



IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Misc. Application No.1334 of 2018

Rakesh Thakur

.... Applicant

Versus

M/s Dashmesh Steel Centre

..... Respondent

Present:-

Mr. V.D. Bisen, learned counsel for the applicant.

Mr. Vikas Kumar Guglani, learned counsel for the respondent.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present criminal miscellaneous application under Section 482 of the Code of Criminal Procedure, the applicant has sought quashing of Criminal Case No. 5047 of 2015, M/s Dashmesh Steel Centre Vs. M/s Dudgal Construction, under Section 138 of the N.I. Act, pending in the Court of the 1st Additional Civil Judge (J.D.)/Judicial Magistrate, Udham Singh Nagar.

2. Assailing the proceedings under Section 138 of the N.I. Act at the behest of the complainant/respondent, learned counsel for the applicant would submit that, since M/s Mudgal Construction Limited is a partnership



firm, it was incumbent upon the complainant/respondent herein to implead all the partners as accused persons in the complaint. He would further submit that the liability of all the partners is joint and several, and by impleading only the applicant, Rakesh Thakur, who is one of the partners, in addition to two other partners, the entire burden would fall upon him. He would further submit that it appears that the complaint under Section 138 of the N.I. Act has been filed by the complainant/respondent herein in connivance with the other partners. He would further submit that, since it is a partnership firm, the financial burden also needs to be shared equally by all the three partners, and by impleading the applicant as the only partner out of the three partners, the complaint is vitiated. The firm is not duly represented through a partner, and therefore, the entire proceedings of the said complaint deserve to be quashed.

3. Per contra, Mr. Vikas Kumar Guglani, learned counsel for the respondent, would submit that M/s. Mudgal Construction Limited is a partnership firm, and by impleading even one of the partners, the firm would be duly represented. He would rely upon a judgment of the Hon'ble Supreme Court in the case of Dhanasingh



Prabhu v. Chandrasekar and Another, reported in (2025)

10 SCC 96, and has drawn the attention of the Court to paragraph numbers 66, 68, and 69 thereof, which are extracted hereunder for ready reference:-

“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 200CrPC (equivalent to Section 223 BNSS), such a complaint is maintainable.

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 under Section 138 of the



2026:UHC:6300

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."

4. He would submit that if a partner of the partnership firm is proceeded against, he 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.

5. He would further submit that the notice issued to the partners of the firm shall be construed to be a notice to the partnership firm, and hence, he would submit that the proceedings under Section 138 of the N.I. Act before the trial court are perfectly justified and do not warrant any interference by this Court under Section 482 of the Cr.P.C.

6. After hearing the learned counsel for the parties and going through the record, it is clear therefrom that the complaint has been made by the complainant/respondent herein against the firm as well as the partner, Mr. Rakesh Thakur.

7. Before proceeding further, it is apt to refer to Sections 19 and 25 of the Indian Partnership Act, 1932, which are extracted hereinbelow for ready reference:-



2026:UHC:6300

“19. Implied authority of partner as agent of the firm.—(1) *Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.*

The authority of a partner to bind the firm conferred by this section is called his “implied authority”.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(h) transfer immovable property belonging to the firm, or

(g) enter into partnership on behalf of the firm.

25. Liability of a partner for acts of the firm.—*Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.”*

8. A perusal of Section 25 of the Indian Partnership Act, 1932 would reveal that every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.



9. Learned counsel for the applicant does not dispute that he is a partner in the firm M/s. Mudgal Construction Limited. His only submission, as has been recorded hereinabove, is that all the other partners of the firm have not been impleaded as accused in the complaint and that the firm has not been represented through a partner. A perusal of the complaint would reveal that the firm is arrayed as accused No. 1, whereas the applicant has been arrayed as accused no.2 as a partner of M/s. Mudgal Construction Limited, which is a partnership firm. In such an eventuality, the submissions made on behalf of the applicant, to the effect that the firm is not represented through a partner, do not appear to be correct.

10. Also, in view of the position of law as enunciated by the Hon'ble Supreme Court in the case of Dhanasingh Prabhu (*supra*), it is clear that if the partners of the partnership firm are proceeded against, they, being jointly and severally liable along with the partnership firm, the complaint would be maintainable.

11. Hence, this being the settled position of law, the proceedings of Criminal Case No. 5047 of 2015, M/s Dashmesh Steel Centre vs. M/s Mudgal Construction



and Another, are found to be in accordance with law and do not warrant any interference under Section 482 of the Cr.P.C.

12. Thus, the instant application under Section 482 of the Cr.P.C. deserves to be dismissed and is hereby dismissed.

(Siddhartha Sah, J.)
23.07.2026

BS
BALWANT
SINGH

