HC-KAR

NC: 2026:KHC:62447
CRL.P No. 4183 of 2023

CNR: KAHC010200472023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 4183 OF 2023

BETWEEN:

1. MR. RAJESH SOGANI
S/O MR. R.C. SOGANI
AGED ABOUT 51 YEAR OLD
HAVING HIS OFFICES AT G557
RIICO INDUSTRIAL AREA
SITAPURA JAIPUR
RAJASTHAN - 302 022.

2. MRS. SONU SOGANI
W/O MR. RAJESH SOGANI
AGED ABOUT 45 YEARS OLD
HAVING HER OFFICES AT G557
RIICO INDUSTRIAL AREA
SITAPURA JAIPUR
RAJASTHAN - 302 022.

3. MRS. SHEFALI SOOD
D/O MR. N.K SOOD
AGED ABOUT 42 YEARS OLD
HAVING HER OFFICES AT G557
RIICO INDUSTRIAL AREA
SITAPURA JAIPUR
RAJASTHAN - 302 022.

4. MR. HARUN
S/O MR. KAMARUDEEN
AGED ABOUT 28 YEARS OLD
HAVING ITS REGISTERED OFFICES AT G557
RIICO INDUSTRIAL AREA
SITAPURA JAIPUR, RAJASTHAN - 302 022.

...PETITIONERS

(BY SMT. AKANKSHA CHOUDHARY, ADV., FOR
SRI AHAAN MOHAN, ADV.)

Digitally signed by NANDINI D
Location: HIGH COURT OF KARNATAKA

AND:

1. VIKRAM TRADERS
A PARTNERSHIP FIRM UNDER THE
PARTNERSHIP ACT, HAVING ITS
REGISTERED OFFICE AT
SUBRAMANYAPURA, BANGALORE - 560 061
(REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. NAGAPPA MIRAGI B.

2. SOGANI FASHIONS JAIPUR LLP
A LIMITED LIABILITY PARTNERSHIP FIRM
INCORPORATED UNDER THE LIMITED LIABILITY
PARTNERSHIP ACT 2008
HAVING ITS REGISTERED OFFICES
AT G557, RIICO INDUSTRIAL AREA
SITAPURA JAIPUR, RAJASTHAN - 302 022.

…RESPONDENTS

(BY SRI N.K. DILIP, ADV, FOR R-1;
R-2 NOTICE NOT ORDERED)

THIS CRL.P IS FILED U/S. 482 CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 8.11.2022 PASSED BY THE LD.SCCH-26 XXIV ADDL.SCJ AND A.C.M.M AT BENGALURU TAKING IN PCR NO.5388/2022 (NOW C.C.NO.13211/2022) REGISTERING A CRIMINAL CASE AGAINST AND ISSUING SUMMONS ON THE PETITIONERS FOR THE OFFENCE P/U/S 138 OF THE N.I ACT WHO ARE ACCUSED NO.2 TO 5 THEREIN. PRODUCED HEREWITH AS ANNEXURE-B.

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

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. This petition under Section 482 of Cr.PC is filed by accused nos.2 to 5 seeking for the following reliefs:

"a. set aside the order dated 08.11.2022 passed by the Ld. SCCH 26 XXIV Addl. SCJ and ACMM at Bangalore taking in P.C.R.No.5388 of 2022 (now C.C.No.13211 of 2022) registering a criminal case against and issuing summons on the petitioners for the offences punishable under Section 138 of the NI Act who are Accused Nos.2 to 5 therein, produced herewith as Annexure-B;

b. quash the entire proceedings in above C.C.No.13211 of 2022 against the Petitioners herein for the offences punishable under Section 138 of the NI Act who are Accused Nos.2 to 5 therein pending before Ld. SCCH 26 XXIV Addl. SCJ and ACMM at Bangalore produced as Annexures-A and B;

c. Pass such other orders as this Hon'ble Court deems appropriate in the interest of justice and equity."

2. Heard the learned Counsel for the parties.

3. Respondent no.1 herein had filed a private complaint in PCR.No.5388/2022 before the Court of jurisdictional Magistrate against the petitioners herein and respondent no.2 herein for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate vide order dated 17.11.2022 has taken cognizance of the offence punishable under Section 138 of the N.I.Act against the accused named in

the private complaint and had directed the Registry to register a criminal case against the accused for the offence punishable under Section 138 of the N.I.Act. Aggrieved by the same, petitioners are before this Court.

4. Learned Counsel for the petitioners having reiterated the grounds urged in the petition, submits that the cheque in question has been issued from the joint account of accused no.1-partnership firm. Accused nos.2 & 3 are the partners of the said firm, but accused no.2 alone has signed the cheque in question. Accused nos.3 to 5 have unnecessarily made as parties to the impugned criminal proceedings solely with an intention to harass and embarrass them. Accused nos.3 to 5 are the employees of the firm. The complaint lacks necessary ingredients for prosecuting accused nos.3 to 5 for the offence punishable under Section 138 of the N.I.Act. In support of her arguments, she has placed reliance on the following judgments:

i. SIBY THOMAS VS SOMANY CERAMICS LTD. - AIR 2023 SC 4929;

ii. SUNITA PALITA & OTHERS VS PANCHAMI STONE QUARRY - AIR 2022 SC 3548;

iii. ASHOK SHEWAKRAMANI & OTHERS VS STATE OF ANDHRA PRADESH & OTHERS - (2023)8 SCC 473.

5. Per contra, learned Counsel for respondent no.1-complainant, submits that accused nos.2 & 3 are the partners of accused no.1-firm and both of them are the authorized signatories on behalf of the firm. He submits that accused nos.3 to 5 were also actively participating in the day today affairs of the firm and they have communicated with the complainant number of times with regard to the subject matter of the complaint. He submits that the contentions urged on behalf of accused nos.3 to 5 is the subject matter of trial, and accordingly prays to dismiss the petition.

6. Respondent no.2 (accused no.1) is a limited liability partnership firm, of which, accused nos.2 & 3 who are the husband and wife are the partners. It appears that accused no.1 had placed order with the complainant for supply of textile/fabrics and lab dip. According to the complainant, as per the purchase orders, materials were supplied to the accused firm and towards payment of outstanding dues, the cheques in question were issued on behalf of accused no.1-firm, which

were dishonoured by the drawee bank when presented for realization. After complying the statutory requirements, complainant had approached the jurisdictional Court of Magistrate and had filed a private complaint against accused nos.1 to 5 for the offence punishable under Section 138 of N.I.Act.

7. Undisputedly, the cheque in question are drawn from the current account of accused no.1-firm maintained in Punjab & Sind Bank, Station Road, Jaipur. The cheques in question are signed by accused no.2 and not by accused no.3 who is also the authorized signatory for operating the bank account of accused no.1-firm.

8. During the course of arguments, learned Counsel for the petitioner has produced a memo dated 11.11.2026 along with certain documents. Document no.1 is the letter issued by Punjab & Sind Bank, Station Road, Jaipur, which reads as under:

> "This is to certify that M/s. SOGANI FASHIONS JAIPUR LLP is maintaining current account 01351300055177 at Jaipur Station Road Jaipur since

21-09-2020 and his address in C/O SOGANI FASHIONS JAIPUR LLP G557 RIICO INDUSTRIAL AREA SITAPURA JAIPUR 302022.

The Authorised Signatory details are as follow:

1. Rajesh Sogani
2. Sonu Sogani

The mode of operation as on today in the bank account is "Anyone" (Anyone from the above Authorized signatories). The mode of operation is as per the standing instruction from the date of commencement of the account."

9. Though accused nos.2 & 3 are the authorized signatories for operating the bank account of accused no.1-firm, the aforesaid documents makes it clear that any one amongst them also can operate the bank account of the partnership firm.

10. In the case on hand, the cheques in question have been signed only by accused no.2 on behalf of accused no.1-firm. Since accused no.3 is not the signatory of the cheque in question, merely for the reason that she is also authorized to operate the bank account and sign the cheque on behalf of the firm, she cannot be prosecuted for the offence punishable

under Section 138 of N.I.Act, unless she is also the signatory to the cheque issued on behalf of accused no.1-firm.

11. A reading of the complaint averments would go to show that, though it is averred that accused nos.3 to 5 also are actively participating in the day today affairs of the firm, it is not specified in what manner accused nos.3 to 5 were also actively participating in the day today affairs of accused no.1-firm. Merely for the reason that an employee of the firm/company has communicated with the complainant with regard to the subject matter of the complaint, he/she cannot prosecuted for the offence punishable under Section 138 of the N.I.Act.

12. In Ashok Shewakramani's case supra, the Hon'ble Supreme Court has held that sub-section (1) of Section 141 of N.I.Act required that the accused at the time of commission of offence were in charge of and was responsible to the company for the conduct of the business of the company, and mere allegation that accused were liable for the transactions of the company and they were fully aware of the issuance of cheque

and dishonour of the same, is not sufficient to prosecute such accused for the offence punishable under Section 138 of the N.I.Act.

13. Similar view was taken by the Hon'ble Supreme Court in Sunita Palita's case supra, where persons who were not in the management of the company nor they were the signatories of the cheque which was dishonoured were sought to be prosecuted for the offence punishable under Section 138 of the N.I.Act.

14. In Siby Thomas's case supra, in paragraphs 14 to 16, the Hon'ble Supreme Court has observed as under:

> *"14. In view of the factual position relating the averments revealed from the complaint as aforesaid it is relevant to refer to the decisions relied on by the learned counsel appearing for the appellant. In the decision in Anita Malhotra's case (supra) in paragraph 22 it was held thus:-*
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> > *"22. This Court has repeatedly held that in case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused company for conduct of its business and mere bald statement that he or she was in charge of and was*

responsible to the company for conduct of its business is not sufficient. (Vide National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal). In the case on hand, particularly, in Para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day-to-day affairs of the Company. We have verified the averments as regards to the same and we agree with the contention of Mr. Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day-to-day affairs of the Company. On this ground also, the appellant is entitled to succeed."

15. Paragraph 19 of the Ashok Shewakramani's case (supra) is also relevant for the purpose of the case and it, in so far as relevant, reads thus:

"19. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub- section 1 of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence under Section 138 of the NI Act. In the light of sub-section 1 of Section 141,

we have perused the averments made in the complaints subject matter of these three appeals. The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day to day affairs of the company. It is further averred that they are also in charge of the company and are jointly and severally liable for the acts of the accused No.1 company. The requirement of sub-section 1 of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section 1 of Section 141 NI Act must be a person 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. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of Section 141 of the NI Act. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of subsection 1 of Section 141 of the NI Act. The allegation that they are in charge of the

company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act."

16. Thus, in the light of the dictum laid down in Ashok Shewakramani's case (supra), it is evident that a vicarious liability would be attracted only when the ingredients of Section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of Section 141(1) of the NI Act, would reveal that only that person 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 alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. In such circumstances, paragraph 20 in Ashok Shewakramani's case (supra) is also relevant. After referring to the Section 141(1) of NI Act, in paragraph 20 it was further held thus:

> *"20 On a plain reading, it is apparent that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between."*

15. In view of the aforesaid, I am of the opinion that the averments found in the complaint as well as the material made available to the Court are not sufficient to satisfy the mandatory requirement under sub-section (1) of Section 141 of the N.I.Act, so as to create a vicarious liability on accused nos.3 to 5 and prosecute them for the offence punishable under Section 138 of the N.I.Act.

16. So far as accused no.2 is concerned, he is not only the partner of accused no.1-firm on whose account the cheques in question have been issued, but he is also the signatory of the said cheques, and therefore, he is liable to be prosecuted for the alleged offence. Under the circumstances, I am of the opinion that the impugned proceedings in so far as accused nos.3 to 5 is concerned is liable to be quashed and in so far as accused no.2 is concerned, the same is required to be continued. Accordingly, the following order:

17. Petition is allowed in part. Petition is dismissed in so far as petitioner no.1 is concerned, and petition is allowed in so far as petitioner nos.2 to 4 are concerned. The entire proceedings in C.C.No.13211/2022 pending before the Court of XXIV Addl. Small Causes Judge & Addl. Chief Metropolitan Magistrate, Bengaluru, arising out of PCR.No.5388/2022 for the offence punishable under Section 138 of N.I.Act, is quashed as against petitioner nos.2 to 4/accused nos.3 to 5.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

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