Smt K R Aruna Prasad vs Sri V Raghavendra on 19 September, 2024

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF SEPTEMBER, 2024

BEFORE

R

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 9909 OF 2017 (482(Cr.PC) / 528(BNSS)-)

C/W

CRIMINAL PETITION NO. 463 OF 2018 (482(Cr.PC) / 528(BNSS)-)

In Crl.P.9909 of 2017

BETWEEN:

SMT G.K. AKSHATA,
AGED ABOUT 35 YEARS,
W/O DR. K.J. RUDRADEV,
R/AT NO. 38/58,
"BASAVA KRUPA".
GOVINDAPPA ROAD,
BASAVANAGUDI,
BANGALORE-560004.

...PETITIONER

(BY SRI: KRISHNAMURTHY G. HASYAGAR, ADVOCATE)

AND

V. RAGHAVENDRA,
AGED ABOUT 50 YEARS,
S/O OF SRI. VASUDEVACHAR,
MANAGING PARTNER &

AUTHORISED SIGNATORY
M/S PIONEER DEVELOPERS,

"KANASU", 241/A, 1ST CROSSS,
II BLOCK, III PHASE,
BSK III STAGE,
BENGALURU-560085.

...RESPONDENT

(BY SRI. RAMESH P. KULKARNI., ADVOCATE) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CRIMINAL PROCEDURE CODE PRAYING TO SET ASIDE THE COMMON ORDER DATED 16.11.2017 PASSED BY THE LXIX ADDL. CITY CIVIL & SESSIONS JUDGE, BANGALORE (CCH-70) IN CRL.R.P. 567/2017, WHICH HAS SET ASIDE THE ORDER DATED 6.5.2017 ON THE APPLICATION FIELD BY THE ACCUSED UNDER SECTION 251 OF CR.P.C. PASSED BY THE XVI ACMM, BENGALURU, IN C.C.NO.13850/2016 AND ETC. In Crl.P.463 of 2018 BETWEEN SMT K.R. ARUNA PRASAD WIFE OF SRI. K.S. RAVEENDRA PRASAD AGED ABOUT 55 YEARS, RESIDING AT NO. 422, "LAKSHMISRI" 19TH B CROSS, 3RD BLOCK, JAYANAGAR, BANGALORE-560011.

...PETITIONER (BY SRI: M.S. ASHWIN KUMAR., ADVOCATE) AND SRI. V. RAGHAVENDRA, AGED ABOUT 50 YEARS, S/O OF SRI. VASUDEVACHAR, NC: 2024:KHC:38869 MANAGING PARTNER & AUTHORISED SIGNATORY M/S PIONEER DEVELOPERS, "KANASU", 241/A, 1ST CROSSS, II BLOCK, III PHASE, BSK III STAGE, BENGALURU-560085.

...RESPONDENT (BY SRI. RAMESH P. KULKARNI., ADVOCATE) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CRIMINAL PROCEDURE CODE PRAYING TO CALL FOR THE RECORDS PERUSE THEM AND SET-ASIDE THE JUDGMENT DATED 16.11.2017 PASSED BY LXIX ADDITIIONAL CITY CIVIL AND SESSIONS JUDGE(CCH-70) BANGALORE IN CRL.R.P.566/2017, DISCHARGING THE ACCUSED.

THESE CRIMINAL PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 11.06.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ NC: 2024:KHC:38869
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Whether without issuance of notice to a partnership firm, whether registered or unregistered, criminal proceedings under Section 138 could be filed or would it be barred under Section 141 of the N.I. Act? ..... 91 H. Whether issuance of a notice to one of the partners would amount to service of a valid notice on the firm? .....106 I. Whether separate notices or a single notice with separate demarcation of the firm and the partners is NC: 2024:KHC:38869 required under Section 138 of the N.I. Act leading to a presumption under Section 141 of N.I. Act? ..... 107 J. In the event of the partnership firm or the partner not being arraigned as an accused in a complaint filed under Section 138 of N.I. Act, can an application be filed by the applicant to arraign them as party-accused by way of either amendment or by way of an application for impleading? ..... 111 K. Whether Sections 138 to 141 of the N.I. Act are a complete Code by themselves or reference to the Partnership Act, can be made to attribute criminal liability on the firm and or the partners? ..... 116 L. In the present case is the order passed by the Revisional Court required to be interfered with?..... 123 M. What Order? ..... 125 NC: 2024:KHC:38869 CAV ORDER A. Background

1. The Petitioner in Crl.P. 9909/2017 is before this Court seeking for the following reliefs:

i. Set aside the Common Order dated 16.11.2017 passed by the LXIX Addl. City Civil & Sessions Judge, Bangalore (CCH-70) in Crl.R.P.No.567/2017, which has set aside the Order dated 6-5-2017 on the Application filed by the Accused under Section 251 of Cr.P.C. passed by the XVI ACMM, Bengaluru, in C.C.No.13850/2016;

ii. Quash the entire proceedings in Crl.RP No.567/2017 on the filed of LXIX Addl. City Civil & Sessions Judge, Bangalore (CCH-70) and consequently direct the learned XVI ACMM, Bengaluru, to proceed with C.C.No.13850/2016 in accordance with law, in the interest of justice and equity.

iii. Pass such other suitable order or orders as this Hon'ble Court deems fit in the admitted facts and circumstances of the case to meet the ends of justice.

2. The Petitioner in Crl.P. 463/2018 is before this Court seeking for the following reliefs:

NC: 2024:KHC:38869 "Call for the records, and set aside the judgment dated 16.11.2017 passed the LXIX Additional City Civil and Sessions Judge (CCH-70), Bangalore in Crl.R.P.No.566/201, discharging the accused."

3. The Petitioner had filed a complaint under Section 200 of Cr.P.C. read with Section 138 of Negotiable Instruments Act, 1881 ['N.I. Act', for short] against the Respondents in PCR No.5759/2016 which came to be numbered as C.C. No.13850/2016 before the 16th ACMM,

Bangalore alleging that the cheque issued by the Respondent had been dishonoured for insufficiency of funds. On appearance, an application under Section 251 of Cr.P.C. came to be filed by Respondent-Accused which came to be dismissed by the Trial Court. Challenging the same, Respondent- Accused filed Crl. Revision Petition under Section 397 of Cr.P.C which came to be numbered as Crl.R.P. No.566 and 567/2017 before the 59th Addl. City Civil and Sessions Judge (69). The Revisional court by way of its order dated 16.11.2017 allowed the revision petition, set-aside the impugned order dated NC: 2024:KHC:38869 06.05.2017 and allowed the application under Section 251 Cr.P.C. discharging the Petitioner in both the cases. Challenging the same, the Petitioner- Complainant is before this Court.

4. The Facts leading up to the above matter are that the Respondent-V. Raghavendra is the Managing Partner in two registered partnership firms viz., M/s Pioneer Developers and M/s Sampurna Builders which are sister concerns. The said V. Raghavendra is also stated to be the authorised signatory of Pioneer Developers.

5. On 28.09.2009 Smt. K.R. Aruna Prasad and Sri. K.S. Ravindra, her husband had entered into an agreement of sale for purchase of a residential apartment from M/s Pioneer Developers, thereafter both the parties agreed to cancel the agreement and an amount of Rs.50 lakhs paid under the said agreement was agreed to be adjusted towards the agreement of sale dated 28.02.2011 executed by M/s Sampoorna Builders in favour of NC: 2024:KHC:38869 Smt. K.R. Aruna Prasad and Sri. K.S. Ravindra Prasad. Both the agreement dated 28.09.2009 and the agreement dated 28.02.2011 have been signed by V. Raghavendra, subsequent to the said adjustment, an additional amount of Rs.10 lakhs was paid by Smt. K.R. Aruna Prasad and Sri. K.S. Ravindra Prasad.

6. The subject matter of agreement of sale dated 28.02.2011 is the commercial space on II Floor, Block-S1 being 3.2% of undivided share in property bearing old No.169/1, 169/2, new No.191/1 and 192 and 30 situated at Vasavi temple road, V.V. Puram, Bangalore. In furtherance of which payment was made, a draft sale deed was sent by e-mail on 16.05.2011 by Pioneer Developers. In the meanwhile the share of Sri. K.S. Ravindra Prasad i.e. 50% under the agreement dated 28.02.2011 was assigned by him in favour of Smt. G.K. Akshatha, the complainant before the Trial Court. Thereafter an absolute sale deed came to be executed on 06.09.2012 by Pioneer

NC: 2024:KHC:38869 Developers represented by Shri. V. Raghavendra in favour of K.R. Aruna Prasad and G.K. Akshatha. Since there were typographical errors, rectification deed came to be executed on 12.04.2013. Though the sale deed and rectification deed, as referred to above, were executed, the physical possession of the property was not handed over by Pioneer Developers/V. Raghavendra to Smt. G.K. Akshata and Smt. K.R. Aruna Prasad. Several requests made did not yield any results.

7. The Petitioner came to know that the said Pioneer Developers/V. Raghavendra having sold the very same property to a third party and had put the purchaser in possession of the property and therefore expressed their helplessness to handover possession and as such, came forward to settle

the claim of the Petitioner and Smt. K.R. Aruna Prasad by making a payment of sum of Rs. One Crore i.e. Rs.50 lakhs each. In furtherance thereof, Pioneer Developers/V. Raghavendra credited an amount of Rs.5 lakhs to the

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NC: 2024:KHC:38869 account of Smt. Aruna Prasad on 10.03.2016, yet another sum of Rs.5 lakhs on 19.03.2016. As regards the balance amount of Rs.45 lakhs, the said Raghavendra had issued two cheques, a cheque bearing No.653516 dated 28.03.2016 for Rs.25 lakhs and cheque bearing No.653517 dated 28.03.2016 for Rs.7.5 lakhs in favour of Smt. K.R. Aruna Prasad and insofar as Petitioner-Smt. G.K. Akshatha, cheques bearing No.653518 dated 28.03.2016 for Rs.25 lakhs and cheque bearing No.653519 dated 28.03.2016 for Rs.7.50 lakhs was handed over. These cheques being issued towards the discharge of debt due and liable to be paid to the Petitioners i.e. Smt. G.K. Akshatha and Smt. K.R. Aruna Prasad.

8. The balance amount due in respect of both the Petitioners-Smt. G.K. Akshatha and Smt. K.R. Aruna Prasad was agreed to be handed over by cash, which was not paid. When the aforesaid cheques were presented by Smt. G.K. Akshatha and Smt. K.R. Aruna Prasad, the cheques were returned with the

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NC: 2024:KHC:38869 endorsement, 'Account Blocked', of which an intimation was received on 11.04.2016 and legal notices were issued. Though accused received the notices they did not reply to the notices, thereafter, two separate complaints were filed by Smt. G.K. Akshatha and Smt. K.R. Aruna Prasad. The complaint filed by Smt. G.K. Akshatha came to be numbered as C.C. No.13850/2016and complaint filed by Smt. K.R. Aruna Prasad came to be numbered as OC No.13851/2016. The Magistrate took cognizance of the offences in both the matters issued summons to the accused.

9. The accused in both the cases, filed an application under Section 251 of Cr.P.C. at the stage of cross- examination of the complainant. By way of said application the accused sought for dismissal of the complaint and acquittal/discharge of the accused on the ground that the firm viz., Pioneer Developers was not impleaded as accused. The cheques having been issued by Pioneer Developers, the complaint only

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NC: 2024:KHC:38869 against the Managing Partner was not maintainable. The cheques having been issued from the account of the firm and not on the personal account of the Managing Partner, without the Firm being a party, no proceedings could be filed against the accused.

10. The Magistrate dismissed the said memo on the ground that the accused was shown as the common partner in the registered partnership firms M/s Pioneer Developers and Sampoorna

Builders, he being the authorised signatory of Pioneer Developers had issued the cheques by signing the same being the Managing Partner and further being in-charge of business of the firm and liable for the business of the firm, but, however came to the conclusion that in the business or firm, the complaint filed against the partner was not maintainable. As regards whether non-impleading of the firm would entail dismissal of the complaint, the Trial Court came to a conclusion that the same cannot be so done without examining the merits of the matter.

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11. Challenging these two orders both dated 06.05.2017, two separate Criminal Revision Petitions in Crl.R.P. No.566/2017 and 567/2017 were filed by the accused. Crl.R.P. No.566/2017 was filed as regards the complaint filed by K.R. Aruna Prasad and Crl.R.P. No.567/207 was filed as regards the complaint filed by G.K. Akshatha. Both Criminal Revision Petitions were taken up for hearing together and a common order dated 16.11.2017 was passed by the Revisional Court. The Revisional Court came to a conclusion that the Trial Court having first come to a conclusion that the application filed by the accused was justified, has deviated from the decision and rejected the application solely on the ground that the stage of the matter was for recordal of statement of the accused under Section 313 of Cr.P.C.

12. The Revisional Court came to a conclusion that arraigning the firm/company as an accused being a condition precedent, without doing so, the complaint against a partner was not maintainable and as such

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NC: 2024:KHC:38869 allowed the revision petition, set-aside the order passed by the Trial Court and consequently allowed the application filed under Section 251 of Cr.P.C. It is challenging this order that the Petitioner- Complainants are before this Court in the above Criminal Petitions, Crl.P. No.9909/2017 is filed by Smt. D.K. Akshatha and Crl.P. No.463/2018 is filed by Smt. K.R. Aruna Prasad.

B. Submissions of Petitioners

13. Sri. Krishnamurthy. G. Hasyagar, learned counsel for the Petitioner in Crl.P. No.9909/2017 submits that, 13.1. The application under Section 251 of Cr.P.C. as filed by the accused was not supported by an affidavit. On this ground itself, the application ought to have been rejected. The person arraigned as an accused is the Managing Partner of Pioneer Developers. Apart from being the authorised signatory of Pioneer Developers and Sampoorna Builders, notice has been

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NC: 2024:KHC:38869 issued in the name of V. Raghavendra, Managing Partner of Pioneer Developers, so also the complaint was filed against V. Raghavendra, Managing Partner of Pioneer Developers. It does not matter if the name of the Managing Partner is first mentioned and the Firm name is mentioned thereafter, that would only be semantics whether the name of the firm is first mentioned followed by the name of the representative or name of the representative is first mentioned and the firm name is followed, they are one and the same.

13.2. Essentially accused is a firm and not the Managing Partner. This aspect has not been properly considered by the Magistrate Court, as also the Revisional Court since the complaint was not rejected and the matter was proceeded with, the order of the Magistrate Court has not been challenged by the Petitioners. It is only on the complaint being rejected/dismissed that the

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NC: 2024:KHC:38869 Petitioners have challenged the order passed in the Revision Petition.

13.3. The order dated 16.05.2017 is an interlocutory order passed on application filed under Section 251 and as such, not amenable for review jurisdiction under Section 397(2) of Cr.P.C. 13.4. The application filed by the accused under Section 251 of Cr.P.C. is not maintainable inasmuch as Section 251 does not provide for the Magistrate to dismiss the complaint, so also would the Revisional Court not have the power to dismiss the complaint.

13.5. He invokes the provision of 319 of Cr.P.C. to contend that if it appears to the court that a person not being accused has also committed the offence, then the Court would have power to implead such person by exercising powers under Section 319, the Magistrate Court and or the Revisional Court could have impleaded M/s Pioneer Developers as an additional accused.

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NC: 2024:KHC:38869 This he submits without prejudice to his contention that a complaint is filed against the firm itself represented by the Managing Partner. 13.6. Insofar as the decisions relied upon by the Revisional Court, he submits that those decisions are ones related to companies and not to partnership firms. Partnership firms would have to be considered differently from a company, company being a body incorporated represented by its Directors and officers, a partnership firm is always represented by its partners who are so authorised to represent and as such, the principles applicable to a company would not be applicable to a partnership firm.

13.7. Notice having been issued to the firm, addressed to the Managing Partner, there is no reply received thereto, therefore, the presumption under Section 139 of N.I. Act, is required to be drawn. By referring to Section 25

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NC: 2024:KHC:38869 of the N.I. Act, he submits that every partner is liable jointly with all the other partners and also severally for all acts of the firm done while as a partner, thus even if it is assumed that notice was issued to the Managing Partner, the fact of him being the Managing Partner not being disputed, even in terms of Section 25 of the Partnership Act without making the firm a party, the partner would be liable for all the actions.

13.8. On facts, he submits that V. Raghavendra being the Managing Partner and authorised signatory has represented the firm and all its transactions, he has executed the agreement of sale, cancellation agreement, signed and handed over the cheques, received the legal notice, chosen not to reply to the same, entered appearance before the Trial Court and thus, he having acted for and on behalf of the Firm being a Managing Partner is liable for the

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NC: 2024:KHC:38869 dishonour of the cheque which ought to have been taken into consideration by the Revisional Court.

13.9. In support of the above contentions, he places reliance upon the following decisions:

> 13.10. The Hon'ble Apex Court in Everest Advertising (P) Ltd. vs State, Govt. Of NCT Of Delhi and others (Coram: 2 JJ)1 more thereof which is reproduced hereunder for easy reference:
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> 8. Mr Aloke Kumar Sengupta, learned Senior Counsel appearing on behalf of the Company, would submit that having regard to the allegations made in the complaint petition, the High Court committed a serious illegality in passing the impugned judgment. The learned counsel submitted that the learned Magistrate had no jurisdiction to recall its order whereby the accused persons were summoned.
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> 9. Mr K.T.S. Tulsi, learned Senior Counsel appearing on behalf of Respondents 2 and 3, on the other hand, would submit that complaint petition contained mechanical reproduction of the wordings of a section and, thus, without making any allegation that Respondents 2 and 3 had any role to play in the matter of issuance of cheque or (2007) 5 SCC 54 | 2007 INSC 397
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NC: 2024:KHC:38869 the dishonour thereof, no order issuing summons as against the said respondents could have been passed. A distinction, according to the learned counsel, must be made between a Chairman of a company and a Managing Director or a Deputy Managing Director thereof inasmuch whereas a Managing Director or a Deputy Managing Director is presumed to be involved in the day-to-day affairs of the company, the Chairman of a company may not even have any knowledge in relation thereto. Provisions of the Negotiable Instruments Act, it was submitted, are being misused and this Court, therefore, should strike a balance between the interest of a

complainant and interest of an accused who is alleged to be vicariously liable for the offences committed by the Company.

10. Summons were issued by the learned Magistrate by reason of an order dated 24-7-1999. He recalled the said order. He did not have any jurisdiction in that behalf. A Magistrate does not have and, thus, cannot exercise any inherent jurisdiction.

11. In Adalat Prasad v. Rooplal Jindal [(2004) 7 SCC 338: 2004 SCC (Cri) 1927] a three-Judge Bench of this Court while overruling an earlier decision of this Court in K.M. Mathew v. State of Kerala [(1992) 1 SCC 217: 1992 SCC (Cri) 88] stated the law thus: (SCC p. 343, paras 14 & 16) "14. But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under Section 204 of the Code. Therefore, what is necessary or a condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under Section 204 of the Code. In none of these stages the Code has provided for hearing the summoned

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NC: 2024:KHC:38869 accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] that before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under Sections 200 and 202, and the only stage of dismissal of the complaint arises under Section 203 of the Code at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under Section 203 of the Code on a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.

13.11. By relying on Everest Advertising (P) Ltd's case, he submits that what has been done by the Revisional Court is to recall the order issuing summons. Section 251 does not provide for discharge of a proceeding under Section 138 of N.I. Act being a summons case and not a warrant case, Section 239 of Cr.P.C. for discharge would not apply to a summons case. Thus, this recalling is not permissible.

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NC: 2024:KHC:38869 13.12. He relies upon the decision of the Hon'ble Apex Court in Adalat Prasad vs Rooplal Jindal and Others (Coram: 3 JJ)2, more particularly Paragraph Nos. 14 and 15 thereof which is reproduced hereunder for easy reference:

14. But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under Section 204 of the Code. Therefore, what is necessary or a condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under Section 204 of the Code. In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] that before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under Sections 200 and 202, and the only stage of dismissal of the complaint arises under Section 203 of the Code at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the court and making an application for dismissal of the (2004) 7 SCC 338

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NC: 2024:KHC:38869 complaint under Section 203 of the Code on a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.

15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code. 13.13. By relying on Adalat Prasad's case, He submits that even where a Magistrate took cognizance of an offence, issues process without there being any allegation against the accused, same could be a contravention of provisions of Section 200 and 202 of Cr.P.C., thus vitiating the order. Even when such an order is vitiated, Section 203 of Cr.P.C. would not be applicable, the remedy would only lie under Section 482 of Cr.P.C., thus when Section 203 was not applicable, revisional

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NC: 2024:KHC:38869 petition under Section 397 would not be maintainable.

13.14. He relies upon the decision of the Hon'ble Apex Court in Subramanium Sethuraman vs State of Maharashtra & Anr (Coram: 3 JJ)3, wherein it is held thus:

"Being aggrieved by the said order of the learned Magistrate, the complainant filed a criminal revision petition before the High Court of Judicature at Bombay which by the impugned order reiterated its earlier view that it was not open to the Magistrate to order the discharge of an accused once his plea has been recorded and on that basis it allowed the revision petition of the complainant keeping open the question of validity of the statutory notice to be raised at the trial.

From the above, it is clear that the larger Bench of this Court in Adalat Prasad's case did not accept the correctness of the law laid down by this Court in K.M. Mathew's case. Therefore, reliance on K.M. Mathew's case by the learned counsel appearing for the appellant cannot be accepted nor can the argument that Adalat Prasad's case requires reconsideration be accepted. The next challenge of the learned counsel for the appellant made to the finding of the High Court that once a plea is recorded in a summons case it is not open to the accused person to seek a discharge cannot also be accepted. The case involving a summons case is covered by Chapter XX of the Code which does not contemplates a stage of discharge like Section 239 which provides for a discharge in a warrant case. Therefore, in our opinion the High Court was correct in coming to the conclusion once the plea of the

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NC: 2024:KHC:38869 accused is recorded under Section 252 of the Code the procedure contemplated under Chapter XX has to be followed which is to take the trial to its logical conclusion. As observed by us in Adalat Prasad's case the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under Section 482 of the Code and not by way of an application to recall the summons or to seek discharge which is not contemplated in the trial of a summons case.

The learned counsel for the appellant then sought leave of this Court to approach the High Court by way of 482 petition questioning the issuance of process by the Magistrate. The same was very strongly opposed by the learned counsel for the respondents who contended that the complaint in this case was filed as far back as 24th of December, 1996 and though there was a direction earlier for an early disposal of the trial, appellant and the other accused have successfully managed to keep the trial in abeyance by initiating one proceeding after the another even up to this Court. He submitted both this Court as well as the High Court in the earlier proceedings has left the question of validity of statutory notice to be considered at the trial but the accused persons including the appellant herein are time and again raising the same issue with a view to delay the trial, hence no such permission as sought for by the appellant should be granted. We see that this Court while dismissing earlier S.L.P. as withdrawn had left the question of legality of the notice open to be decided at the trial. Therefore, legitimately the appellant should raise this issue to be decided at the trial. Be that as it may, we cannot prevent an accused person from taking recourse to

> a remedy which is available in law. In Adalat Prasad's case we have held that for an aggrieved person the only course available to challenge the issuance of process under Section 204 of the Code is by way of a petition under Section 482 of the Code. Hence, while we do not grant any permission to the appellant to file a petition under Section 482, we cannot also deny him the statutory right available to him in law. However, taking into consideration the history of this case, we have no
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> NC: 2024:KHC:38869 doubt the concerned court entertaining the application will also take into consideration the objections i.e. raised by the respondent in this case as to delay i.e. being caused by the entertainment of applications and petitions filed by the accused. With the above observations this appeal fails and the same is dismissed."

13.15. Relying on the decision in Subramanium Sethuraman's case, he submits that there is no power with the Magistrate to order the discharge of an accused once his plea has been recorded in a proceeding contemplated under Chapter-XX i.e. summons case, once summons has been issued, the statement of the accused are to be recorded and the trial to proceed to its logical conclusion and the remedy which is available is to file for proceedings under Section 482 of Cr.P.C. and not an application to recall the summons or to seek discharge, thus he submits that an application under Section 251 was not maintainable.

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NC: 2024:KHC:38869 13.16. He relies upon the decision of this Hon'ble Court in Revanna vs State Of Karnataka4 more thereof which are reproduced hereunder for easy reference:

> 4. The finite consideration in all these petitions is their maintainability. Therefore, detailed narration of facts may not be necessary.

However, conspectuses of necessary facts are petitioners accused of certain offences sought for discharge before the Trial Courts. Their prayers have been rejected and the respective Trial Courts have proceeded further to frame charges. Feeling aggrieved, they have filed these revision petitions.

5. Registry has raised an objection with regard to maintainability of these petitions in view of bar contained in Sec. 397(2) Cr.P.C.

6. The arguments advanced by the learned counsel for the petitioners may be summarized as follows:

> i) that an order passed by the trial court declining to discharge an accused is not an interlocutory order;

ii) that the objection raised by the registry with regard to maintainability of a revision petition is no more res integra.

It has been settled by various pronouncements of the Hon'ble Supreme Court holding that an order directing framing of charge is not an interlocutory order and therefore, the revision Crl.R.P No. 57/2017 | 2017:KHC:8410

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NC: 2024:KHC:38869 petitions are maintainable. Hence, applying the doctrine of 'stare decisis,' it may be held that a revision petition is maintainable;

iii) that the judgment in the case of V.C. Shukla v. State through C.B.I. [1980 Supp Supreme Court Cases 92:AIR 1980 SC 962] is not applicable to the facts of these cases because, in the said case, the Hon'ble Supreme Court was considering maintainability of an appeal under Sec.11(2) of the Special Court's Act,1979 which was enacted for a special purpose for speedy disposal of cases and the Special Court was headed by a sitting judge of the High Court;

iv) that the judgment in the case of V.C. Shukla is rendered keeping in view the purpose and intent of a Special Act and to ensure that flooding of cases is avoided to the Supreme Court;

v) though Sub Section (2) of Section 397Cr.P.C. places an embargo from entertaining a revision petition, all orders cannot be classified only under two categories namely, 'interlocutory' and 'final'. There is a third kind of order namely, 'intermediate order' as defined in V.C.Shukla's case;

vi) that the judgments in the cases of Amar Nath and others v. State of Haryana and another [(1977)4 SCC 137] and Madhu Limaye v. The State of Maharashtra [(1977) 4 SCC 551] cover the point involved in these petitions. It is held by the Hon'ble Supreme Court in V.C. Shukla that those cases were correctly decided;

vii) that in the case of K.K.Patel and another v. State of Gujarat and another [(2000) 6 SCC 195], the Hon'ble Supreme Court after applying a 'feasible test' has held that an order rejecting a prayer to discharge is revisable. The test applied was whether by upholding the objections raised by a party, would it result in culminating the proceedings, and if so, an order passed on such objections would not be interlocutory in nature;

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34. Therefore, the above discussion leads to an inescapable conclusion that as held by the Hon'ble Supreme Court in the case of V.C. Shukla supra, an order framing charge in both categories of cases is an interlocutory order. The said judgment is by a larger bench and hence, binding. Resultantly, a revision petition shall not be maintainable in view of express bar contained in Sub Section (2) of

Section 397Cr.P.C. The points framed for consideration are accordingly answered.

13.17. By relying on Revanna's case, he submits that an order framing charge is an interlocutory order and revision petition under Subsection (2) of Section 397 of Cr.P.C. is not maintainable. 13.18. He relies upon the decision of the Hon'ble Apex Court in the case of Brijendra Singh & others

-v- State of Rajasthan (Coram: 2 JJ)5, more particularly Paragraph No.12 thereof, which is reproduced hereunder for easy reference:

> 12. Section 319 CrPC springs out of the doctrine cum nocens absolvitor (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit undelying the enactment of Section 319 CrPC.
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> 13.19. By relying on Brijendra Singh's case, he submits that by exercising powers under
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NC: 2024:KHC:38869 Section 319 of Cr.P.C, any person who is guilty of an offence if not arraigned as an accused can always be so arraigned by the Court. 13.20. He relies on the decision of this Court in Shanmugam -v- S.B. Rushbendra6, more particularly paragraphs 11, 12 and 13 thereof, which are reproduced hereunder for easy reference:

> 11. If the complainants intended to prosecute the petitioner in his individual capacity, there was absolutely no reason for the complainants to make the averments in the complaints that the petitioner was the Managing Director of the aforesaid Company. There was also no necessity for the complainants to describe the petitioner/accused as Managing Director of M/s.Sree Shanmuga Modern Rice Mills Pvt. Ltd., and the Proprietor of M/s.Sree Shanmuga Finance, but for the fact that the complainants were very much aware that the cheques in question were drawn on the account maintained by the Company and therefore, they intended to prosecute the Company.
>
> 12. The legal position as to when the drawer of the cheque falls within the ambit of section 141 of N.I. Act, is explained by the Hon'ble Apex Court in Anil Hada vs. India Acrylic Ltd., (2000) 1 SCC 1 as under:
>
> "The effect of reading Section 141 is that when the company is the drawer of the cheque such company is the principal offender under Section 138 of the Act and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per the section. Hence the actual offence should have been committed by CRL.P. No.4533/2018 | 2018:KHC:21084
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> NC: 2024:KHC:38869 the company, and then alone the other two categories of persons can also become liable for the offence."

13. Though in this decision it was held that even if the prosecution proceedings against the Company were not taken or could not be continued, it is no bar for proceeding against the other persons falling within the purview of sub- sections (1) and (2) of Section 141 of the N.I. Act; but this view has been held as not laying down the correct law as far as it states that the Director or any other Officer can be prosecuted without impleadment of the Company, in the later decision of the Three Judge Bench of the Hon'ble Supreme Court in Aneeta Hada vs. Godfather Travels and Tours Pvt. Ltd., (2012) 5 SCC 661. In para 59 of the said decision, it is held as under:

> "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 inC.V.Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para
>
> 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove."

13.21. By relying on Shanmugam's case, he submits that merely because there is ambiguity in the description of the cause title on account of jumbling of the parties, misdescription of an accused is only a curable defect and could be so rectified by necessary amendment to bring in line with the averments made in the complaint.

NC: 2024:KHC:38869 His further submission on that basis is that all necessary averments having been made in the body of the compliant as regards the Firm being liable to make payment of the monies and cheques having been issued from the account of the firm, if at all it is held that there is misdescription, same may be permitted to be corrected and or the application filed by the petitioner to implead the firm be allowed. 13.22. He relies on the decision in Radhakrishnan -v-

Thomas7 more particularly paragraph 11 thereof, which is reproduced hereunder for easy reference:

> 11. The firm is also thus shown to have committed the offence under Section 138 of the N.I. Act. It is now trite (See the dictum in Anil Hada supra) that it is not essential to prosecute the firm/company also before the person in charge is sought to be prosecuted. It is then contended that there is no averment in the complaint that the petitioner was in charge of and responsible to the company for the conduct of its affairs. It is not necessary in every complaint to repeat the words of Section 141 of the

> N.I. Act - that the indictee was in charge of and is responsible to the company for the conduct of its affairs. The fact that the petitioner is the one who has signed the cheque as Managing Partner of the firm goes miles to assure the court that he was acting and was competent to act on behalf of the firm. Even without a specific averment in the complaint 2006(1) KLT 150
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NC: 2024:KHC:38869 that the petitioner was in charge of and responsible to the company for the conduct of the affairs of the firm a safe conclusion on that aspect can be reached the petitioner having admittedly signed the cheque as Managing Partner of the firm.

13.23. By relying on Radhakrishnan's case, he submits that V. Raghavendra being signatory to the cheque and the cheque having been dishonoured, he would be liable in his capacity as a Managing Partner, he will be liable in his capacity as a signatory, he would be also liable as managing partner since he was in-charge of day-to-day affairs of the firm irrespective of whether the firm is arraigned as accused or not. 13.24. He relies on the decision of the Kerala High Court in the case of PNM Hospital and another -v- M/s HDFC Bank and another8 more particularly paragraph 10 thereof, which is reproduced hereunder for easy reference:

> 10. However, the learned counsel for the petitioners would raise a new contention which has not been raised either before the appellate court or before the trial court to the effect that apart from the 2nd petitioner, there are other Crl.R.P. No.254/2017 | 2017:KER:11162
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NC: 2024:KHC:38869 partners in the 1st accused firm and that those 2 partners would also be equally responsible, who were in charge of the affairs of the partnership firm, and therefore non impleadment of such partners as accused in the complaint would lead to the situation that the complaint should be necessarily thrown out on the ground of non arraigning of all the accused. For fortifying this contention the learned counsel for the petitioners would argue that the mandate of Sec.141 of the N.I.Act is that if the person committing an offence under section 138 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 therefore non arraigning of all the responsible partners would lead to the situation of necessarily throwing out the complaint. Prima facie, this Court is of the view that the said contention is not tenable. The Supreme Court in the decision in Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd. reported in (2015) 5 SCC 661, has held that where the drawer of the cheque is a company, the aspects arising out of Sec.141 of the Negotiable Instruments Act will come into play and that therefore the principal accused/offender in such a case is only the company and that without impleading the company, which is the principal offender, the prosecution is bound to fail against any such complaint as the drawer and the principal offender, who has committed the offence, is the company. The petitioners' contention is that though the partnership firm and the

managing partner have been arraigned as accused, non inclusion of the other partners in the accused arraign would lead to the situation of throwing out the complaint. Without going more into those aspects, in Crl.R.P.No.254 of 2017 is to be noted that the 2nd petitioner has not laid down any factual foundation about this aspect at any stage of the impugned criminal complaint. They have not cared to send a reply notice to the statutory demand notice. The contention that, apart from the managing partner, 2 other partners are responsible and in charge of the business of the partnership firm at the time of committing the offence under Sec.138 of the N.I.Act, has never been raised in the reply notice (which has never been sent) or while cross-examining PW-1 or at the stage of Sec.313 questioning of the accused or even by giving defence evidence in that regard. In the absence or raising such a factual foundation, this Court is totally disabled from entertaining such a legal plea as it is not within the cognizance of this Court based on the materials available on record as to whether other partners were actually responsible for and in charge of affairs of the business of the firm apart from the 2nd petitioner, who is the managing

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NC: 2024:KHC:38869 partner. Therefore, in the absence of such a factual foundation, the petitioner cannot be permitted to raise such a contention. Moreover, such contention, which has never been raised before the trial court or appellate court cannot be permitted to be raised at the revisional stage. Therefore the said contention raised by the petitioners will also stand overruled. Thus the upshot of the above discussion is that the factual findings rendered by the trial court as well as the appellate court are based on judicial evaluation and appreciation of the evidence on record and the findings thereon rendered by both the courts below that the revision petitioners are liable to be convicted for the offence under Sec.138 of the N.I.Act cannot be said to be palpably perverse and unreasonable. No crucial and relevant evidentiary aspects have been shut out by both the courts below. The learned counsel for the petitioners has not been able to convince this Court that any grave illegality or impropriety has been committed in the rendering of the above said impugned judgments of both the courts below. When that is the position, this Court is constrained to hold that the revision petitioners have not been able to establish any cogent grounds so as to make interference at the hands of this Court while exercising revisional jurisdiction 13.25. By referring to PNM Hospital's case, he submits that it is not necessary for the complainant to arraign all the partners, if only a managing partner is arraigned as an accused, that would suffice unless it had been specifically stated in reply to the notice issued that the noticee was not in-charge of the day-to-day affirs of the firms and certain others were in- charge of the firm. In the present case, no reply having been issued, only the Managing

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NC: 2024:KHC:38869 partner of the firm having been arraigned as a party is sufficient.

13.26. He relies on the decision of the Apex Court in the case of Ashutosh -v- State of Rajasthan and others (Coram: 2 JJ)9, more particularly the unnumbered paragraphs, which are reproduced hereunder for easy reference:

"Both the contentions raised by the learned counsel appearing for the appellant have absolutely no merit. It is not in dispute that the decree was passed against the firm in which Smt. Dhanwanti Devi was also a partner. Under the provisions of the Partnership Act, one partner is the agent of the other. The partner is always liable for partnership debt unless there is implied or express restriction. In the instant case, notice was duly served on Smt. Dhanwanti Devi and her husband at House No.80B, Block Sri Ganganagar. Sections 24&25 of the Indian Partnership Act, 1932 can be usefully referred to in the present context which are reproduced hereunder:

"Section 24- Effect of notice to the acting partner Notice to the partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner."

"Section 25 Liability of a partner for acts of the firm Every partner is liable, jointly with all the other partners and also severally for all acts of the firm done while he is a partner."

Section 24 deals with the effect of notice to a partner. Such notice may be binding if the following conditions are satisfied:

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(a) the notice must be given to a partner;

(b) the notice must be a notice of any matter relating to the affairs of the firm;

(c) fraud should not have been committed with the consent of such partner on the firm.

Section 24 is based on the principle that as a partner stands as an agent in relation to the firm, a notice to the agent is tantamount to the principles and vica versa. As a general rule, notice to a principal is notice to all his agents; and notice to an agent of matters connected with his agency is notice to his principal. Under Section 25, the liability of the partners is joint and several. It is open to a creditor of the firm to recover the debt from any one or more of the partners. Each partner shall be liable as if the debt of the firm has been incurred on his personal liability. The judgment in the case of Dena Bank vs. Bhikhabhai Prabhudas Parekh & Co. &Ors., (2000) 5 SCC 694 can be beneficially referred to in the present context. Two questions arose for consideration by this Court in this case. Firstly, whether the recovery of sales tax dues amounting to Crown debt shall have precedence over the right of the Bank to proceed against the property of the borrowers mortgaged in

favour of the Bank. Secondly, whether property belonging to the partners can be proceeded against for recovery of dues on account of Sales tax assessed against the partnership firm under the provisions of the Karnataka Sales Tax Act, 1957. We are concerned only with regard to the second question. In paragraph 18, R.C. Lahoti,J. observed as under:

> "The High Court has relied on Section 25 of the Partnership Act, 1932 for the purpose of holding the partners as individuals liable to meet the tax liability of the firm. Section 25 provides that every partner is liable, jointly with all the other partners and also severally for all acts of the firm done while he is a partner. A firm is not a legal entity. It is only a collective or compendious name for all the partners. In other words, a firm does not have any existence away from its partners. A decree in favour of or against a firm in the name of the firm has the same effect as a decree in favour of or against the partners. While the firm is incurring a liability it can be assumed that all the partners were incurring that liability and so the partners remain liable jointly and severally for all the acts of the firm."

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NC: 2024:KHC:38869 13.27. By relying on Ashuthosh's case, his submission is that a notice where a partner habitually acts in the business of the firm relating to the affairs of the firm, operates as notice to the firm except in case of fraud on the firm committed by or with the consent of that partner and in terms of Section 25 of Indian Partnership Act, every partner is liable jointly with all other partners for acts of the firm. In the present case, notice having been issued to a partner as regards the affairs of the firm, the same is a notice on the firm and mere arraigning V. Raghavendra as Managing Partner would not take away of the fact that the complaint is against the firm of which V. Raghavendra is a Managing partner and in- charge of its affairs.

13.28. He relies on the decision of the Apex Court in S.M.S. Pharmaceuticals Ltd. -v- Neeta

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NC: 2024:KHC:38869 Bhalla and another (Coram: 3 JJ)10, it is held as under:

> In view of the above discussion, our answers to the questions posed in the Reference are as under:
>
> (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.
>
> (b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141

> of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.
>
> (c) The answer to question (c) has to be in affirmative.

The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141. 13.29. By relying on S.M.S. Pharmaceuticals Ltd's case, he submits that once it is established that AIR 2005 SC 3512 | 2005 INSC 432

 that a person is in-charge of day-today affairs of the company or a firm, he becomes liable under Section 141 of N.I. Act.

13.30. He relies on the decision of the Apex Court in Mainuddin Abdul Sattar Shaikh -v- Vijay D. Salvi (Coram: 2 JJ)11, it is held as under:

> The Respondent has adduced the argument that in the complaint the appellant has not taken the averment that the accused was the person incharge of and responsible for the affairs of the Company. However, as the respondent was the Managing Director of M/s. Salvi Infrastructure Pvt. Ltd. and sole proprietor of M/s. Salvi Builders and Developers, there is no need of specific averment on the point. This Court has held in National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal and Anr.,[2] as follows:
>
> Para 39 (v) "If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with." Thus, in the light of the position which the respondent in the present case held, we are of the view that the respondent be made liable under Section 138 of the NI Act, even though the Company had not been named in the notice or the complaint. There was no necessity for the appellant to prove that the said respondent was incharge of the affairs of the company, by virtue of the position he held. Thus, we hold that the respondent Vijay D Salvi is liable for the offence under Section 138 of the NI Act.

13.31. Relying on Mainuddin Abdul Sattar Shaikh's case, he submits that once a person who is a

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NC: 2024:KHC:38869 Managing Director or Joint Managing Director, and in this case a Managing Partner, he would be responsible for the day-to-day affairs of the company, as such liable for an offence under Section 138 read with Section 141 of the N.I. Act.

13.32. Reliance is placed on the decision of the High court of Judicature at Madras in the case of P. Apparasamy -v- Kalaimani12, more particularly paragraph 6 and 16 thereof, which are reproduced hereunder for easy reference:

> 6. The Supreme Court in S.M.S. PHARMACEUTICALS LIMITED v. NEETA BHALLA AND ANOTHER (AIR 2005 SC 3512) has categorically held that it is necessary to specifically aver in the complaint that the person accused of was in charge of and responsible for the conduct of the business of the company. Such an averment is an essential requirement of section 141 of the Negotiable Instruments Act and therefore, the same has to be averred in the complaint. Without such an averment being made in the complaint, the requirement of section 141 of the Negotiable Instruments Act cannot be said to be satisfied. Here in this case, on a careful perusal of the complaint, it is found that the respondent has categorically stated that the second and third accused along with the first accused were in the administration of the partnership firm and that they have been carrying on the business of the partnership firm.

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16. In view of the clarification found in the aforesaid authority reported in 2007 (3) CTC 495, the court holds that if the complainant, who is the payee or holder in due course, who may not be aware of the indoor administration of a company or the partnership firm, lodges a complaint under section 138 and 141 of the Negotiable Instruments Act with the averment that the Director or the Partners concerned were in charge of and responsible for the conduct of the business of the partnership firm concerned, then it will have to be construed that such an averment is a necessary and sufficient one as contemplated under section 141 of the Negotiable Instruments Act. Then the burden is shifted to the Partner or the Director of the Company, who has got thorough knowledge about the indoor management of the company or partnership firm, to prove that he was not in charge of and responsible for the conduct of the business of the company at the relevant point of time. Therefore, I reject, without any hesitation, the submission made by the learned Senior Counsel appearing for the petitioner that the complaint which does not whisper any averment as to how and in what manner, the Partners of the partnership firm played a role is not maintainable. Even otherwise, the reply

notice issued by the Managing Partner which forms part of the complaint, prima facie, shows that the petitioner herein had actually played a role in the day to day administration of the fourth accused partnership firm. Therefore, the court has to hold that the complainant has come out with a prima facie material to convince the learned Judicial Magistrate that the third accused was also in charge of and responsible for the conduct of the business of the fourth accused partnership firm.

13.33. Relying on P. Apparasamy's case, he submits that if a complaint is filed alleging that a person is a partner or Managing Partner, it is for such accused or partner to establish that he is not

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NC: 2024:KHC:38869 in-charge of the affairs and in absence thereof, he will be presumed under Section 139 to be responsible for offence on dishonour of cheques.

13.34. He relies on the decision of the Hon'ble Apex Court in Ashapura Minechem Ltd. -v- Philip J & Another (Coram: 2 JJ)13, wherein it is held as under:

> Leave granted.
>
> Heard learned counsel for the parties. These appeals take exception to the judgment and order dated 29.01.2016 passed by the High Court of Judicature at Bombay in Criminal Writ Petition Nos. 2909 of 2013, 2910 of 2013, 2914 of 2013 and 2915 of 2013, whereby the High Court quashed the complaint(s) filed by the appellant under Section 138 of The Negotiable Instruments Act, 1881 (for short 'hereinafter referred to as the Act') on the ground that it was filed against only one of the partner of the partnership firm without joining the partnership firm as respondent/accused. Such complaint(s) according to the High Court was not maintainable. The view so expressed by the High Court has been questioned before this Court by producing the copies of the original complaint(s) in the respective matters. The description of the accused given therein is as follows:-
>
> " Phillip J.
>
> Age - 37 years, Occ.: Business, Partner, M/s Amalagiris, for himself and on behalf of M/s Amalagiris Partnership Firm, Partnership Firm M/s Amalagiris having regd. Office at S-14/15, Second Floor, Alfran Plaza, M.G. Road, Panjim, Goa, Pin code- 403 001 ..... Accused" We agree with the appellant that going by the description of the Crl.A. No.964-967/2019

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> NC: 2024:KHC:38869 accused, as stated in the concerned complaint, the High Court was not right in quashing the complaint(s) on the assumption that the partnership firm has not been made party in the complaint.

The question whether such description, is substantial compliance of the requirements of Section 138 read with Section 141 of the Act, is a matter to be analyzed by the Trial Court in the first instance. We do not intend to answer any other contention except to observe that the assumption of the High Court for allowing the quashing petition is contrary to the record and for which reason the same is set aside. All other contentions available to the parties are left open including regarding the correctness of the description as given in the concerned complaint and further as to whether the same meets the mandatory requirements of Section 138 and 141 of the Act. The Trial Court may also consider any other objection available to the accused in law or on facts, on its own merits, including regarding the status of the parties as arraigned in the concerned complaint. Accordingly, the appeals succeed in the above terms. Pending applications, if any, stand disposed of.

13.35. By referring to Ashapura Minechem Ltd's case, he submits that if in the description an individual partner's name followed by name of the firm is shown, that would be sufficient compliance of the requirement of Section 138 r/w 141 of the Act.

13.36. He relies on the decision of this Court in Smt. Akkamahadevi -v- Sri. Basnagouda, more particularly paragraph 9 thereof, which is reproduced hereunder for easy reference:

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9. When the Hon'ble Apex Court in the case of Bhupesh Rathod supra held that company was aware that complaint had to be filed by the company itself and signature on cheque was not disputed by the accused, neither was it explained by way of an alternative story as to why the duly signed cheques were handed over to the company and no case is set up with nature of transaction which availed beyond the scope of section 138 of NI Act and whether the petitioner was in charge of the affair of the firm or not, again it is a disputed fact and I have already pointed out that in paragraph-2 of the complaint, specific averments are made and so also in the legal notice, specific averments are made in respect of both the accused persons and when such being the facts and circumstances of the case, this Court cannot come to the conclusion that she was not in-charge of the day-to-day affairs of the firm and hence, I do not find any force in the second contention of the learned counsel for the petitioner that this petitioner was not in-charge of the day-to-day affairs of the firm.

13.37. By referring to Akkamahadevi's case, he submits that an averment made that a partner is responsible for the day-to-day affairs of the firm is sufficient compliance of Section 138 and contra was required to be proved by the accused in trial.

13.38. He relies on the decision of the Hon'ble Apex Court in M/s Bilakchand Gyanchand Co. -v-

Chinnaswami (Coram: 2 JJ)14, more

AIR 1999 SC 2182

particularly paragraph 3 and 4 thereof, which are reproduced hereunder for easy reference:

3. The respondent moved an application before the Magistrate asking him to recall the process. Having failed in this attempt, a petition under Section 482 Cr.P.C. was filed in the High Court. The High Court by the impugned judgment came to the conclusion that notice under Section 138 was sent by the appellant herein to A. Chinnaswami at his office address but this could not mean that the notice was sent to the company itself. On this ground alone, the High Court allowed, the petition and quashed the complaint which was filed.

4. In our opinion, the High Court erred in quashing the complaint. It is evident that proceedings were initiated by the appellant against A. Chinnaswami who happened to be the Managing Director of Shakti Spinners Ltd. The cheques in question which were dishonoured were signed by him. The process was issued by the Judicial Magistrate in his name. We see no infirmity in the notice issued under Section 138 addressed to A. Chinnaswami, who was a signatory of the said cheques. The High Court, in our opinion, clearly fell in error in allowing the petition under Section 482 Cr.P.C. and in quashing the complaint & setting aside the proceedings pending before the Judicial Magistrate."

13.39. By Referring to Bilakchand's case, he submits that when the cheque is signed by a Managing Director of the company, notice sent to the Managing director at the company address would be a notice to the company itself. As such, in the present case, notice having been

 issued to the Managing Partner at the address of the firm is a notice to the firm.

13.40. He relies on the decision of the Hon'ble Apex Court in Rajaneesh Aggarwal -v- Amit J. Bhalla (Coram: 2 JJ)15, wherein it is held as under:

14 Having regard to the contentions raised by the counsel for the parties, two questions really arise for our consideration:

> (1) Was the High Court justified in coming to the conclusion that the drawer has not been duly served with notice for payment?
>
> (2) Whether deposit of the entire amount covered by three cheques, while the matter is pending in this Court, would make any difference?

So far as the first question is concerned, it is no doubt true that all the three requirements under clauses(a), (b) and (c) must be complied with before the offence under Section 138 of the Negotiable Instruments Act, can be said to have been committed and Section 141 indicates as to who would be the persons, liable in the event the offence is committed by a company. The High Court itself on facts, has recorded the findings that conditions (a) and (b) under Section 138 having been duly complied with and, therefore, the only question is whether the conclusion of the High Court that condition (c) has not been complied with, can be said to be in accordance with law. Mere dishonour of a cheque would not raise to a cause of action unless the payee makes a demand in writing to the drawer of the cheque for the Appeal (Crl.) 10-12 of 2001

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NC: 2024:KHC:38869 payment and the drawer fails to make the payment of the said amount of money to the payee. The cheques had been issued by M/s Bhalla Techtran Industries Limited, through its Director Shri Amit Bhalla. The appellant had issued notice to said Shri Amti J. Bhalla, Director of M/s Bhalla Techtran Industries Limited. Notwithstanding the service of the notice, the amount in question was not paid. The object of issuing notice indicating the factum of dishonour of the cheques is to give an opportunity to the drawer to make payment within 15 days, so that it will not be necessary for the payee to proceed against in any criminal action, even though the bank dishonoured the cheques. It is Amit Bhalla, who had signed the cheques as the Director of M/s Bhalla Techtran Industries Ltd. When the notice was issued to said Shri Amit Bhalla, Director of M/s Bhalla Techtran Industries Ltd., it was incumbent upon Shri Bhalla to see that the payments are made within the stipulated period of 15 days. It is not disputed that Shri Bhalla has not signed the cheques, nor is it disputed that Shri Bhalla was not the Director of the company. Bearing in mind the object of issuance of such notice, it must be held that the notices cannot be construed in a narrow technical way without examining the substance of the matter. We really fail to understand as to why the judgment of this court in Bilakchand Gyanchand Co.,1999(5) SCC 693, will have no application. In that case also criminal proceedings had been initiated against A. Chinnaswami, who was the Managing Director of the company and the cheques in question had been signed by him. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court committed error in recording a finding that there was no notice to the drawer of the cheque, as required under Section 138 the Negotiable Instruments Act. In our opinion, after the cheques were dishonoured by

the bank the payee had served due notice and yet there was failure on the part of the accused to pay the money, who had signed the cheques, as the Director of the company. The impugned order of the High Court, therefore, is liable to be quashed."

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NC: 2024:KHC:38869 13.41. Referring to Rajaneesh Agarwal's case, he submits that notice issued to a drawer of the cheque who is the Director of the company is a notice issued to the company.

14. Shri. M.S. Ashwin Kumar, learned counsel for the Petitioner/Complainant in Connected Matter Crl.P. No. 463/2018 also adopts the submissions made by the learned counsel for the Petitioner in Crl.P. No. 9909/2017 and in addition would rely on the following Judgments and submits as under; 14.1. He relies on Expeditious Trial of Cases16 Under Sec. 138, NI Act 1881 more particularly Paragraph No. 24 thereof which is reproduced hereunder for easy reference:

> 24. The upshot of the above discussion leads us to the following conclusions:
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> 24.1. The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

(2021) 16 SCC 116

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NC: 2024:KHC:38869 24.2. Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

24.3. For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses. 24.4. We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.

24.5. The High Courts are requested to issue practice directions to the trial courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

24.6. The judgments of this Court in Adalat Prasad [Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338 :

> 2004 SCC (Cri) 1927] and Subramanium Sethuraman [Subramanium Sethuraman v. State of Maharashtra, (2004) 13 SCC 324 : 2005 SCC (Cri) 242] have interpreted the law correctly and we reiterate that there is no inherent power of trial courts to review or recall the issue of summons. This does not affect the power of the trial court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

24.7. Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters & Instruments [Meters & Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560 : (2018) 1 SCC (Civ) 405 : (2018) 1 SCC (Cri) 477] do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the trial courts to reconsider/recall summons in respect of complaints under Section 138 shall be

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NC: 2024:KHC:38869 considered by the Committee constituted by an order of this Court dated 10-3-2021 [Expeditious Trial of Cases Under Section 138 of NI Act 1881, In re, 2021 SCC OnLine SC 354].

24.8. All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject-matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee. 14.2. By relying on Expeditious trial's case, he submits that insofar as matters relating to offences under Section 138, are to be dealt with expeditiously, technicalities ought not to come in the way. The Trial court would not have any power to recall the order of issuance of summons and therefore, he submits that revisional court could not have under Section 397 recalled the issuance of summons and acquitted the accused.

14.3. He relies on the decision of Hon'ble Apex Court in Bhupesh Rathod -v- Dayashankar Prasad Chaurasia and another (Coram: 2 JJ)17, (2022) 2 SCC 355 | 2021 INSC 710

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NC: 2024:KHC:38869 more particularly para 21 and 25 thereof, which are reproduced hereunder for easy reference:

> 21. If we look at the format of the complaint which we have extracted aforesaid, it is quite apparent that the Managing Director has filed the complaint on behalf of the Company. There could be a format where the Company's name is described first, suing through the Managing Director but there cannot be a fundamental defect merely because the name of the Managing Director is stated first followed by the post held in the Company.

> 25. The description of the complainant with its full registered office address is given at the inception itself except that the Managing Director's name appears first as acting on behalf of the Company. The affidavit and the cross-examination in respect of the same during trial supports the finding that the complaint had been filed by the Managing Director on behalf of the Company. Thus, the format itself cannot be said to be defective though it may not be perfect. The body of the complaint need not be required to contain anything more in view of what has been set out at the inception coupled with the copy of the Board Resolution. There is no reason to otherwise annex a copy of the Board Resolution if the complaint was not being filed by the appellant on behalf of the Company.
>
> 14.4. By relying on Bhupesh Rathod's case, he submits that when a plaint is filed first giving the name of Managing Director followed by name of the company, the same cannot be said to be one not filed by the company, it does not matter whether name of the Managing Director
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> - 54 -

NC: 2024:KHC:38869 is shown first or the name of the company is shown first.

14.5. He relies on the decision of the Hon'ble Apex Court in S.V. Mazumdar and others -v- Gujarat State Fertilizer Co. Ltd. (Coram: 2 JJ)18, more particularly paras 8 to 11 thereof, which are reproduced hereunder for easy reference:

> 8. We find that the prayers before the courts below essentially were to drop the proceedings on the ground that the allegations would not constitute a foundation for action in terms of Section 141 of the Act. These questions have to be adjudicated at the trial. Whether a person is in charge of or is responsible to the company for conduct of business is to be adjudicated on the basis of materials to be placed by the parties. Sub-section (2) of Section 141 is a deeming provision which as noted supra operates in certain specified circumstances. Whether the requirements for the application of the deeming provision exist or not is again a matter for adjudication during trial. Similarly, whether the allegations contained are sufficient to attract culpability is a matter for adjudication at the trial.
>
> 9. Under the scheme of the Act, if the person committing an offence under Section 138 of the Act is a company; by application of Section 141 it is deemed that every person who is in charge of and responsible to the company for conduct of the business of the company as well as the company are guilty of the offence. A person who proves that the offence was committed without his knowledge or that he had exercised all due diligence is exempted from becoming liable by operation of the proviso to sub-section (1). The burden in this regard has to be discharged by the accused.

(2005) 4 SCC 173 | 2005 INSC 229

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NC: 2024:KHC:38869

10. The three categories of persons covered by Section 141 are as follows:

> (1) The company who committed the offence.
>
> (2) Everyone who was in charge of and was responsible for the business of the company.
>
> (3) Any other person who is a Director or a manager or a secretary or officer of the company with whose connivance or due to whose neglect the company has committed the offence.

11. Whether or not the evidence to be led would establish the accusations is a matter for trial. It needs no reiteration that proviso to sub-section (1) of Section 141 enables the accused to prove his innocence by discharging the burden which lies on him.

14.6. By relying on S.V. Mazumdar's case, he submits that if the person committing an offence under Section 138 is accompanied by application of Section 141, persons in charge of and responsible to the company for conduct of the business would be guilty of the offence. Thus, in the present case, the accused being the Managing Partner of the firm, being in charge of the day-to-day affairs is guilty of the offence on behalf of the Firm.

14.7. On the basis of the above, both Sri. Krishnamurthy Hasyagar and M.S. Ashwin

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NC: 2024:KHC:38869 Kumar submit that the above petitions have to be allowed, the order passed by the revisional court set-aside, the complaint restored to file with a direction to the trial court to expeditiously dispose off the matter considering that the complaints are of the year 2016. C. Submissions of Respondent

15. Sri. Ramesh Kulkarni., learned counsel appearing for Sri. V. Raghavendra, Respondent-Managing partner would submit that;

15.1. Raghavendra is only the Managing partner, the registered partnership firm has not been made as a party, the primary liability and responsibility of making payment of the money, even according to the complainant is that of the firm, when the firm is not brought on record as accused, there is no vicarious liability on part of the partner or Managing partner to make payment of the money, let alone criminal

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NC: 2024:KHC:38869 responsibility. His submission is that the notice issued is completely defective, no notice has been issued to the firm, the complaint has also been filed against the managing partner and not against the firm. This error goes to the root of the matter requiring the complaint to be dismissed.

15.2. The Magistrate ought not to have taken cognizance but ought to have dismissed the same at the time of sworn statement itself. When notice has not been issued to the firm, the question of Magistrate issuing summons in the matter where a firm is not a party is bad in law. The complaint filed thereafter without arraigning the firm as a party is not maintainable. This cannot be rectified either by way of amendment or by the Magistrate court or this court exercising powers under Section 319 of Cr.P.C.

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NC: 2024:KHC:38869 15.3. As regards the Judgments relied upon by the Petitioners, he submits that the Judgment relating to Section 319 are ones which are relating to criminal offences under the IPC and not under N.I. Act. Insofar as N.I. Act is concerned, there is specific requirement to arraign the firm and the partners responsible for day-to-day affairs of the firm as a party. The firm not being arraigned as party, the proceedings being quasi criminal in nature, the Revisional Court has rightly dismissed the complaint.

15.4. He relies on the decision of the Hon'ble Apex Court in the case of Rajendra Kumar Sitaram Pande and others vs Uttam and Anr (Coram: 2 JJ)19, more particularly Paragraph No. 6 which is produced hereunder for easy reference:

> AIR 1999 SC 1028 | 1999 INSC 58
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> - 59 -
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> NC: 2024:KHC:38869 "6 Discretion in the exercise of revisional jurisdiction should, therefore, be exercised within the four corners of Section 397, whenever there has been miscarriage of justice in whatever manner. Under sub-section (2) of Section 397, there is a prohibition to exercise revisional jurisdiction against any interlocutory order so that inquiry or trial may proceed without any delay. But the expression "interlocutory order" has not been defined in the Code. In Amar Nath v. State of Haryana [(1977) 4 SCC 137 : 1977 SCC (Cri) 585 : (1978) 1 SCR 222] this Court has held that the expression "interlocutory order" in Section 397(2) has been used in a restricted sense and not in a broad or artistic sense and merely denotes orders of purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the right of the parties cannot be said to be an "interlocutory order". In Madhu Limaye v.

State of Maharashtra [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : (1978) 1 SCR 749] a three-Judge Bench of this Court has held an order rejecting the plea of the accused on a point which when accepted will conclude the particular proceeding, cannot be held to be an interlocutory order. In V.C. Shukla v. State [1980 Supp SCC 92 : 1980 SCC (Cri) 695 : (1980) 2 SCR 380] this Court has held that the term "interlocutory order"

> used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi-final. This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same. The High Court, therefore, was not
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> - 60 -
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> NC: 2024:KHC:38869 justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in view of the bar under sub- section (2) of Section 397 of the Code."

15.5. By relying on Rajendra Kumar Sitaram Pande's case, he submits that whenever there is any miscarriage of justice, the powers under Section 379 can be exercised. The term 'interlocutory order' has to be given wide interpretation. The order issuing process is not purely interlocutory, and therefore there is no bar under Subsection (2) of Section 397 of Cr.P.C.

15.6. He relies upon the decision of the of the Hon'ble Apex Court in Aneeta Hada vs M/S Godfather Travels and Tours Pvt. Ltd. (Coram: 3 JJ)20 more particularly Paragraph Nos. 42, 43 and 44 thereof which are reproduced hereunder for easy reference:

> "42. We have referred to the aforesaid passages only to highlight that there has to be strict AIR 2012 SC 2795 | 2012 INSC 187
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> - 61 -
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> NC: 2024:KHC:38869 observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arraigned as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the section is of immense significance and, in its tentacle, it brings in the company as

well as the Director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the Directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context.In RBI v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424] it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in Deewan Singh v. Rajendra Pd. Ardevi [(2007) 10 SCC 528] and Sarabjit Rick Singh v. Union of India. 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.

43. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the

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NC: 2024:KHC:38869 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.

44. 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."

15.7. By referring to Aneeta Hada's case, he submits that without the company being arraigned as an accused, the proceedings cannot be initiated against the directors. 15.8. He relies upon the decision of the Hon'ble Apex Court in Himanshu vs B. Shivamurthy and

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NC: 2024:KHC:38869 Anr (Coram: 3 JJ)21 more particularly Paragraph Nos. 13 and 15 thereof which are reproduced hereunder for easy reference:

> "13. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. The complaint was lodged only against the appellant without arraigning the company as an accused.
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> 15. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused."

15.9. By referring to Himanshu's case, he reiterates that in the absence of company being arraigned as accused, complaint against the director is not maintainable.

15.10. He relies upon the decision of the Hon'ble Apex court in Dilip Hariramani vs Bank of Baroda (Coram: 2 JJ)22 more particularly Paragraph AIR 2019 SC 3052 | 2019 INSC 53 AIR 2022 SC 2258 | 2022 INSC 539

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NC: 2024:KHC:38869 Nos. 11, 12, 14 and 15 thereof which are produced hereunder for easy reference:

> "11. In the present case, we have reproduced the contents of the complaint and the deposition of PW-1. It is an admitted case of the respondent Bank that the appellant had not issued any of the three cheques, which had been dishonoured, in his personal capacity or otherwise as a partner. In the absence of any evidence led by the prosecution to show and establish that the appellant was in charge of and responsible for the conduct of the affairs of the firm, an expression interpreted by this Court in Girdhari Lal Gupta v. D.H. Mehta and Another to mean 'a person in overall control of the day-to- day business of the company or the firm', the conviction of the appellant

has to be set aside. The appellant cannot be convicted merely because he was a partner of the firm which had taken the loan or that he stood as a guarantor for such a loan. The Partnership Act, 1932 creates civil liability. Further, the guarantor's liability under the Indian Contract Act, 1872 is a civil liability. The appellant may have civil liability and may also be liable under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. However, vicarious liability in the criminal law in terms of Section 141 of the NI Act cannot be fastened because of the civil liability. Vicarious liability under sub-section (1) to Section 141 of the NI Act can be pinned when the person is in overall control of the day- to-day business of the company or firm. Vicarious liability under sub-section (2) to Section 141 of the NI Act can arise because of the director, manager, secretary, or other officer's personal conduct, functional or transactional role, notwithstanding that the person was not in overall control of the day-to-day business of the company when the offence was committed. Vicarious liability under

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NC: 2024:KHC:38869 sub-section (2) is attracted when the offence is committed with the consent, connivance, or is attributable to the neglect on the part of a director, manager, secretary, or other officer of the company.

12. The demand notice issued on 04th November 2015 by the Bank, through its Branch Manager, was served solely to Simaiya Hariramani, the authorised signatory of the Firm. The complaint dated 07th December 2015 under Section 138 of the NI Act before the Court of Judicial Magistrate, Balodabazar, Chhattisgarh, was made against Simaiya Hariramani and the appellant. Thus, in the present case, the Firm has not been made an accused or even summoned to be tried for the offence.

14. The provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the NI Act extends vicarious criminal liability to officers associated with the company or firm when one of the twin requirements of Section 141 has been satisfied, which person(s) then, by deeming fiction, is made vicariously liable and punished. However, such vicarious liability arises only when the company or firm commits the offence as the primary offender. This view has been subsequently followed in Sharad Kumar Sanghi v. Sangita Rane, Himanshu v. B. Shivamurthy and Another, and Hindustan Unilever Limited v. State of Madhya Pradesh. The exception carved out in Aneeta Hada (supra), which applies when there is a legal bar for prosecuting a company or a firm, is not felicitous for the present case. No such plea or assertion is made by the respondent.

> 15. Given the discussion above, we allow the present appeal and set aside the appellant's conviction under Section 138 read with Section 141 of the NI Act. The impugned judgment of the High Court confirming the conviction and
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> NC: 2024:KHC:38869 order of sentence passed by the Sessions Court, and the order of conviction passed by the Judicial Magistrate First Class are set aside. Bail bonds, if any, executed by the appellant shall be cancelled. The appellant is acquitted. However, there would be no order as to costs."

15.11. By relying on Hariramani's case, he submits that without the company or firm being made a party, proceedings cannot continue against the director or partner.

15.12. He relies upon the decision of this Court in Prabhavathi K.R. and Anr vs Lokesh23, more thereof which are reproduced hereunder for easy reference:

> "9. The main grounds urged by the learned counsel appearing for the petitioners-accused are that both the Courts below have grossly erred for having not appreciated the fact that, in the absence of the firm, being made a party, the complaint is not maintainable under Section 141 of Negotiable Instruments Act (herein after it is called as "NI Act" for short). It is his further submission that the conviction of the partners of the firm without making the company/firm is bad in law and want of compliance under Section 141 of NI Act is must. In order to Substantiate his said contention, he has relied upon the decision in the case of Aneeta Hada Vs. Godfather Travels and Tours (P) Ltd reported in (2012)5 SCC 661. It 2020 (2) AKR 362 | 2019:KHC:40018
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> - 67 -
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> NC: 2024:KHC:38869 is his further submission that there is no compliance of the provision of Section 138 of NI Act. In order to take the cognizance of the offence, the notice has to be served to the accused. But in the instant case, the notice has not been served to the accused and it has been sent to a wrong address. It is the specific case that the address mentioned in Ex.P3 legal notice and Ex.P4 clearly goes to show that the said notice has been sent to a wrong address.
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> 39. In that light as mandated under Section 141 of the NI Act, without making the firm as a party to the proceedings the vicarious liability cannot be fixed on the petitioners- accused. This aspect has not been properly considered by the Court below and have been swayed away by the contention of the complainant. Keeping in view the anatomy of the above said provision of law and analyzing the Section 141 of the NI Act and in view of the larger bench decision of the Hon'ble Apex Court in the case of Aneeta Hada (quoted supra) it is aptly applicable to the present facts of the

case. In that light without making the Company a party, the complaint is not maintainable. No doubt the other contentions which have been taken up by the accused has not rebutted the presumption drawn as contemplated under Section 139 of the Act is concerned it can be safely held that though the primary aspect has been proved to show that there exists a liability, the accused has admitted the signature on the cheque and then the burden shifts on to the accused to rebut the said presumption. But however, when the basic ingredients have not been established to take the cognizance of the case and they have not been proved as contemplated under the law, then under such circumstances not rebutting the presumption will not come to the aid of the complainant so as to take advantage. The trial Court as well as the first appellate Court has not applied their mind to Section 141 of the NI Act and has erroneously come to the wrong conclusion.

41. Keeping in view the above said facts and circumstances, I am of the considered opinion

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NC: 2024:KHC:38869 that the petitioner-accused has made out a case to interfere with the judgment of trial Court. In that light, petition is allowed and the judgment of LXXII Additional City Civil and Sessions Judge at Mayo Hall, Bengaluru in Criminal Appeal No.25180/2018 dated 17.01.2019 is set aside and consequently the judgment of conviction and order of sentence passed by LVII Additional Chief Metropolitan Magistrate, Mayo Hall unit, Bengaluru in C.C.No.53439/2015 dated 18.09.2018 is also set aside and the petitioners- accused have been acquitted of the charges levelled against them. The amount in deposit made by the accused is ordered to be refunded to them on proper identification and acknowledgment."

15.13. By relying on Prabhavathi's Judgment, his submission is that without making the firm a party, partners cannot be convicted. Without making the firm a party to the proceedings, vicarious liability cannot be fixed on the accused.

15.14. He relies upon the decision of the Hon'ble Gujarat High Court in Sanjaybhai Jamnadas Dharsandiya vs State of Gujarat24 more particularly Paragraph No. 10 which has been reproduced hereunder for easy reference:

(2022 CRI.L.J. 1627)

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NC: 2024:KHC:38869 "10. Thus the deeming provision under Section 141 of the Act applies to the Company and person responsible for the acts of the Company. Section 141 clarifies that the company would mean any body corporate and would include a firm and "directors", in relation to firm, would also means a partners in the firm.

> Section 141 clearly stipulates that the person which is a Company commits offence then certain categories of person as provided therein, as well as the Company would be deemed to be liable for the offences under Section 138 of the N.I. Act.

Explanation to Section 141 thus makes deeming fiction applicable in the case of partnership firm too, which gets included in the meaning of the Company for the purpose of Section 141 of the N.I. Act. The effect of the Section 141 is that Company is principal offender under Section 138 of the Act and remaining persons are made offender by virtue of legal fiction created by the legislature as per the Section. Thus actual offence should have been committed by the Company then alone the other categories of persons would become liable for the offences. The same legal fiction gets extended in the case of the firm, as offence would be primarily attributed to the firm and person thereafter, responsible for, the Firm would become liable for the offence. the deeming provision makes its imperative to join partnership firm as party being principal offender to the criminal proceedings under Section 138 of the N.I. Act read with Section 141 of the Act. Here in the present case though the name of the firm has been reflected in the cause title showing petitioner as partner of the firm, but the firm has not been separately, in individual capacity, made a party to the proceedings. The petitioner has been joined as a partner to the firm without impleading the firm in the criminal proceedings, which is not tenable."

15.15. By relying on Sanjaybhai Jamnadas Dharsandiya's decision, he submits that Section 141 of N.I. Act would be equally

 applicable to a partnership firm. The word 'company' would include partnership firm. The actual offence having been committed by the firm, legal notice would have to be issued to the firm, without doing so, the complaint is not maintainable.

15.16. He relies upon the decision of the Hon'ble Supreme Court in N. Harihara Krishnan vs J. Thomas25 more particularly Paragraph Nos. 6, 7, 8, 25, 26 and 27 thereof which has been produced hereunder for easy reference:

> 6. On 19-8-2015, Crl. MP No. 6771 of 2015 came to be filed in the abovementioned CC No. 2925 of 2012 by the respondent herein purporting to be an application under Section 319 of the Code of Criminal Procedure, 1973 (for short "CrPC") with prayer as follows:
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> "3. In the above circumstances, it is therefore prayed that this Hon'ble Court may be pleased to implead M/s Dakshin Granites (P) Ltd., No. 3-B, Ceebros Centre, 40, Montieth Road, Chennai - 600 008 as accused A-1, in CC No. 2925 of 2012 pending on the file of this Hon'ble Court and thus render justice."

7. According to the said application, it came to the notice of the respondent during the course of cross-examination of the appellant herein at the trial of CC No. 2925 of 2012 that the cheque in

question was drawn on the account of Dakshin and the appellant is only a signatory on behalf of AIR 2017 SC 4125 | 2017 INSC 830

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NC: 2024:KHC:38869 Dakshin in his capacity as a Director of Dakshin. The respondent had initially failed to lodge the complaint against Dakshin by inadvertence and hence the application.

8. The application was contested by the appellant. The learned Metropolitan Magistrate by his order dated 21-4- 2016 allowed the said application. The petitioner carried the matter in Criminal RC No. 774 of 2016 to the Madras High Court [N. Harihara Krishnan v. J. Thomas, 2016 SCC OnLine Mad 33596] unsuccessfully. Hence the instant SLP.

25. The question whether the respondent had sufficient cause for not filing the complaint against Dakshin within the period prescribed under the Act is not examined by either of the courts below. As rightly pointed out, the application, which is the subject-matter of the instant appeal purportedly filed invoking Section 319 CrPC, is only a device by which the respondent seeks to initiate prosecution against Dakshin beyond the period of limitation stipulated under the Act.

26. No doubt Section 142 authorises the court to condone the delay in appropriate cases. We find no reason to condone the delay. The justification advanced by the respondent that it is during the course of the trial, the respondent realised that the cheque in question was drawn on the account of Dakshin is a manifestly false statement. On the face of the cheque, it is clear that it was drawn on the account of Dakshin. Admittedly the respondent issued a notice contemplated under clause (b) of the proviso to Section 138 to Dakshin. The fact is recorded by the High Court. The relevant portion is already extracted in para 15.

27. The judgment under appeal is contrary to the language of the Act as expounded by this Court in Aneeta Hada (AIR 2012 SC 2795) (supra) and, therefore, cannot be sustained. The judgment is, accordingly, set aside. The appeal is allowed. In the circumstances, the costs is quantified at Rs.1,00,000/- (Rupees One Lakh Only) "

> 15.17. By relying on Harihara Krishnan's case, his submission is that Section 138 of the N.I. Act is
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> NC: 2024:KHC:38869 different from an offence under the Cr.P.C. All the requirements under Section 138 are required to be alleged and proved by the complainant, more so when there is a presumption, the complaint should contain all the necessary averments, without the averments being available, the proceedings would have to fail.

15.18. He relies upon the decision of the Hon'ble Bombay High Court in Srushti Developers vs Ramesh Rambhau Bidkar26 more particularly Paragraph Nos. 19, 20, 21 thereof, which are reproduced hereunder for easy reference:

"19. It would be necessary to advert to the facts of this case in brief. The notice in this case was not issued to the Firm. The Firm was not arraigned as an accused, when the complaint was filed. The Firm, being a principal offender, was a necessary party. Even on the date of the filing of the complaint as per Section 141 of the N.I. Act, the Firm was necessary party as a principal offender. Therefore, the submissions advanced by the learned advocate for the complainant that the amendment was intended to rectify the curable infirmity or defect, are not acceptable. It is AIR Online 2023 BOM 574

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NC: 2024:KHC:38869 submitted that there was no legal flaw or lacuna in the case and therefore, the contention of the accused that it is an attempt to fill up the lacuna is not tenable.

20. In my view, in this case, the ground put-forth to seek the amendment in the complaint is not at all tenable. On such a ground, the application for amendment cannot be allowed. The failure on the part of the complainant to issue notice to the Partnership Firm before filing the complaint and to arraign the Partnership Firm, being a principal accused in the complaint, is a legal flaw in this case. In view of the settled legal position in the catena of decisions, this lacuna or illegality cannot be allowed to be rectified. In the facts and circumstances, I am of the view that the judgment and order passed by the learned Additional Sessions Judge, Nagpur cannot be sustained. The impugned judgment and order is not in accordance with law. The writ petition, therefore, deserves to be allowed.

21. In the facts and circumstances, I am of the view that the judgment and order passed by the learned Additional Sessions Judge, Nagpur cannot be sustained. The impugned judgment and order is not in accordance with law. The writ petition, thereof, deserves to be allowed."

15.19. By relying on Srushti Developers' case, his submission is that in the vent of there being a failure to issue notice to a partnership firm before filing a complaint and failure to arraign the partnership firm as an accused being a principal accused, is a legal flaw which goes to the root of the matter and such a flaw, lacuna or irregularity cannot be allowed to be rectified.

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NC: 2024:KHC:38869 15.20. He submits that notice not being issued to a firm, the firm not being arraigned as party to the complaint, the firm being a necessary party, the application for

amendment to include the firm is not permissible.

15.21. He relies upon the decision of the Hon'ble Bombay High Court in Harikisan Vithaldasji Chandak vs Syed Mazaruddin Syed Shabuddin (Dead) by Lrs27 more particularly Paragraph Nos. 23, 24, 25 and 26 thereof which are reproduced hereunder for easy reference:

> "23. In view of the law laid down in the reported decisions considered hereinabove and the facts of the case on hand, I am of the view that the learned Magistrate has committed a patent illegality in granting the amendment application. By the proposed amendment, the complainants have stated that the Partners, being responsible for conduct of the day-to-day affairs and business of the firm are vicariously liable. It is seen that by the proposed amendment, a categorical statement has been made that the accused are the Partners of M/s. Ramdeobaba Developers and Builders. It is, therefore, apparent that the complainants were conscious of the fact that their transaction was with the AIR Online 2023 Bom 661
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> - 75 -
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> NC: 2024:KHC:38869 partnership firm. The cheque was issued from the account of the partnership firm. The cheque was signed by some of the Partners of the firm. The primary submission advanced on behalf of the accused persons, therefore, deserves acceptance. In this case, the prejudice or likely prejudice to the accused persons would be a secondary and insignificant aspect. In this case, it would not be necessary to go into the aspect of prejudice or likely prejudice to the accused persons by grant of the amendment. The primary question that needs to be considered and addressed would be the maintainability of the complaint in this form without joining the partnership firm being a principal accused in the arraign of the parties.
>
> 24. In view of the law laid down in the decisions considered above, I am of the view that the learned Magistrate was not right in granting the amendment. The learned Magistrate has failed to take into consideration this primary legal issue. The amendment application made by the complainants could not have been decided without addressing this issue. It has been held consistently that if a cheque is issued on behalf of the company or the partnership firm, then the company or the partnership firm in case of dishonour of cheque is the principal accused. It is held that in the absence of the company or the firm as an accused, the complaint against the directors or partners is not maintainable. It is held that considering the mandatory provisions of Section 138 of the N.I. Act and its scheme, the defect of this kind cannot be rectified subsequently by amending the complaint by adding the company or firm as an accused. All the earlier decisions have been considered by the Hon'ble Apex Court in the case of Pawan Kumar Goel (supra).
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> 25. In the facts and circumstances, in my view, the amendment application was not at all maintainable. There was a legal defect in the complaint itself. The defective

complaint could not have been amended by incorporating the

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NC: 2024:KHC:38869 facts set out in the application. The accused have admitted that they are the Partners of the firm. They have stated the reasons for giving intimation to the bank to stop the payment. In this case, the contention that certain important facts are undisputed at the behest of the accused and therefore, no prejudice would be caused to the accused by amending the complaint, cannot be entertained. The grant of the amendment in the backdrop of this flaw would be completely against the provisions of law.

26. In the facts and circumstances, I conclude that the learned Magistrate has granted the amendment without considering the basic legal flaw in the complaint. The legal flaw in the complaint, as stated above, is not a curable infirmity or defect. This defect cannot be allowed to be cured or rectified by granting the amendment. The grant of amendment would relate back to the date of dishonour of the cheque. Notice was not issued in this case to the partnership firm. The partnership firm has not been arraigned as an accused. Even in the amendment application, no prayer was made to add the partnership firm as an accused. In the facts and circumstances, I am of the view that the learned Magistrate was not right in granting the amendment. Therefore, the order passed by the learned Magistrate is required to be quashed and set aside."

15.22. By relying on Harikisan Vithaldasji Chandak's case he reiterates that by way of amendment the defective complaint cannot be rectified. The said defect is not a curable infirmity or defect. Notice not having been issued to the partnership firm and partnership

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NC: 2024:KHC:38869 firm not being arraigned as an accused, the partnership firm cannot be brought on record by way of an amendment.

15.23. On these grounds, he submits that the revisional court has by way of its order performed an act of justice. There would be no purpose which would be served by the Magistrate going on with the trial since the same would end in acquittal of the managing partner without the partnership firm being brought on record. Alternatively, he submits that even if there is no power under Subsection (2) of Section 397, at the most it can be said that the petition would have to be filed under Section 482 and in such a petition under Section 482, this Court would have to quash the proceedings. Thus, there would be no need of multiplicity of proceedings, this Court could in the present matter by taking into account the

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NC: 2024:KHC:38869 principles of law uphold the order passed by the revisional court.

15.24. On all the above grounds, he submits that the above petition is required to be dismissed.

16. Heard Sri. Krishnamurthy G. Hasyagar, learned counsel for the petitioner and Sri. Ramesh P. Kulkarni, learned counsel for the respondent in Crl.P. No.9909/2017 and Sri. M.S. Ashwin Kumar, learned counsel for the petitioner and Sri. Ramesh P. Kulkarni, learned counsel for the respondent in Crl.P. No.463/2018. Perused papers.

D. Points For Consideration

17. Having heard learned counsel for the parties, the points that would arise for consideration are:

1. Whether the Sessions Court could exercise review powers under Section 397 of Cr.P.C. in respect of order passed under Section 251 of Cr.P.C?

2. Whether an application under Section 251 Cr.P.C could also be treated as one of discharge in a summons case?

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NC: 2024:KHC:38869

3. Whether without issuance of notice to a partnership firm, whether registered or unregistered, criminal proceedings under Section 138 could be filed or would it be barred under Section 141 of N.I. Act?

4. Whether issuance of a notice to one of the partners would amount to service of a valid notice on the firm?

5. Whether separate notices or a single notice with separate demarcation of the firm and the partners is required under Section 138 of the N.I. Act leading to a presumption under Section 141 of N.I. Act?

6. In the event of partnership firm or the partner not being arraigned as an accused in a complaint filed under Section 138 of N.I. Act, can an application be filed by the applicant to arraign them as party accused by way of either amendment or by way of an application for impleading?

7. Whether Sections 138 to 141 of the N.I. Act are a complete Code by themselves or reference to the Partnership Act, can be made to attribute criminal liability on the firm and or the partners?

8. In the present case is the order passed by the Revisional Court required to be interfered with?

9. What Order?

18. I answer the above points as under:

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NC: 2024:KHC:38869

19. Answer To Point No.1: Whether the Sessions Court could exercise review powers under Section 397 of Cr.P.C. in respect of order passed under Section 251 of Cr.P.C?

And Answer To Point No.2: Whether an application under Section 251 of Cr.P.C could also be treated as one of discharge in a summons case? 19.1. The submission of Sri. Hasyagar, learned Counsel is that a revision under Section 397(2) of Cr.P.C. would not be maintainable in respect of an order passed on the application under Section 251 of Cr.P.C. His submission is that even Section 251 would not be applicable in a summons case where summons have been issued by the Magistrate to an accused. In this regard reliance has been placed on the decision in Everest Advertising (P) Ltd's case, to contend that once summons have been issued, the question of recalling the summons would not arise. Section 251 does not provide for

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NC: 2024:KHC:38869 discharge of the proceedings under section 138 of N.I. Act.

19.2. Section 251 of Cr.P.C is reproduced hereunder easy reference:

251. Substance of accusation to be stated.--

When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge. 19.3. In the present case admittedly, the proceedings have been initiated under Section 138 read with Section 141 of the N.I. Act, such a case is a summons case and not a warrant case. Upon a sworn statement being recorded, the Magistrate has issued notice to the Accused/Respondent. The criminal proceeding under Section 138 of N.I. Act is more akin to a quasi-criminal proceeding on account of dishonour of a cheque for various reasons including insufficiency of funds. The procedure which has been prescribed for a summons case and that for

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NC: 2024:KHC:38869 warrant case are different under the erstwhile Cr.P.C. A private complaint having been filed under Section 200 of the Cr.P.C, the same would be taken into consideration on a sworn statement being recorded. If offences are made out, summons are issued, after the accused were to appear, the plea of the accused would be recorded and the matter proceeded with. 19.4. Section 251 only relates to the substance of accusation to be stated in a summons case and to record the plea of the accused as to whether he is guilty or not guilty and there would be no requirement to

frame a formal charge. Thus, what Section 251 only contemplates is the recordal of the plea and the same does not contemplate dismissal of the complaint at that stage. The emphasis under Section 251 is on the plea of the accused and not the case of the complainant. The case of the complainant was earlier considered at the time of issuance of

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NC: 2024:KHC:38869 summons after recordal of the sworn statement. Thus, insofar as a summons case is concerned, there is no provision made available for discharge of the accused, much less under section 251 of the Cr.P.C.

19.5. Section 239 which relates to discharge comes within Chapter-19 relating to trial of a warrant case before the Magistrate when cases have been instituted on a police report. There is no similar provision under Chapter-20 which relates to trial of summons cases by the Magistrates.

19.6. There is no order which can be passed under Section 251 of the Cr.P.C except for recordal of the plea of the accused. In the present case, an application has been filed by the accused for dismissal of the complaint, acquittal and discharge of the accused which came to be dismissed vide the order dated 06.05.2017. I am of the considered opinion that such an order

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NC: 2024:KHC:38869 could not have been passed by the Magistrate since no such power is available under Section

251. The Magistrate only ought to have recorded the plea of whether guilty or not guilty, 19.7. An order dismissing an application for acquittal/discharge having been made, the same was taken up in a Revision Petition under Section 397 of Cr.P.C in Criminal Revision Petitions No.566 and 567 of 2017, the Revisional Court allowed the revision petitions and thereby allowed the application under Section 251 of Cr.P.C discharging the accused from both the cases.

19.8. As held supra, there is no power under Section 251 of Cr.P.C for discharge, in fact, there is no particular provision in Chapter-XX of the Cr.P.C which deals with discharge in a summons cases. The concept of discharge is alien to a summons case. Both the Magistrate and the

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NC: 2024:KHC:38869 Revisional Court have fallen into error. The Magistrate passing an order on an application under section 251, dismissing the application for acquittal/discharge and the Revisional Court setting aside the said order and consequently discharging the accused. As held Supra, there being no power under Section 251 of Cr.P.C for acquittal or discharge and there being only power to record the plea, recordal of such plea cannot be said to be an interlocutory order which will come within the purview of Section 397 of Cr.P.C, amenable for revision. Merely because the Magistrate has committed an error in considering the application under Section 251 for acquittal

or discharge would not confer the power on the Magistrate under Section 251, thereby conferring the power on the Revisional Court.

19.9. As held by the Hon'ble Apex Court in Adalat Prasad's case, it is only at the stage of Section

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NC: 2024:KHC:38869 203 of Cr.P.C that a complaint in a summons case could be dismissed and not after summons have been issued in pursuance of Section 204 of Cr.P.C. The Judgment of the Hon'ble Apex Court in Adalat Prasad's case has been approved of and followed in Everest Advertising's case. The Hon'ble Apex Court in Adalat Prasad's case has also come to a conclusion that if any person is aggrieved, it is only under section 482 of Cr.P.C that proceedings for quashing could be filed in a summons case. Thus, again clearly and categorically laying down the law that once summons have been issued on a private complaint, there is no power for the Magistrate to acquit or discharge the accused in a summons case. Subsequently the Hon'ble Apex Court in Subramanian Sethuraman's case has also come to a conclusion that once a plea is recorded under Section 251, the further

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NC: 2024:KHC:38869 proceedings in terms of Chapter-XX would have to be followed and if any party were to be aggrieved, it is only the extraordinary remedy under Section 482 which would be available. 19.10. Now let us look at it from the point of view of Section 397. Section 397 of Cr.P.C is reproduced for easy reference:

> 397. Calling for records to exercise powers of revision.--
>
> (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.--All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section

398. (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

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NC: 2024:KHC:38869 19.11. Subsection (2) of Section 397 makes it clear that the powers of revision conferred under Subsection (1) shall not be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceedings. Subsection (1) of Section 397 provides for the High Court or any Sessions Judge to call for and examine the records to satisfy the correctness, legality or propriety of any finding, sentence or order recorded in the past, as also the regularity of the proceedings. These aspects relating to proceedings, Subsection (2) of Section 397 barring the power of revision in relation to an interlocutory order, what would have to be seen is, whether an order which could be passed under Section 251 is an interlocutory order or an intermediate order.

19.12. As referred to Supra, what can be done under Section 251 is only recording the plea of the accused. Recordal of plea is not a judicial order,

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NC: 2024:KHC:38869 therefore it could neither be classified as an interlocutory order or an intermediate order since there is no judicial order which can be passed under Section 251.

19.13. Thus, as held by the Hon'ble Apex Court in Revanna's case, framing of charges was held to be an interlocutory order and revision under Subsection (2) of Section 397 was not maintainable. When framing of the charge is an interlocutory order, the recordal of plea can also, at the most, be an interlocutory order, but as I have said, it is not a judicial order. 19.14. As submitted by Sri. M.S. Ashwin Kumar, learned counsel, the proceedings under Section 138 of the N.I. Act have to be dealt with expeditiously and in this regard, he has relied upon the decision of the Hon'ble Apex Court in Expeditious Trial of cases' case under Section 138. A perusal of the said directions issued by the Hon'ble Apex Court would

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NC: 2024:KHC:38869 indicate that the Courts ought not to delay the proceedings. In a proceeding under Section 138 by way of order passed in the present matter under Section 251 and subsequent Revision Petition, both the courts not having any Authority to pass such orders, much time has been wasted. The Hon'ble Apex Court has categorically directed the High Courts to issue practice direction to the Magistrate in terms of paragraph 24 of the said judgment. 19.15. In view of my reasoning above, I answer Point No.1 holding that neither the Magistrate had power under Section 251 to consider an application for acquittal or discharge filed by an accused in a summons case, nor would the Revisional Court have the power under Section 397 of Cr.P.C to review the Judgment of the Magistrate and consequently direct the discharge of the accused by allowing an application under Section 251 of Cr.P.C, when

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NC: 2024:KHC:38869 Section 251 of Cr.P.C does not provide for such acquittal or discharge.

19.16. I answer Point No.2 by holding that Section 251 of Cr.P.C only provides for recordal of the plea of the accused and does not provide for a judicial order of discharge to be passed in a summons case and as such is neither an interlocutory nor an intermediate order.

20. Answer to Point No.3: Whether without issuance of notice to a partnership firm, whether registered or unregistered, criminal proceedings under Section 138 could be filed or would it be barred under Section 141 of the N.I. Act?

20.1. Much has been argued on this aspect by both sides. The submission of Mr. Ramesh Kulkarni, learned counsel appearing for the Respondent- Accused is that, the individual has been arraigned as an accused, the Firm has not been arraigned as an accused. The Firm being registered under the Partnership Act, 1932, the cheque has been issued as regard an account

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NC: 2024:KHC:38869 maintained by the Firm, without making the Firm a party, no criminal proceedings could be continued. Apart therefrom, he submits that in the present case, there is not even a notice, which has been issued to the Firm, complying with the requirement of Section 138 of the N.I. Act, without such a notice, the question of filing a private complaint would not arise. 20.2. In this regard, relying upon the decisions in Aneeta Hada, Himanshu, Dilip Hariramani, Prabhavathi. K.R., Sanjaybhai Jamnadas Dharsandiya, Harihara Krishnan and Srushti Developers, he submitted that if a cheque were to be drawn on an account maintained by a company which were to be dishonoured, an offence under Section 138 of N.I. Act alleged, without making the company a party, no proceeding could be initiated. This he extrapolates to the partnership firm also and submits that without the partnership firm being

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NC: 2024:KHC:38869 arraigned as an accused, the partners or Managing Partner of the accused cannot be proceeded with as regards such an offence. 20.3. He additionally submits that in the present case, notice had been issued to the Managing Partner in person, no notice has been served on the Firm, therefore, the requirement of Section 141 not having been fulfilled, criminal proceedings could not have been initiated under Section 138 r/w Section 141 of the N.I. Act. 20.4. Sri. Hasyagar, learned counsel submitted that a distinction is to be drawn between the company and a partnership Firm. A company being a body incorporate, having a perpetual succession being an unanimated body having a separate identity would have to be arraigned as an accused in respect of an offence under Section 138. Whether the Directors are arraigned as accused or not depends on the facts and circumstances.

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NC: 2024:KHC:38869 20.5. Insofar as Partnership, he submitted that a partnership firm is an association of persons, an amalgamation of persons who have got together and are performing business activities. Each and every partner is an agent of the other, as also an agent of the Firm.

Each of them is both the principal and agent as regards the other and the Firm is also principal and agent as regards the partners.

20.6. Partnership firm not having a perpetual succession or not being recognized as a legal entity, whether the Firm is arraigned as an accused or not, if the persons who have acted on behalf of the Firm have been issued notice and arraigned as an accused, would be sufficient compliance under Section 138 and 141 of the N.I. Act. His submission in this regard is that a company and a Firm cannot be equated since they do not occupy the same position. The law applicable to a Firm under

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NC: 2024:KHC:38869 Section 138 r/w 141 would have to be different from that applied to a company. The Judgments which have been relied on are all relating to a company and not in specific relating to a partnership firm, therefore, he submits that those decisions would not be applicable. 20.7. He relies upon the decision in Radhakrishnan's case to contend that if a person has signed a cheque as Managing Partner of the Firm, it is categorically established that he is acting for and on behalf of the Firm which would make him responsible for dishonour of the cheque.

20.8. He has relied upon PNM Hospital case to contend that a person who is in-charge and responsible for the conduct of the business shall be deemed to be guilty of the offences under Section 138, thus, a Managing Partner being in- charge and responsible for the conduct of the business of the Firm, is amenable for

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NC: 2024:KHC:38869 jurisdiction under Section 138 and 141 of N.I. Act.

20.9. By relying on Ashuthosh's case, he submits that what is required to be looked into is Section 24 and Section 25 of Indian Partnership Act which has been reproduced hereunder for easy reference:

> 24. Effect of notice to acting partner -
>
> Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates, as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.
>
> 25. Liability of a partner for acts of the firm- Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

20.10. In terms of Section 25 every partner is jointly and severally liable for all actions of the Firm and partners, therefore, Raghavendra being the Managing Partner is responsible and liable for dishonour of the cheque.

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NC: 2024:KHC:38869 20.11. By relying on SMS Pharmaceutical's case, his submission is that a Joint Managing Director is responsible for the acts of the company. 20.12. By relying on Mainuddin Abdul Sattar Shaikh's case, his submission is that where a Managing Director or a Joint Managing Director have been arraigned as accused, there would be no necessity for specifically averring that they are responsible for day-to-day affairs of the company. Similarly, insofar as the Managing Partner of a partnership firm is concerned, there would be no such requirement. 20.13. By relying on Apparasamy's case, his submission is, it is for the partner or Director to establish that he is not in-charge of day-to-day affairs.

20.14. Thus, from the submissions made by both the counsels, it is seen that the submission of Sri. Ramesh Kulkarni, learned counsel for the

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NC: 2024:KHC:38869 Respondent as regards the company and its directors, whereas the submission made by Sri. Hasyagar is with reference to the Indian Partnership Act, 1932, more particularly, the liability of a partner vis-à-vis another partner, as also vis-à-vis the Firm.

20.15. In the present case it is not in dispute that the Respondent is the Managing Partner of the Firm. It is also not in dispute that he has been acting for and on behalf of the Firm with the complainants. He has executed all the agreements of sale, cancellation, etc., in favour of the complainants on behalf of the firm, he has also signed the cheque which has been drawn on the account of the Firm, thus all the actions taken by the Respondent-Accused has been on behalf of the Firm and insofar as the present transaction is concerned, no one apart from the Respondent has acted on behalf of the

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NC: 2024:KHC:38869 Firm. All correspondence which have been exchanged by the complainants with the Firm are with reference to the Respondent. The Respondent has held himself out to be the person in-charge of the affairs of the partnership firm, as afore indicated a partner is both principal and agent for the other partners, as also for the Firm, which in contradiction to a company is not recognized to be a legal entity having perpetual succession. Thus, I am of the considered opinion that extrapolation of the finding of the Hon'ble Apex Court in respect to a company and its directors holding that a company is required to be arraigned as an accused and only thereafter the directors can be arraigned as an accused would not be applicable to a partnership firm. 20.16. A partnership firm being an association of persons, each of the partners being responsible

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NC: 2024:KHC:38869 for the other jointly and severally. The liability of the partners is also not limited. A partner is a stakeholder in a partnership firm, whereas a director may or may not be a

shareholder in a company and even the liability of a shareholder is limited by the quantum of shares held by him.

20.17. Thus, when the matter is looked at purely from the purview of a partnership firm under Partnership Act 1932, a partner being an agent and principal with respect to a partnership firm, a proceeding can be initiated against the partner without the partnership firm being arraigned as a party.

20.18. However, in respect of a matter relating to dishonour of cheque and an offence under Section 138 of the N.I. Act, what would have to be looked at is Section 141 of the N.I. Act,

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NC: 2024:KHC:38869 which is reproduced hereunder for easy reference.

141. Offences by companies:-

> (1) If the person committing an offence under section 138 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:
>
> PROVIDED that nothing contained in this sub- section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:
>
> PROVIDED FURTHER that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.
>
> (2) Notwithstanding anything contained in sub-

section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

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NC: 2024:KHC:38869 20.19. A perusal of the explanation would indicate that for the purpose of Section 141, both a company and a partnership firm are treated on equal footing and it is made clear that without the partnership firm being arraigned as a party, the proceedings cannot continue against the partners. This is a peculiar situation which has arisen on account of the explanation to Section 141 of the N.I. Act.

20.20. In the background of the said explanation, the Hon'ble Apex Court has considered this aspect and come to a conclusion in Aneeta Hada's case, that a company is required to be arraigned as an accused, arraigning of the directors of the company is not sufficient. The decisions in Himanshu and Dilip Hariramani's case also deal with a company. Since it is a principle of vicarious liability, it will

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NC: 2024:KHC:38869 make a director or a partner liable in a proceeding under Section 138 of the N.I. Act. 20.21. When a company and a firm are equated and deemed to be the same in terms of explanation to Section 141 of the N.I. Act. The decision of the Hon'ble Apex Court in Aneeta Hada's case, though rendered with respect to a company, would be equally applicable to a partnership firm, thus requiring the firm to be arraigned as a party.

20.22. The decision in Aneeta Hada's case being that of a Constitutional Bench, the decision relied upon by the petitioner in Ashapura Minechem's case would not be applicable to the present case. The Hon'ble Apex Court in Ashapura's case was of the opinion that the issuance of notice to the partner of a partnership firm would be sufficient compliance. However, the Constitutional Bench in Aneeta

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NC: 2024:KHC:38869 Hada's case has come to a conclusion that the firm and the partner are to be separately arraigned as separate parties.

20.23. The above position emerges out of the explanation to Section 141, since the said explanation creates a specific requirement for the purpose of the said provision. By virtue of the said explanation, a company and a partnership firm have been treated to be one and the same for the purpose of Section 141. It is this explanation which has been interpreted by the Hon'ble Apex Court in various cases cited supra to come to a conclusion that without a firm being made a party, proceedings cannot continue against a partner.

20.24. There may be a requirement for the legislature to have a relook at this explanation to Section 141 of N.I. Act in juxtaposition to the Indian Partnership Act 1932, so as to bring about a

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NC: 2024:KHC:38869 harmonious construction of both the statutes. Section 25 of the Partnership Act would have to be given its due meaning in Section 141 of the N.I. Act. Since a partnership firm is not a body incorporate and cannot be regarded on the same footing as a company. A request is made to the Law Commission of India to have a relook at Section 141 in light of the provisions of the Indian Partnership Act, 1932. 20.25. The law however being what it is, the explanation equating a company to a partnership firm which has been interpreted by the Hon'ble Apex Court in various decisions cited supra, I answer point No.3 by holding that without issuance of a notice to a partnership firm specifically, criminal proceedings under Section 138 would not be maintainable and would be barred on account of the explanation to Section 141 of the N.I. Act.

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NC: 2024:KHC:38869

21. Answer To Point No. 4: Whether issuance of a notice to one of the partners would amount to service of a valid notice on the firm? 21.1. In view of the discussion to point No.3 supra, it is categorically seen that a separate and distinct notice is required to be issued to a partnership firm. Though a partner would be an agent as also a principal with respect to the partnership firm in terms of Section 25 of the Partnership Act, 1932, in so far as the Negotiable Instruments Act is concerned, the proceedings being initiated under the said Act. Section 24 and Section 25 of the Partnership Act would have no bearing and it is the explanation to Section 141 which would have to be considered. If the same were to be so considered, it would require issuance of a separate notice to a firm, a notice to a partner of the firm would not amount to a notice on the firm.

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NC: 2024:KHC:38869 21.2. In view of the above, I answer point No.4 by holding that issuance of a notice to one of the partners, even if she were to be a Managing Partner, would not amount to a service of a valid notice on the firm as required by the explanation to Section 141 of the N.I. Act.

22. Answer To Point No.5: Whether separate notices or a single notice with separate demarcation of the firm and the partners is required under Section 138 of the N.I. Act leading to a presumption under Section 141 of N.I. Act? 22.1. In view of my answer to point Nos.3 and 4, it is clear that a separate notice has to be issued to the firm and separate notices have to be issued to the partners inasmuch as they have to be named in the notice so issued. That is to say, the partnership firm and all the partners could be named in one single notice or separate notices could be issued to each of them. 22.2. Whether notices are issued to all the partners or not, notice is required to be issued to the

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NC: 2024:KHC:38869 partnership firm and the persons whom the complainant were to indicate to be in charge of the day-to-day running of the firm. A notice to an individual partner or the managing partner would not suffice the requirement of Section 141 of the N.I. Act.

22.3. Hence, I answer point No.5 by holding that a single notice could be issued to the firm and the partners but however the firm has to be issued a notice. The decision in PNM Hospital's case was one where both the firm and the managing partner were arraigned as accused. The defence taken was that the other partners were not arraigned as an accused and the Hon'ble Apex Court in the said decision came to a conclusion that non-arraignment of the other partners is not fatal to the proceedings. More so, when the persons who had been arraigned as a party had not in the reply notice indicated that somebody

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NC: 2024:KHC:38869 else was in charge of the day-to-day affairs of the company and that the person who had been arraigned was not in charge of the day-to-day affairs. That decision would not help the Petitioners in the present case.

22.4. The decision in Ashuthosh's case has been dealt with supra, that decision was not one which was rendered under Section 138 or 141 of the Negotiable Instruments Act and as such would not assist the petitioners in any manner. The decision in SMS Pharmaceuticals' case was also one relating to a company and lays down the tests as regards the person in charge of the day-to-day affairs of the company, which again would not help the petitioners. 22.5. The decision in Ashapura Minechem Ltd's case was one where the notice had been issued to the partner of the firm for himself and on behalf of the firm. In the present case, notice

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NC: 2024:KHC:38869 has been issued to the respondent as managing partner of the firm. There is no usage of the words "on behalf of" the firm. Thus, the notice is issued only to the partner and not to the firm. As such, Ashapura's decision would not come to the rescue of the petitioner. 22.6. It is the decision of the Constitutional Bench in Aneeta Hada's case which will hold the field, requiring separate notices to be issued to the firm as also to the partners, even though in a single notice by demarcation of each of them. 22.7. Thus, I answer point No.5 by holding that separate notices to the firm and the partners or a single notice addressed to all of them is required under Section 138 of the Negotiable Instruments Act. If no notice is issued to the firm, no criminal proceedings can be initiated, against an individual partner or all the partners.

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NC: 2024:KHC:38869 Even if so initiated, those criminal proceedings would fail.

23. Answer To Point No. 6: In the event of the partnership firm or the partner not being arraigned as an accused in a complaint filed under Section 138 of N.I. Act, can an application be filed by the applicant to arraign them as party-accused by way of either amendment or by way of an application for impleading?

23.1. The submission of Sri. K.G. Hasyagar., learned counsel for the Petitioner is that, even if the firm had not been issued with a notice and/or the firm not made a party to the proceedings under Section 138 of the N.I. Act, an application could be filed by the applicant to arraign the firm as a party accused by filing an application for amendment and/or by impleading and in this regard, reliance has been placed on Brijendra Singh's case and Shanmugam's case.

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NC: 2024:KHC:38869 23.2. The contra submission of Sri. Ramesh Kulkarni, learned counsel for respondent is that no cognizance could have been taken by the Magistrate when no notice was issued to the firm and/or the firm not made a party and in this regard, his submission is that the said defect goes to the root of the matter and no application for impleading the firm as a party is maintainable. Reliance is placed on the decision in Srushti Developers and Harikisan Vithaldasji's cases.

23.3. Having perused all the judgments referred to above by both the parties, it is seen that Section 319 of the Cr.P.C. applied in Brijendra Singh's case was in respect of a criminal proceeding under the IPC and not under a proceeding under Section 138 read with 141 of the N.I. Act, that was a case where upon investigation, the report submitted by the

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NC: 2024:KHC:38869 investigating officer was that, there is someone else also who is guilty of the offence and in that background, Section 319 of the Cr.P.C. was invoked to arraign the said person who was initially not an accused, as an accused in the proceedings. That decision in my considered opinion would not apply as that relates to a general principle of criminal law and not to a special statute like the Negotiable Instruments Act, where a specific provision like section 141 exists.

23.4. The decision in Shanmugam's also refers to the decision in Anil Hada's case. Anil Hada's case has been overruled in Aneeta Hada's case. Therefore, the decision in Shanmugam's case would not be applicable and/or cannot be pressed into service. 23.5. Furthermore, in Shanmugam's case, Aneeta Hada's decision has been referred to which

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NC: 2024:KHC:38869 makes it imperative and mandatory that the firm is arraigned as a party. Thus, the non- arraignment of the firm in the complaint as also non-issuance of notice to the firm under Section 138 of the N.I. Act goes to the root of the matter. As held by the Hon'ble Bombay High Court in Srusti Developers case which specifically referred to the provision of Section 138 and 141 of

the NI Act, the partnership firm being the principal accused, if the firm were not to be made a party, the said legal flaw goes to the root of the matter and cannot be rectified, which has been reiterated by the Hon'ble Bombay High Court in Harikisan Vithaldasji 's case, where it is again held that a basic flaw cannot be rectified by way of an amendment or an impleading application. The complaint itself being defective, the said defect would enure to the benefit of the accused.

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NC: 2024:KHC:38869 23.6. Having considered the decisions of the Hon'ble Bombay High Court in detail, I am of the considered opinion that those decisions would apply to the present case also and the position of law as laid down in those decisions is that a legal flaw in a complaint or a defective complaint cannot be rectified by filing an amendment application or an impleading application, the defect going to the root of the matter is not curable by such an application. 23.7. Hence, I answer Point No. 6 by holding that in the event of a partnership firm or a partner not being arraigned as an accused in the complaint filed under Section 138 of the N.I. Act read with Section 141 of the N.I. Act, an application cannot be filed by the applicant to arraign the partnership firm or a partner not so arraigned by way of an amendment or an impleading application.

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NC: 2024:KHC:38869

24. Answer To Point No.7: Whether Sections 138 to 141 of the N.I. Act are a complete Code by themselves or reference to the Partnership Act, can be made to attribute criminal liability on the firm and or the partners?

24.1. The submission of Sri. K.G. Hasyagar., learned counsel for the Petitioner by relying on Ashuthosh's case is that the principles of Section 24 and 25 of the Partnership Act, 1932 would have to be invoked insofar as a partnership firm and its partner are concerned. A notice to a partner who habitually acts in the business of the firm or any matter relating to the affairs of the firm, a notice to such partner would constitute a notice to the firm and as such he submits that the notice to the Managing Partner of the firm would constitute notice to the firm.

24.2. By relying on Ashapura's case, he had submitted that issuance of notice to the partner representing the firm would constitute valid

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NC: 2024:KHC:38869 notice and in that background he submits that the principles of Partnership Act, 1932 would have to also be applied to a proceeding under Section 138 and 141 of the N.I. Act. 24.3. Per contra, the submission of Sri. Ramesh Kulkarni, learned counsel for the Respondent is that the Negotiable Instruments Act being a complete Code in itself, the principle of vicarious liability being imputed under Section 141 of the N.I. Act, the question of imputing vicarious liability would arise only upon the prime accused namely the firm being a party to the said complaint and in this

regard he relies upon the decision of the Hon'ble Gujarat High Court in Sanjaybhai Jamnadas Dharsandiya's case to contend that even if the firm's name is reflected in the cause title, the firm is required to be arraigned as an accused separately, mere impleading of a

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NC: 2024:KHC:38869 partner in the complaint would not suffice the requirement of Section 141.

24.4. Reliance is also placed on the decision of the Hon'ble Apex Court in Harihara Krishnan's case when the Hon'ble Apex Court has held that there being a time limit in which a notice under Section 138 is required to be issued, if no notice were issued to the accused within that period of time, the right to file a complaint under Section 138 would be lost. Thus, after the lapse of the period prescribed under the Act, no application could be filed to implead the firm as a party-accused.

24.5. Having considered all the above decisions, it is clear that Sections 138 to 141 of the N.I. Act have been introduced as a special provision in case of dishonour of cheques whereunder the accused would have to be arraigned on the basis of who the account holder is, that is to

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NC: 2024:KHC:38869 say if the account holder is a company, it is a company which has to be arraigned and if the account holder is a partnership firm, it is a partnership firm which has to be arraigned as a party-accused after issuance of notice to such company or partnership firm as the case may be.

24.6. The deeming fiction which has been created under Section 141 is with reference to the primary accused making the persons responsible for running of the day-to-day affairs of the company and/or the firm also vicariously liable for the offence committed by the company or the firm mainly for the reason that the punishment contemplated under Section 138 is imprisonment, the company or a firm cannot be imprisoned and therefore the directors and/or the partners or any other person who is/are in charge of the day-to-day

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NC: 2024:KHC:38869 affairs of the company or the firm as the case may be would be vicariously liable for the dishonour of a cheque issued on the account of the company or the firm as the case may be on the said cheque being dishonoured for the reasons as stated under Section 138. 24.7. The deeming fiction being exclusive to offences under Section 138 by way of an explanation introduced in Section 141 of the N.I. Act, it is only on account of the said explanation that other than the primary accused, certain others could be made liable for an offence under Section 138. This deeming fiction is not available in the general criminal law but has been specifically introduced under the Negotiable Instruments Act for the reasons aforesaid. Thus, the general principles of criminal law for arraigning of a person on account of any wrongdoing of the said person

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NC: 2024:KHC:38869 during the course of trial would not be applicable insofar as the Negotiable Instruments Act is concerned.

24.8. The offence of dishonour becomes an offence only after the period of time prescribed under Section 138 has expired. That is to say, a notice has to be issued within the prescribed time to all the accused. The accused ought not to have complied with the demand made under the said notice within the time prescribed and it is only thereafter that a complaint under Section 138 can be filed.

24.9. The dishonour of the cheque by itself is not an offence, the dishonour of the cheque coupled with the remedial measures not being taken would constitute an offence both of which would have to be taken together. Thus, when no notice was issued to the firm, the firm had no opportunity to rectify or remedy the situation.

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NC: 2024:KHC:38869 Hence, the question of subsequently introducing the firm as a party would not arise. 24.10. Any proceedings under Section 138 against a company or a firm would have to be considered in terms of the explanation to Section 141 of the N.I. Act which would but require that the company or the firm who is the holder of the account is to be notified of the dishonour and subsequently on the said company or firm not remedying the dishonour, a complaint is required to be filed against the company or the firm.

24.11. Thus, it is clear that insofar as offences under the Negotiable Instruments Act relating to a dishonour of cheque under Section 138 is concerned, the said provisions are a complete code in themselves which are required to be referred to in order to invoke the criminal

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NC: 2024:KHC:38869 liability as also the vicarious liability under the Negotiable Instruments Act.

24.12. Thus, I answer Point No.7 by holding that Section 138 to 141 of the NI Act are a complete code by themselves and reference to Partnership Act cannot be made to attribute criminal offence on the firm and or the partners.

25. Answer to Point No. 8: In the present case is the order passed by the Revisional Court required to be interfered with?

25.1. I have come to a conclusion that there is no Revisional Power vested with the Revisional Court to set aside the order passed by the Magistrate and allow an application in Section 251 of the Cr.P.C. for the reason that Section 251 of the Cr.P.C. would not be applicable to a summons case. However, taking into consideration that the above matter has been pending for a long time and the effect of setting

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NC: 2024:KHC:38869 aside the order passed by the Revisional Court would only be for the Respondent to file a petition under Section 482 of the Cr.P.C. which is more than likely to succeed in view of the answers given to the points above. I am of the considered opinion, that no purpose would be served by quashing the order passed by the Revisional Court and permitting the respondent to file an application under Section 482 of the Cr.P.C.

25.2. Thus, though there are infirmities in the order, I am of the considered opinion that the exercise of power by this Court to quash the order passed by the Revisional Court would not be in the interest of justice.

25.3. The Revisional Courts are, however, cautioned to henceforth not exercise powers under Section 397 in respect of an application under Section 251 of the Cr.P.C. for discharge of an

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NC: 2024:KHC:38869 accused. Since there is no such discharge which is contemplated for a summons case, what Section 251 only provides for is 'recordal of plea', and therefore recordal of the plea would not entail discharge of the accused. Similarly, the Magistrates are also cautioned not to exercise powers under Section 251 of the CRPC to discharge an accused in a summons case. 25.4. Hence, I answer point No.8 by holding that though the order passed by the Revisional Court is required to be interfered with, in view of the peculiar circumstances of the case such interference would not be in the interest of justice.

26. Answer to Point No.9: What Order?

26.1. In view of my answers to all the points above, no grounds having been made out, the above petitions stand dismissed.

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NC: 2024:KHC:38869 26.2. The Registry is, directed to forward a copy of this order to the Law Commission of India with my request to consider the peculiarity of the firm in respect of a dishonour of cheque under Section 138 of the Negotiable Instruments Act taking into consideration that the firm is not a legal entity but is only an amalgamation of persons and in terms of Section 24 of the Partnership Act, notice to one partner would be notice to the firm and other partners and in terms of Section 25 of the Partnership Act every partner is liable jointly with all the other partners and also severally for all acts of the firm done while she is a partner thereby imposing an individual liability on the partner, the liability also being both joint and several. 26.3. The above judgment having been delivered in terms of the law as is there may be a requirement for the Law Commission to

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NC: 2024:KHC:38869 consider this aspect and make such suggestions as it deems fit. More so, for the reason that there are several cases which have been filed and pending as regards partnership firms, more so when a partnership firm is one of the modalities resorted to in the field of commerce.
26.4. The Registrar (General) is directed to place the judgment of the Hon'ble Supreme Court of India in Expeditious Trial of Cases under Section 138 of the N.I. Act reported in (2021) 16 SCC 116 before Hon'ble The Chief Justice of this Court to consider the issuance of practice directions to the Trial Court as held in the said judgment.

Sd/-

(SURAJ GOVINDARAJ) JUDGE LN/SR