



CNR: KAHC010028772025

NC: 2026:KHC:52951
CRL.P No. 719 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 719 OF 2025



BETWEEN:

SRI CHAKRADHARA,
S/O LATE GOVINDA RAO,
AGED ABOUT 67 YEARS,
NO.36B, JANAPRIYA ABODES,
KENCHENAHALLI, RAJARAJESHWARI NAGAR,
BENGALURU 560058.

...PETITIONER

(BY SRI N ANANTHA, ADVOCATE)

AND:

SRI A P NARENDRA,
S/O LATE A M PUTTSWAMY,
AGED ABOUT 59 YEARS,
BIRLA SUNLIFE INSURANCE AGENT,
R/O BEHIND BDO OFFICE, 1ST FLOOR,
MANDYA CITY 571401.

...RESPONDENT

(BY SRI AKARSH KUMAR GOWDA, ADVOCATE)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) TO 1. SET ASIDE THE IMPUGNED ORDER DATED 9TH OCTOBER 2024 PASSED BY THE ADDL. CIVIL JUDGE AND JMFC, MANDYA ON APPLICATION UNDER SECTION 141 OF NI ACT IN CC NO. 523/2018 AS ANNEXURE-D AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



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CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. Sri.Akarsh Kumar Gowda., learned counsel submits that he has filed Vakalathnamma for respondent No.2. Registry is directed to print his name as such.
2. The petitioner is before this Court seeking for the following reliefs:-
 1. *Set aside the impugned order dated 9th October 2024 passed by the Addl. Civil Judge and JMFC, Mandya on Application under section 141 of NI Act in CC No. 523/2018 as at Annexure - D;*
 2. *Quash the criminal complaint in CC No 523/2018 registered against the Petitioner, pending before the Hon'ble Addl. Civil Judge and JMFC, Mandya for offence under section 138 of Negotiable Instruments Act, 1881, quashing the entire proceedings as at Annexure - A;*
 3. *Pass such other order/s in the facts and circumstances of the case in the interest of justice."*
3. Respondent No.2 filed a private complaint in PCR No.131/2011 before the Civil Judge (Jr. Dn.) and JMFC, Maddur, under Section 200 of the Cr.P.C. read with Section 138 of the Negotiable Instruments Act, 1881 (for short, "the NI Act"), contending that the petitioner had borrowed a sum of ₹3,00,000/- from the complainant on 17.03.2010 as working capital for



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his concern, namely, "M/s. Fusion Design and Build", agreeing to pay interest on the said amount at the rate of 2% per month.

4. It was contended that, despite repeated demands made by the complainant, the amount was not repaid. In the circumstances, the petitioner is stated to have issued a cheque for a sum of ₹3,00,000/- on 02.04.2011, post-dating the same as 19.04.2011, with an undertaking to make payment of the interest within two months.
5. When the said cheque was presented for encashment, it was dishonoured and returned to the complainant with the endorsement "Account transferred to SAM Bank". In the circumstances, a legal notice came to be issued on 03.05.2011, which was served upon the petitioner on 07.05.2011. Since the payment was not made despite service of the notice, the complaint came to be lodged.
6. The petitioner filed an application under Section 141 of the NI Act contending that the cheque had been issued by a partnership firm and that, since the partnership firm had not been arrayed as an accused, the complaint was not maintainable.



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7. The learned Magistrate, by the impugned order dated 09.10.2024, held that, as per the averments in the complaint, the accused had borrowed a sum of ₹3,00,000/- for his proprietary concern, whereas the accused contended that "M/s. Fusion Design and Build" was a partnership firm. However, the accused had not placed any material on record to establish that "M/s. Fusion Design and Build" was a partnership firm. The learned Magistrate was, therefore, of the view that the matter required to be tried and that, at that stage, the complaint could not be dismissed.
8. It is challenging the said order dated 09.10.2024 that the petitioner is before this Court.
9. The submission of Sri.N.Anantha., learned counsel for the petitioner is that;
 - 9.1. The very cheque which has been presented for payment and made part of the complaint indicates that it has been signed for M/s Fusion Design and Build as a partner and therefore that itself was sufficient for the Magistrate to have looked into and considered that the cheque has been issued by a partnership firm and there was no other further requirement



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which was required to be placed on record by the petitioner.

9.2. His submission is that without making the partnership firm a party to the complaint, the complaint could not have been filed. As such the application under Section 141 filed by the petitioner ought to have been allowed.

10. Sri.Akarsh Kumar Gowda., learned counsel appearing for the respondent could however submit that;

10.1.The position has been explained by a detailed and comprehensive judgment of the Hon'ble Apex Court in ***Dhanasingh Prabhu vs. Chandrasekar & Anr.***¹ and in that regard he relies upon para 9.9 thereof, which is reproduced hereunder for easy reference;

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*

¹ Special leave petition (Criminal) No.5706 of 2024 dated 14.07.2025





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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.

10.2.By relying on ***Dhanasingh Prabhu's case***, his submission is that even in the absence of a 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 issues 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 the CrPC, such a complaint is maintainable.

10.3.This being a categorical observation made by the Hon'ble Apex Court, as regard the position of a partnership firm not being made a party in a proceedings under Section 138 of the



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Negotiable Instruments Act, the same would be applicable in the present matter on all fours.

11. The submission of learned counsel for the petitioner, in rejoinder, that the judgment in **Dhanasingh Prabhu** having been rendered only on 14.07.2025 would not be applicable to the present case, since the impugned order was passed much earlier on 09.10.2024, also cannot be accepted. The mere fact that the judgment of the Hon'ble Apex Court was rendered subsequent to the passing of the impugned order would not render the law declared therein inapplicable to the proceedings which are pending consideration before this Court.
12. The judgment in **Dhanasingh Prabhu** is not one which creates a new statutory liability or introduces a new requirement in relation to proceedings under Section 138 of the NI Act. The Hon'ble Apex Court has, in the said judgment, interpreted the existing statutory scheme governing the liability of a partnership firm and its partners in proceedings arising under Section 138 of the NI Act and has explained the effect of the firm not being separately arrayed as an accused. The declaration of law by the Hon'ble Apex Court is therefore an exposition of the





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legal position governing the provision as it stood during the relevant period.

13. It is well settled that a declaration of law by the Hon'ble Supreme Court is ordinarily declaratory of what the law has always been, unless the judgment itself expressly provides that the declaration shall operate prospectively or the nature of the judgment is such that prospective application is specifically warranted. No such prospective limitation has been placed on the judgment in **Dhanasingh Prabhu**. The applicability of the judgment, therefore, cannot be defeated merely on the ground that the complaint or the impugned order preceded the date of the said judgment.
14. What is required to be considered is the legal position applicable to the proceedings as on the date on which this Court is called upon to adjudicate the challenge. Once the Hon'ble Apex Court has authoritatively explained the legal position with regard to the maintainability of a complaint under Section 138 of the NI Act in circumstances where the partnership firm has not been separately arrayed as an accused, this Court is bound to apply the law so declared while deciding the present petition.



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15. Further, the petitioner cannot claim a vested right to have the criminal proceedings terminated merely because the learned Magistrate had considered the issue prior to the pronouncement of **Dhanasingh Prabhu**. The impugned order does not confer any substantive right upon the petitioner; it only declines to terminate the complaint at the threshold and leaves the matter open for adjudication in accordance with law. The subsequent authoritative pronouncement of the Hon'ble Apex Court is therefore required to be taken into consideration while examining whether the complaint is legally maintainable.
16. In the present case, the principal objection raised by the petitioner is that the cheque was issued in the name of "M/s. Fusion Design and Build" and that the said entity, according to the petitioner, is a partnership firm. It is therefore contended that, in the absence of the firm being arrayed as an accused, the proceedings against the petitioner could not be continued.
17. However, the decision in **Dhanasingh Prabhu** makes it clear that the mere non-arraying of the partnership firm does not, by itself, result in the



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complaint becoming non-maintainable where the partners themselves are proceeded against and the liability alleged against them is founded upon the transaction of the partnership firm. The question as to the precise status of the petitioner, the constitution of "M/s. Fusion Design and Build", the capacity in which the petitioner had issued the cheque and the extent of his liability are matters which can be examined on the basis of the evidence placed before the Trial Court.

18. At the stage at which the petitioner seeks termination of the proceedings on the sole ground that the partnership firm has not been impleaded, this Court is required to consider whether such non-arraying is, as a matter of law, fatal to the complaint. In view of the law declared by the Hon'ble Apex Court, the answer would be in the negative. The petitioner cannot therefore seek dismissal of the complaint merely on the ground that the partnership firm has not been separately arraigned as an accused.
19. In that view of the matter, the contention of learned counsel for the petitioner that the proceedings under Section 138 of the NI Act are not maintainable solely



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on account of the partnership firm not having been arrayed as an accused, cannot be accepted. The subsequent pronouncement of the Hon'ble Apex Court in **Dhanasingh Prabhu** does not alter the nature of the liability under Section 138 of the NI Act but declares the legal position governing the maintainability of such proceedings. The said declaration of law is binding upon this Court and is applicable to the proceedings pending consideration before it.

20. Consequently, the order passed by the learned Magistrate declining to terminate the proceedings on the aforesaid ground does not call for interference. The petitioner would be at liberty to urge all other factual and legal contentions available to him before the learned Trial Court in accordance with law.

21. Accordingly, the petition stands **dismissed**.



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(SURAJ GOVINDARAJ)
JUDGE

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List No.: 1 Sl No.: 12