

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10844 of 2024

Arising Out of PS. Case No.-429 Year-2022 Thana- BHOJPUR COMPLAINT CASE
District- Bhojpur

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Bablu Kumar, S/o- Sri Ram Sundar Sah Village- Dhanwati Po- Dhanwati Ps-
Charpokhari Dist- Bhojpur,A/p- W.NO- 12, Piro Ps- Piro Dist- Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Raj Kishor Singh, son of Moarika Singh R/o- Near Ashok Cinema Hall
Bihiya Road Ps- Piro Dist- Bhojpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate

For the Opposite Party/s : Mr. Rajendra Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT

Date : 23-02-2026

Heard the learned counsel for the parties.

2. The present application has been filed by the petitioner invoking the inherent jurisdiction of this Hon'ble Court for quashing the order dated 03.01.2023 passed by the learned Sessions Judge, Bhojpur, Ara, in Cr. Revision No.92 of 2022 by which the order taking cognizance under Section 138 of the N.I. Act dated 19.05.2022 by the Court of learned Judicial Magistrate 1st Class, Ara, in Complaint Case No.429(C) of 2022 was set aside and the revision petition filed by the opposite party no.2 was allowed.

3. The facts giving rise to the present complaint



application is that petitioner had sold paddy to the opposite party no.2, who is the owner of Durga Rice Mill, Hasan Bazar, Bhojpur and the opposite party no. 2 had given a cheque of Rs.6,00,000/- to the petitioner on 28.12.2021, but the cheque was dishonoured by the Bank. It is alleged that when the petitioner informed the opposite party no.2 about the same, he did not give a satisfactory reply and then petitioner sent a legal demand notice through his lawyer on 10.03.2022, complying with the mandatory provisions of the Negotiable Instruments Act, 1881 but the opposite party no.2 neither responded to the notice nor made any payment. In such a situation, the petitioner filed a Complaint Case No.429(C) of 2022.

4. On the basis of the aforesaid complaint and the documents on record and after examination of the inquiry witnesses, the learned Judicial Magistrate by order dated 19.05.2022, took cognizance under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as “NI Act”).

5. The said order taking cognizance was challenged before the learned Sessions Judge in Cr. Rev. NO.92 of 2022 and the learned Sessions Judge by the order impugned set aside the order of cognizance and allowed the revision application on



the ground that the concerned firm, Durga Ji Rice Mill, has not been made a party by the complainant/petitioner and in the absence of the said party, this case cannot be proceeded.

6. Learned counsel for the petitioner submits that the present application challenging the said revisional order is primarily on the ground that the learned Revisional Court has erred in holding that “if the person committing an offence under Section 138 is a company, every person who, at the time of 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”.

7. Learned counsel for the petitioner submits that the learned Sessions Judge, who was hearing the revision application, has quoted Section 141 of the NI Act in coming to the finding that the order taking cognizance was bad, as the same was taken against the person and the complainant has not made Durga Ji Rice Mills as a party and as the mill itself has not been made a party, the case would not proceed.

8. Learned counsel for the petitioner submits that Durga Ji Mills is a proprietorship firm and the opposite party



no.2 is the owner of the said firm and this firm does not operate under the company act. It has further been submitted that the opposite party no.2 is the only person who is accountable that for all types of transactions, but this fact has been misread by the learned Revisional Court. It has been submitted that the gross illegality has been committed by the learned Revisional Court by going on to quash the cognizance and the summoning order, taking recourse to Section 141 of the NI Act.

9. Learned counsel for the petitioner has referred to the cheques, which were issued in favour of the petitioner by the opposite party no.2 against the price of paddy and the two cheques were presented before the Bank and the same was dishonoured by the Bank on 01.03.2022 and from perusal of the said cheque, which has been brought on record by way of Annexure P2, it is evident that the opposite party no.2 had issued the cheque as the proprietor of Shri Durja Ji Rice Mills. Learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Supreme Court in the case of ***Raghu Lakshminarayanan vs. M/s Fine Tubes*** reported in **2007 (5) SCC 103** wherein the Hon'ble Supreme Court has very clearly observed as under: -

“.....A proprietary concern,
however, stands absolutely on a different



footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Company in terms of the Explanation appended to Section 141 of the Negotiable Instruments Act, means any body corporate and includes a firm or other association of individuals. Director has been defined to mean in relation to a firm, a partner in the firm. Thus, whereas in relation to a company, incorporated and registered under the Companies Act, 1956 or any other statute, a person as a Director must come within the purview of the said description, so far as a firm is concerned, the same would carry the same meaning as contained in the Partnership Act.....”.

10. It has, thus, been submitted that in view of the observations made by the Hon'ble Supreme Court setting aside of the cognizance order by the Revisional Court is palpably illegal and against the mandate of Hon'ble Supreme Court as referred to hereinabove and thus, impugned order is fit to be set aside.

11. Per contra, learned counsel for the opposite party no.2 submits that there is no illegality in the order impugned and in fact the learned Magistrate had passed the order taking



cognizance in a mechanical way without applying its judicial mind. It has further been submitted that Durga Ji Rice Mills was a firm and therefore, the requirement under Section 141 of the NI Act ought to have been complied with and since the petitioner had not made Durga Ji Rice Mills an accused, the order taking cognizance was bad on this ground alone. Learned counsel for the opposite party no.2 has referred to Section 141 of the Negotiable Instrumental Act and has submitted that the learned Magistrate did not consider the provision of the said Section, which debars prosecution because of the fact that the company has not been made a party and therefore there is no illegality in the impugned order.

12. Learned opposite party no.2 has relied upon a judgment rendered by the Hon'ble Supreme Court in case of ***Aneeta Hada vs. M/s Godfather Travels & Tours Pvt. Ltd.*** reported in ***2012 (5) SCC 661*** and has relied upon paragraphs '57' and '58' which states as under:-

“57. In RBI v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424] it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in Deewan Singh v. Rajendra Pd. Ardevi [(2007) 10 SCC 528] and Sarabjit Rick



Singh v. Union of India [(2008) 2 SCC 417 : (2008) 1 SCC (Cri) 449] .

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.”

13. Learned counsel for the opposite party no.2 relying on the aforesaid judgment, has thus submitted that the opposite party no.2 could not have been solely made an accused and proceeding ahead by the learned Magistrate, as Durga Ji Rice Mills was not made a party, is in contravention to the required Section 141 of the NI Act. Learned counsel for the opposite party no.2 has relied upon the judgment of the Hon’ble Supreme Court passed in ***Anil Gupta vs. Star India Pvt. Ltd.***



reported in **(2014) Cri.L.J. 3884 Supreme Court** in support of his arguments.

14. Having heard the learned counsel for the parties and perused the respective pleadings, it is evident that the petitioner has filed a complaint making the opposite party no. 2 an accused in a case where a cheque of six lakh was given in favour of the petitioner and was subsequently dishonoured.

15. It is an admitted fact, which would be evident from the perusal of Annexure P2 that the opposite party no.2, namely, Raj Kishore Singh, happens to be the proprietor of Sri Durga Ji Rice Mills which admittedly is a firm.

16. In such factual background, the judgment rendered in the case of **Raghu Laxmi Narayan (Supra)** the Durga Ji Rice Mills, would not stand in place of a company as contemplated under Section 141 of the NI Act and therefore the learned Magistrate was justified in taking cognizance against the opposite party no.2, who was the sole proprietor of Durga Ji Rice Mill.

17. In view of the discussions made hereinabove, finding that the opposite party no.2 was the whole and sole of Durga Ji Rice Mill, being the sole proprietor of the firm, making Durja Rice Mills an accused was not mandatory under the NI



Act and therefore, interference by the Revisional Court taking recourse to the provision of Section 141 of the NI Act to my understanding, is wrong and therefore, the order dated 03.01.2023 passed in Criminal Revision No.92 of 2022 could not be sustained.

18. The order dated 03.01.2023 passed by the learned Sessions Judge, Bhojpur, Ara, in Cr. Revision No.92 of 2022 is hereby set aside and the learned Magisterial Court in *seisin* of complaint case No.429(C) of 2022 is hereby directed to proceed ahead from the stage of taking cognizance and issue fresh summons to the accused to face the trial.

19. Therefore, the present application is allowed.

(Sourendra Pandey, J)

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AFR/NAFR	NAFR
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