IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 01.09.2025

\+ **W.P.(CRL) 1989/2022 & CRL.M.A. 17238/2022**

HIMANSHU **.....Petitioner**

versus

TCNS CLOTHING CO. LTD **.....Respondent**

Advocates who appeared in this case:

For the Petitioner : Mr. Gagan Gandhi, Mr. Vijay Kumar, Dr. B.S. Chauhan, Ms. Luvika & Ms. Shraddha Saxena, Advs.

For the Respondent : Mr. Nitin Sharma, Adv. along with Mr. Jatin Kumar, AR of the Respondent.
Mr. Ashish Mohan, Sr. Adv., Amicus.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition has been filed seeking quashing of Complaint Case No. 2542/2019 pending before the learned Metropolitan Magistrate ('**MM**'), South District, Saket Courts, New Delhi, for offence under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (**'NI Act'**).

2. Briefly stated, the facts of the case are that the petitioner is a partner in the partnership firm namely– A & A Enterprises that

entered into a Franchisee Agreement dated 28.12.2012 with the respondent company namely– TCNS Clothing Co. Ltd. (hereafter '**complainant**'), who is in the business of sale of women's apparel and accessories under the brand name "W", "Aurelia" and "Wishful". In pursuance of the Franchisee Agreement dated 28.12.2012, A & A Enterprises was appointed as a retailer / retail operator of the products of the respondent company and was to establish and operate a retail outlet at Store No. 111, Moments Mall, Patel Road, New Delhi. It is alleged that various products were delivered to the petitioner through invoices in which Customer Code No. 119101 has been mentioned and the same have been received by the petitioner. It is alleged that a total sum of about Rs. 38,11,873/- is due on part of the petitioner. It is alleged that in discharge of its liability the petitioner issued two cheques, one bearing No. 000565 dated 27.09.2018 for a sum of Rs. 10,00,000/- and one being cheque No. 000566 dated 30.09.2018 for a sum of Rs. 7,50,000/- both drawn on HDFC Bank, G-14, Kirti Nagar Extension, New Delhi– 110015, in favour of the complainant.

3. It is alleged that the said cheques were dishonoured *vide* return memo dated 21.12.2018 for reasons "Funds Insufficient". Following the dishonour of the cheques, the complainant sent a legal notice dated 14.01.2019, calling upon the petitioner to make payment towards the dishonoured cheques within 15 days.

4. On the failure of the petitioner to make the payment, the complainant filed the complaint under Section 138 of the NI Act against the petitioner, alleging that the petitioner, being the sole

proprietor of A & A Enterprises, had failed to discharge his financial obligation in accordance with the terms of the Franchisee Agreement dated 28.12.2018. In the memo of parties of the complaint, the name of the signatory Rishi Kalia appears to have been added with a pen.

5. By order dated 05.03.2019, the learned MM issued summons upon the petitioner. On 09.08.2019, the learned MM issued Bailable Warrants against the petition, which were received back unexecuted, whereafter the complainant was directed to verify the address of the petitioner. By orders dated 03.03.2020, 26.02.2021, 06.10.2021, 07.12.2021 and 10.03.2022 the learned MM granted last and final opportunity to the complainant to take steps in terms of the direction to verify the address of the petitioner following which an affidavit was filed by the complainant furnishing the fresh address of the petitioner. By order dated 03.06.2022, Non Bailable Warrant got issued against the petitioner, which was stayed by order dated 25.08.2022, on an application filed by the petitioner seeking cancellation of Non Bailable Warrant.

6. In the meantime, the petitioner approached this Court, challenging his impleadment in the complaint in his personal capacity as a sole proprietor, rather than as a partner of A & A Enterprises. He also raised grievance over the fact that the accused firm itself had not been made a party to the proceedings.

7. It is the case of the petitioner that despite knowing that A & A Enterprises is a partnership concern in which the petitioner is merely a partner, the respondent has deliberately proceeded against him in the

capacity of a sole proprietor, and also deliberately furnished wrong address of the petitioner for service of summons to prevent him from being served. It is submitted that the respondent was well aware of the fact that A & A Enterprises is a partnership concern in view of the Franchisee Agreement dated 28.12.2012.

8. The learned counsel for the petitioner submitted that the statutory notice was issued upon the petitioner in his individual capacity while the cheques in question were issued by the partnership concern. He relied on the partnership deed dated 25.10.2012, executed between Sh. Usha Kalia, Rishi Kalia and the petitioner.

9. He submitted that the petitioner neither signed the cheques in question, nor issued them, and thus, the prosecution against the petitioner is not maintainable.

10. He further submitted, without prejudice, that the statutory notice was issued by the respondent on 14.01.2018, whereas the cheques in question were only issued in the month of September, 2018, and therefore the notice was defective, *non-est* and bad in law. He placed reliance on ***Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd.*** **: (2009) 1 SCC 720** to argue that the respondent has failed to comply with the conditions with regard to service of notice, for establishing an offence under Section 138 of the NI Act.

11. The learned counsel for the respondent submitted that the petitioner represented himself as the sole proprietor of A & A Enterprises and entered into the Agreement dated 28.12.2012, as a proprietor. He submitted that the petitioner failed to disclose his actual

identity while entering into the Agreement.

12. He submitted that the respondent had issued a Legal notice dated 14.01.2019 after the dishonor of the cheques in question, and the same was duly received by the petitioner, which he acknowledged in his reply *vide* email dated 28.01.2019.

13. He submitted that the respondent made several attempts to serve the legal notice on the address provided by the petitioner in the ordinary course of business, however the same could not be served upon the petitioner due to his *mala fide* actions.

14. He submitted that the amendment sought to be made by the respondent relates merely to cure a simple infirmity which may be allowed at any stage of the proceedings as the same does not change the nature of the complaint. [Ref: ***U.P. Pollution Control Board v. Modi Distillery*** **: (1987) 3 SCC 684**; ***Anil Hada v. Indian Acrylic Ltd.*** **: (2000) 1 SCC 1**]

15. He argued that the matter requires consideration of evidence and the filing of the present petition is the petitioner's attempt to linger the matter and mislead the Court in order to escape his financial liability.

16. Senior Advocate Mr. Ashish Mohan, had been appointed by this Court as an Amicus, to assist in determining the question of law whether a complaint under Section 138 of the NI Act, which has been filed impleading the accused on the basis of a mistaken form of the entity, can be permitted to be amended at a post summoning stage. Written submissions have been filed by the learned Amicus in this

regard. It is submitted that although there is no specific provision in the Code of Criminal Procedure, 1973 ('CrPC') for amendment of complaint, however he has cited various judgements of the hon'ble Apex Court wherein the general view expressed by the Hon'ble Court has been that "curable infirmities" can be dealt with by permitting amendment of the complaint. [Ref: ***S.R. Sukumar v. S. Sunaad Raghuram*** **: (2015) 9 SCC 609**; ***U.P. Pollution Control Board v. Modi Distillery*** **: (1987) 3 SCC 684;** ***Kunapareddy v. Kunapareddy Swarna Kumari*** **: (2016) 11 SCC 774]**

17. Learned Amicus has cited views expressed by the Hon'ble High Courts of Andhra Pradesh, Madhya Pradesh and Allahabad, allowing the amendment in a criminal complaint filed under Section 138 of the NI Act, where the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment. On the contrary, the Hon'ble High Courts of Uttarakhand and Bombay have rejected the argument that a complaint can be amended in a case where the firm has not been arraigned as an accused.

18. At the outset, it is relevant to note that this Court can quash the proceedings in NI Act cases, in exercise of its inherent jurisdiction under Section 482 of the CrPC, if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques, or in case where legal lacuna of such nature is pointed out which goes to the root of the matter.

19. In the present case, the petitioner is seeking quashing of the

summoning order dated 05.03.2019 and the complaint filed by the respondent under the NI Act, on the ground that despite knowing that A & A Enterprises is a partnership concern in which the petitioner is merely a partner, the respondent has deliberately proceeded against him in the capacity of a sole proprietor and has failed to arraign the partnership concern. It is also alleged that the statutory notice was issued upon the petitioner in his individual capacity while the cheques in question were issued by the partnership concern.

20. The petitioner has placed reliance on the judgments passed in ***Dilip Hariramani v. Bank of Baroda*** **: (2022) 19 Comp Cas-OL 20** and ***Himanshu v. B. Shivamurthy*** **: (2019) 3 SCC 797**, wherein the Hon'ble Apex Court, while relying on its earlier judgement passed in ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*****: (2012) 5 SCC 661** had quashed the proceedings against the accused Partner/ Director of the firm/ company respectively, where neither any statutory demand notice was ever served upon the company/ firm nor was it arraigned as an accused in the complaint filed by the drawee under Section 138 of the NI Act. It was held that there was lack of compliance by the drawee with the *proviso* of Section 138 of the NI Act.

21. In ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*** *(supra)*, the moot point was whether any person, who has been mentioned in Section 141(1) and 141(2) of the NI Act can be prosecuted without the company being impleaded as an accused. The Hon'ble Apex Court held that to sustain a prosecution under Section 141 of the NI Act, other individuals can be made liable only by invoking the principle of

vicarious liability, as specifically provided under the said provision, however, it is essential that the company itself is arraigned as an accused. It was observed as under:

> *38. From the aforesaid pronouncements, the principle that can be culled out is that it is the bounden duty of the court to ascertain for what purpose the legal fiction has been created. It is also the duty of the court to imagine the fiction with all real consequences and instances unless prohibited from doing so.* ***That apart, the use of the term "deemed" has to be read in its context and further, the fullest logical purpose and import are to be understood.*** *It is because in modern legislation, the term "deemed" has been used for manifold purposes. The object of the legislature has to be kept in mind.*
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> *39. The word "deemed" used in Section 141 of the Act applies to the company and the persons responsible for the acts of the company. It crystallises the corporate criminal liability and vicarious liability of a person who is in charge of the company.* ***What averments should be required to make a person vicariously liable has been dealt with in S.M.S. Pharmaceuticals Ltd. [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] In the said case, it has been opined that the criminal liability on account of dishonour of cheque primarily falls on the drawee (sic drawer) company and is extended to the officers of the company and as there is a specific provision extending the liability to the officers, the conditions incorporated in Section 141 are to be satisfied.***
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> *41. After so stating, it has been further held that while analysing Section 141 of the Act, it will be seen that it operates in cases where an offence under Section 138 is committed by a company. In para 18 of the judgment, it has been clearly held as follows: (S.M.S. Pharmaceuticals Ltd. case [(2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , SCC p. 102)*
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> > *"18. ... there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process.* ***A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability."***
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> *43****. A contention was raised before this Court on behalf of the State of Madras that the conviction could be made on the basis of Section***

10 of the 1955 Act. *The three-Judge Bench repelled the contention by stating thus: (**C.V. Parekh case [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] , SCC p. 493, para 3**)*

> *"3. The learned counsel for the appellant, however, sought conviction of the two respondents on the basis of Section 10 of the Essential Commodities Act under which, if the person contravening an order made under Section 3 (which covers an order under the Iron and Steel Control Order, 1956), is a company, every person who, at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly**. It was urged that the two respondents were in charge of, and were responsible to the company for the conduct of the business of the company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of Clause (5) of the Iron and Steel Control Order. This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in contravention of Clause (5) of the Iron and Steel Control Order was made by the company**. **In fact, the company was not charged with the offence at all. The liability of the persons in charge of the company only arises when the contravention is by the company itself. Since, in this case, there is no evidence and no finding that the company contravened Clause (5) of the Iron and Steel Control Order, the two respondents could not be held responsible. The actual contravention was by Kamdar and Vallabhadas Thacker and any contravention by them would not fasten responsibility on the respondents.**"*
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> *(emphasis supplied)*

The aforesaid paragraph clearly lays down that the first condition is that the company should be held to be liable; a charge has to be framed; ***a finding has to be recorded, and the liability of the persons in charge of the company only arises when the contravention is by the company itself.***

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51. We have already opined that ***the decision in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] runs counter to the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC***

(Cri) 97] which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. *Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of lex non cogit ad impossibilia gets attracted.*

52. At this juncture, ***we may usefully refer to the decision in U.P. Pollution Control Board v. Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] . In the said case, the company was not arraigned as an accused and, on that score, the High Court quashed the proceeding against the others. A two-Judge Bench of this Court observed as follows:*** *(SCC p. 690, para 6)*

> *"6. ...* ***Although as a pure proposition of law in the abstract the learned Single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-section (1) or (2) of Section 47 of the Act unless there was a prosecution against Modi Industries Ltd., the Company owning the industrial unit, can be termed as correct, the objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum****. We have already pointed out that the technical flaw in the complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the Board. Furthermore, the legal infirmity is of such a nature which could be easily cured.*** *Another circumstance which brings out the narrow perspective of the learned Single Judge is his failure to appreciate the fact that the averment in para 2 has to be construed in the light of the averments contained in paras 17, 18 and 19 which are to the effect that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company."*

Be it noted, the two-Judge Bench has correctly stated that there can be no vicarious liability unless there is a prosecution against the company owning the industrial unit but, regard being had to the factual matrix, namely, the technical fault on the part of the company to furnish the requisite information called for by the Board, directed for making a formal amendment by the applicant and substitute the name of the owning industrial unit. It is worth noting that in the said case, M/s Modi Distilleries was arrayed as a

party instead of M/s Modi Industries Ltd. Thus, it was a defective complaint which was curable *but, a pregnant one, the law laid down as regards the primary liability of the company without which no vicarious liability can be imposed has been appositely stated.*

53. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. ***There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.***

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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."***

(emphasis supplied)

22. The observations made in ***Aneeta Hada v. Godfather Travels &***

Tours (P) Ltd. *(supra)* can be summarised to state that when vicarious liability under Section 141 of the Act is sought to be imposed on an individual associated with a company, the company itself must be treated as the principal accused. The Hon'ble Court, in para 43 referred to the decision in ***State of Madras v. C.V. Parekh*** **: (1970) 3 SCC 491** wherein the appellant sought conviction of the two respondents asserting that they were in charge of and were responsible for the conduct of the business of the company and thus, they must be held responsible for contravening the provisions of the Iron and Steel Control Order in terms of Section 10 of the Essential Commodities Act, 1955. The said Section 10 of the Essential Commodities Act, 1955 is *pari materia* with the provisions of Section 141 of the NI Act. It was held that to apply Section 10 of the Essential Commodities Act, 1955 it is essential that the person contravening the order must be a company itself. It was found that there was no evidence to the effect that the company contravened the provisions of the Iron and Steel Control Order, and therefore the two respondents could not be held liable.

23. The Hon'ble Court also referred to the ratio in ***Anil Hada v. Indian Acrylic Ltd.*** *(supra)* and ***U.P. Pollution Control Board v. Modi Distillery*** *(supra)* which have been relied upon by the respondent. In ***Anil Hada v. Indian Acrylic Ltd.*** *(supra)* the name of company was not added in the complaint under section 138 of NI Act. It was held that the provisions do not contain a condition that prosecution of the company is *sine qua non* for prosecution of the

other persons who fall within the second and the third categories. It was further observed that the persons who are accused cannot escape liability when the company cannot be prosecuted due to a legal snag (where the doctrine of *lex non cogit ad impossibilia* gets attracted).

24. ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*** *(supra)* treated the ratio laid down in ***Anil Hada v. Indian Acrylic Ltd.*** *(supra)* to be incorrect law to the extent that it permits the prosecution of a Director or any other officer without the company being impleaded as an accused.

25. ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*** *(supra)* affirmed the view taken by the two-Judge Bench in ***U.P. Pollution Control Board v. Modi Distillery*** *(supra),* directing the complainant to make a formal amendment in the complaint, noting that such a defect in the complaint was curable in nature. While the Hon'ble Court in ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*** *(supra)* was of the opinion that the view taken in ***U.P. Pollution Control Board v. Modi Distillery*** *(supra),* was correct based on the factual matrix being the fault on the part of the company to furnish the requisite information called for by the complainant, in order to implead the company, however, it was underscored that since the liability under the NI Act is penal in nature, a strict construction of the provision must be made. [Ref: para 58 of ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*** *(supra)*]

26. In view of the aforesaid discussion, it is clear for vicarious liability under Section 141 of the NI Act to be imposed on an

individual, the company must be arrayed as the principal accused. Section 141 of the NI Act mandates that the company must be shown to have committed the offence. In absence of such evidence, individuals alone cannot be held liable. Although the provision ought be construed strictly, it is also clear that where there is a simple/ curable infirmity in the complaint and neither does it change the nature of the complaint nor cause prejudice to the accused persons, a formal amendment in the complaint may be permitted.

27. In the case at hand, it is the case of the respondent that the petitioner represented himself as the sole proprietor of A & A Enterprises and entered into the Agreement dated 28.12.2012 for operation and management of the store of the respondent, at shop bearing No. 111, Moments Mall, Patel Nagar; New Delhi, in the capacity of A & A Enterprises being a proprietorship. It is further contended that the petitioner failed to disclose his actual identity while entering into the Agreement.

28. It is contended on behalf of the respondent company that despite the fact that the Legal Notice dated 14.01.2019 was only addressed to the petitioner, based on the information provided by the petitioner himself, however the same was also sent by way of e-mail dated 14.01.2019, addressed to A & A Enterprises on their e-mail namely– *himanshu.kalia@rediffmail.com* and *rishikalia80@gmail.com*, thereby complying with the statutory provision for service of notice. Reliance is also placed in this regard, on the reply sent by the petitioner, *vide* e-mail dated 28.01.2019,

acknowledging the service of notice dated 14.01.2019.

29. It is contended on behalf of the petitioner that the statutory notice was issued by the respondent on 14.01.2018, whereas the cheques in question were only issued in the month of September, 2018, and therefore the notice was defective, *non-est* and bad in law. This Court has perused the Legal Notice issued by the respondent. While the Legal notice reflects that it is dated as "14.01.2018", it records that the subject cheques were only dishonoured *vide* return memos dated 21.12.2018. On such a conspectus of facts, it is apparent that the date mentioned in the Legal Notice is only a typographical error.

30. Perusal of the record reveals that the subject cheques drawn in the name of the respondent have been signed by Sh. Rishi Kalia who is one of the three partners in the alleged partnership firm of the petitioner. The memo of parties filed along with the complaint entails the name of the accused as "Sh. Himanshu (Proprietor of A and A Enterprises)". It appears that the name of the signatory of the subject cheque- Sh. Rishi Kalia has been added with a pen, subsequent to filing of the complaint.

31. It is pertinent to note that the Agreement dated 28.12.2012 placed on record by the respondent refers to the accused company/ firm as under:

> *"A & A Enterprises, a proprietorship firm having its Registered Office at C-144 B, Moti Nagar, New Delhi-110015 represented proprietor Mr. Himanshu, hereinafter referred to as the "Retail Operator"*

32. While the copy of the Agreement dated 28.12.2012 placed on

record by the petitioner refers to the accused company/ firm as under:

> *"A & A Enterprises, a partnership firm having its Registered Office at C-144 B, Moti Nagar, New Delhi-110015 represented by its partner Mr. Himanshu, hereinafter referred to as the "Retail Operator"*

33. It is also observed that the respondent/ complainant has filed the complaint under Section 138 read with Section 142 of the NI Act and has not invoked Section 141 of the NI Act while filing the present complaint.

34. Although, it is the case of the respondent that the error of non-arraignment of the firm as an accused is not fatal to the proceedings and seeks an opportunity to amend the complaint instead of quashing the complaint, it is relevant to see whether the same is a curable infirmity or whether the amendment would prejudice the accused persons or change the nature of the complaint.

35. Now, it will be useful to refer to the observation made by the Hon'ble Court in the case of ***S.R. Sukumar v. S. Sunaad Raghuram : (2015) 9 SCC 609.*** The same is reproduced hereunder:

> *"19. What is discernible from U.P. Pollution Control Board case [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] is that* ***an easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made.*** *On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the court shall not allow such amendment in the complaint.*
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> *20. In the instant case, the amendment application was filed on 24-5-*

2007 to carry out the amendment by adding Paras 11(a) and 11(b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. ***Firstly, the Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem Khalnayakaru being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore, to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution.*** *"*

(emphasis supplied)

36. As observed above, modification of a complaint may be permitted where cognizance has not yet been taken, the alteration does not alter the essential character of the complaint, the defect sought to be rectified is one which can be cured through a formal amendment, and where such modification does not result in prejudice to the accused or the opposite party.

37. In the present case, it is not in dispute that the complaint was instituted describing the petitioner as the sole proprietor of A & A Enterprises, whereas the material on record suggests that the cheques in question were signed by another partner namely– Sh. Rishi Kalia, on behalf of the partnership concern. *Prima facie*, the arraignment of

the petitioner in his individual capacity, without impleading the firm, is inconsistent with the settled position of law as laid down in ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd.*** *(supra).*

38. However, a closer scrutiny of the proceedings before the learned MM reveals that although cognizance was taken in the present matter, the summons issued to the petitioner remained unserved on multiple occasions. Thereafter, bailable warrants were issued, which also remained unexecuted, and the complainant was directed to verify the address of the petitioner. Even the direction was not complied with, and before the accused could effectively enter appearance, the present petition came to be filed before this Court. Though non-bailable warrants were issued on 03.06.2022, the same were stayed upon appearance of the counsel for the accused, and the matter was fixed for furnishing bail bonds *vide* order dated 01.09.2022.

39. Thus, the stage of effective trial has not commenced yet. The accused has not yet faced the process of recording of plea, evidence, or cross-examination. In such circumstances, it cannot be said that permitting an amendment to implead the partnership firm would cause prejudice to the petitioner. On the contrary, refusal to allow such an amendment would result in stifling of proceedings on a mere technicality, thereby defeating the object of Section 138 of the NI Act.

40. It is observed that the complaint contains certain typographical errors, which, however, do not appear to be fatal to the substance of the case.

41. It is apposite to recall the dictum of the Hon'ble Apex Court in

U.P. Pollution Control Board v. Modi Distillery *(supra)* wherein it was observed that a complaint should not be dismissed at the threshold merely on account of a curable legal infirmity, and that the Court may allow appropriate correction to advance the cause of justice. The present case, in the considered opinion of this Court, falls within that category where the amendment sought is to rectify a simple and formal infirmity does not alter the nature of the complaint or cause prejudice to the accused, since the description of the accused entity can be corrected without changing the substratum of the allegations or setting up a new case.

42. The complaint was filed way back in the year 2019. In the interest of justice, the respondent should be granted an opportunity to file an application to amend the complaint and rectify these errors, so as to ensure proper adjudication on merits.

43. While it is noted that the summoning order dated 05.03.2019 issued by the learned MM is *non est***,** as it merely records the summoning of the petitioner, this deficiency alone does not warrant quashing of the complaint. The complaint, being otherwise maintainable, should not be quashed solely on this technical ground.

44. This Court is of the view that the non-impleadment of the firm is a curable defect. In view of the above, the respondent/complainant is permitted to file an application seeking amendment of the complaint, by impleading necessary parties and to suitably amend the memo of parties in the complaint.

45. The matter has been pending before this Court since the year

2022 and the complaint was also filed way back in the year 2019 and remained unserved for a long period. The delay in adjudication of the matter, can largely be attributed to the complainant and therefore, in the opinion of this Court, equities would be balanced by adequately compensating the petitioner. Therefore, it is directed that the learned Trial Court shall consider the application, if any, filed by the respondent / complainant keeping in view the observations made in the present judgment only if the same is filed within a period of two months from date, subject to payment of compensatory cost of ₹35,000/- by the complainant to the petitioner.

46. In view of the above discussion, the present petition stands dismissed with the aforesaid directions. Pending application also stands disposed of.

AMIT MAHAJAN, J

SEPTEMBER 1, 2025