HC-KAR
NC: 2026:KHC:63751
CRL.P No. 2416 of 2024
CNR: KAHC010147402024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO. 2416 OF 2024

BETWEEN:

1. M/S DHARANI SPICES AND FOODS
PLOT NO 171,
SY NO 318, AND 316 ROAD NO 3,
KIADB INDUSTRIAL AREA BELUR,
DHARAWADA CITY,
REPRESENTED BY ITS PARTNERS,
NAMELY PETITIONER NO.2 AND 3

2. PALLAVI
W/O RUDRAMANI CHIKKAMATH
AGED ABOUT 55 YEASR,
PLOT NO.44, SHIVALAYA DOUBLE ROAD,
OPP: DR. PUTTI BUILDING, BELAGAVI 590001

3. RUDRAMANI M CHIKKAMATH
S/O MALLAYYA CHIKKAMATH
AGED ABOUT 63 YEARS,
PLOT NO.44, SHIVALAYA DOUBLE ROAD,
OPP: DR PUTTI BUILDING BELAGAVI-590 001

...PETITIONERS

(BY SRI. R.B DESHPANDE, ADVOCATE)

Digitally signed by PANKAJA S
Location: HIGH COURT OF KARNATAKA

AND:

1. VIJAY SAGAR PATIL
S/O VEERENDRA PATIL,
AGED ABOUT 35 YEARS,
"ASHIRWAD" 2ND MAIN, 16TH CROSS,
BESIDE RAJARAM COLONY POST OFFICE, HARIHAR,
DAVANAGERE DISTRICT-577 601

...RESPONDENT

(BY SRI. GOPALAKRISHNAMURTHY C, ADVOCATE)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO QUASH THE CRIMINAL PROCEEDINGS AGAINST THE PETITIONERS IN C.C.NO.567/2023, ON THE FILE OF I ADDL. CIVIL JUDGE AND JMFC, HARIHAR (REGISTERED FOR THE OFFENCE P/U/S 138 OF N.I. ACT).

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

In this petition, the petitioners/accused Nos.1 to 3 have challenged the proceedings in C.C.No.567/2023, for the offence punishable under Section 138 of Negotiable Instruments Act (for short, 'N.I. Act'), pending on the file of I Addl. Civil Judge and JMFC at Harihara.

2. The brief facts of the case are, the respondent filed a private complaint under Section 200 of Cr.P.C. for the offence punishable under Section 138 of N.I. Act against the petitioners alleging that petitioner No.1 is the firm and petitioner Nos.2 and 3 along with one Prasanna T. Sirsalmath (now deceased) are the active partners of petitioner No.1-Company and they were engaged in spices business with the respondent. It is alleged in the complaint that the respondent availed loan of Rs.13,89,900/- from various Banks and transferred the same to

the Bank Account of petitioner No.1 on the assurance that the petitioner would repay the said amount within three months. Thereafter, when the respondent insisted to repay the same, the petitioners paid a sum of Rs.9,90,000/-. For the balance sum of Rs.4,00,000/-, the petitioners issued a cheque bearing No.606854 in the name of petitioner No.1-Company, which is signed by petitioner No.3 and the deceased - Prasanna T. Sirsalmath. Subsequently, the said cheque was presented by the respondent on 23.01.2023 and the same was dishonored. On request of the petitioners, the respondent once again presented the said cheque for encashment on 07.03.2023, the same was return with an endorsement 'Account Blocked'. As such, the respondent filed this present private complaint. Accordingly, learned Magistrate took cognizance of the offence against the petitioners. Aggrieved by the same, the petitioners/accused Nos.1 to 3 preferred this petition.

3. Heard the learned counsel for the respective parties.

4. The contention of learned counsel for the petitioners is, in connection with the alleged transaction between the

petitioners and respondent, on behalf of petitioner No.1-Company, petitioner No.3 and deceased-Prasanna T. Sirsalmath issued a signed cheque and admittedly, petitioner No.2 is not the signatory to the cheque. Except the averments in the complaint, no such specific document is placed to state that she is the active partner of the Company. In such circumstance, he submits that continuation of proceedings against her, who is none other than the wife of petitioner No.3, is abuse of process of Court.

5. The prayer of the petitioners is opposed by learned counsel for the respondent and contended that petitioner Nos.2, 3 and deceased-Prasanna T. Sirsalmath are the active partners of petitioner No.1-Company. However, he fairly submits that the cheque by the petitioners to the respondent was signed by petitioner No.3 and deceased-Prasanna T. Sirsalmath. Accordingly, he prays to dismiss the petition.

6. I have given my anxious consideration to the submissions and perused the documents made available on record.

7. On careful reading of the complaint and other averments, admittedly, in the complaint and legal notice, it is contended that the petitioners owed a sum of Rs.13,89,900/- to the respondent and for discharge of the same, the petitioners paid a sum of Rs.9,90,000/-. For the balance sum of Rs.4,00,000/-, the petitioners issued a cheque bearing No.606854 in the name of petitioner No.1-Company, which is signed by petitioner No.3 and the deceased - Prasanna T. Sirsalmath. Admittedly, petitioner No.2 is the wife of petitioner No.3. Without any express allegation in the complaint that petitioner No.2 is the active member in the firm and the cheque was issued well within her knowledge, proceedings cannot be continued against such partner in the Company. In such circumstance, petitioner No.2 cannot be held vicariously liable for the act committed by petitioner Nos.1 and 3, since vicarious liability is alien to criminal law. Nevertheless, the Hon'ble Apex Court in the case of ***S.M.S. Pharmaceuticals ltd vs. Neeta Bhalla and Anr.*** reported in ***(2005) 8 SCC 89*** held in paragraph No.10 as under:

> ***"10.*** *While analysing Section 141 of the Act, it will be seen that it operates in cases where an*

offence under Section 138 is committed by a company. The key words which occur in the section are "every person". These are general words and take every person connected with a company within their sweep. Therefore, these words have been rightly qualified by use of the words:

"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, etc."

What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of

> *"every person" the section would have said "every director, manager or secretary in a company is liable"…, etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action."*

8. Collocating the findings in the above judgment of the Hon'ble Apex Court to the facts and circumstances of the present case, I am of the considered view that the above findings in the judgment squarely applicable to the facts and circumstances of this case. Accordingly, continuation of proceedings against petitioner No.2/accused No.2 is nothing but abuse of process of Court. Hence, I proceed to pass the following:

ORDER

i. The criminal petition is ***allowed***.

ii. The proceedings against petitioner No.2/accused No.2 in C.C.No.567/2023, for the offence punishable under Section 138 of Negotiable Instruments Act, pending on the file of I Addl. Civil Judge and JMFC at Harihara, is hereby quashed.

iii. It is made clear that the proceedings against petitioner Nos.1 and 3/accused Nos.1 and 3 shall continue.

SD/-
(RAJESH RAI K)
JUDGE

HKV
List No.: 1 Sl No.: 5