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

CRIMINAL WRIT PETITION NO.387 OF 2022

Rajgopal Sikandar Jham
Aged about 38 years, Occ: Business,
R/o C/o Kanhaiya Builders and Developers,
Rajabaxa, Medical College Square, Nagpur.
(original accused) ....**PETITIONER**

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

Bapurao S/o Kashinath Warhade
(Died) (original complainant)

1(a) Sau. Shoubha Babarao Irutkar,
Aged about 50 years, Occ: Household,
R/o Teachers Colony, Butibori,
Dist. Nagpur.

1(b) Suresh Bapurao Warhade,
Aged about 48 years, Occ: Agriculturist,
R/o Sonegaon Bori, P.O. Rama,
Dist. Nagpur. ...**RESPONDENTS**

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Shri S.V. Bhutada, Advocate for petitioner.
Ms Vidya Umale, Advocate for respondents.

CORAM: M.W. CHANDWANI, J.
DATED : 22.04.2024

ORAL JUDGMENT:

. **Rule**. Rule is made returnable forthwith. Heard finally at the admission stage with consent of the learned counsel for the parties.

2. The writ petitions seek to quash Summary Criminal Case Nos.1837 and 1838 of 2011 filed by the respondent against the petitioner.

3. Bare facts, which are necessary to dispose of the present petitions, can be culled out as under:

The respondent filed Summary Criminal Case Nos.1837, 1838 of 2011 before the learned Judicial Magistrate First Class, Arvi, District Wardha alleging that petitioner purchased land from the respondent as a partner of Kanhaiya Builders and Developers (for short, 'the Firm') and towards consideration of the said transaction, the petitioner gave an amount of Rs.5,00,000/- in cash and remaining part of the said consideration was given in the form of post-dated cheques. Some of the cheques were honoured but two of them were dishonoured. After issuance of statutory notice under Section 138 of the Negotiable Instruments Act (for short, "N.I. Act"), a complaint came to be filed before the learned Judicial Magistrate First Class against the petitioner only, upon which the learned Magistrate issued the process against the petitioner for the offence punishable under Section 138 of the N.I. Act.

4. It is the contention of the learned counsel for the petitioner that the cheque has been issued by Kanhaiya Builders and Developers, a partnership firm, the petitioner is not even a signatory of the cheque. According to him, the Firm has not been made an accused in the complaint and only the petitioner is arrayed as an accused, even no other partner of the Firm has been made an accused. According to him, complaint under Section 138 of the N.I. Act is not maintainable against a person in the capacity of a partner if partnership Firm is not made an accused in the complaint. To buttress his submission he seeks to rely on the decision of ***Dilip Hariramani Vs. Bank of Baroda*** [1]**.**

1 **2022 SCC OnLine 579**

5. *Per contra*, learned counsel for the respondent submits that the amount of consideration was outstanding towards the Firm for which cheques in question were issued. However, the cheques were dishonoured and therefore the compliant came to be filed. The petitioner is an active partner of the Firm. Though the Firm has not been made a party, but notice was issued to the Firm. Therefore, she sought rejection of the petition.

6. Before referring to the decision of the *Dilip* (supra) it will be apt to reproduce Section 141 of the N.I. Act, which reads 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 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, —
(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."

7. It is not in dispute that the cheques have been issued by the Firm, which came to be dishonoured. Thus, the case in hand is a case covered by Section 141 of the N.I. Act, which imposes a vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the Firm. Thus, the principal offender is the Firm and only by way of deeming fiction the criminal vicarious liability is extended to the partners of the Firm. If the Firm is not made an accused, there is no question of extending vicarious liability. Vicarious liability arises only when

the firm commits the offence. In the present case, since the firm is not made an accused, vicarious liability cannot be extended to the petitioner.

8. This takes me to the decision of the Supreme Court in the case of *Dilip* (supra), wherein in para 16 held as under:

> *"16. The provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, which person(s) then, by deeming fiction, is made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender. This view has been subsequently followed in Sharad Kumar Sanghi v. Sangita Rane, Himanshu v. B. Shivamurthy, and Hindustan Unilever Ltd. Vs. State of Madhya Pradesh. The exception carved out in Aneeta Hada (supra),which applies when there is a legal bar for prosecuting a company or a firm, is not felicitous for the present case. No such plea or assertion is made by the respondent."*

9. For the reasons mentioned above, the complaint in the present in form is not maintainable against the petitioner.

Therefore, I find substance in the argument of the learned counsel for the petitioner. Pendency of such a complaint against the petitioner is abuse of process of the law. The proceeding cannot be continued against the petitioner. Therefore, Summary Criminal Case Nos.1837 and 1838 of 2011 are hereby quashed and set aside. The petitioner is discharged from the complaints.

10. Rule is made absolute in above terms.

JUDGE

Wagh