



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

134

CRM-M-8810-2023 (O&M)
Date of decision: 15.01.2026

Rajdeep Roy and Another

....Petitioners

Versus

Modi Enterprises and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. H.P.S. Ghumman, Advocate for the petitioner

Mr. Ritik Mohindroo and Mr. Vishal Garg, Advocates
for the respondents

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for quashing of impugned criminal complaint bearing No.NACT-9010-2020 dated 20.03.2020 titled as Modi Enterprises vs. Cell Solution and summoning order dated 16.02.2021.
2. Learned counsel for the petitioners does not press the petition qua petitioner No.2. Insofar as petitioner No.1 is concerned, it is submitted that he was only the authorised signatory of M/s Cell Solutions and not its proprietor, which, as a matter of fact, was one Ms. Doty Roy, who was not even summoned as an accused, on account of her not being the signatory.
3. The issue as regards liability of the proprietor for prosecution under Section 138 NI Act, in case of a proprietorship firm, is no longer *res integra*, as



Hon'ble the Supreme Court in **Raghu Lakshminarayanan vs. Fine Tubes**, (2007) 5 SCC 103, had observed and held thus:

“5. A bare perusal of the complaint petition would show that the accused No. 1 was described therein as 'a business concern'. It was not described as a Company or a partnership firm or an Association of Persons. The concept of vicarious liability was introduced in penal statutes like Negotiable Instruments Act to make the Directors, partners or other persons, in charge of and control of the business of the Company or otherwise responsible for its affairs; the Company itself being a juristic person. The description of the accused in the complaint petition is absolutely vague. A juristic person can be a Company within the meaning of the provisions of the Companies Act, 1956 or a partnership within the meaning of the provisions of the Indian Partnership Act, 1932 or an association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. 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 Indian Partnership Act.

6. It is interesting to note that the term "Director" has been defined. It is of some significance to note that in view of the said description of "Director", other than a person who comes within the purview thereof, nobody else can be prosecuted by way of his vicarious liability in such a capacity. If the offence has not been committed by a Company, the question of there being a Director or his being vicariously liable, therefore, would not arise. Appellant herein categorically contended that accused No. 1 was a proprietary concern of the accused No. 2 and he was merely an employee thereof. If accused No. 1 was not a Company within the meaning of Section 141 of the Negotiable



Instruments Act, the question of an employee being preceded against in terms thereof would not arise. Respondent was aware of the difference between a 'partnership firm' and a 'business concern' as would be evident from the fact that it described itself as a partnership firm and the accused No. 1, as a business concern. Significantly, Respondent deliberately or otherwise did not state as to in which capacity the appellant had been serving the said business concern. It, as noticed hereinbefore, described him as in charge, Manager and Director of the accused No. 1. A person ordinarily cannot serve both in the capacity of a Manager and a Director of a Company.

7. The distinction between partnership firm and a proprietary concern is well known. It is evident from Order XXX Rule 1 and Order XXX Rule 10 of the Code of Civil Procedure. The question came up for consideration also before this Court in M/s. Ashok Transport Agency v. Awadhesh Kumar and another [(1998) 5 SCC 567] wherein this Court stated the law in the following terms:-

"6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order XXX, Rule 1, CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order XXX, which make applicable the provisions of Order XXX to a proprietary concern enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order XXX have no application to such a suit as by virtue of Order XXX, Rule 10 the other provisions of Order XXX are applicable to a suit against the proprietor of



proprietary business "insofar as the nature of such case permits." This means that only those provisions of Order XXX can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

4. Pertinently, petitioner No.1, not the proprietor of M/s Cell Solutions, a fact, that remained unrefuted at the hands of learned counsel for the respondents, who, despite best efforts, was unable to draw out any distinctive aspects in the aforementioned judgment or cite any contrary law, in view of which, the present petition is allowed.

5. Consequently, the criminal complaint No.NACT-9010-2020 and summoning order dated 16.02.2021 are quashed, qua petitioner No.1 only.

(AMAN CHAUDHARY)
JUDGE

15.01.2026
M.Kamra

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