**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-47011-2025
Date of decision: 16.10.2025

Rajlaxmi ...Petitioner

Versus

M/s Balaji Road Lines Fatehabad and others ...Respondents

CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY

Present : Mr. Dinesh Saini, Advocate for the petitioner.

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AARADHNA SAWHNEY, J.(ORAL)

1. Smt. Raj Laxmi, the sole proprietor of M/s Raj Fleet Management, having their registered office at A-26, Guru Kirpa-1, Lower Ground Floor, Hem Marg, Swej Farm, New Sanganer Road, Sodala, Rajpur, has filed the present petition under Section 528 of the BNSS, praying for quashing/setting aside of order dated 21.07.2025 passed by learned Additional Sessions Judge, Fatehabad in CRR No.27 of 2021 titled ‘M/s Balaji Roadlines Fatehabad vs. Smt. Rajlaxmi and others’, vide which the revision petition filed by respondent No.1/complainant, was allowed and petitioner was summoned to face trial as an accused under Section 138 NI Act in criminal complaint No.NI-591 of 2020 titled ‘M/s Balaji Roadlines Fatehabad vs. Smt. Rajlaxmi and others’.

2. Relevant facts as emerging from documents on record be noticed hereinbelow:-

> *M/s Balaji Roadlines (respondent No.1 in the present petition and complainant in the complaint) is a partnership firm comprising of two partners namely Sh. Pawan Kumar and Mukesh Kumar. The firm is running the business under the*

name and style of M/s Balaji Roadlines, Fatehabad. The complainant firm was deputed by the accused (petitioner herein) for transporting telecom goods material and tyres etc. For part payment of outstanding amount in the account of complainant firm, accused issued a postdated cheque No.000684 dated 01.06.2020 drawn on HDFC Bank, Branch Vaishali Nagar, Jaipur, for Rs.42,64,227/- on 18.02.2020. On presentation of the said cheque in Kotak Mahindra Bank, Fatehabad, on 02.06.2020, the same was returned back unpaid due to 'funds insufficient', vide memo dated 05.06.2020. The cheque and memo, however, were not returned to them, being in custody of Operation Manager on the said day. On 06.06.2020, as per the case set up by the complainant firm, one of the partners again visited the bank and he was informed that 2 persons had visited the bank and, on their claim, the cheque and memo were handed over to them by obtaining their signatures. The conduct on the part of bank officials was quite questionable, which led complainant to lodge a complaint on 08.06.2020 to SHO, Police Staton City, Fatehabad against the Manager Sh. Vikas Kumar, Branch Manager-Ishant Bansal. Further, request was made to preserve the CCTV camera footage of the relevant period. After making enquiries on the complaint, criminal proceedings vide FIR No.325 dated 03.07.2020 were initiated in PS City Fatehabad.

It is further the case of complainant (respondent No.1 herein petition) that vide letter issued by the Branch Manager of Kotak Mahindra Bank to HDFC Bank, it was assured that the bank (Kotak Mahindra) would ensure return of the cheque from the person who had illegally collected it from their bank and would return the same to the complainant for proceeding in the Court. Both, the proprietor of M/s Raj Fleet Management i.e. Smt. Rajlaxmi and the authorized signatory Sh.Vinod Poonia, were also intimated that the cheque in question had been misplaced by the bank (Kotak Mahindra

Bank, Fatehabad). Complainant alleges that the impression that both the proprietor (Smt. Rajlaxmi) and her husband (Vinod Poonia) were already aware of this fact. Repeated requests were also made to both of them to issue new cheques but for reasons best known they kept on prolonging the matter on one pretext or the other. Even legal notice dated 02.07.2020 under Section 138(b) was issued by complainant demanding the payment of cheque amount i.e. Rs.42,64,227/-, within 15 days but despite receiving notice neither fresh cheque was issued nor the money was paid. Rather a reply on behalf of both Rajlaxmi and Vinod Poonia was received.

3. Documents on record reveal that vide order dated 22.01.2021, the learned trial Court summoned M/s Raj Fleet Management through Sh. Vinod Kumar, the authorized signatory of Smt. Rajlaxmi, the sole Proprietor of M/s Raj Fleet Management, (Annexure P-2). However, Smt. Rajlaxmi was not summoned as an accused, nor any reasons were given for summoning her.

4. It further emerges from the document on record that feeling dissatisfied the complainant- M/s Balaji Roadlines filed a revision petition against the aforesaid order passed by the then CJM, Fatehabad, vide which the proprietor of M/s Raj Fleet Management (present petitioner), had not been summoned as an accused. This revision petition was partly allowed by the then learned Additional Sessions Judge, Fatehabad, inasmuch as, accused No.1 i.e. Smt. Rajlaxmi, the sole proprietor of M/s Raj Fleet Management, was also summoned.

5. This being the factual aspect of the case, order dated 21.07.2025 was passed by the learned Additional Sessions Judge, Fatehabad, partly allowing the revision petition filed by original complainant M/s Balaji

Roadlines, Fatehabad and petitioner in the present petition was summoned for commission of offence punishable under Section 138 of the NI Act.

6. Impugned order has been challenged primarily on four grounds:-

I. Firstly, on the point of limitation, submitting that complaint filed by the complainant is time barred.

II. Secondly, on the point of not getting the matter enquired into or investigated as provided under Section 202 Cr.P.C., as the accused are residing beyond the territorial jurisdiction of learned Magistrate in which he exercises his control.

III. Thirdly, that the cheque in question was not signed by petitioner. Her husband Sh. Vinod Kumar being the authorized signatory of M/s Raj Fleet Management had issued the cheque. The liability, if at all any, as per learned counsel, is only of the authorized signatory of the cheque i.e. Vinod Kumar. Petitioner, as per learned counsel, cannot be held liable.

IV. Fourthly, that cheque in question was not issued in exercise of legally enforceable debt. The submission of learned counsel for the petitioner is that no material/document was placed on record by the complainant i.e. respondent No.1 in the present petition, to prove actual transportation of the services rendered.

7. Before expressing any opinion as to whether the complaint filed by the complainant-M/s Balaji Roadlines through its partner Mukesh Kumar, is time barred or not, let us briefly recapitulate the statutory provisions.

Under Section-138(a) of the NI Act, cheque is to be presented within a period of 03 months from the date on which it is drawn or within the period of its validity, whichever is earlier. If the cheque is returned unpaid, Section-138(b) mandates issuance of notice in writing by the payee or the holder in due course of the cheque, as the case may be, to the drawer of the cheque raising a demand for payment of cheque amount within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. Under Section-138(c), if the drawer of such cheque fails to make the payment of the said amount of the money to the payee or to the holder in due course of the cheque, as the case may be, within 15 days of the receipt of said notice, then the offence under Section-138 of the Negotiable Instruments Act 1881 stands committed.

Under Section-142(b), to take cognizance of said offence committed under Section-138, the complaint is required to be made within 01 month of the date on which the cause of action arises under Section-138(c) of the NI Act. There is a proviso to Section-142(b) introduced by Act 55 of 2002, the period as provided under Section-142(b) can be condoned if the complainant satisfies the court that he had 'sufficient cause' for not making a complaint within such period.

From the conjoint reading of aforesaid two provisions, it emerges that the complainant has 45 days to file a complaint under Section-138 of the NI Act, from the date the notice under Section-138(c) is received by the drawer of the cheque.

Reverting back to the facts of the case in hand, notice under Section-138(b) of the NI Act was issued by the complainant on 02.07.2020 and was dispatched on 03.07.2020 through its counsel. However, there is no document on the file to show as to when said notice was received by the drawer of the cheque. Normally it takes 2-3 days for the consignment to be delivered by the Postal Department. If the notice was received by the drawer on 06.07.2020 or on any date subsequent thereto, the complaint is within limitation as the same was filed on 20.08.2020. If the notice was received by the drawer prior to 06.07.2020, then the complaint may be barred by limitation. Thus, it is a question of fact to be established/proved by leading evidence. On this score alone, complaint cannot be quashed at this stage, in exercise of powers under Section-482 of Cr.P.C.

As regards the submissions by learned counsel for the petitioner that learned Magistrate erred in law in not getting the complaint investigated, as provided u/s 202 Cr.P.C., which according to him is the requirement of law, accused being residents of Jaipur, suffice it would be to point out here that the documents on record reveal that the learned Magistrate did not act merely on the basis of averments made in the complaint. Rather, a detailed enquiry was conducted by him, inasmuch as he recorded the statement of the complainant, statement of bank official and also perused the documents placed along with the complaint, before taking cognizance of the offence under Section 138 of the NI Act. The procedure so adopted by him was the only proper way to verify/enquire into the facts and nothing more was expected from him at the stage of taking cognizance of the offence. Thus, on this ground also, a complaint cannot be quashed.

As regards the third plea taken by the petitioner that the cheque in question was not issued in discharge of legally enforceable debt by the firm M/s Raj Fleet Management (of which she is the sole proprietor), this Court is of the opinion that this point can only be adjudicated after parties lead their respective evidence.

As regards the fourth plea taken by the petitioner, the same has been discussed at length by learned Additional Sessions Judge, Fatehabad. It is settled that a proprietorship firm does not has a separate legal entity apart from the proprietor. As the proprietorship firm and the proprietor are one of the same persons, the proprietor cannot escape from the liability on the ground that she is not a signatory of the cheque. Reliance in this regard is placed on the following judgments:-

1. ***M.Hemalatha vs. D. Kannan 2016(2) CTC 669.***
2. ***Naresh Garg vs. M/s Innovative Textiles Private Limited 2015 (145) AIC 926.***
3. ***Market Committee, Bhawanigarh vs. M/s Karan Traders and others 2020(2) PLR 156.***
4. ***Kamal Kumar vs. Mahesh Garg 2018(2) NIJ 521.***
5. ***Raghu Lakshminarayanan vs. M/s Fine Tubes 2007(3) BCR 259.***

8. In view of the detailed discussion made hereinabove, finding no illegality in the impugned order dated 21.07.2025, the same is upheld. Petition being devoid of merit, is hereby dismissed.

(AARADHNA SAWHNEY)
JUDGE

16.10.2025
Hemant

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No