IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.624 OF 2020

Bharuka Trading Company, Risod,
Through its Proprietor
Durgabai Kachrulal Agrawal
Aged about 63 years, Occ: Business,
R/o Risod, Tq. Risod, Dist. Washim. .... **PETITIONER**

...V E R S U S...

1. M/s. Hanuman Dal Industries Pvt. Ltd.

2. Ramanrao Muslaiha Bolla,
Aged about 43 years, Occ: Business.

3. Tirupatirao Muslaiha Bolla,
Aged about 48 years, Occ: Business.

4. Vijayalaxmi Ramanrao Bolla,
Aged about 49 years, Occ: Business.

5. State of Maharashtra through
Police Station Risod.

R/o Wardhaman Nagar, Near Old Pardi Naka,
Behind Sarjarao Bar, Infront of Hanuman
Temple, Nagpur. .... **RESPONDENTS**

Mr. Palash K. Mohta, Advocate for Petitioner.
Mr. M. Anilkumar, Advocate for Respondents 1 to 4.
Mr. N.S. Rao, APP for Respondent 5/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **21st JUNE, 2021.**

ORAL JUDGMENT:

Heard.

2. Rule.

3. With consent, the petition is finally heard.

4. The petitioner, who shall be referred to as the complainant hereinafter, instituted Summary Criminal Case 187/2018 under Sections 138 read with Section 142 of the Negotiable Instruments Act, 1881 (Act for short) arraigning M/s. Hanuman Dal Industries Pvt. Ltd., Nagpur, Ramanarao Muslaji Naggaya Bolla, Tirupatirao Bolla and Vijayalaxmi Bolla as accused 1 to 4 respectively.

5. The complainant is a businessman engaged in wholesale trade in grain under the name and style "Bharuka Trading Company".

6. It is averred in paragraph 1 of the complaint that the accused 2 to 4 carry on business under the name and style "M/s. Hanuman Dal Industries Pvt. Ltd.,". It is further averred that "Hanuman Dal Industries" is a registered partnership firm and accused 2 to 4 are the partners of the said firm.

7. In the cause-title, while disclosing the address of the accused, the alternate address disclosed is “M/s. Hanuman Dal Industries”.

8. A conjoint reading of the cause-title and the averments in paragraph 1 would suggest that the complainant was separate and independent existence of “Hanuman Dal Industries” which is a firm. This has some significance since the learned Sessions Judge has quashed the order of issuance of process on the premise that the firm which issued the cheque is not arraigned as accused, which order of the learned Sessions Judge is impugned.

9. Revering to the averments in the complaint, paragraph 2 avers that accused 2 to 4 purchased grain for and on behalf of “M/s. Hanuman Dal Industries Pvt. Ltd.” and that an amount of Rs.54,57,747/- is due and payable as the price of the goods supplied by the complainant.

10. It is further averred in the complaint that accused 2 Ramanarao Muslaji Naggaya Bolla issued five cheques on behalf of the “Partners and Firms” which were dishonoured and that despite

the receipt of the statutory notice the accused did not make the payment covered by the dishonoured cheques.

11. Perusal of the statutory notice reveals that the notice is issued to "M/s. Hanuman Dal Industries Pvt. Ltd." and the accused 2 to 4. The statutory notice refers to "M/s. Hanuman Dal Industries Pvt. Ltd., Nagpur" as a registered partnership firm and to accused 2 to 4 as the partners.

12. The learned Judicial Magistrate First Class, Risod was pleased to issue process under Section 138 of the Act, vide order dated 30.10.2018.

13. The respondents herein – accused preferred revision under Section 397 of the Code of Criminal Procedure, 1973 (Code) challenging the order of issuance of process.

14. The accused contended that the dishonoured cheques were issued by M/s. Hanuman Dal Industries through its partner Ramanarao Bolla and not by the company "M/s. Hanuman Dal Industries Pvt. Ltd. The extension of the contention is that the company "M/s. Hanuman Dal Industries Pvt. Ltd." and its

Directors are unnecessarily implicated.

15. The memo of revision further contends that although the cheque was issued by a partnership firm, the firm was not issued the statutory notice. In paragraph 5 of the memo of revision the constitution of the partnership firm and the company is disclosed.

16. In sum and substance, the contention in the memo of revision is that the learned Magistrate committed a jurisdictional error in taking cognizance of the offence.

17. By the impugned judgment the learned Additional Sessions Judge, Washim was pleased to allow the revision and quash the order of issuance of process.

18. The learned Sessions Judge noted that the dishonoured cheques are issued by the partnership firm and not by the private limited company and that the firm was not served with the statutory notice.

19. The learned Sessions Judge further noted that

"M/s. Hanuman Dal Industries" is a registered partnership firm having Ramanarao Bolla and Tirupatirao Bolla as the partners where as "M/s. Hanuman Dal Industries Pvt. Ltd." is a company incorporated under the Companies Act, 2013 whose Directors are Ramanarao Bolla and Vijayalaxmi Bolla.

20. The learned Sessions Judge noted that the notice came to be wrongly issued to the company and as a fact it is the company which is arraigned as an accused and not the partnership firm. The learned Sessions Judge rejected the submission of the complainant that since the partnership firm and private limited company are sister concerns, there is no illegality in the order of issuance of process. The learned Sessions Judge deals with the issue thus:

> *10] It is argument of complainant that partnership firm and Private limited Company are sister concern and hence, there is no illegality in filing complaint case against Private Limited Company and its directors. However, both are different entities. This is penal statute and liability of Partnership Firm cannot be fastened on Private Limited Company. Explanation appended to Sec.141 though relates to offences by Companies, same is also applicable to Firms. But it does not means that complainant can issue notice to company though cheque is issued by Partnership Firm. If the Partnership firm has issued cheques then notice is to be issued to partnership firm and*

its partners. Issuing notice to private limited company though cheques are issued by Partnership Firm and then filing case against Private limited Company is illegal. It is pertinent to note here that after filing of this revision petition, complainant moved an application on 12.7.2019, before trial court for amendment in complaint case and prayed to delete words "Private Limited" from the name of accused No.1 i.e. "M/s. Hanuman Dal Industries Pvt. Ltd". Copy of said application is filed on record of this case. However, said application is not yet decided by trial court. But, in my view, said amendment would not make any difference and is not of no use to the complainant to overcome material defect in the case. Reason for the same is that even if it is allowed, then also no notice was issued to "M/s. Hanuman Dal Industries" who is drawer of those cheques. It is mandatory requirement that notice of dishonourence of cheque is required to be given to drawer and amount of dishonoured cheques is to be demanded. If drawer fails to comply the said notice then only, the cause of action to file case under 138 of N.I.Act arise. Notice is soul of criminal case under section 138 of the Act. Thus, what is important is, to issue the notice to the "drawer" of cheque. It is prerequisite condition for filing criminal case under section 138 of the Act. Moreover, there can not be amendment in "notice" on cecase is filed on that basis. In this case, amendment in complaint will not help the complainant as no notice was issued to "M/s. Hanuman Dal Industries". Hence, no criminal complaint can survive against it and its partners, for want of statutory notice to it. In case of N. Harihara Krishnan ..Vs.. J. Thomas AIR 2017 SC 4125, it is held that Directors cannot be prosecuted if the Company is not made party. It is held that making Company a accused is condition precedent for prosecuting its Directors/ officers. As per Proviso to Sec.141 of the Act, provision of Sec.141 is applicable to the Firm also. In the

> *present case, instead of "Company", there is a Partnership Firm and no notice is issued to Partnership Firm. Therefore, in absence of notice to Partnership Firm, its partners cannot be prosecuted. Therefore, proposed amendment in the complaint is not helpful to the complainant in light of above case law.*

21. Having heard the learned counsel Mr. Mohta for the complainant and Mr. Anilkumar, the learned counsel for the respondents 1 to 4, I have no reason to take a view different from that taken by the learned Sessions Judge.

22. In my considered view, the order of issuance of process suffers from a jurisdictional error.

23. The cheque is issued by a firm, which is not arraigned as accused. Indeed, since the statutory notice was not served, the firm could not be arraigned as accused. The private limited company, which has no nexus whatsoever with the dishonoured cheques, was arraigned as accused 1. The fact that Ramanarao Bolla is a Director of the private limited company as well as a partner of the firm, is of scant significance considering that the company is a distinct legal entity and the mere fact that one of the

Director is also a partner of a firm which issued the dishonoured cheque cannot be the basis of the implication of the company in the alleged offence.

24. The law is not *res integra*. The decision of the Apex Court in *Aneeta Hada v. Godfather Travels and Tours Private Limited (2012) 5 SCC 661* is relatively recently referred to and followed by the Apex Court in *Himanshu v. B. Shivamurthy and another (2019) 3 SCC 797*.

25. No interference is necessary with the revisional order impugned.

26. The petition is dismissed.

JUDGE

NSN