2025:BHC-NAG:13288

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

CRIMINAL APPEAL NO. 615 OF 2008

Deepak Jaychandbhai Hindocha

-- VERSUS --

Deepak Ramraoji Pradhan and Another

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Mr. P.P. Kothari, Advocate for the Appellant.

Mr. K.S. Malokar, Advocate for the Respondent No.1.

Mr. A.M. Joshi, A.P.P. for the Respondent No.2/State.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 01, 2025.

Heard.

2. The challenge is raised to the judgment and order dated 16/04/2008 passed by the Judicial Magistrate First Class, Yavatmal, Court No.2, in Com. Cri. Case No.1385/2007 whereby the respondent is acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The learned counsel for the appellant vehemently submits that the findings of the Trial Court are contrary to record. The findings to the effect that notice is not issued to the proprietor, however, it was issued in individual capacity is against the law laid down by the Supreme Court in the case of ***Dhanasingh Prabhu***

VS Chandrasekar and Another, **(2025) SCC OnLine SC 1419.** He has also raised another issue that the Trial Court has disbelieved presentation of the cheques on the ground that the documents, i.e., cheques and the pay slips does not have the seal as well as stamp. He has invited my attention to the evidence of Bank Manager, wherein he has deposed that all the cheques have been deposited by the complainant and those have dishonored, and therefore, he submits that nothing was brought in the cross-examination to disbelieve the evidence of Bank Manager, who is witness No.2.

3. On the other hand, the learned counsel appearing for the respondent submits that the Trial Court has come to right findings as the complainant has miserably failed to prove that the cheques have been presented. He has also pointed out that pay slips and cheques do not bear the seal and stamp of the bank. He has invited my attention to the Cheque Return Register (Exh.-57), wherein, three entries dated 28/02/2007 are in different ink and handwriting, and those entries are at the bottom of the register. The upper part of the register is written in different handwriting and with different ink. He submits that the Trial Court after appreciating the entire evidence has come to the conclusion that the cheque itself is not presented with the Bank and in collusion with the bank, the return memo was obtained. He further submits that when he has already given intimation to the Bank for stopping payment, under such circumstances, it cannot be said that there can be an endorsement of insufficiency of funds on the return memo. Not only that after giving intimation, the Bank has deducted Rs.66 which can be gathered from the evidence of P.W.-2.

4. Considering the entire facts and circumstances, the counsel for respondent submits that the entire transaction, so far as 'dishonored' is concerned, is doubtful, and therefore, no reliance can be placed on the evidence of P.W.-2.

5. Upon consideration of the rival submissions, it appears that probably there are two grounds for acquitting the respondent. The first ground is that notice was issued in the individual capacity whereas the cheque was in the name of proprietor concerned. However, as was argued by the learned counsel for the appellant by relying on the judgment of Supreme Court in the case of *Dhanasingh Prabhu (supra),* wherein the Supreme Court in identical sets of issue has considered that *"The complainant has proceeded against the partners only without arraigning the partnership firm as an* *accused. It is necessary to reiterate that a partnership firm in the absence of its partners cannot at all be considered to be a juristic entity in law. On the other hand, the partners who form a partnership firm are personally liable in law along with the partnership firm."* Therefore, the Supreme Court in unequivocal terms has ruled that even if the cheque was issued in the name of partnership firm and if the complaint was filed in the name of partners, the complaint would be maintainable and it would not be fatal. The Supreme Court further observed in the case of *Dhanasingh Prabhu (supra),* as under:-

> *"2.4 Our attention has been drawn to the uncontested fact that neither was the statutory notice issued to the partnership firm nor was the firm arraigned as an accused in the complaint. Instead, the statutory notice and the complaint mentioned the names of both the respondents who are the partners to the said firm.*
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> *5. On hearing the learned counsel for the appellant and the learned senior counsel for the respondent, the points that arise for our consideration revolve around the interpretation of the expressions, company and director in the Explanation to Section 141 of the Act in the context of the partners of a partnership firm. In other words, the questions are:*
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> > *(i) "Whether the High Court was right in dismissing the complaint on the ground that the name of the partnership firm was not mentioned in the statutory notice issued by the appellant / complainant to the respondents under Section*

138 of the Act and was also not arraigned as an accused in the complaint filed by the appellant / complainant?

(ii) What order?"

6.9 On considering the aforesaid judgments, we observe that even if we have to come to the conclusion that the juristic entity i.e., the partnership firm is the primary accused in the instant case it would be necessary for us to also state that such a juristic entity, namely, a partnership firm is not distinct from the partners who comprise the partnership. In other words, if the complainant had proceeded only against the partnership firm and not the partners it possibly could have been held that the partnership firm in the absence of its partners is not a complete juristic entity which can be recognised in law and therefore cannot be proceeded against. On the other hand, in the instant case the complainant has proceeded against the two partners. The complainant is aware of the fact that the cheque has been issued in the name of the partnership firm "Mouriya Coirs" and has been signed by one of the partners. The complainant has proceeded against the partners only without arraigning the partnership firm as an accused. It is necessary to reiterate that a partnership firm in the absence of its partners cannot at all be considered to be a juristic entity in law. On the other hand, the partners who form a partnership firm are personally liable in law along with the partnership firm. It is a case of joint and several liability and not vicarious liability as such. Therefore, if the complainant herein has proceeded only against the partners and not against the partnership firm, we think it is not something which would go to the root of the matter so as to dismiss the complaint on that ground. Rather, opportunity could have been given to the complainant to *implead the partnership firm also as an accused in the complaint even though no notice was sent specifically in the name of the partnership.*

6.10 Alternatively, notice to the partners/ accused could have been construed as notice to the partnership firm also. We say so for the reason that unlike a company which is a separate juristic entity from its directors thereof, a partnership firm comprises of its partners who are the persons directly liable on behalf of the partnership firm and by themselves. Therefore, a partnership firm, in the absence of the partners being arraigned as accused would not serve the purpose of the case and would be contrary to law. On the other hand, even in the absence of making a partnership firm an accused in the complaint, the partners being made the accused would be sufficient to make them liable inasmuch as the partnership firm without the partners is of no consequence and is not recognised in law. This is because in the case of a partnership firm, the said juristic entity is always understood as a compendious term namely, the partnership firm along with its partners. Therefore, if the appellant-complainant had proceeded only against the partnership firm and not its partners then possibly the respondents would have been right in contending that the complaint was not maintainable but here the case is reversed. The complainant herein has not arraigned the firm but has arraigned the partners of the firm as accused and has also issued notice to them; therefore, we find that the defect, if any, is not significant or incurable in these circumstances. Permission is therefore to be granted to the complainant to arraign the partnership firm also as an accused in the complaint. Moreover, the cheque was issued in the name of the firm and signed by one of the partners, for and on behalf of

> *the other also, therefore, the liability is deemed to be on both the partners of the firm.*
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> *Hence permission is given to arraign the partnership firm as an accused having regard to the peculiar characteristics of a partnership firm and a company on which aspect we will discuss further. "*

6. Therefore, in view of the observations of the Supreme Court *(supra),* the findings of the Trial Court to that effect are perverse. However, so far as the findings in respect of the issue which was framed by the trial Court as to whether presentation of the cheque by the complainant to the bank is said to be proved or not, the trial Court has answered in negative and to buttress the aforesaid finding the trial Court has considered the documentary evidence on record. From the documents it appears that the cheques and the pay slips does not bear the seal of the bank. Further, all the cheques (Exhs.-39 to 41) does not bear the seal of the bank and also there is no date mentioned when the cheque was presented. Exh.-61 is the pay slip, wherein, the cheques were deposited, however, even on those pay slips, there is no stamp of the Bank.

7. After perusal of Exh.-57, the 3 entries which were made on 28/02/2007 are the last entries on that day, and those are in different handwriting and ink and the upper part of the said extract shows that the other entries are in different hand writing. The very fact that the cheques which are presented and further pay slips does not have the date and the seal of the bank, itself creates doubt about presentation of the cheque to the bank. Though the witness which was examined by the complainant, i.e., Bank Manager, the testimony goes to show that the complainant had deposited cheques, however, whatever was observed above falsifies his testimony. There is another important aspect that the accused has placed on record Exh.-59, i.e., cheque issued in the name of Sulochna Namdeo Dhonge, who is the wife of accused and bank slip (Exh-58) which goes to show that there is endorsement seal on both these documents, therefore, if the bank has given stamp / seal in the case of dishonour of cheque which was issued in the name of wife-Sulochna, then why separate procedure was followed by the bank in respect of appellant as was observed above that there is no seal of the bank / stamp on the pay slip as well as on the cheque, therefore, as was contended by the learned counsel for the respondent that the complainant has failed to prove that cheques Exh.39 to 41 are presented and similarly Exh.-61 – Pay Slip do not have the seal would strengthen the case of the accused. After perusal of Exh.-58 and Exh.- 59 admittedly there is endorsement of bank. Therefore, the evidence of bank Manager cannot be believed.

8. The Trial Court has rightly appreciated the evidence so far as presentation of cheque to the bank is concerned and accordingly given findings. Considering the facts and circumstances of the case, there is no merit in the appeal. Hence, the appeal is **dismissed.**

[M.M. NERLIKAR, J]

PIYUSH MAHAJAN