



2025:AHC:150820

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 30317 of 2025

M/S. M.S. Agro Foods And 5 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Jai Raj

Counsel for Opposite Party(s) : Harish Chandra Pratap, Mamta Sen,
G.A.

Court No. - 75

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Jai Raj, learned counsel for the applicants, who are six in number, Sri Akash Sharma, learned State Law Officer for the State/opposite party no.1 and Sri Harish Chandra Pratap along with Ms. Mamta Sen learned counsel for the opposite party no.2.

2. A joint statement has been made by learned counsel for the parties that they do not propose to file any further affidavit and the application be decided on the basis of the documents available on record. With the consent of the parties, the application be decided at the fresh stage.

3. This application under Section 528 of the B.N.S.S. has been filed by the applicants to the summoning order dated 17.06.2025 passed by Additional Chief Judicial Magistrate, Court No.4, Agra, in Complaint Case No. 7015 of 2025 (Mohd. Aman Vs. M/s. M.R. Agro Food and others), U/s. 138 N.I. Act, Police Station Kotwali, District Agra, as well as entire criminal proceedings of Complaint Case No. 7015 of 2025 pending before the court of Additional Chief Judicial Magistrate, Court No.4, Agra.

4. The case of the applicants is that on 29.03.2025 a complaint stood lodged by the opposite party No.2 against the applicants with an allegation that the applicant No.1 happens to be a partnership firm and the authorised signatory whereof is applicant No.3 and the rest of the applicants being applicants No. 2 and 4 to 6 are also the partners, who are related to the applicant No.3 who happens to be the authorised signatory

of the cheque. With respect of discharge of a liability, a cheque stood drawn on behalf of the applicant No.1 firm under the signatures of the applicant No.3 for an amount of Rs.55 lakhs dated 31.1.2025 bearing No.000110 which on presentation in the bank on 31.01.2025 came to be dishonoured on 1.02.2025 with the remark 'account blocked' thereafter a statutory demand notice came to be issued on 21.02.2025 which is stated to have been served upon the applicants on 24.02.2025 followed by a complaint under Section 138 of the N.I.Act on 29.03.2025 and the applicants came to be summoned under Section 138 of the N.I. Act on 17.06.2025 by the Additional Chief Judicial Magistrate, Court No.4, Agra, in Complaint Case No. 7015 of 2025.

5. Questioning the summoning order, the present application has been preferred.

6. Learned counsel for the applicants has submitted that the summoning order cannot be sustained for more than one reason, firstly, the applicant No. 3 as per the own case of the complainant was the authorised signatory of the cheque which has been issued for the applicant No.1 partnership firm, thus, the applicants No.2 and 4 to 6 cannot be held to be singly or jointly liable for the offences in view of the provisions contained under Section 141 of the N. I. Act, as explanation so appended thereto itself speaks out that the company means a body corporate and includes a firm or other association of the individual and director in relation to the firm means a partner in the firm, thus, in absence of the ingredients which were to be recited in the complaint that every person who at the time the offence was committed was in-charge of and was responsible for the conduct of the business of the company, once is lacking and necessary averments are not there then the complaint could not be maintainable, secondly, as per the complaint itself there is no mode and the manner mentioned with regard to the payment of the said amount which became actually payable and thus in view of the provisions contained under Section 269 S.S. of the Income Tax Act, any payment beyond Rs.20,000 cash would be hit by the said provision and thus there is no legal debt or liability so as to remove the provisions contained under Section 138 of the N. I. Act.

7. Learned State Law Officer on the other hand submits that once the cheque stood drawn then presumption under Section 139 of the N.I. Act

would be there.

8. I have heard the submissions made across the bar and perused the record carefully.

9. As regards the first submission of the learned counsel for the applicants that once the applicant No.1 firm happened to be a partnership firm, thus the principles so enshrined and the mandatory requirement contained under Section 141 of the Negotiable Instrument Act would apply and in absence of any clear recital that 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 was a mandatory requirement and in absence of the said recital, the complaint would not be maintainable is misconceived besides the out of context as the said issue is no more res integra as the Hon. Apex Court in **Special Leave Petition (Criminal) No. 5706 of 2024, Dhansingh Prabhu versus Chandrashekhar and another decided on 14.07.2025** had the occasion to consider the said aspect and it was observed as under:-

9.5 The Explanation to Section 141 has two clauses. 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. 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.

9.6 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 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 the Parliament knowing fully well and being conscious of the fact that a partnership firm, jurisprudentially speaking, does not stand on par with a director of a body corporate. Since the 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, the 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.

9.7 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.

9.8 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. 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.

9.9 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 of CrPC, (equivalent to Section 223 of the BNSS), such a complaint is maintainable.

9.10 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.

10. As regards the second submission of the learned counsel for the applicants that there is no legal enforceable debt or liability so fastened upon the applicants and thus the proceedings under Section 138 of the N. I. Act could not have been initiated since the payment so made in cash is over and above Rs.20,000 and is hit by the provisions contained under Section 269 S.S. of the Income Tax is concerned, the same is not liable to be accepted particularly when the High Court of Judicature at Bombay Nagpur Bench Nagpur in **Criminal Appeal No. 795 of 2018, Prakash Madhukarrao Desai versus Dattatraya Sheshrao Desai** had the occasion to consider the said aspect and vide judgment dated 19.08.2023, it was observed as under :-

" 18. In view of the aforesaid discussion, it is held that a transaction not reflected in the books of accounts and/or Income Tax returns of the holder of the cheque in due course can be permitted to be enforced by instituting proceedings under Section 138 of the Act of 1881 in view of the presumption under Section 139 of the Act of 1881 that such cheque was issued by the drawer for the discharge of any debt or other liability, execution of the cheque being admitted. Violation of Sections 269-SS and/or Section 271-AAD of the Act of 1961 would not render the transaction unenforceable under Section 138 of the Act of 1881. The decisions in Krishna P. Morajkar, Bipin Mathurdas Thakkar and Pushpa Sanchalal Kothari (supra) lay down the correct position and are thus affirmed. The decision in Sanjay Mishra (supra) with utmost respect stands overruled.

11. Much emphasis has been laid upon the judgment of the High Court of Kerala at Enrakulam in **CRL. REV. PET No. 408 of 2024 P.C. Hari versus Shine Varghese** decided on 25.5.2025 however, in the said case the Kerala High Court was concerned with an order of conviction and sentence post dismissal of the appeal. Here in the present case the challenge has been raised to the summoning order thus, it would not be appropriate for this Court to interfere at this stage.

12. Accordingly, interference is declined. Application stands **disposed of** leaving it open to the applicant to raise all legal and factual issues before the court below while contesting the trial and this Court has no reasons to disbelieve that the same shall be considered in accordance with law.

13. At this stage learned counsel for the applicants seeks direction for bail in view of the judgment of the Hon. Apex Court in **Satender Kumar Antil Vs. Central Bureau of Investigation, (2022) 10 SCC 51.**

14. In the opinion of the Court once an application seeking enlargement on bail is preferred and this Court has no reason to disbelieve that the same shall be considered strictly in accordance with law.

(Vikas Budhwar,J.)

August 28, 2025
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