IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.300 of 2019

Date of Decision: 20.04.2026

Sh. Parveen Rajput ……Petitioner

Versus

Sh. Kuldeep Singh … Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes.

For the Petitioner: Mr. R.K. Bawa, Senior Advocate with Mr. Ajay Kumar Sharma, Advocate.

For the Respondent: Mr. Nitin Thakur, Advocate.

Sandeep Sharma, Judge:

By way of instant petition filed under Section 482 Cr.P.C, prayer has been made on behalf of the petitioner-accused for quashing and setting aside the complaint/criminal case No.81-III/18, titled as **Kuldeep Singh vs. Parveen Rajput,** filed under Section 138 of the Negotiable Instruments Act **(for short 'Act')** alongwith consequential proceedings as well as orders dated 21.02.2019 and 27.04.2019, passed by learned Additional Chief Judicial Magistrate, Dehra, District Kangra, Himachal Pradesh.

2. Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the respective parties, are that the respondent-complainant**(hereinafter referred to as the 'complainant')** filed a complaint under Section

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

138 of the Act in the competent court of law, alleging therein that cheque bearing No.000394, dated 30.11.2017 of account No. 502000 05136351 of the HDFC Bank, Dehra, amounting to Rs. 10,00,000/- issued by the accused towards discharge of lawful liability was dismissed on account of insufficient funds in the bank account of the accused. Since despite having received legal notice accused failed to make the payment good well within stipulated time, complainant instituted proceedings under Section 138 of the Act in the competent court of law, but before same could be taken to its logical end, petitioner/accused has approached this Court in the instant proceedings, praying therein to quash and set aside the complaint/ criminal case, as detailed hereinabove, on the ground that complaint is not maintainable against the petitioner-accused for want of non-impleadment of society, from whose account cheque in question was issued by the petitioner-accused being authorized signatory.

3. Mr. R.K. Bawa, learned Senior Counsel duly assisted by Mr. Ajay Kumar Sharma, Advocate, representing the petitioner, while making this Court peruse complaint sought to be quashed **(Annexure P-2),** submitted that there is no whisper, if any, with regard to liability, if any, of the petitioner to pay the cheque amount. He submitted that Delhi Convent School, Jawalamukhi was being run in the rented premises owned by the complainant and bare perusal of rent agreement executed *interse* parties, clearly reveals that rent deed

was executed *interse* petitioner as well as society named as "Professors Educational and Welfare Society" registration No. S/65372/2009. He submitted that petitioner herein, being General Secretary of the society, issued cheque, which was allegedly dishonoured on account of insufficient funds, but since society, which had actually hired accommodation for running the school, is not impleaded as party respondent, petitioner herein merely on the basis of his having issued signed cheque in question cannot be prosecuted under Section 138 of the Act. In support of his aforesaid submissions, he placed reliance upon the judgments passed by Hon'ble Apex Court, which shall be dealt with in later part of the judgment. He also referred to Sections 138 and 141 of the Act, to submit that complaint under Section 138 of the Act can only be filed against a person, who had issued cheque of his account. He submitted that as per Section 141 of the Act, company would include "Association of Persons", meaning thereby society formed by "Association of Persons" being juristic person is also required to be impleaded in such like cases.

4. To the contrary, Mr. Nitin Thakur, learned counsel representing the respondent, vehemently argued that present petition is not maintainable, because questions, otherwise sought to decided in the instant proceedings, can only be decided by learned trial Court in totality of evidence led on record by the respective parties. He submitted that bare perusal of rent agreement clearly reveals that

same was executed *interse* respondent and the petitioner and as such, it cannot be said that he has no liability to issue the cheque, which ultimately came to be dishonoured. He further submitted that otherwise also, omission, if any, on the part of the respondent/ complainant to implead society as party, is a curable defect, which can be cured by this Court by ordering impleadment of the society, but certainly complaint, as has been sought to be quashed, cannot be quashed. In support of his afore submission, he also placed reliance upon the judgment passed by Hon'ble Delhi High Court in case **Himanshu vs. TCNS Clothing Company Limited** passed in W.P. (CRL) 1989/2022 & CRL.M.A. 17238/2022.

5. I have heard learned counsel for the parties and have gone through the record carefully.

6. Before ascertaining the correctness and genuineness of the aforesaid submissions and counter submissions made on behalf of learned counsel representing the parties, this Court deems it necessary to discuss /elaborate upon the scope and competence of this Court to quash the criminal complaint as well as consequent proceedings, while exercising power under Section 482 Cr.P.C.

7. A three-Judge Bench of the Hon'ble Apex Court in case titled **State of Karnataka** v. **L. Muniswamy and others**, 1977 (2) SCC 699, held that High Court, while exercising power under Section 482 Cr.P.C (now Section 528 of BNSS) is entitled to quash the

proceedings, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

8. Subsequently, in case titled **State of Haryana and others** v. **Bhajan Lal and others**, 1992 Supp (1) SCC 335, the Hon'ble Apex Court, while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.PC(now Section 528 of BNSS) laid down certain principles governing the jurisdiction of High Court to exercise its power. After passing of aforesaid judgment, issue with regard to exercise of power under Section 482 Cr.P.C (now Section 528 of BNSS), again came to be considered by the Hon'ble Apex Court in case bearing Criminal Appeal No.577 of 2017 (arising out of SLP (CrL.) No. 287 of 2017) titled ***Vineet Kumar and Ors. v. State of U.P. and Anr.***, wherein it has been held that saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings ought not be permitted to degenerate into a weapon of harassment or persecution.

9. The Hon'ble Apex Court in Prashant **Bharti v. State (NCT of Delhi),** (2013) 9 SCC 293, relying upon its earlier judgment titled as **Rajiv Thapar and Ors v. Madan Lal Kapoor**, (2013) 3 SCC 330, reiterated that High Court has inherent powers under Section 482 Cr.P.C (now Section 528 of BNSS), to quash the proceedings

against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charge, but such power must always be used with caution, care and circumspection. In the aforesaid judgment, the Hon'ble Apex Court concluded that while exercising its inherent jurisdiction under Section 482 of the Cr.PC(now Section 528 of BNSS), Court exercising such power must be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/her defence is based on sound, reasonable, and indubitable facts and the material adduced on record itself overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. Besides above, the Hon'ble Apex Court further held that material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C (now Section 528 of BNSS) to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. In the aforesaid judgment titled as Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293, the Hon'ble Apex Court has held as under:-

> "22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C.") has been dealt with by

this Court in Rajiv Thapar & Ors. vs. Madan Lal Kapoor wherein this Court inter alia held as under: (2013) 3 SCC 330, paras 29-30)

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

> 30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
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> 30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?
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> 30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?
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> 30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

10. It is quite apparent from the bare perusal of aforesaid judgments passed by the Hon'ble Apex Court from time to time that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him/her due to private and personal grudge, High Court while exercising power under Section 482 Cr.P.C (now Section 528 of BNSS) can proceed to quash the proceedings.

11. Hon'ble Apex Court in case tilted Ana**nd Kumar Mohatta and Anr**. v. **State (Government of NCT of Delhi**) Department of Home and Anr, AIR 2019 SC 210, has held that abuse

of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation and as such, the abuse of law or miscarriage of justice can be rectified by the court while exercising power under Section 482 Cr.P.C(now Section 528 of BNSS). The relevant paras of the judgment are as under:

> 16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows:-
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> > "482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."
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> 17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court (G. Sagar Suri and Anr. V. State of U.P. and Others, (2000) 2 SCC 636 (para 7), Umesh Kumar v. State of Andhra Pradesh and Anr. (2013) 10 SCC 591 (para 20). Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

12. Hon'ble Apex Court in case titled **Pramod Suryabhan Pawar** v. **The State of Maharashtra and Anr**, (2019) 9 SCC 608, has elaborated the scope of exercise of power under Section 482 Cr.P.C, the relevant para whereof reads as under:-

> "7. Section 482 is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under

Section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under the CrPC; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. These principles have been consistently followed and re-iterated by this Court. In Inder Mohan Goswami v State of Uttaranchal5, this Court observed.

> "23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:
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> (i) to give effect to an order under the Code;
> (ii) to prevent abuse of the process of the court, and
> (iii) to otherwise secure the ends of justice.
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> 24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute."

8. Given the varied nature of cases that come before the High Courts, any strict test as to when the court's extraordinary powers can be exercised is likely to tie the court's hands in the face of future injustices. This Court in State of Haryana v Bhajan Lal6 conducted a detailed study of the situations where the court may exercise its extraordinary jurisdiction and laid down a list of illustrative examples of where quashing may be appropriate. It is not necessary to discuss all the examples, but a few bear relevance to the present case. The court in Bhajan Lal noted that quashing may be appropriate where, (2007) 12 SCC 1 1992 Supp (1) SCC 335

> "102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie

> constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2).
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> ……..
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> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."
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> In deciding whether to exercise its jurisdiction under Section 482, the Court does not adjudicate upon the veracity of the facts alleged or enter into an appreciation of competing evidence presented. The limited question is whether on the face of the FIR, the allegations constitute a cognizable offence. As this Court noted in Dhruvaram Murlidhar Sonar v State of Maharashtra, 2018 SCC OnLine SC3100 ("Dhruvaram Sonar") :
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> > "13. It is clear that for quashing proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers."

13. Aforesaid law, clearly stipulates that court can exercise power under S.482 of the Code of Criminal Procedure (now Section 528 of BNSS), to quash criminal proceedings, in cases, where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

14. Now being guided by the aforesaid proposition of law laid down by the Hon'ble Apex Court, this Court would make an endeavor

to examine and consider the prayer made in the instant petition vis-à-vis factual matrix of the case.

15. Having carefully perused the complaint filed at the behest of the respondent/complainant under Section 138 of the Act, this Court is persuaded to agree with learned Senior counsel representing the petitioner that there is no specific averment, if any, with regard to liability, if any, of the petitioner to pay the cheque amount. However, during evidence, one rent agreement has been exhibited, perusal whereof clearly reveals that respondent/complainant, who was earlier running some school, rented entire building comprising of 27 rooms to one society, namely Professors Educational and Welfare Society, registration number whereof has been already given hereinabove, for monthly rent of Rs. 1,04,000/-. On behalf of afore society, petitioner herein, namely Sh. Parveen Rajput, being Secretary of aforesaid society, entered into the agreement with the respondent/complainant. Since petitioner issued cheque for a sum of Rs. 10, 00,000/- towards payment of rent, which ultimately came to be dishonoured, complainant initiated proceedings under Section 138 of the Act against him, but question, which needs to be determined in the case at hand is “whether petitioner herein, who issued cheque for Delhi Convent School, which is admittedly run by Professors Educational and Welfare Society, could be prosecuted under Section 138 of the Act, merely on the basis of his having issued cheque”. Record further

reveals that cheque in question is of account No.50200005136351, HDFC Bank, Dehra and same account pertains to Delhi Convent School, not petitioner, whose personal account number is 501000 10013887, HDFC, Bank, Dehra, District Kangra, Himachal Pradesh.

16. At this stage, it would be profitable to take note of section 138 of the Act, herein-below:-

> **"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—**
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> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:
> Provided that nothing contained in this section shall apply unless—
> (a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
> (b)the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
> (c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.
> Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]"

17. Careful perusal of aforesaid provisions of law clearly reveals that where any cheque drawn by a person on an account maintained by him is dishonoured, holder of the cheque can prosecute him under Section 138 of the Act. Admittedly, in the instant

case, cheque though has been issued by the petitioner, but not of his account, but of the account of Delhi Convent School, being run by the society.

18. True it is that cheque, if any, issued in the name of the company or society is always issued by the authorized signatory, but his/her culpability, if any, can only be established by impleading company or society, because cheque is in the name of the society. Firstly, society or company is to be held liable, because cheque is issued towards lawful liability of company or society, however same cannot be done without there being impleadment of the company or society.

19. At this stage, reliance is placed upon the judgment passed by Bombay High Court in case titled **Banwari Lal L. Saini and another vs. State of Maharashtra and another,** 2013(1) Mh.L. J., wherein it has been held as under:-

> "15. The phrase as well as the "association of individuals" emphasized above is significant. It means that the "association of individuals" could be prosecuted along with the other persons who would be liable to be prosecuted by virtue of the said section. If the view that the petitioners and the accused No.2 had formed an "association of individuals" is accepted, it would mean that the petitioners as well as the accused No.2 should be prosecuted as being responsible for the "association of individuals" and the "association of individuals" also should be prosecuted along with them. They would lead to absurd results as the "association of individuals" which is supposed to have been formed by the petitioners and accused No.2, has no legal existence so as to be capable of being separately prosecuted. This makes the legislative intent clear viz. 'that the "association of individuals" must be taken as an association which is a legal entity and has existence as such, in law'. *Apparently, the expression is intended to cover the cases of societies, trusts etc who have a legal and juristic personality.*
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> ***16.*** The offence punishable under section 138 of the Negotiable Instruments Act is a statutory offence. The drawer of a cheque in

> certain circumstances is “deemed” to have committed an offence. The offence is of strict liability and does not require any *mens rea.* The penal provisions contained in section 138 of the Negotiable Instruments Act are therefore, required to be construed strictly. No person who does not fall within the terms of section 138 and/or the terms of section 141 of the said Act can be prosecuted with respect to the offence in question. The emphasis of the Addl. Sessions Judge on the existence of liability on the part of the petitioner would be irrelevant in the context of prosecution of the petitioners, as that would be the civil liability of the petitioners. *The body of the offence punishable under section 138 requires drawing of a cheque by a person on an account maintained by him; and as the petitioners have not drawn any cheque or any account maintained by them or any of them, there would be no question of prosecuting them with respect to an offence punishable under section 138 of the said Act.* On a reading of the relevant provisions, there can be no doubt that merely because a cheque has been drawn and issued by a person towards the discharge of the liability of another, that another cannot be prosecuted for an offence punishable under section 138 of the said Act on the ground that 'the liability to pay was his.'"

20. It has been categorically held in the aforesaid judgment that the body of the offence punishable under Section 138 of the Act requires drawing of a cheque by a person on an account maintained by him. In aforesaid judgment, Hon’ble High Court of Bombay has further held that “association of individuals” must be taken as an association, which is a legal entity and has existence as such, in law. Apparently, the expression is intended to cover the cases of societies, trusts etc., who have a legal and juristic personality.

21. Reliance is also placed upon the judgment passed by Hon'ble Apex Court in **Aneeta Hada versus Godfather Travels and Tours Private Limited,** (2012) 5 Supreme Court Cases 661, wherein it has been held as under:-

> **“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.
>
> **59.** In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in *C.V. Parekh* [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal* [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada* [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery* [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.
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> **60.** We will be failing in our duty if we do not state that all the decisions cited by the learned counsel for the respondents relate to service of notice, instructions for stopping of payment and certain other areas covered under Section 138 of the Act. The same really do not render any aid or assistance to the case of the respondents and, therefore, we refrain ourselves from dealing with the said authorities. Resultantly, Criminal Appeals Nos. 838 and 842 of 2008 are allowed and the proceedings initiated under Section 138 of the Act are quashed."

22. In afore judgment, Hon'ble Apex Court, while dealing with Section 141 of the Act, specifically held that arraigning of a company as an accused is imperative, rather categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as has been stipulated in the provision itself.

23. Though, at this stage, Mr. Nitin Thakur, learned counsel representing the respondent, attempted to argue that society cannot be equated with the company, but he was unable to dispute that both company and society are the juristic person and as such, same can be prosecuted in the competent court of law. No doubt, judgment

rendered in **Aneeta Hada** case (supra) deals with the company not society, but bare perusal of Section 141 of the Act, itself suggests that for the purpose of this Section “company” would mean any body corporate and includes a firm or other association of individuals and “director”, in relation to a firm, means a partner in the firm.

24. Admittedly, the society is an association of individuals, if it is so, office bearer and authorized signatory of the same cannot be prosecuted for the act, if any, of the society without there being impleadment of the society. Admittedly, cheque in the case is issued on behalf of the school i.e. Delhi Convent School, which is run by the society. Petitioner, being General Secretary and authorized signatory of the society, issued cheque for clearance of rent, which was otherwise payable by the society, which had actually hired building for running the school, named hereinabove. Had the petitioner issued cheque of his account for clearing the lawful liability of school or society, respondent-complainant would have right in contending that he is liable to be prosecuted under Section 138 of the Act. Once cheque, which is subject matter of the present case is of Delhi Convent School and bare perusal of the same suggests that it bears signature of the petitioner being authorized signatory, complaint instituted under Section 138 of the Act against the petitioner is not maintainable without there being impleadment of the society.

25. Mr. Nitin Thakur, learned counsel representing the respondent placed reliance upon the judgment passed by Hon'ble High Court of Delhi in case titled **Himanshu versus TCNS Clothing Company Limited** passed in W.P (CRL) 1989/2022 & CRL. M.A. 17238/2022, wherein it has been ruled that non-impleadment of a firm is a curable defect and it can be cured by filing an application, but same is not applicable in the given facts and circumstances of the case. Bare perusal of aforesaid judgment reveals that same was with regard to partnership firm, namely A&A Enterprises. In afore case decided by Hon'ble Delhi High Court, accused was partnership firm, named hereinabove, who in pursuance of Franchisee Agreement, was appointed as a retailer / retail operator of the products of the respondent company. In discharge of its liability, one of the partners of firm issued two cheques in favour of the complainant, but same was dishonoured. Complainant lodged complaint under Section 138 of the Act, alleging that petitioner being sole proprietor of A&A Enterprises, had failed to discharge financial obligation in accordance with terms of Franchisee Agreement, accused approached High Court for quashing of the FIR on the ground that he only could not be prosecuted, merely on the strength of his being partner, especially when cheque was issued on behalf of the firm, where besides him, there were two partners. Hon'ble High Court of Delhi, having taken note of the fact that firm had three partners and liability was of the

firm, rejected the prayer of the petitioner for quashment, but ordered impleadment of firm as one of the accused. Since in the case at hand, cheque has not been issued on behalf of the firm, rather on behalf of the society, which is formed by association of individuals duly covered under explanation given under Section 141 of the Act, coupled with the fact that as per the Indian Partnership Act, an act of the 'firm' means any act of omission by all the partners or any partner or agent of the firm which gives right enforceable or against the firm.

26. As per Section 4 of the Indian Partnership Act, "partnership" is the relation between persons, who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively a "firm" and the name under which their business is carried on is called the "firm name" and the partnership firm is not a distinct legal entity and the partnership property belongs to all the partners constituting the firm. Hence, no benefit, if any, can be drawn by the respondent from afore judgment rendered by Hon'ble High Court of Delhi, which admittedly has been given in all together different case. The case of the petitioner is squarely covered by judgment passed by Hon'ble Apex Court in **Aneeta Hada** case (supra).

27. Reliance is also placed upon the judgment passed by Hon'ble Apex Court in case titled **Dhana Singh Prabhu vs.**

Chandrasekar & another, 2025 Live Law (SC) 708. In afore case, Hon'ble Apex Court held that partnership is not a separate juristic entity and partner is liable jointly and severally. At this stage, it would be profitable to reproduce relevant paras of aforesaid judgment herein below:-

> "9.1 Section 138 of the Act creates an offence for dishonour of a cheque for, inter alia, insufficiency of funds in the account by a deeming fiction. The complainant who is a victim of the dishonour of cheque issued by an accused has the right to file a private complaint in terms of Section 200 of the CrPC, (equivalent to Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS")). When the said offence is proved against an individual/natural person, he is punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque. But when such an offence is committed by a company, which is an artificial juristic entity, Section 141 of the Act applies. The said Section states that if the person committing an offence under Section 138 of the Act is a company, every 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, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Since an artificial juristic entity such as a company cannot be punished with imprisonment, by a deeming fiction certain persons associated with such an artificial juristic entity are deemed to be guilty of the offence and made liable to be proceeded against and punished accordingly. This is an instance of vicarious liability on every 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. This is for the reason that a company is a separate entity vis-à-vis its shareholders or those who are in charge of the conduct of its business since a company is an artificial juristic entity. Thus, the liability would be on the company as well as on the category of persons mentioned above. Such a person must be both in charge of, as well as responsible to, the company for the conduct of the business of the company. However, the aforesaid category of person who is deemed to be guilty of the offence along with the company, can escape punishment (i) if he can prove that the offence was committed without his knowledge; or (ii) that he had exercised all due diligence to prevent the commission of such an offence. Hence, by way of a proviso to sub-section (1) to Section 141 of the Act, two defences are provided for the category of persons named in sub-section (1) of Section 141.

9.2 The second proviso to sub-section (1) of Section 141 is an exception for a person who is a director of the company who shall not be liable for prosecution under Chapter XVII of the Act. The second proviso is not relevant for the purpose of this case as the said proviso refers to ex-officio directors representing the Central Government or state governments or a financial corporation owned or controlled by the Central Government or the state government, as the case may be.

9.3 Sub-section (2) of Section 141 begins with a non- obstante clause. It extends the scope of categories of persons associated with the company who could also be deemed to be guilty of an offence under Section 138 of the Act and shall be liable to be proceeded against and punished accordingly. Sub-section (2) of Section 141 states that where the offence has been committed by a company and it is proved that the offence has been committed with the (i) consent; or (ii) connivance of; or (iii) is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such aforesaid categories of persons shall also be deemed to be guilty, proceeded against and punished accordingly. While sub-section (1) of Section 141 restricts the category of persons who would be deemed to be liable when the offence is committed by a company, sub-section (2) of Section 141 extends the scope of liability to further categories of persons namely, director, manager, secretary or other officer of the company to be made liable provided there is proof that such category of persons associated with the company had committed the offence with the consent or connivance of, or due to any negligence on their part. The expression “shall also be deemed to be guilty” in sub-section (2) of Section 141 of the Act would imply that the object and purpose of the said provision is to encompass the categories of persons mentioned in that sub-section owing to a criminal intent or negligence attributable on their part.

9.4 Thus, while under sub-section (1) of Section 141 of the Act, the criminal liability on the category of persons named in the said sub-section is owing to the position that person holds in the company, when the company is said to have committed the offence under Section 138 and therefore the deeming fiction under sub-section (2) of Section 141 of the Act, on the other hand, there has to be a proof with regard to consent or connivance for the committing of the offence or a criminal negligence on the part of the director, manager, secretary or other officer of the company who shall also be deemed to be guilty of the offence under Section 138 of the Act. Thus, under sub-section (2) of Section 141 of the Act, when the company is guilty of the offence under Section 138 of the Act, a director, manager, secretary or other officer of the company shall also be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly, provided there is proof of mens rea on the part of such category of persons. Hence, a director, manager, secretary or other officer of the company cannot be proceeded against per se by virtue of the position they hold in the company but can be proceeded against only when there is proof that the offence under Section 138 was committed by the company

with their consent or connivance or due to negligence on their part. The standard of proof is higher under sub-section (2) of Section 141 vis-à-vis the category of persons mentioned therein with regard to their specific role in the commission of the offence under Section 138. This implies that the primary liability of the company is transferred to the above categories of persons who are deemed to be guilty vicariously having regard to the deemed penal nature of the offence under Section 138 of the Act.

9.5 The Explanation to Section 141 has two clauses. Clause (a) defines a company to mean any body corporate and includes a firm or other association of individuals. The expression "company" encompasses, inter alia, a body corporate which refers to a company incorporated under the provisions of the Companies Act or a statutory body. The expression "company" is inclusive inasmuch as it includes a firm, meaning thereby a partnership firm, as per the provisions of the Partnership Act, as well as a limited liability partnership or other association of individuals. Clause (b) of the Explanation defines a director as mentioned in sub- section (2) of Section 141 of the Act in relation to a firm to mean a partner in the firm. Thus by a legislative device an inclusive definition is added by way of an Explanation to Section 141 of the Act inasmuch as in jurisprudence and in law, a company is a distinct body corporate and separate juristic entity as compared to a partnership firm.

9.6 On a conjoint reading of the various clauses of Section 141, what emerges is that the expression "company" has been used in an expansive way to include not just a company incorporated under the provisions of the Companies Act stricto sensu but also any body corporate such as a statutory company as well as other artificial juristic entity such as a partnership firm or other association of individuals. Hence, the expression "director" in sub-section (2) of Section 141 is not restricted to a director of an incorporated company or a statutory body, but also includes a partner of a firm. The expression "director" in sub-section (2) of Section 141 of the Act in relation to a firm means a partner, which is also a legislative device adopted by the Parliament knowing fully well and being conscious of the fact that a partnership firm, jurisprudentially speaking, does not stand on par with a director of a body corporate. Since the Parliament has used the expression "company" encompassing all types of juristic persons, it was necessary to give an expanded definition to the expression "director" in relation to a firm to mean a partner in the firm. Therefore, the inclusion of a firm within the meaning of the expression "company" is by a legal fiction and by way of a legislative device only for the purpose of creating a liability on the partners of the firm, which in any case, they are liable under the law of partnership in India. But the definition of the word company including a partnership firm has been incorporated in the Explanation for the sake of convenience, as otherwise a similar provision would have to be inserted for the very same purposes. Instead of replicating the same definition for different kinds of juristic entities, the Parliament has thought it convenient to add an Explanation to define a company for the purpose of Section 141 of the Act in the context of an offence committed by, inter alia, a

company, as understood within the meaning of the Companies Act, and also include a firm or other association of individuals within the definition of company. Similarly, under clause (b) of the explanation, the expression “director”, in relation to a firm, means a partner in the firm.

9.7 This also demonstrates the fact that while a director is a separate persona in relation to a company, in the case of a partnership firm, the partner is not really a distinct legal persona. This is because a partnership firm is not really a legal entity separate and distinct as a company is from its directors but can have a legal persona only when the partnership firm is considered along with its partners. Thus, the partnership firm has no separate recognition either jurisprudentially or in law apart from its partners. Therefore, while a director of a company can be vicariously liable for an offence committed by a company, insofar as a partnership firm is concerned, when the offence is committed by such a firm, in substance, the offence is committed by the partners of the firm and not just the firm per se. Therefore the partners of the firm are liable for the dishonour of a cheque, even though the cheque may have been issued in the name of the firm and the offence is committed by the firm. Therefore, in law and in jurisprudence, when a partnership firm is proceeded against, in substance, the partners are liable and the said liability is joint and several and is not vicarious. This is unlike a company which is liable by itself and since it is an artificial juristic entity, the persons in charge of the affairs of the company or who conduct its business only become vicariously liable for the offence committed by the company.

9.8 However, jurisprudentially speaking, the partners of a partnership firm constitute the firm and a firm is a compendious term for the partners of a firm. This is opposed to the position of a director in a company which is a body corporate stricto sensu and such a company is a separate juristic entity vis-à-vis the directors. On the other hand, a partnership firm has no legal recognition in the absence of its partners. If a partnership firm is liable for the offence under Section 138 of the Act, it would imply that the liability would automatically extend to the partners of the partnership firm jointly and severally. This underlying distinction between a partnership firm and a company which is a body corporate has to be borne in mind while dealing with an offence committed by a company or a partnership firm, as the case may be, within the meaning of Section 138 read with Section 141 of the Act. To reiterate, in the case of a partnership firm, there is no concept of vicarious liability of the partners as such. The liability is joint and several because a partnership firm is the business of partners and one cannot proceed against only the firm without the partners being made liable.

9.9 Therefore, even in the absence of partnership firm being named as an accused, if the partners of the partnership firm are proceeded against, they being jointly and severally liable along with the partnership firm as well as inter-se the partners of the firm, the complaint is still maintainable. The accused in such a case would in substance be the partners of the partnership firm along with the firm

itself. Since the liability is joint and several, even in the absence of a partnership firm being proceeded against by the complainant by issuance of legal notice as mandated under Section 138 of the Act or being made an accused specifically in a complaint filed under Section 200 of CrPC, (equivalent to Section 223 of the BNSS), such a complaint is maintainable.

9.10 Thus, when it is a case of an offence committed by a company which is a body corporate stricto sensu, the vicarious liability on the categories of persons mentioned in sub-section (1) and sub-section (2) of Section 141 of the Act accordingly would be proceeded against and liable for the offence under Section 138 of the Act. In the case of a partnership firm on the other hand, when the offence has been proved against a partnership firm, the firm per se would not be liable, but liability would inevitably extend to the partners of the firm inasmuch as they would be personally, jointly and severally liable with the firm even when the offence is committed in the name of the partnership firm.

9.11 To reiterate, when the partnership firm is only a compendious name for the partners of the firm, any offence committed under Section 138 read with Section 141 of the Act would make the partners of the firm jointly and severally liable with the firm. If, on the other hand, the Parliament intended that the partners of the firm be construed as separate entities for the purpose of penalty, then it would have provided so by expressly stating that the firm, as well as the partners, would be liable separately for the offence under Section 138 of the Act. Such an intention does not emanate from Section 141 of the Act as the offence proved against the firm would amount to the partners of the firm also being liable jointly and severally with the firm. Therefore, there is no separate liability on each of the partners unless sub- section (2) of Section 141 applies, when negligence or lack of bona fides on the part of any individual partner of the firm has been proved."

28. Consequently, in view of the above, this Court finds merit in the present petition and accordingly same is allowed. The complaint/criminal case No.81-III/18, titled **Kuldeep Singh vs. Parveen Rajput** filed under Section 138 of the Negotiable Instruments Act alongwith consequential proceedings as well as orders dated 21.02.2019 and 27.04.2019 passed by learned Additional Chief Judicial Magistrate, Dehra, District Kangra, Himachal

Pradesh, are quashed and set-aside. Pending applications, if any, are disposed of. Interim directions, if any, also stand vacated.

(Sandeep Sharma),
Judge

April 20, 2026
(shankar)