IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 2nd OF APRIL, 2026

MISC. CRIMINAL CASE No. 24557 of 2019

MRS. RACHNA SINGH

Versus

MANISH AND OTHERS

Appearance:

Shri Gagan Bajad - Advocate for the petitioner.

Shri Ravindra Singh Chhabra - Senior Advocate along with Shri Raghav Raj Singh - Advocate for the respondent [R-1].

ORDER

This petition under section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to "Cr.P.C.") are filed feeling aggrieved by the impugned order dated 28.03.2019 in Criminal Private Complaint no. SCNIA/9644318/2016 (Case no. 164427/2016), whereby application filed by the petitioner for removal of her name as accused, was dismissed by learned Judicial Magistrate First Class, Indore.

2. The exposition of facts, giving rise to this petition, in brief, is as under :

1. As per the copy of complaint annexed with the petition, the complainant Manish Tiwari filed a complaint for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to "N.I. Act") and section 420 of Indian Penal Code, 1860 (hereinafter referred to "IPC") against Pawan Singh and Rachna Singh *inter-alia* alleging that the complainant and the accused were partners in M/s. Vani Education in

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furtherance of the partnership deed executed on 13.01.2015 retirement deed dated 15.11.2015 was executed between partners settling the liability toward the complainant for the amount of Rs. 33,20,000/-. Both the accused continued partnership firm – M/s Vani Education at the time of retirement of the complainant from the firm, therefore, both the accused were liable to payment of liability amount of Rs. 33,20,000/- to the complainant. Accused Pawan Singh signed and issued six cheques for payment of the liability amount of Rs. 33,20,000/- in favour of the complainant on behalf of the firm – M/s Vani Education. The cheque no. 000395 dated 20.08.2016 and cheque no. 000396 dated 20.08.2016 for Rs. 5,55,335/- were presented by the complainant at his bank – Kotak Mahindra Bank, Branch – Janjirwala Chouraha, Indore. The cheque no. 000395 was dishonored and returned with the remark **"payment stopped by drawer"** and the cheque no. 000396 was dishonored and returned with the remark **"date alterative sig. required of owners"** . The accused, despite issuance of notice through registered post AD on 22.09.2016 demanding payment, refused to pay the amount of cheque, therefore, the complaint for the offence punishable under section 138 of N.I. Act and section 420 of IPC was filed after lapse of period of statutory notice.

3. Learned JMFC, Indore took cognizance of the offence punishable under section 138 of N.I. Act. The petitioner / accused no. 2 Rachna Singh submitted an application for discharge. Learned JMFC, *vide* impugned order dated 28.03.2019, rejected the application on the grounds that once cognizance has been taken and the trial has proceeded according to the procedure for summons trial, the accused cannot be discharged. Further, the objection that accused Rachna Singh had retired as a partner of the firm – M/s Vani Education, will be decided after evidence.

4. Feeling aggrieved by the impugned order, present petition is filed for quashing

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the proceedings against the accused / petitioner Rachna Singh on following grounds -

1. Accused Pawan Singh (Respondent No. 2) had issued the cheque in question to the complainant Manish Tiwari (non-applicant no. 1) toward full and final settlement as per the admission-cum-retirement deed. The petitioner also left the partnership firm on 22nd February, 2016. Respondent no. 2 Pawan Singh agreed to pay the petitioner a sum of Rs. 14,19,000/- as full and final settlement according to admission-cum-retirement deed dated 22nd February, 2016. Respondent no. 2 Pawan Singh issued cheques in favour of the petitioner, which were dishonored, therefore, the petitioner filed private complaint for the offence punishable under section 138 of N.I. Act in the Court of JMFC, Indore against M/s Vani Education and the partners. The petitioner was also cheated by Respondent no. 2 - Pawan Singh.

2. The petitioner has not signed and issued the impugned cheque. She was not responsible for management of the firm on the date when the impugned cheque was issued, therefore, the order passed by learned JMFC, Indore is arbitrary and illegal.

On these grounds, it is requested that the impugned order be set aside and the petitioner be acquitted in Criminal Private Complaint no. SCNIA/9644318/2016.

5. Learned counsel for the petitioner, in addition to the grounds stated in the petition, contended that the petitioner has left the partnership firm M/s Vani Education *vide* deed of admission-cum-retirement dated 22nd February, 2016, therefore, the petitioner is not liable for the cheque issued by Respondent no.2 or

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by the firm after her retirement. Learned counsel, referring to para-3 of the complaint, submitted that the impugned cheque were issued by accused no. 2 Pawan Singh. He has assured the payment of amount of the cheque. There is no allegation that the petitioner is, in any manner, involved in the transaction regarding issuance of the cheque. Learned counsel further contends that section 138 of N.I. Act provides for individual liability against the person, who has signed the negotiable instrument. Section 141 of N.I. Act provides for vicarious and deemed liability against the partners of the firm, provided specific averments with regard to their involvement in conduct of the business of the firm are made in the complaint. Learned counsel for the petitioner referring to the judgments of Supreme Court in the case of ***Bijoy Kumar Moni Vs. Paresh Manna & Anr*** reported in ***2024 INSC 1024, Pawan Kumar Goel Vs. State of U.P. & Another*** reported in ***2022 (8) SUPREME 618*** and Order dated ***29.01.2016*** passed in ***Cr. W.P. No. 2909/2013*** by the High Court of Bombay contended that the complaint is not maintainable also for the reason that the partnership firm M/s Vani Education was not made a party. In view of the provisions contained in Section 141 of N.I. Act, non-impleadment of the firm is fatal for the complaint.

6. *Per contra,* learned counsel for the respondent/complainant submitted that the complainant had retired from the partnership firm – M/s Vani Education *vide* retirement deed dated 15.11.2015, wherein the existing partners i.e. accused Pawan Singh and Rachna Singh have admitted liability of payment of Rs. 33,20,000/- toward full and final settlement in favour of the complainant. The cheques were issued toward settlement of aforesaid liability. The petitioner was a partner in the firm at the time of retirement of the complainant from the partnership firm, therefore, the petitioner is liable for the payment of settlement amount. Subsequent retirement of the petitioner from the firm would not absolve her from liability. Learned counsel further referring to provisions of the Partnership Act, contended that the procedure prescribed for notification of

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retirement from the partnership firm has not been complied with. The effect of subsequent retirement of the petitioner from the partnership firm – M/s Vani Education would to be decided after evidence in trial. The petitioner, as a partner in M/s Vani Education, is responsible for the offence punishable under section 138 of N.I. Act in view of existing liability against the firm. Learned counsel for the respondent/complainant referring to the judgments of Supreme Court in the case of ***Riya Bawri Vs. Mark Alexander Davidson & Ors***. reported in ***2023 Online SC 1072***, ***G. Malarvizhi & Ors. Vs. P. Sampath*** reported in ***2023 SCC Online Del 3835*** and ***Rallis India Ltd Vs. Poduru Vidhabu*** reported ***2011(13) SCC 889*** and ***S.P. Mani & Mohan Dairy Vs. Dr. Snehlata Elangovan*** reported in 2023***(10) SCC 685*** contended that the execution of retirement deed will have to be proved by the petitioner by adducing evidence at the trial. The Court, while considering the quashing of complaint under Sec. 482 of Cr.P.C., cannot indulged into meticulous examination of facts.

7. Heard, both the parties and perused the record.

8. The Apex Court, in the case of ***Indian Oil Corpn. V. NEPC India Ltd.,*** reported in ***(2006) 6 SCC 736,*** held as under:

> "12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few— Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. V. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. V. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283].
>
> The principles, relevant to our purpose are:

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v. A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not. (emphasis added)

9. The petitioner asserts that she retired from the partnership firm prior to the issuance of the cheques in question. The petitioner has relied on a copy of date of admission *cum* retirement deed dated 22.02.2016. The copy of retirement deed cannot be treated as unimpeachable, uncontroverted and clinching evidence, sufficient to hold at this juncture that petitioner Rachna Singh had retired before issuance of cheque in question and she was not liable to the partnership firm. The determination would depend on the evidence regarding whether any retirement deed was properly executed and whether the retiring partner (petitioner) complied

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with the provisions of Section 32(2) and 72 of the Indian Partnership Act. Therefore, the plea of retirement before issuance of cheque in question by itself is not sufficient to quash the summoning order and the complaint. [***Riya Bawri Vs. Mark Alexander Davidson & Ors*** and ***Rallis India Ltd Vs. Poduru Vidhabu*** (supra) relied].

However, it is imperative to consider another significant legal aspect contended by the petitioner.

10. Section 138 of the Negotiable Instruments Act,1881 reads as under:

> **138. Dishonour of cheque for insufficiency, etc., of funds in the account.**
>
> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years', or with fine which may extend to twice the amount of the cheque, or with both:
>
> Provided that nothing contained in this section shall apply unless—
>
> (a) the cheque has 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;
>
> (b) ***the payee or the holder in due course of the cheque, as the case may be, makes 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;*** and
>
> (c) the drawer of such cheque fails to make the 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.
>
> Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability."

11. The Supreme Court in case of ***Kusum Ingots & Alloys Ltd.*** v. ***Pennar Peterson Securities Ltd.*** reported in **(2000) 2 SCC 745** explained the ingredients

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for making out offence punishable under Section 138 of the NI Act as under :

> "On a reading of the provisions of Section 138 of the NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:
>
> (i) ***a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;***
>
> (ii) that cheque has 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;
>
> (iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
>
> (iv) ***the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;***
>
> (v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice." (emphasis added)

12. In case of ***Bijoy Kumar Moni Vs. Paresh Manna & Anr*** reported in ***2024 INSC 1024,*** it was held that-

> **38.** The proviso (b) to Section 138 provides that the payee or the holder of the cheque which has been dishonoured must give a written notice to the drawer of the cheque within 30 days of the receipt of information from the bank that the cheque has been returned as unpaid. Further proviso (c) provides that if the drawer of the cheque makes the payment of the amount mentioned in the cheque within 15 days of receiving the notice mentioned in proviso (b), then he cannot be held liable under Section 138.
>
> **39.** What invariably follows from a perusal of the aforesaid provisions is that it is only the drawer of the cheque who can be held liable under Section 138. Section 141 is an exception to this scheme of the NI Act and provides for vicarious liability of persons other than the drawer of the cheque in cases where the drawer of the cheque under Section 138 is a corporate person.
>
> **44.** In yet one another decision of this Court in the case of N. Harihara Krishnan v. J. Thomas reported in **(2018) 13 SCC 663**, while dealing with the issue of commission of an offence under Section 138 of the NI Act by a company, the Court observed that Section 138 only contemplates the drawer of the cheque to be

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responsible for the commission of the offence. It is only by virtue of Section 141 that certain persons other than the drawer of the cheque can be made liable for the offence in cases where the offence under Section 138 is committed by a company and not an individual person. The Court, in the facts of the case before it, further held that the identity of the drawer of the cheque was apparent from the cheque itself and thus it was not open to the payee/complainant to seek impleadment of the company, that is, the drawer of the cheque, at a belated stage by filing an impleadment application when it had instituted the complaint only against the authorised signatory who had signed the cheque on behalf of the company. The Court also held that the offence under Section 138 is person specific and in the absence of applicability of the principles of the Criminal Procedure Code, 1973, the magistrate cannot take cognizance of the complaint unless it is made against the drawer of the cheque, as it is only the drawer who can be an accused under Section 138. The relevant observations are reproduced hereinbelow:

> "20. The offence under Section 138 of the Act is capable of being committed only by the drawer of the cheque. The logic of the High Court that since the offence is already taken cognizance of, there is no need to take cognizance of the offence against Dakshin is flawed. Section 141 stipulates the liability for the offence punishable under Section 138 of the Act when the person committing such an offence happens to be a company—in other words when the drawer of the cheque happens to be a company. […]
>
> xxx xxx xxx
>
> 22. The High Court failed to appreciate that the liability of the appellant (if any in the context of the facts of the present case) is only statutory because of his legal status as the Director of Dakshin. Every person signing a cheque on behalf of a company on whose account a cheque is drawn does not become the drawer of the cheque. Such a signatory is only a person duly authorised to sign the cheque on behalf of the company/drawer of the cheque. If Dakshin/drawer of the cheque is sought to be summoned for being tried for an offence under Section 138 of the Act beyond the period of limitation prescribed under the Act, the appellant cannot be told in view of the law declared by this Court in Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] that he can make no grievance of that fact on the ground that Dakshin did not make any grievance of such summoning. It is always open to Dakshin to raise the defence that the initiation of prosecution against it is barred by limitation. Dakshin need not necessarily challenge the summoning order. It can raise such a defence in the course of trial. (emphasis added)

13. Section 141 of the Negotiable Instruments Act,1881 provides as under-

Offences by companies. —

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(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***.

14. A three-Judge Bench of the Supreme Court, in case of ***Aneeta Hada*** **v.** ***Godfather Travels and Tours Private Limited*** reported in **(2012) 5 SCC 661** explained the effect of expression '***as well as the company',*** in above provision, as under-

"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)

15. Learned counsel for the petitioner relied upon the order of the Nagpur Bench of Bombay High Court in the case of ***Shri Satyaseelan Kuttappan Vs. P.P. Sudhakaran and Another Order dated 28.04.2023*** passed in ***Criminal Revision Application No.94/2023*** to contend that there is no restriction on making of unregistered partnership firm an accused u/S 141 of NI Act. Section 141 of N I Act mandates inclusion of the firm as an accused regardless of registration status.

16. Also in the case of ***Philip J Vs. Ashapura Minechem Ltd***. Reported in ***2016 CRI.L.J.(NOC) 195*** decided on 29.01.2016 , it was held that for maintaining prosecution against a partner under Section 141 of N.I. Act, arraigning of partnership firm as an accused is imperative. However, in the case of ***Dhanasingh Prabhu Vs. Chandrasekhar & Another*** reported in **(2025) 10 SCC 96**, the following observations have been made:

15. On hearing the learned counsel for the appellant and the learned Senior Counsel for the respondent, the points that arise for our consideration revolve around the interpretation of the expressions, "company" and "Director" in the Explanation to

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Section 141 of the Act in the context of the partners of a partnership firm. In other words, the questions are:

> "(i) Whether the High Court was right in dismissing the complaint on the ground that the name of the partnership firm was not mentioned in the statutory notice issued by the appellant-complainant to the respondents under Section 138 of the Act and was also not arraigned as an accused in the complaint filed by the appellant-complainant?
>
> (ii) What order?"

22. We are of the view that having regard to the distinct facts in the aforesaid case in Dilip Hariramani v. Bank of Baroda, (2024) 15 SCC 443, relief was granted by this Court but the present case cannot be decided on the basis of the aforesaid judgment. The three significant facts noted in the aforesaid judgment must be contrasted with the facts which arise in the present case, which are as under:

> (i) Notice of the complainant was not issued only to one partner or only to the authorised signatory of the partnership firm. It was issued to both partners in the present case.
>
> (ii) The cheque was issued in the name of partnership firm "Mouriya Coirs". However, both the partners were issued notice by the complainant which was not so in the aforesaid case, although the partnership firm was not issued any statutory notice.
>
> (iii) The complaint has been made against both the partners even though the firm has not been made an accused in the complaint in the instant case.

23. In fact, in an earlier judgment G. Ramesh v. Kanike Harish Kumar Ujwal, (2020) 17 SCC 239 which is also a judgment of a two-Judge Bench of this Court, it was noted from the complaint considered in the said case that the same contained a sufficient description of:

> (i) nature of the partnership;
>
> (ii) the business which was being carried out; and
>
> (iii) role of each of the accused in the conduct of the business and specifically in relation to the transaction which took place with the complainant.

In the averments, the accused had been referred to in the plural sense. This Court observed that Section 141 uses the expression "company" so as to include a firm or association of a persons. That the first accused in the said case was a partnership firm of which the remaining two accused were the partners which fact had been missed by the High Court and therefore the appeal was allowed.

24. Paras 11 and 12 of the judgment in G. Ramesh case read as under:

> "11. In terms of the Explanation to Section 141, the expression "company"

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has been defined to mean any body corporate and to include a firm or other association of individuals. Sub-section (1) of Section 141 postulates that where an offence is committed under Section 138 by a company, the company as well as every person who, at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business shall be deemed to be guilty of the offence.

12. In determining as to whether the requirements of the above provision have been fulfilled, it is necessary to bear in mind the principle of law that a partnership is a compendious expression to denote the partners who comprise the firm. By the deeming fiction in Explanation (a) the expression "company" is defined to include a firm."

25. While holding that Section 141 is a deeming provision, it was also observed that a partnership is a compendious expression to denote the partners who comprise the firm which means that a firm without a reference to its partners has no juristic identity in law. By a deeming fiction, in Explanation (a) to Section 141, the expression "company" has been defined to include a firm. Since the High Court had lost sight of the fact that a partnership firm has to be read within the meaning of Section 141 which uses the expression "company", the appeal filed by the complainant therein was allowed.

26. On considering the aforesaid judgments, we observe that even if we have to come to the conclusion that the juristic entity i.e. the partnership firm is the primary accused in the instant case it would be necessary for us to also state that such a juristic entity, namely, a partnership firm is not distinct from the partners who comprise the partnership. In other words, if the complainant had proceeded only against the partnership firm and not the partners it possibly could have been held that the partnership firm in the absence of its partners is not a complete juristic entity which can be recognised in law and therefore cannot be proceeded against. On the other hand, in the instant case the complainant has proceeded against the two partners. The complainant is aware of the fact that the cheque has been issued in the name of the partnership firm "Mouriya Coirs" and has been signed by one of the partners. The complainant has proceeded against the partners only without arraigning the partnership firm as an accused. It is necessary to reiterate that a partnership firm in the absence of its partners cannot at all be considered to be a juristic entity in law. On the other hand, the partners who form a partnership firm are personally liable in law along with the partnership firm. It is a case of joint and several liability and not vicarious liability as such. Therefore, if the complainant herein has proceeded only against the partners and not against the partnership firm, we think it is not something which would go to the root of the matter so as to dismiss the complaint on that ground. Rather, opportunity could have been given to the complainant to implead the partnership firm also as an accused in the complaint even though no notice was sent specifically in the name of the partnership.

27. Alternatively, notice to the partners/accused could have been construed as notice to the partnership firm also. We say so for the reason that unlike a company which is a separate juristic entity from its Directors thereof, a partnership firm comprises of its partners who are the persons directly liable on behalf of the partnership firm and

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by themselves. Therefore, a partnership firm, in the absence of the partners being arraigned as accused would not serve the purpose of the case and would be contrary to law. On the other hand, even in the absence of making a partnership firm an accused in the complaint, the partners being made the accused would be sufficient to make them liable inasmuch as the partnership firm without the partners is of no consequence and is not recognised in law. This is because in the case of a partnership firm, the said juristic entity is always understood as a compendious term, namely, the partnership firm along with its partners. Therefore, if the appellant-complainant had proceeded only against the partnership firm and not its partners then possibly the respondents would have been right in contending that the complaint was not maintainable but here the case is reversed. The complainant herein has not arraigned the firm but has arraigned the partners of the firm as accused and has also issued notice to them; therefore, we find that the defect, if any, is not significant or incurable in these circumstances. Permission is therefore to be granted to the complainant to arraign the partnership firm also as an accused in the complaint. Moreover, the cheque was issued in the name of the firm and signed by one of the partners, for and on behalf of the other also, therefore, the liability is deemed to be on both the partners of the firm.

28. Hence, permission is given to arraign the partnership firm as an accused having regard to the peculiar characteristics of a partnership firm and a company on which aspect we will discuss further.

17. The Supreme Court in case of ***Dhanasingh Prabhu (supra)*** while distinguishing a partnership firm from a Company regarding liability for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act 1881, held as under-

62. The Explanation to Section 141 has two clauses:

62.1. Clause (a) defines a company to mean any body corporate and includes a firm or other association of individuals. The expression "company" encompasses, inter alia, a body corporate which refers to a company incorporated under the provisions of the Companies Act or a statutory body. The expression "company" is inclusive inasmuch as it includes a firm, meaning thereby a partnership firm, as per the provisions of the Partnership Act, as well as a limited liability partnership or other association of individuals.

62.2. Clause (b) of the Explanation defines a Director as mentioned in sub-section (2) of Section 141 of the Act in relation to a firm to mean a partner in the firm. Thus, by a legislative device an inclusive definition is added by way of an Explanation to Section 141 of the Act inasmuch as in jurisprudence and in law, a company is a distinct body corporate and separate juristic entity as compared to a partnership firm.

63. On a conjoint reading of the various clauses of Section 141, what emerges is that the expression "company" has been used in an expansive way to include not just a

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company incorporated under the provisions of the Companies Act stricto sensu but also any body corporate such as a statutory company as well as other artificial juristic entity such as a partnership firm or other association of individuals. Hence, the expression "Director" in sub-section (2) of Section 141 is not restricted to a Director of an incorporated company or a statutory body, but also includes a partner of a firm. The expression "Director" in sub-section (2) of Section 141 of the Act in relation to a firm means a partner, which is also a legislative device adopted by Parliament knowing fully well and being conscious of the fact that a partnership firm, jurisprudentially speaking, does not stand on a par with a Director of a body corporate. Since Parliament has used the expression "company" encompassing all types of juristic persons, it was necessary to give an expanded definition to the expression "Director" in relation to a firm to mean a partner in the firm. Therefore, the inclusion of a firm within the meaning of the expression "company" is by a legal fiction and by way of a legislative device only for the purpose of creating a liability on the partners of the firm, which in any case, they are liable under the law of partnership in India. But the definition of the word "company" including a partnership firm has been incorporated in the Explanation for the sake of convenience, as otherwise a similar provision would have to be inserted for the very same purposes. Instead of replicating the same definition for different kinds of juristic entities, Parliament has thought it convenient to add an Explanation to define a company for the purpose of Section 141 of the Act in the context of an offence committed by, inter alia, a company, as understood within the meaning of the Companies Act, and also include a firm or other association of individuals within the definition of company. Similarly, under clause (*b*) of the Explanation, the expression "Director", in relation to a firm, means a partner in the firm.

64. ***This also demonstrates the fact that while a Director is a separate persona in relation to a company, in the case of a partnership firm, the partner is not really a distinct legal persona. This is because a partnership firm is not really a legal entity separate and distinct as a company is from its Directors but can have a legal persona only when the partnership firm is considered along with its partners. Thus, the partnership firm has no separate recognition either jurisprudentially or in law apart from its partners. Therefore, while a Director of a company can be vicariously liable for an offence committed by a company, insofar as a partnership firm is concerned, when the offence is committed by such a firm, in substance, the offence is committed by the partners of the firm and not just the firm per se. Therefore, the partners of the firm are liable for the dishonour of a cheque, even though the cheque may have been issued in the name of the firm and the offence is committed by the firm.*** Therefore, in law and in jurisprudence, when a partnership firm is proceeded against, in substance, the partners are liable and the said liability is joint and several and is not vicarious. This is unlike a company which is liable by itself and since it is an artificial juristic entity, the persons in charge of the affairs of the company or who conduct its business only become vicariously liable for the offence committed by the company.

65. However, jurisprudentially speaking, the partners of a partnership firm constitute the firm and a firm is a compendious term for the partners of a firm. This is opposed to the position of a Director in a company which is a body corporate stricto sensu and such a company is a separate juristic entity vis-à-vis the Directors.

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On the other hand, a partnership firm has no legal recognition in the absence of its partners. If a partnership firm is liable for the offence under Section 138 of the Act, it would imply that the liability would automatically extend to the partners of the partnership firm jointly and severally. ***This underlying distinction between a partnership firm and a company which is a body corporate has to be borne in mind while dealing with an offence committed by a company or a partnership firm, as the case may be, within the meaning of Section 138 read with Section 141 of the Act. To reiterate, in the case of a partnership firm, there is no concept of vicarious liability of the partners as such. The liability is joint and several because a partnership firm is the business of partners and one cannot proceed against only the firm without the partners being made liable.***

66. ***Therefore, even in the absence of partnership firm being named as an accused, if the partners of the partnership firm are proceeded against, they being jointly and severally liable along with the partnership firm as well as inter se the partners of the firm, the complaint is still maintainable***. The accused in such a case would in substance be the partners of the partnership firm along with the firm itself. ***Since the liability is joint and several, even in the absence of a partnership firm being proceeded against by the complainant by issuance of legal notice as mandated under Section 138 of the Act or being made an accused specifically in a complaint filed under Section 200 CrPC (equivalent to Section 223 BNSS), such a complaint is maintainable***.

67. Thus, when it is a case of an offence committed by a company which is a body corporate stricto sensu, the vicarious liability on the categories of persons mentioned in sub-section (1) and sub-section (2) of Section 141 of the Act accordingly would be proceeded against and liable for the offence under Section 138 of the Act. In the case of a partnership firm on the other hand, when the offence has been proved against a partnership firm, the firm per se would not be liable, but liability would inevitably extend to the partners of the firm inasmuch as they would be personally, jointly and severally liable with the firm even when the offence is committed in the name of the partnership firm.

68. To reiterate, when the partnership firm is only a compendious name for the partners of the firm, any offence committed under Section 138 read with Section 141 of the Act would make the partners of the firm jointly and severally liable with the firm. If, on the other hand, Parliament intended that the partners of the firm be construed as separate entities for the purpose of penalty, then it would have provided so by expressly stating that the firm, as well as the partners, would be liable separately for the offence under Section 138 of the Act. Such an intention does not emanate from Section 141 of the Act as the offence proved against the firm would amount to the partners of the firm also being liable jointly and severally with the firm. Therefore***, there is no separate liability on each of the partners unless sub-section (2) of Section 141 applies, when negligence or lack of bona fides on the part of any individual partner of the firm has been proved***.

69. In view of the aforesaid discussion, we hold that the High Court was not right in rejecting or dismissing the complaint for the reason that the partnership firm was not arraigned as an accused in the complaint or that notice had not been issued to it

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> under Section 138 of the Act. In view of the aforesaid discussion, the notice issued to the partners of the firm in the instant case shall be construed to be a notice issued to the partnership firm also viz. "Mouriya Coirs". Permission is granted to arraign the partnership firm as an accused in the complaint. (emphasis added)

18. The factual scenario, as reflected by the record, is examined in the light of aforestated propositions of law.

19. In the case on hand, the petitioner/accused Rachana Singh is sought to be prosecuted in capacity of a partner of the partnership firm M/s. Vani Education. Although, she has not signed the cheque in question, the fact remains that the cheque was issued from the account of firm- M/s Vani Education. She was a partner in the firm and executed Retirement Deed dated 15.11.2015 accepting the liability toward the complainant for the amount of Rs. 33,20,000/-. The petitioner, being a partner on the date of acceptance of liability towards the retiring partner (the complainant) would be jointly and severally liable with the firm. Allegedly, the cheque in question was issued from the account of the partnership firm to discharge the liability. The factum and effect of subsequent retirement of petitioner from the partnership firm would be considered after evidence in the trial.

20. In view of above discussion, this Court is of considered opinion that the impugned order does not suffer from manifest impropriety or legal infirmity. No case is made out to interfere in the impugned order or to quash the criminal complaint in exercise of inherent jurisdiction.

21. The Petition (MCRC No. 24557 of 2019) is, accordingly, dismissed.

(SANJEEV S KALGAONKAR)
JUDGE

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