

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Criminal Petition Nos.,564, 566, 569 and 572 of 2020

COMMON ORDER:-

CrL.P.Nos.,564, 566, 569 and 572 of 2020 are filed under Section 482 of the Code of Criminal Procedure, 1973¹, seeking to quash proceedings initiated in C.C.Nos.,1145, 1147, 1146 and 1148 of 2019 on the file of Judicial Magistrate of First Class, Nandyal, Kurnool District,² for the offences under Sections 138 and 142 of the Negotiable Instrument Act, 1881.³

2. The facts leading to filing of these Petitions are;

a. Accused No.1 is the sole proprietor of Sri Mahati Trading Company. Petitioner/Accused No.2 is the Manager/Authorized signatory of the sole proprietorship. Respondent No.2/*de-facto* Complainant supplied rice worth about Rs.18,00,000/- to the firm of the Accused No.1, on credit basis.

b. Accused No.1 issued acknowledgment to that effect. Thereafter, Accused No.1 issued Cheques bearing No.000378 for Rs.5,00,000/- on 18.05.2019; No.000377 for Rs.5,00,000/- on

¹ In short 'Cr.P.C'

² In short, Magistrate

³ In short, NI Act

20.05.2019; No.000380 for Rs.3,00,000/- on 21.05.2019 and No.00 0379 for Rs.3,00,000/- on 17.05.2019 respectively. Thereafter, when Respondent No.2 presented the said cheques, they were returned with an endorsement '*insufficient funds*'.

c. *De-facto* Complainant after observing the formalities of issuing statutory notice, laid a private complaint before the court under Section 200 of Cr.P.C. Subsequently, the learned Magistrate took cognizance for the offences punishable under Sections 138 and 141 of NI Act against the Petitioner also, vide C.C.Nos., 1145, 1147, 1146 and 1148 of 2019. By virtue of the present petition, Petitioner seeks indulgence of this Court to quash proceedings against him.

d. Hence, Criminal Petitions.

Arguments Advanced at the Bar

3. Heard Sri V.R. Reddy Kovvuri, learned Counsel for the Petitioners and Ms. Prasanna Lakshmi, learned Assistant Public Prosecutor representing State/Respondent No.1. Though notice is served on Respondent No.2, no appearance is made to submit any objections.

4. Learned counsel for the Petitioners based his arguments on two broad grounds. First, he submitted that all the criminal cases registered against the Petitioner/A.2 are not maintainable as he is not a signatory to the cheques that were dishonored. Second, he would contend that when the Accused No.1 is a proprietor of sole trading concern, the question of vicarious liability against the present Petitioner, being authorized signatory, does not arise to attract Section 141 of the N.I. Act. On these grounds, the counsel urges this Court to quash the proceedings.

5. *Per contra*, learned Assistant Public Prosecutor would submit that there is ample material against the Petitioner to attract the offences under Sections 138 and 141 of NI Act. Hence, she would submit that the question of quashment of the case against the Petitioner does not arise and prays to dismiss these petitions.

Points for Determination

6. Having heard the submissions advanced, this Court has perused the material available on record. The points that would arise for determination are;

- i. *Could an authorized signatory be made vicariously liable under Section 141 of N.I. Act, 1881 in a sole proprietary trading?*
- ii. *Whether there are any justifiable grounds to exercise jurisdiction under Section 482 of the Cr.P.C., to quash the proceedings initiated against the Petitioner/Accused No.2 in C.C.Nos., 1145, 1147, 1146 and 1148 of 2019 on the file of Judicial Magistrate of First Class, Nandyal, Kurnool District?*

Legal Analysis & Findings

7. Before determining the points raised, it is relevant to chalk out the crux of the legal provisions involved in this matter i.e., Sections 138 and 141 of N.I.Act, 1881 and Section 482 of Cr.P.C.

8. It is often reiterated that Section 138 of the N.I. Act clothes criminality to a civil transaction by fiction of law. The intention behind fastening liability is to inculcate faith in the efficacy of financial operations that are based on negotiable instruments. The Hon'ble Apex Court in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel***⁴ detailed the ingredients essential to attract the offence under Section 138 at para 11.

⁴ (2023) 1 SCC 578

9. Section 141 of the N.I. Act deals with “Offences by Companies”. A bare perusal of the provision indicates its primary ingredient is to establish that the commission of offence under Section 138 is by a juristic person i.e., company, firm, or association of individuals. This provision in its all its clauses places “deemed” liability. The entire exercise contemplated by the Section 141(1) is to find out and fix liability on the person/s whose conduct resulted the bouncing of the cheque. The proviso carves out the situations wherein the criminal liability would not be fastened, to avoid undue harassment to such persons. Section 141(2) paints the larger picture in fastening criminal liability as it includes the concepts of ‘consent’, ‘connivance’ ‘neglect’ of various categories of officers like director, manager, secretary, or other officer of the company.

10. Further, Section 482 of Cr.P.C. makes it clear that the Code envisages that inherent powers of the High Court are not limited or affected so as to make orders as may be necessary; (i) to give effect to any order under the Code or, (ii) to prevent abuse of the process of any Court or, otherwise (iii) to secure ends of justice.

11. Section 482 is to be exercised *ex debito justitiae*, i.e., to do real and substantial justice. These powers must be invoked for compelling reasons of abuse of process of law or glaring injustice, which are against sound principles of criminal jurisprudence. Specific circumstances warranting invocation of powers under Section 482 have been strongly emphasized in a catena of decisions, viz., **State of Haryana & others v. Bhajanlal & others**⁵ at paras 102 and 103, **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & others**,⁶ at para 57, etc.

12. With the crux of the provisions encapsulated, this Court proceeds to decide the case on hand. At the cost of repetition, the first throng of the argument of learned petitioner counsel's is on maintainability of the criminal proceedings for being Manager/Authorized Signatory of the sole trading concern and the second being on the non-applicability of Section 141 to the Petitioner.

13. It is not in dispute that the dishonored cheques referred supra were issued by Accused No.1, that they were also

⁵ 1992 Supp. (1) SCC

⁶ (2020) 10 SCC 180

drawn from the bank-account of Accused No.1, and that Petitioner is neither signatory nor were the dishonored cheques drawn from her bank account. Even otherwise, none of the complaints show that there is a joint account.

14. A fair reading of Section 138 of NI Act, makes it clear that the attribution of the liability to the person *who draws the cheque from an account maintained by him for discharge of his debt or other liability*. Section 138 of the NI Act does not speak about joint liability. Even in case of a joint liability, in case of individual persons, a person other than the person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the N.I. Act. Primarily, on this interpretation, liability cannot be maintained on the Petitioner.

15. Next comes the question of analyzing whether Section 141 applies or not, in case of sole trading concern. In ***Alka Khandu Avhad v. Amar Syamprasad Mishra and another***⁷, at para-Nos. 12 and 13, the Hon'ble Apex Court rejected the plea that in case of two or more persons, it should be considered as "other

⁷ (2021) 4 SCC 675

association of individuals”. The Apex Court held that Section 141 of N.I. Act cannot be made applicable to individuals, as in such scenario, it does not become an offence committed by a company or by its corporate or firm or other associations of individuals.

16. In *Raghu Lakshminarayanan v. Fine Tubes*⁸, the Hon’ble Apex Court while dealing with a matter relating to Section 141 levelled against a “business concern”, held as under;

*“9. 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 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 Partnership Act.*

⁸ (2007) 5 SCC 103

12. If Accused I was not a company within the meaning of Section 141 of the Negotiable Instruments Act, the question of an employee being proceeded against in terms thereof would not arise.....

13. The distinction between partnership firm and a proprietary concern is well known. It is evident from Order 30 Rule 1 and Order 30 Rule 10 of the Code of Civil Procedure. The question came up for consideration also before this Court in Ashok Transport Agency v. Awadhesh Kumar [(1998) 5 SCC 567] wherein this Court stated the law in the following terms: (SCC pp. 569-70, para 6)

“6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Partnership Act, 1932. Though a partnership is not a juristic person but Order 30 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 30 which make applicable the provisions of Order 30 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 30 have

no application to such a suit as by virtue of Order 30 Rule 10 the other provisions of Order 30 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 30 can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

14. We, keeping in view the allegations made in the complaint petition, need not dilate in regard to the definition of a "company" or a "partnership firm" as envisaged under Section 34 of the Companies Act, 1956 and Section 4 of the Partnership Act, 1932 respectively, **but, we may only note that it is trite that a proprietary concern would not answer the description of either a company incorporated under the Companies Act or a firm within the meaning of the provisions of Section 4 of the Partnership Act."**

(Emphasis supplied)

17. Therefore, it is clear from the above ruling that a sole-proprietorship concern cannot be brought within the ambit of Section 141 of the N.I. Act. A sole proprietorship concern possesses no separate legal identity on its own and is merely a business name of the proprietor. Therefore, any reference made to proprietorship firm means and includes the proprietor and any reference made to proprietor, includes such concern. There is no question of treating such concerns as equivalent to a company, partnership firm, or even association of individuals. Nevertheless,

as in any other natural scenario, the sole proprietor can be held liable under Section 138. With this reasoning, it naturally follows that, vicarious liability cannot be attached on the employees of the sole proprietor concern, vide Section 141.

18. Coming to Accused No.2/Petitioner, he is a Manager and Authorised Signatory, he cannot be prosecuted on the allegation that he was involved in the business of the proprietorship concern of which someone else (Accused No.1 herein) is the proprietor. In that view of the matter, since Accused No.1 is a proprietor of sole trading concern, only the proprietor can be liable under Section 138 of NI Act as the proprietorship concerned and the proprietor are one and the same. Simply put, Accused No.2 being an authorized signatory cannot be held vicariously liable.

19. With the above reasoning, this Court finds that there are justifiable grounds to exercise its jurisdiction vested under Section 482 of the Cr.P.C. to quash the proceedings initiated against the Petitioner as they amount to abuse of process of court.

20. Accordingly, these Criminal Petitions are allowed and the proceedings initiated in C.C.Nos.1145, 1147, 1146 and 1148 of

2019 on the file of the Judicial Magistrate of First Class, Nandyal, Kurnool District, for the offences under Sections 138 and 142 of the Negotiable Instrument Act, 1881, are hereby quashed.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

VENKATA JYOTHIRMAI PRATAPA, J

Date : 02.11.2023

eha

HONOURABLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Criminal Petition Nos.564, 566, 569 and 572 of 2020

Date : 02.11.2023

eha