**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.148 OF 2018**

Anil Rampratap Goyal,
Age : 54 years, Occ. Business,
r/o. Plot No.40, Vidya Nagar,
Jalna Road, Aurangabad ..Petitioner
(orig. accused)

Vs.

Katyayanji s/o. Vishwambhar Dayal,
Through Power of Attorney -
Mahendra Giridharilal Agrawal
Age : - Major, Occ. Business,
r/o. Jalna ..Respondent
(orig. complainant)

**WITH**
**CRIMINAL WRIT PETITION NO.149 OF 2018**

Anil Rampratap Goyal,
Age : 54 years, Occ. Business,
r/o. Plot No.40, Vidya Nagar,
Jalna Road, Aurangabad ..Petitioner
(orig. accused)

Vs.

Girdharilal s/o. Shivdasji Agrawal,
Age : - 70 years, Occ. Business,
r/o. Jalna ..Respondent
(orig. complainant)

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Mr.Swapnil Patil, Advocate for petitioner

Mr.P.R.Katneshwarkar, Advocate for respondents

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**CORAM : SANGITRAO S. PATIL, J.**
**RESERVED ON : JULY 27, 2018**
**PRONOUNCED ON : AUGUST 03, 2018**

**COMMON JUDGMENT :**

The parties to these Writ Petitions are the same and the questions proposed to be considered therein also are identical. Therefore, they are being decided by this common judgment.

2. The respondent filed complaints bearing numbers 1732 of 2016 and 1715 of 2016 of the Negotiable Instruments Act ("the Act", for short) against accused no.1, a partnership firm namely, M/s.Rampratap Ghanshamdas Drugs Division, Swami Complex, Sarojini Devi Road, Jalna, and three others, on the say that they are partners of accused no.1. The present petitioner is accused no.4. According to the respondent, accused nos.2 and 3 as well as the present petitioner, being partners of accused no.1, were looking after the day-to-day business transactions when the cheques in question were

issued. They were responsible for the conduct of the business of accused no.1. It is further stated that the petitioner approached the respondent and requested to lent certain amount for the business of accused no.1. Accordingly, the respondent lent Rs.10,00,000/- on 04.10.2013 and Rs.6,00,000/- on 19.08.2013 by issuing cheques bearing numbers 112808 and 071467 drawn on HDFC Bank, Branch Jalna. The petitioner encashed those cheques and utilised the said amounts for the business of accused no.1. It is further stated that the petitioner paid nominal interest on the amounts of loan. However, accused nos.1 to 3 and the present petitioner failed to repay the loan amounts to the respondent, despite repeated demands. Ultimately, accused nos.1 to 3 and the petitioner issued cheques in the sums of Rs.10,00,000/- and Rs.6,00,000/- drawn on Sundarlal Sawji Co-operative Bank Ltd., Jintur, Branch Jalna on 30.03.2016, which were signed by accused no.2 being the authorised signatory of accused no.1 –

partnership firm. The cheques were dishonoured and returned to the respondent with the remark “exceeds arrangement” on 22.06.2016. The respondent sent demand notices on 21.07.2016 and called upon accused nos.1 to 3 and the present petitioner to pay the cheque amounts. Accused nos.1 and 2 refused to accept the notices. The petitioner (accused no.4) received the notices. However, he sent the replies dated 25.07.2016 and denied his liability to pay the cheque amounts, on the say that he had no concern whatsoever with the partnership firm since there has been change in the partnership. The respondent then filed complaints for the offence punishable under Section 138 of the Negotiable Instruments Act (“the Act”, for short) for dishonour of the above-mentioned cheques. The learned Magistrate considered the contents of the complaints, supported by the affidavit of the respondent and the documents annexed thereto and found sufficient grounds to proceed against accused nos.1 to 4. He, therefore, issued process for the said offence as per the orders dated 17.11.2016.

3. Being aggrieved by the orders issuing process against the petitioner, he filed Criminal Revision Nos.7 of 2017 and 8 of 2017. The learned Sessions Judge, Jalna, heard both sides and found that there was no substance in the claims made by the petitioner and therefore, dismissed the said Revision Applications vide the common judgment and order dated 15.01.2018. Being aggrieved by the said common judgment and order, the petitioner has preferred these Writ Petitions.

4. The learned Counsel for the petitioner submits that the petitioner is retired from the partnership firm on 01.04.2014. Accordingly, it was reported to the Assistant Registrar of Firms, Aurangabad. The name of the present petitioner came to be deleted as partner of accused no.1 – Firm in the register of partnership firms. Accused no.3 came

to be added as partner of accused no.1 – Firm with effect from 05.08.2018. The addition of accused no.3 as partner of accused no.1 – Firm was within the knowledge of the respondent. Therefore, the respondent issued demand notices to accused no.3 and also arrayed him as accused no.3 in the complaints. Therefore, the respondent cannot say that he was not aware about reconstitution of the partnership firm and retirement of the petitioner as a partner thereof with effect from 01.04.2014. Moreover, in the replies, the petitioner had made it clear that since after his retirement, he has no concern whatsoever with accused no.1 – partnership firm, which has been renewed subsequently, and since he has not either issued or signed any cheque in favour of the respondent, he is not liable to pay the cheque amounts to the respondent. Even then, the respondent arrayed the petitioner as accused no.4 and falsely prosecuted him for the offence under Section 138 of the Act.

5. The learned Counsel submits that there are no specific averments made in the complaint showing actual role played by the petitioner and merely on the basis of a bald statement that the petitioner being one of the partners is looking after the day-to-day transactions of accused no.1 and is responsible for the transactions of accused, he cannot be fastened with vicarious liability with the aid of Section 141 of the Act. In support of this contention, he cited the judgment in the case of **Anita Malhotra Vs. Apparel Export Promotion Council and anr., (2012)1 SCC 520.**

6. The learned Counsel submits that the cheques in question were not issued or signed by the petitioner. Relying on the judgment in the case of **P.J. Agro Tech Limited and others Vs. Water Base Limited, (2010)12 SCC 146,** he submits that the petitioner is not liable to honour the cheques issued by respondent no.2. The learned Counsel cited the

judgment in the case of **Aparna A. Shah Vs. Sheth Developers Pvt. Ltd. and anr., (2013)8 SCC 71,** wherein it is observed that if the cheque is issued from joint account, the person, who is not the signatory of the cheque, would not be liable to be prosecuted for the offence under Section 138 of the Act.

7. The learned Counsel submits that though the notice about retirement of the petitioner as a partner of accused no.1 – Firm was not given, as required under Section 32 and in the manner provided under under Section 72 of the Partnership Act, 1932, since the respondent had issued demand notice against the newly substituted partner i.e. accused no.3, knowledge can be attributed impliedly to the respondent about retirement of the present petitioner. In support of this contention, he cited the judgment in the case of **Vinayak Keshav Paranjape Vs. Dena Bank and others, 1998(3) Mh.L.J. 395.** Relying on the judgment in the case of **Sanjay**

**Chandrakant Shah Vs. Oil Mills and others, 2006 All M.R. (Cri.) 2914,** he submits that the provision of Section 32 of the Partnership Act, in respect of giving a public notice of retirement, relates to civil liability and not criminal liability. Therefore, the partner, who retires from the firm, cannot be prosecuted for the offence under Section 138 read with Section 141 of the Act.

8. The learned Counsel for the petitioner further submits that the learned Sessions Judge did not consider the facts and circumstances of the present case as well as the legal position referred to above and wrongly upheld the orders of the learned Magistrate issuing process against the petitioner. He, therefore, prays that the impugned common judgment and order may be quashed and set aside and the orders issuing process against the petitioner may also be quashed and set aside.

9. On the other hand, the learned Counsel for the respondent strongly opposed the contentions raised by the learned Counsel for the petitioner. He submits that there are sufficient averments made in the complaint that the present petitioner is a partner of accused no.1 – Firm, looking after its day-to-day business. Moreover, the petitioner personally had approached the respondent for obtaining loan on behalf of accused no.1. Thus, there is not merely a bald statement made in terms of Section 141 of the Act to connect the petitioner with the above-mentioned offences. He submits that even if a person might not be a partner, still he could be responsible for the conduct of its business, within the meaning of Section 141 and can be prosecuted under Section 138 of the Act. He submits that the petitioner has played an active role by approaching the respondent personally to obtain loan. The cheques in question were issued to repay the loan. Therefore, he cannot absolve himself from the

liability to pay the cheque amounts. Since the cheques have been dishonoured, the petitioner is liable to be prosecuted for the offence under Section 138 read with 141 of the Act. In support of this contention, he cited the judgments in the cases of **Ruchika Enterprises and others Vs. Shriram Enterprises, MANU/MH/1185/2007** and **Standard Chartered Bank Vs. State of Maharashtra and ors., MANU/SC/0409/2016.** The learned Counsel for the respondent submits that once it is *prima facie* established that the petitioner was looking after the day-to-day business of accused no.1 – Firm, he played an active role and obtained loan amounts from the respondent, the burden would lie on him to show that he is not liable to be convicted by adducing evidence at the trial. His defence cannot be considered at this preliminary stage. In support of this contention, he relied on the judgment in the case of **N. Rangachari Vs. Bharat Sanchar Nigam Ltd., (2007)4 SCC 108.**

10. The learned Counsel submits that as long as the notice under Section 32 is not published by the retiring partner in the manner of the provisions under Section 72 of the Partnership Act, the partner continues to be liable as the partner to third parties for any act done by any partner, which would have been an act of the firm, if done before his retirement. In support of this contention, he relied on the judgments in the cases of **Anil Kumar Singh Vs. Smt. Kanak Prabha Dutta and othres., 2003(2) DCR 162 (Allahabad High Court)** and **AP. V. Sundaram Vs. E. Santhalingam, 2005(2) DCR 197 (Madras High Court).** The learned Counsel pointed out to the bank account of accused no.1 – Firm in HDFC Bank, wherein accused no.2 and the present petitioner are shown as authorised signatories. The learned Counsel submits that the petitioner is liable to be prosecuted for the offence under Section 138 read 141 of the Act, since there is strong *prima facie* case made out

against him. According to him, the learned Sessions Judge has rightly dismissed the Revision Applications and confirmed the orders passed by the learned Magistrate, issuing process against the petitioner also. He, therefore, prays that the Writ Petitions may be dismissed.

11. As per sub-section (1) of Section 141 of the Act, if the person committing an offence under Section 138 is a Company, 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, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. As per clause (a) under Explanation, “company” means any body corporate and includes a firm or other association of individuals. As such, it is clear that it is not only the partners of the firm, but every person, who, at the time the offence was committed, was in-charge or responsible for

conduct of the business of the firm, shall deemed to be guilty of the offence under Section 138 of the Act.

12. In the present case, as seen from the contents of the demand notices issued against the petitioner and from the contents of the complaints, there is specific mention that the petitioner being one of the partners, was responsible for day-to-day transaction of accused no.1 – Firm and that he was in-charge of the partnership firm and looking after the day-to-day business along with accused nos.2 and 3 when the cheques were issued. It is further specifically mentioned that the present petitioner approached the respondent and requested for loan for the business of the firm. At his request, the respondent lent Rs.10,00,000/- and Rs.6,00,000/- by issuing two different cheques, which were encashed by the present petitioner for being used for the business of accused no.1 – Firm. Thus, it is not that the respondent has made just a bald statement to

fulfil the requirements of Section 141 of the Act, but has specifically stated the role played by the petitioner in obtaining loan from the respondent.

13. Though it is the case of the petitioner that he retired from accused no.1 - Firm on 01.04.2014, indisputably, he did not issue notice under Section 32 in the manner provided under Section 72 of the Partnership Act. As per sub-section (3) of Section 32, notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement.

14. It is the contention of the learned Counsel for the petitioner that when the respondent arrayed accused no.3 as the accused, who became partner of accused no.1 – Firm after retirement of the petitioner, the respondent can be attributed implied

knowledge about retirement of the petitioner. I am not inclined to accept this contention. It is likely that the third parties might treat accused no.3 as an additional partner of the firm. Addition of accused no.3 as partner of accused no.1 – Firm by itself would not be indicative of the fact that the petitioner got retired. Therefore, the judgment in the case of **Vinayak Keshav Paranjape** (supra) would be of no help to the petitioner to prove his retirement as a partner of accused no.1 – Firm.

15. In the case of **Sanjay Chandrakant Shah** (supra), it is specifically mentioned in paragraph 11 of the judgment that there was no mention in the complaint therein that accused no.5, who claimed to have retired from accused no.1 – Firm, was responsible for the conduct of the business of the firm. Therefore, in the absence of such averments together with the fact of retirement of accused no.5 from the partnership firm on 01.04.1998, he was absolved from his criminal liability, though he had

not published the notice under Section 32 of the Partnership Act. In the present case, as stated above, there are specific averments made in the complaints that the present petitioner was responsible for the conduct of the business of accused no.1 – Firm. In view of this distinguishing fact, the above-cited case would not be helpful to the petitioner to seek his discharge from the prosecution under Section 138 of the Act.

16. The judgment in the case of **Aparna A. Shah** (supra) cited on behalf of the petitioner, does not pertain to a partnership firm. In that case, the accused – wife and her husband had a joint account and the cheque was issued by her husband. As the wife was not signatory to the cheque, it was held that she was not liable to be prosecuted for the offence under Section 138 of the Act. In the present case, the petitioner has been connected with the offence under Section 138 read with Section 141 of the Act. In view of this distinguishing fact, the

above-cited judgment would not be helpful to the petitioner.

17. In the case of **P.J. Agro Tech Limited** (supra), the cheque in question was issued by accused no.11 – K. Balashankar Reddy from his personal saving bank account. Therefore, it was held that the company and its directors would not be liable to honour that cheque. In the present case, the cheques subject-matter of the complaints have been issued by one of the partners of accused no.1 – Firm on behalf of the firm. In view of this distinguishing fact, the above-cited case would be of no use to the petitioner to advance his case.

18. As cited above, in the present case, the petitioner has not been prosecuted merely on a bald statement that he was in-charge of and was responsible to the business of accused no.1 – Firm. A specific role has been attributed against him to show that he is in-charge of and responsible to the

business of accused no.1 – Firm. Consequently, the judgment in the case of **Anita Malhotra** (Supra) would be of no help to the petitioner. In that case, it has been held that though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merit of accusation, but if on the face of the document which is beyond suspicion or doubt placed by the accused and if it is considered the accusation against the accused cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code. In the present case, merely producing the extract of the register of the partnership firm maintained by the Assistant Registrar of Firms, would not be sufficient to show that the petitioner retired from accused no.1 - Firm on 01.01.2014, in the absence of publishing a notice under Section 32 in the manner provided under Section 72 of the Partnership Act. Consequently, the said ruling also would not be helpful to the petitioner. Moreover, as stated above, the petitioner, as a person looking after the day-to-day business transactions of accused no.1 – Firm, is liable to be prosecuted for the offence under Section 138 read with Section 141 of the Act. A prima facie case is disclosed against the petitioner for this offence.

19. The learned Sessions Judge has rightly considered the facts and circumstances of the case and rightly held that the defence of the petitioner cannot be considered at this preliminary stage and that he will have to prove it by producing a concrete evidence at the time of the trial. The impugned judgment is quite speaking. In do not find any reason to interfere in the findings recorded by the learned Sessions Judge. There is no substance in the Writ Petitions.

20. In the result, I pass the following order :-

The Writ Petitions are dismissed.

Sd/-

[**SANGITRAO S. PATIL, J.**]

21. After pronouncement of the judgment, the learned Counsel for the petitioner prays that the stay granted by this Court to the further proceedings before the Trial Court, to the extent of the present petitioner, may be continued for a period of four weeks. Considering the facts of the case, I am not inclined to stay the further proceedings since the case for the offence under Section 138 of the Negotiable Instruments Act is pending since the year 2016. The prayer for further stay to the proceedings is, thus, rejected.

Sd/-

[**SANGITRAO S. PATIL, J.**]

kbp