



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

CRIMINAL REVISION APPLICATION NO.92/2023

Satheesan Kuttappan
Age - 60 years, Occupation – Business,
Office Address :- at 12, Adarsh Apartment,
Plot No. 87, Swawalambi Nagar,
Nagpur Resident Of Plot No. 3, 181/182,
Sarjugopi Apartment, Ring Road,
Trimurti Nagar, Nagpur.
Mob No. 9766270514

.....APPLICANT

...VERSUS...

1. P. P. Sudhakaran
Age - 78 years, Occupation – Business
Resident of:-Near Royal Computers,
Quarter No.4/62, Raje Raghuji Nagar,
Hanuman Nagar, Nagpur.
2. The State of Maharashtra, through
Police Station Officer, Police Station,
Pratap Nagar, Nagpur

...NON APPLICANTS

AND
CRIMINAL REVISION APPLICATION NO.94/2023

Shri Satyaseelan Kuttappan
Age – 62 years, Occupation – Business,
Office Address :- at 12, Adarsh Apartment,
plot No. 87, Swawalambi Nagar, Nagpur
Resident Of:-Plot No. 3, 181/ 182,
Sarjugopi Apartment, Ring Road,
Trimurti Nagar, Nagpur.
Mob No. 9766270514

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...VERSUS...

1. P. P. Sudhakaran and anr.
Age - 78 years, Occupation – Business,
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...NON APPLICANTS

Mr. B. H. Tekam, Advocate for applicants.
Mr. G. C. Khond, Advocate for non applicant no.1.
Ms H. S. Dhande, A.P.P. for non applicant no.2.

CORAM:- ANIL L. PANSARE, J.
ARGUMENTS WERE HEARD ON :- 12.10.2023
JUDGMENT DELIVERED ON :- 17.10.2023.

ORAL JUDGMENT

The following question falls for my consideration:

“Whether the term ‘Firm’ used in Section 141 of the Negotiable Instruments Act, 1881, would include ‘Unregistered Firm’?”

2. Section 141 of the Negotiable Instruments Act, 1881

(hereinafter referred to as the “Act of 1881”), reads thus:

“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 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:

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 purposes of this section,

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(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

3. As could be seen, Sub Section (1) of Section 141 of the Act of 1881, provides that if a person committing an offence under Section 138 of the Act of 1881 is a company (firm) 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 (firm)**, shall be deemed to be

guilty of the offence and shall be liable to be proceeded against and punished accordingly.

4. The explanation to Section 141 of the Act of 1881, provides that for the purpose of Section 141, the Company means any body corporate and includes a firm or other association of individuals and the Director in relation to the firm means a partner in the firm. Considering the aforesaid explanation, it is explicitly clear that when the offence has been committed by the firm including the partnership firm, not only the partner, in charge of the firm, but also the firm will have to be made party – accused inasmuch as both, the partner and the firm are deemed to be guilty of the offence in terms of Sub Section (1) of Section 141 of Act of 1881. The question that arises is whether the firm would include an unregistered firm.

5. The reason why this question arose is as under:

The applicants Shri Satheesan Kuttappan and Shri Satyaseelan Kuttappan, in both the revision applications, was an accused before the learned Judicial Magistrate First Class, Nagpur. The non applicant no.1 was the complainant. Learned Judicial Magistrate First Class, vide the judgments, both, dated 17.03.2018,

passed in Summary Criminal Case Nos.25828/2013 and 25829/2013, has convicted the applicant for the offence punishable under Section 138 of the Act of 1881. The learned Sessions Court, vide judgments dated 15.03.2023 and 27.03.2023 in Appeal Nos. 103/2018 and 104/2018, respectively has dismissed these appeals. Hence, the present revision applications.

6. The case of the non applicant no.1 was that he and the applicant are/were old friends and known to each other. Both belong to Kerala but have settled at Nagpur. The applicant is one of the partners of the firm, Shri Balaji Power Tech, Nagpur and is executing the projects of power transmission. The non applicant no.1, on many occasions, had extended financial assistance to the applicant on his request. In February, 2013, he had extended financial assistance of Rs.1,55,000/- and Rs.68,000/- respectively for the purpose of his business with an expectation that the same will be returned in some time. The applicant, however, did not pay the amount in time and upon request made by the non applicant no.1, issued two cheques for the aforesaid amount. The cheques, when presented for encashment, were returned unpaid with a remark, "Account closed". The non applicant no.1, then after completing the formalities in terms of provisions of the Act of 1881,

lodged complaints against the applicant, which resulted into his conviction.

7. Learned counsel for the applicant, submits that since the financial assistance was extended to the applicant in the capacity of a partner of Shri Balaji Power Tech Nagpur and further cheques of the firm having been issued, the firm ought to have been made party–accused in terms of Section 141 of the Act of 1881.

8. As against, Learned counsel for the non applicant no.1 submits that the firm being unregistered, could not have been made party accused in terms of Section 69 of the Partnership Act, 1932.

9. The Counsel for the applicant has relied upon the judgment of the Division Bench of this Court in Narendra s/o Amarnathji Kalda Vs. Balbirsingh s/o Motisingh Chawhan, reported in 2020 ALL MR (Cri) 1861. The question before the Court was whether the complaint made by the unregistered partnership firm is hit by Section 69 of the Partnership Act, 1932? The Court, while appreciating the arguments and after going through the provisions of the Partnership Act, 1932, held that the provisions must receive

its plain and simple meaning and it cannot be stretched for securing immunity from criminal prosecution. Accordingly, the Court held that the prosecution of the accused therein under Section 138 of the Act of 1881 is not hit by the bar under Section 69(2) of the Partnership Act and that the complaint filed by the unregistered firm is maintainable. Accordingly, the learned counsel has argued that the bar under Section 69(2) of the Partnership Act is limited to the suit and not to the criminal prosecution.

10. The learned counsel then referred to the judgment of Madras High Court in Rangabashyam Vs. Ramesh, reported in 2019 SCC OnLine Mad 17188. Similar question, as in the present case, fell for its consideration viz. Whether the unregistered partnership firm can be brought within the purview of Section 141 of the Act of 1881 and whether partnership firm must be made as an accused along with other partners in order to maintain the complaint for an offence under Section 138 of the Act of 1881. The Court considered the judgment passed by the Kerala High Court and Allahabad High Court and answered the question in the following manner.

“19. This Court is in complete agreement with the judgments of the Kerala High Court and the Allahabad High Court. The action under Section 138 of

the Negotiable Instruments Act, is not a Suit to enforce a right arising out of a contract, and therefore, the bar under Section 69 (2) of the Partnership Act will not operate in such a case. The word "Suit" envisaged under Section 69(2) of the Indian Partnership Act, cannot be stretched to criminal prosecutions. A criminal prosecution by its very nature is instituted not for recovery of money or for enforcement of any security. Section 138 of Negotiable Instruments Act is a penal provision, the commission of which offence entails a conviction and sentence on the proof of guilt. Chapter XVII of the Negotiable Instruments Act, 1881 is a code by itself which deals with penalties in case of dishonour of cheques.

20. *Section 141 of the Negotiable Instruments Act deals with the concept of vicarious liability, wherein for the offence committed by the Company or a partnership firm, the directors or the partners, as the case may, are deemed to be guilty of the offence when it is shown that they are in charge of and responsible for the conduct of the day-to-day affairs of the business or the firm, as the case may be. While interpreting the provision, the Hon'ble Supreme Court has categorically held that the complaint cannot be maintained against the directors of the Company, without making the company as an accused person. This concept has been extended even for Partnership Firms. The registration or non-registration of the Partnership Firm will have no bearing insofar as 141 of the Negotiable Instruments Act is concerned.*

21. *In view of the above discussion, this Court is not in agreement with the submissions made by the learned counsel for the respondent. In this case admittedly, the cheque was given in the name of the Partnership Firm and after the cheque was dishonored, no statutory notice was issued to the Partnership Firm,*

and the Partnership Firm was not made as an accused in the complaint. Only the partners have been shown as accused persons in this complaint. Such a complaint is unsustainable and not in accordance with Section 141 of the Negotiable Instruments Act and the law laid down by the Hon'ble Supreme Court. Therefore, the proceedings will have to be necessarily interfered with by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. In the result the proceedings in C.C.No.550 of 2012, pending on the file of the learned Judicial Magistrate No.I, Villupuram, is hereby quashed and the Criminal Original Petition is accordingly allowed. Consequently, the connected miscellaneous petitions are closed.”

11. Thus, it is held that the registration or non registration of the partnership firm will have no bearing insofar as Section 141 of the Act of 1881 is concerned. The provision under Section 141 of the Act of 1881 makes it mandatory to arraign the company or the firm, as the case may be, as party accused in the complaint. This provision or any other provision of the Act of 1881 does not put embargo on making unregistered partnership firm an accused. That being the position and considering the preposition of law spelt out in the aforesaid case, I do not find any reason to take a different view in the matter.

12. In the present case, the cheque has been issued by the partnership firm. The said firm, admittedly, has been not made

party accused in the complaint. Further, only the applicant has been made accused in the complaint. The non applicant no.1 has, in his complaint, averred that the applicant is one of the partners, which means that there are at least two partners in the firm. The other partner(s) has/have been not made accused in the complaint and, therefore, the complaint itself was not maintainable.

13. The learned counsel for non applicant no.1 submits that this objection was not raised either before the trial Court or before the first appellate Court. This contention is taken on record for the purpose of rejection inasmuch as it is well settled that the question of law can be raised at any stage of the proceeding and before any Court. The contention is, therefore, not sustainable.

14. Learned counsel for the non applicant no.1 then submits that the matter may be remanded back to the trial Court for consideration afresh by giving the non applicant no.1 permission to make the firm as party accused.

15. This submission has been rightly countered by the applicant by relying upon the judgment of the Hon'ble Apex Court in the case of Himanshu Vs. B. Shivamurthy and anr.; reported in

(2019) 3 SCC 797. The Apex Court, while considering the compliance of Section 141 of the Act of 1881, has held that the company, which was not arraigned as accused in the complaint cannot be subsequently allowed to be added, for the reason that there was no demand notice against the company and thus the pre-conditions under Section 138 of the Act of 1881 were not complied with as against the company. In the present case as well, the non applicant no.1 has not sent demand notice against the firm and thus, pre-conditions under Section 138 of Act of 1881 have not been complied with. In the circumstances, the request made by the counsel for the non applicant no.1, cannot be accepted.

16. Thus, the judgments passed by the courts below will have to be set aside, being not sustainable in the eyes of law. Hence, the following order is passed.

ORDER

- (i) The revision applications are allowed.
- (ii) Judgments and orders dated 17.03.2018 passed in Summary Criminal Case Nos. 25828/2013 and 25829/2013 by Judicial Magistrate First Class, Nagpur so also judgments and orders dated 15.03.2023 and 27.03.2023 passed by Additional

Sessions Judge, Nagpur in Appeal Nos.103/2018 and 104/2018, are quashed and set aside.

(iii) Applicant – Satheesan Kuttappan is acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. His bail bonds stand discharged.

(Anil L. Pansare, J.)

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