IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.6370 OF 2013

Abhay Shantilal Kankriya ... APPLICANT

VERSUS

M/s Sarda Cloth Stores's partner
Laxminiwas Zumbarlal Sarda ... RESPONDENT

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Shri A.P. Bhandari, Advocate for applicant
Shri R.R. Mantri, Advocate holding for Shri
R.R. Sancheti, Advocate for respondent

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CORAM: M.T. JOSHI, J.

DATED: 16th October, 2015.

ORAL ORDER :

1. Heard both sides.

2. Aggrieved by the acquittal of the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act by the learned Judicial Magistrate, First Class,

Court No.6, Ahmednagar, the original complainant wants to prefer an appeal and, therefore, the present application for leave to file appeal is filed.

3. At the outset, the legal question is as to whether in absence of the partnership firm, the individual partner can be proceeded with as an accused.

4. The complainant/ applicant, in his complaint has arrayed the respondent as under :

M/s Sarda Cloth Stores's partner
Laxminiwas Zumbarlal Sarda

5. Mr. Mantri, learned counsel for the respondent submits that, the partnership firm is not joined as a respondent though the complaint would read that the cheque was issued towards certain alleged liability of the registered partnership firm. He relies on the provisions of Section 141 of the Negotiable Instruments Act as has been interpreted and explained in following judgments :

(1) Dadasaheb Rawal Co-op. Bank of Dondaicha Ltd. Vs.
Ramesh s/o Jawrilal Jain & ors.
(2009(2) Mh.L.J. 558)

(2) Raghu Lakshminarayan Vs. Fine Tubes
(2007 AIR (SC) 1634)

(3) Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.
(2012 (4) Mh.L.J. 527)

6. On the other hand, Mr. Bhandari, learned counsel for the applicant submits that, a partnership stands on a different footing as compared to a Company. In fact, a partnership firm is not a juridical entity. Each partner is principal, as well as an agent for the another partner as has been provided by Section 25 and other provisions of the Indian Partnership Act. He submits that, none of the authorities relied on by Mr. Mantri are relevant to decide this issue. As Laxminiwas Zumbarlal Sarda was the partner and signatory of the cheque at the time of drawing the cheque by him for the partnership firm, the complaint was maintainable. He relied on the ratio laid down by the Hon'ble Supreme Court in the case of **Kirshna Texport & Capital Markets Ltd. Vs. Ila A. Agrawal & ors. (Criminal Appeal No.1220/2009)** decided on 6th May 2015.

7. The provisions of Section 141 of the Negotiable Instruments Act read as under :

> "141. Offences by Companies :- (1) If the person committing an offence under Section 138 is a

company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, <u>as well as</u> 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 purpose of this Section, –

(a) "<u>company" means any body corporate and includes a firm or other association of individuals</u>; . . ."

(*emphasis supplied*)

8. The submissions of Mr. Mantri would show that under Section 141, the Company as well, any Body Corporate, including a firm or other association of individual could be covered by the

provisions of Section 141, and the said institution, by whatever name called, would be a necessary party as has been held in the cases relied on by him. He points towards the fact that, the registered partnership firm was not arrayed as an accused and, therefore, in absence of the said registered partnership firm, the complaint was maintainable.

9. In the case of **Kirshna Texport & Capital Markets Ltd**. (cited supra) relied on by Mr. Bhandari, the issue was as to whether all the Directors of the Company were required to be joined as accused. It was held that, the Company and such person who would be responsible for the affairs of the Company would be necessary accused and other Directors are not the necessary parties.

10. It is true that the authorities relied on by Mr. Mantri do not directly relate to the issue concerning a registered partnership firm. It is also not disputed that the provisions of the Indian Partnership Act would show that a registered partnership firm, in fact, is a compodium of various partners and each of the partner would be an agent for others and the principal so far he is concerned.

11. The provisions of Section 141 of the Negotiable Instruments Act, on the other hand, are penal in nature and, therefore, speak about the offences committed by the individual or the institute as referred supra. It is needless to state that the provisions providing for penal action are required to be constructed strictly. The same principle is underlined in the case of **Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.** relied on by Mr. Mantri.

The issue in the case of **Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.**, was as to whether in absence of Company, a proceeding for the offence punishable under Section 138 of the Negotiable Instruments Act can be continued. The divergence of the conclusions in earlier various judgments of the Supreme Court were set at rest by the ratio of the 3 Judges Bench in **Anita Hada's** case, wherein it is held that the term "as well as" as found in the provisions of Section 141 of the Negotiable Instruments Act quoted above would mean that the company would be a necessary party and in absence of the company, the proceedings cannot be proceeded with.

12. Since we have found that, vide the explanation to Section 141 of the Negotiable Instruments Act, the definition of

the Company for the limited purpose of the provisions of Section 141 of the Negotiable Instruments Act includes a firm, an inescapable conclusion would be that a registered partnership firm would be a necessary party as an accused in a proceeding under Section 138 of the Negotiable Instruments Act. In that view of the matter, the impugned order of the learned Judicial Magistrate, First Class, holding the complaint not maintainable for non addition of the partnership firm can not be faulted with. In the circumstances, the following order :

13. The application is hereby dismissed.

(M.T. JOSHI, J.)

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