

**IN THE HIGH COURT OF UTTARAKHAND****AT NAINITAL****CRIMINAL MISC. APPLICATION No.623 of 2021**

Smt. Gurjeet Kaur

--Applicant

Versus

State of Uttarakhand & Another

--Respondents

Presence:-

Mr. Navneet Kaushik, learned counsel for the applicant.

Mr. Deepak Bhardwaj, learned Brief Holder for the State

Ms. Sukhwani Singh, learned counsel holding brief of Mr. Parikshit Saini, learned counsel for the respondent no.2.

Hon'ble Siddhartha Sah, J. (oral)

By means of the present criminal misc. application under Section 482 of Cr.P.C., the applicant has sought quashing of the impugned summoning order dated 16.10.2019 passed by learned Additional Chief Judicial Magistrate, Laksar, Haridwar in Criminal Complaint Case No.650 of 2019 titled as "Rajveer Singh vs. Smt. Gurjeet Kaur", under Section 138 of Negotiable Instruments Act, P.S. Kotwali Laksar, District Haridwar as well as the entire proceedings of Criminal Complaint Case No.650 of 2019.

2. Learned counsel for the applicant would submit that the complaint under Section 138 of the Negotiable Instruments Act is not maintainable against any individual



party in the absence of partnership firm being arraigned as an accused in the complaint.

3. Per contra, learned counsel for the respondent no.2 would submit that the position of law is otherwise and she would rely upon a judgment of the Hon'ble Supreme Court in the case of “Dhanasingh Prabhu vs. Chandrasekar and Anr.”, (2025) 10 SCC 96 and she would further submit that in the said judgment, the Hon'ble Supreme Court in paragraph nos.35, 43, 64, 65, 66, 67 and 69 has held that a complaint under Section 138 of N.I. Act is also maintainable against a partner.

4. Paragraph nos.35, 43, 64, 65, 66, 67 and 69 of the said judgment are extracted hereunder for ready reference:-

“35. In Section 4 of the Partnership Act, it is clearly stated that persons who have entered into partnership with one another are individually called partners and collectively a firm and the name under which their business is carried out is called a firm name. Thus, while partnership is the relation between persons who have agreed to share profits of the business carried on by all or any of them acting for all, the persons are collectively called a firm and the name of the firm is the firm name which is a compendious or collective term of partnership of the partners. The said section also clearly



implies that a firm or partnership is not a legal entity, separate and distinct from its partners.

43. The partnership name being only a compendious method of describing the partners, it stands to reason that a reference to the partners in their capacity as partners of the firm will be sufficient to impute liability on the partners themselves, whereas Directors of a company are made liable vicariously through the company, upon whom falls the primary liability. Thus, the partners and the partnership firm are one and the same. Unlike a company, a partnership firm has no independent corporate existence and has no distinct legal persona independent of its partners. Similarly, the partners of a firm are co-owners of the property of the firm unlike shareholders in a company who are not co-owners of the property of the company. This principle was also explained by the Calcutta High Court in Kondoli Tea Co. Ltd., In re [Kondoli Tea Co. Ltd., In re, ILR (1886) 13 Cal 43] where the transferors of a tea estate claimed that they were eligible to claim exemption from payment of ad valorem duty because the transferee was a company in which they themselves were shareholders. Negating this contention, it was held that the company was a separate person and the transfer of the tea estate was a conveyance and in substance, a transfer to another person.



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. 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 200CrPC (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.

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



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."

5. In such view of the matter and also in view of the provisions of Section 19 and 25 of the Indian Partnership Act, 1932, the challenge thrown by the applicant is not sustainable because the position of law is that the complaint against one of the partners of the firm is still maintainable and the case is squarely covered by the judgment of Hon'ble Supreme Court in the case of 'Dhanasingh Prabhu' (supra). Hence, there is no force in the present petition. The present Criminal Miscellaneous Application deserves to be dismissed, however, with permission to arraign the partnership firm as an accused in the complaint.

6. The present Criminal Misc. Application under Section 482 of Cr.P.C. is, thus, dismissed with the aforesaid observations.

(Siddhartha Sah, J.)
06.08.2026