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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 5/2025

ARUN RAMACHANDRAN PILLAI .....Petitioner

Through: Mr. Nitesh Rana, Mr. Deepak Nagar, Mr. Nikhil Kohli and Ms. Raksha Tripathy, Advocates.

versus

PERNORD RICARD INDIA PVT. LTD. .....Respondent

Through: Mr. Raj Kamal, Ms. Aprajita Tyagi, Ms. Muskan Sidana, Mr. Karan Khanuja and Mr. Harneet Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **07.01.2025**

1. The present petition under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 seeks quashing of Complaint No. 3473/2023, filed by the Respondent before the Metropolitan Magistrate, Patiala House District Court, New Delhi.[1] The Petitioner further challenges the impugned order dated 31st August 2024, passed in the aforementioned Complaint Case, in which the trial court has taken cognizance of the matter and issued summons under the Negotiable Instruments Act, 1881,[2] subsequent to the recording of pre-summoning evidence of the Complainant.

2. The Petitioner's challenge to the impugned order and the underlying

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[1] "trial court"
[2] "NI Act"

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complaint is premised on multiple grounds. Primarily, it is argued that the trial court erred in taking cognizance of the matter without appreciating the legal requirements under Section 138(b) of the NI Act. The Petitioner, a partner in the partnership firm M/s Indo Spirits (Accused No. 1), contends that the statutory notice under Section 138(b) was not served on him personally, but only on Accused No. 1 and Accused No. 2, who is the power of attorney holder of the firm. Placing reliance on the judgment of the Supreme Court in ***Aneeta Hada v. Godfather Travels and Tours Pvt Ltd.***,[3] the Petitioner submits that the partnership firm and its partners are distinct legal entities, and as such, each partner must be separately arraigned. He argues that the requirement of serving the notice on each partner, as stipulated in Section 138(b), is mandatory.

3. The Petitioner further contends that the averments in the complaint are insufficient to satisfy the requirements of Section 141(1) of the NI Act. He argues that he is not responsible for the conduct of Accused No. 1 and that Accused No. 2, as the controlling person of the firm, bears liability for the alleged dues of the complainant. Additionally, the Petitioner raises an objection on the ground of limitation, asserting that the complaint was filed beyond the statutory period. The Petitioner also questions the authority of the representative who filed the complaint on behalf of the Complainant, claiming improper authorization.

4. On the other hand, Counsel for the Respondent refutes these contentions and submits that the Petitioner's arguments lack merit.

5. This Court is mindful that the proceedings are at a preliminary stage, with only summons having been issued. The power under Section 528 of the

[3] (2012) 5 SCC 661

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Bhartiya Nagrik Suraksha Sanhita, 2023, to quash criminal proceedings is to be exercised sparingly, particularly at a nascent stage, where the factual matrix is yet to be fully established. The Supreme Court, in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)***,[4] elucidated that proceedings for quashing under the NI Act should not result into an inquiry into the merits of the factual disputes, as this would risk prematurely resolving the issue in favor of either the complainant or the respondent. In this regard, the Court made the following observations:

> *"Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."*

6. In the instant case, the Complainant has alleged that despite supplying goods on credit to Accused No. 1 between June 2022 and August 2022, their due payment remains outstanding, with the total amount being INR 1,604,704,922/- as of 29th December, 2022.

7. While the Petitioner, in response, has argued that the statutory notice under Section 138 of the NI Act was not served on him personally, it is imperative to note that the requirement for service of notice pertains exclusively to the 'drawer of the cheque', and does not extend to individual directors of a company. The Supreme Court, in ***Krishna Texport & Capital Markets Ltd. v. Ila A. Agrawal & Ors.***,[5] has clarified the said position in the following terms:

> *"The notice under Section 138 is required to be given to "the drawer"*

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[4] 2022 SCC OnLine SC 513.

[5] Criminal Appeal No. 1220/2009, decided on 06th May, 2015.

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> *of the cheque so as to give the drawer an opportunity to make the payment and escape the penal consequences. No other person is contemplated by Section 138 as being entitled to be issued such notice. The plain language of Section 138 is very clear and leaves no room for any doubt or ambiguity. There is nothing in Section 138 which may even remotely suggest issuance of notice to anyone other than the drawer."*

8. In the present case, the statutory notice under Section 138 was duly served on both the partnership firm (Accused No. 1) and the signatory of the cheques (Accused No. 2). Consequently, there exists no requisite obligation to serve the Petitioner personally under the NI Act.

9. Furthermore, although the Petitioner has sought to equate a partnership firm with a company, it is trite law that, unlike a company, a partnership firm does not possess a distinct legal identity.[6] In this context, Section 24 of the Indian Partnership Act enshrines the principle of agency, whereby notice served on any one partner is deemed to be notice to the entire firm and all its partners. This agency relationship forms the basis of joint and several liability in partnerships. Therefore, the Petitioner cannot claim quashing of the complaint case on the ground of non-service. While he has a right to contest the adequacy of such notice before the trial court, the Magistrate's decision to take cognizance, based on service of notice to Accused No. 2, does not warrant interference at this stage.

10. Additionally, the Petitioner's reliance on ***Aneeta Hada*** is also misplaced. In the said case, the Supreme Court addressed the issue of whether a company must be impleaded as an accused in proceedings under Section 138 of the NI Act for its officers to be held liable. In that case, the appellant, Ms. Aneeta Hada, served as an authorized signatory for

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[6] V. Subramaniam v. Rajesh Raghuvandra Rao, (2009) 5 SCC 608.

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International Travels Limited. She issued a cheque for INR 5,10,000/- in favour of the respondent, M/s. Godfather Travels & Tours Pvt. Ltd. Upon presentation, the cheque was dishonoured due to insufficient funds. Consequently, the respondent initiated a complaint under Section 138 of the NI Act against Ms. Hada. Pertinently, the company, International Travels Limited, was not named as an accused in the complaint. The Supreme Court held that for prosecution under Section 138 read with Section 141 of the NI Act, it is imperative to arraign the company as an accused. Section 141 stipulates that when an offence is committed by a company, both the company and the individuals in charge of its operations at the time are liable. The Court emphasized that the liability of officers is vicarious, contingent upon the prosecution of the company, and that proceedings against the officers without the company being impleaded are unsustainable. Therefore, the said judgment pertains to corporate liability under Section 141 of the NI Act and emphasizes the necessity of arraigning the company as an accused before proceeding against its officers. However, in the context of partnerships, as in the present case, the principle of agency governs the liability of the firm as well as its partners, unless explicitly rebutted during trial.

11. As for the Petitioner's objection regarding the insufficiency of averments in the complaint under Section 141(1), this issue is fact-intensive and requires evidence to determine whether the Petitioner was "in charge of and responsible for the conduct of the business of the firm". While the Petitioner is at liberty to raise such issues at the stage of trial, at this stage, the allegations made in the complaint, supported by the documents on record, are *prima facie* sufficient to warrant the issuance of summons.

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12. Additionally, the Petitioner's objection regarding limitation has already been addressed by the trial court in the impugned order, which noted that the complaint was filed within the extended period of limitation, as permitted by the Supreme Court in the case ***In Re: Cognizance for Extension of Limitation***,[7] in light of the disruptions caused by the COVID-19 pandemic. Nonetheless, if the Petitioner wishes to contend the same, any factual dispute pertaining to the period of limitation must be adjudicated during the trial. It is not for this Court, at the stage of quashing proceedings, to delve into such factual determinations.

13. Lastly, the Petitioner's challenge to the authorization of the AR to file the complaint is also a matter to be addressed during trial. Such an objection, even if substantiated, would not vitiate the complaint outright, but merely require the Complainant to demonstrate proper authorization.

14. In view of the foregoing, the Court does not find any merit in the contentions of the Petitioner, and is thus, not inclined to entertain the present petition. Accordingly, the petition is dismissed, along with pending applications.

SANJEEV NARULA, J

JANUARY 7, 2025
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[7] Suo Motu W.P.(C.) No. 3/2020, decided on 10^{th} January, 2022.

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