 13.12.2022, hence this petition has been filed by the applicant for quashing of aforesaid charge.

Learned counsel for the applicant submits that learned Judicial Magistrate First Class erred in law while taking cognizance vide its order dated 5.9.2022. Learned JMFC has failed to consider the fact that the proprietorship firm, which had issued the cheque in question, has not been impleaded as the respondent/accused. It is further submitted that Jay Shree Rail Constructions

which had issued the cheque, is a proprietorship concern and has an independent existence and therefore, in absence of impleadment of the firm, the cognizance taken by learned JMFC is contrary to law, therefore, the impugned orders may be set aside and the applicant may be discharged from the aforesaid charge.

I have heard learned counsel for the applicant and gone through the impugned order. The impugned orders have been challenged by the applicant mainly on the ground that Jay Shree Rail Constructions, which had issued the cheque, is a proprietorship concern and has an independent existence and therefore, in absence of impleadment of the firm, the cognizance taken by learned JMFC is contrary to law.

In **M.M. Lal Vs. State of NCT of Delhi** reported in **2012 SCC OnLine Del 4851**, it has been observed by the Delhi High Court that "*it is well settled that a sole proprietorship firm has no separate legal identity and in fact is a business name of the sole proprietor. Thus any reference to sole proprietorship firm means and includes sole proprietor thereof and vice versa. Sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, which envisages that if the person committing an offence under Section 138 is a company, every person who, at the time of 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. Company includes a partnership firm and any other association of individuals. The sole proprietorship firm would not fall within the meaning of partnership firm or association of individual.*"

In **Dhirendra Singh Vs. State of U.P. and another** reported in **2020**

SCC Online All 1130, the High Court of Allahabad has observed that "*in the case of a sole proprietary concern, there are no two persons in existence. Therefore, no vicarious liability may ever arise on any other person. The identity of the sole proprietor and that of his 'concern' remain one, even though the sole proprietor may adopt a trade name different from his own, for such 'concern'. Thus, even otherwise, conceptually, the principle contained in section 141 of the Act is not applicable to a sole-proprietary concern.*"

The Supreme Court in the case of **Raghu Lakshminarayanan Vs. Fine Tubes** reported in **(2007) 5 SCC 103** has observed that "*a juristic person can be a company within the meaning of the provisions of the Companies Act, 1956 or a partnership within the meaning of the provisions of the Partnership Act, 1932 or an association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. A proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Company in terms of the Explanation appended to Section 141 of the Negotiable Instruments Act, means any body corporate and includes a firm or other association of individuals.*"

No other ground has been raised by learned counsel for the applicant.

In view of the aforesaid discussion and in the light of the aforesaid decisions, there is no defect in the complaint lodged against the applicant, in his capacity as the sole proprietor of the concern. There was no requirement to implead his sole proprietary concern as an accused person nor there was any need to additionally implead the applicant by his trade name.

Accordingly, this petition, being devoid of merit, is hereby dismissed.

(SMT. ANJULI PALO)
JUDGE

PB

