

KASM600005122024



**IN THE COURT OF V ADDL. DISTRICT &
SESSIONS JUDGE, SHIVAMOGGA,
(SITTING AT SAGAR)**

PRESENT **Sri. Ravindra R. B.A.L., LL.M.**
V Addl.District & Sessions Judge,
Shivamogga. (Sitting at Sagar).

Dated this the 15th day of June, 2026

CRL.R.P.No.10050/2024

Petitioner : Mr. Mehfooz Khan
(Accused) S/o Mehmood Khan,
Stone export house Pvt Ltd, 409,
4th floor, Hub Town Viva Akuriti
Trade Point Shankar wadi Western
Express Highway Jogeshwari (East)
Mumbai – 400060.

(Rep. By Sri.Ganapathi M. Advocate)

V/s

Respondent : Sagar Ginger Traders,
(Complainant) Represented by its Partner
Syed Neeyaz Ahamed
S/o Syed Iqbal,
R/o Market Road, Sagar,

Shivamogga District,
Karnataka State.

(Absent)

ORDER

The Revision Petitioner has preferred this petition U/Sec.397 of Code of Criminal Procedure challenging the issuance of process against the revision petitioner and the order dated 02.07.2024 in CC No.133/2018 passed by the Prl. Civil Judge & JMFC, Sagar, wherein the trial court rejected the amendment application filed by the complaint by giving liberty to file fresh application.

2. In the course of this Judgment, the parties are referred as per their rank in the trial Court for the sake of convenience.

3. Facts of the present case necessary for disposal of this petition are that:

The Complainant filed a complaint before the trial Court U/Sec.200 of Cr.P.C against the revision petitioner /accused for the offence punishable U/Sec.138 of N.I.Act.

After recording of the sworn statement, the trial court vide its order dated 19.02.2018 took cognizance of the offence punishable under 138 of N.I Act and issued process against the accused/revision petitioner herein. After service of summons the revision petitioner appeared before the court and filed application before the trial court seeking dismissal of the complaint on the ground that the complainant has not made company a party to the complaint. The complainant filed an application for amendment of cause title of the complaint to interchange the character and position of the accused by replacing the company name in the place of the accused and insert the name of the accused as Managing Director of the Company. After hearing both the parties, the trial court rejected the said amendment application on the ground that, the cheque is issued by Stone Ispat Private Limited and the complainant is seeking to amend the name of the company to Stone Export Private Limited. However, the trial court granted liberty to the complainant to file fresh amendment application to rectify the error.

4. Being aggrieved by the said order passed by the trial Court, the accused/revision petitioner has approached this Court on the following **grounds**:

The trial court has recorded the findings and observations in the impugned order, which are totally contrary, and against the principles laid down not only by the statutory provisions of 141 of NI Act but also against the principles laid down by the apex court. The trial court failed to understand the provision of law that the company is a person in the eye of law. It is having separate entity from its members. It can be sued in its name. Hence, it was necessary to issue a notice to the company separately before filing complaint. As per Section 145 of N.I. Act, the company is principal offender. On above said grounds, the revision petitioner has sought this Court to set aside the issuance of process against the accused and order dated 02.07.2024 and dismiss the complaint.

5. After filing of the revision petition, notice was issued to the respondent/complainant. The notice issued to respondent was returned with the shara that the respondent

refused to receive the notice. Hence, respondent was placed absent.

6. The revision petition has not been filed within the stipulated time. Hence, the revision petitioner has filed an application to condone the delay of 1200 days in preferring the revision petition against impugned order.

7. Heard arguments of the counsel for the revision petitioner. Perused the records.

8. The counsel for the revision petitioner has relied upon the following citations;

a) Criminal Application (Apl) No.681 of 2013 Hon'ble High Court of Bombay (At:Nagpur) Harikisan Vithaldasji Chandak V/s Syed Mazaruddin Syed Shabuddin

b) Laws (SC) 1996 1 133 Hon'ble Supreme Court of India State of Madhya Pradesh V/s Hiralal

c) Laws (SC) 2015 2 91 Hon'ble Supreme Court of India (From Madhya Pradesh) Sharad Kumar Sanghi V/s Sangita Rane

d) Special Leave Petition (Crl.) Nos.11184-11185/2024 Hon'ble Supreme Court of India Kaveri Plastics V/s Mahdoom Bawa Bahrudeen Noorul

e)Laws (SC) 2012 4 31 Hon'ble Supreme Court of India Aneeta Hada V/s Godfather Travels and Tours Pvt.Ltd

f) Laws (SC) 2008 2 151 Hon'ble Supreme Court of India S.K.Alagh V/s State of Uttar Pradesh

9. Following points arise for consideration are as under:

- 1) Whether the application filed by the revision petitioner to condone the delay in filing the revision petition deserves to be allowed?
- 2) Whether the impugned orders dated 19.02.2018 and 02.07.2024 passed by the trial court in C.C.No.133/2018 calls for interference by this court as sought by the petitioner in the petition?
- 3) What order?

10. My finding on the above points is as under:

Point No.1 : In the Affirmative.

Point No.2: In the Negative

Point No.3 : As per final order
for the following-

REASONS

11. **Point No.1:** The revision petition has not been preferred on time. Hence, the revision petitioner has sought this Court to condone the delay of 1200 days in preferring the present revision petitioner. In the delay application, it has been contended that the revision petitioner was unwell and he was not medically fit to travel for long distance and thereafter his advocate suffered heart attack and hospitalized and doctor advised him complete bed rest. Thereafter, the wife of revision petitioner expired. Further, there was covid pandemic during 2020 and 2021 for a period of 730 days. Due to the aforesaid bonafide reasons, there is a delay of 1200 days in filing the revision petition.

12. The above reasons put forth by the revision petitioner appears to be bonafide. Further, technicalities

should not come in the way of dispensation of justice. Hence, in view of the above said circumstances, the delay in filing the present revision petition needs to be condoned. Hence, the application filed by the revision petitioner to condone the delay in filing the revision petition deserves to be allowed. Accordingly, this point is answered in **Affirmative**.

13. **Point No.2:-** The main contention of the revision petitioner is that, it is mandatory to serve notice on the company separately before filing complaint. The complainant has failed to make company a party to the complaint as accused. The trial court committed an error by taking cognizance of the offence punishable u/s 138 of N.I Act and issuing process against the accused/revision petitioner. Further, trial court committed an error by giving liberty to the complaint to file fresh amendment application to add the company as a party to the complaint.

14. Perusal of the records reveal that the demand notice dated 13.12.2017 was sent to Mehfooz Khan/revision petitioner in his capacity as Managing

Director of the Stone Export House Private Limited. In the instant case, the revision petitioner has affixed his signature on the cheque as the Managing Director of the Stone Ispat Private Limited. The said notice has been served on the revision petitioner. Admittedly, the revision petitioner is the Managing Director of the two companies i.e., Stone Export House Private Limited and Stone Ispat Private Limited. The revision petitioner being the Managing Director of both the companies has transacted with the complainant for purchase of Ginger. The revision petitioner has replied to the demand notice vide reply notice dated 24.12.2017. In the reply, the revision petitioner has admitted the issuance of the cheques and his signature. In the said reply notice, the revision petitioner has not taken a contention that the notice has been sent to wrong company. Even in the instant petition, the contention of the petitioner is that notice has not been served on the company and company is not made a party to the complaint. In grounds of the revision petition, the petitioner has not taken a contention that the notice was served on the wrong company. Perusal of the demand notice and complaint reveal that revision petitioner has

issued some cheques to the complaint on behalf of Stone Export House Private Limited and some cheques on behalf of Stone Ispat Private Limited. Further, perusal of the cheque reveal that the cheque was drawn on behalf of the company and signed by its director i.e, revision petitioner herein. The notice has been issued to the revision petitioner in his capacity as Managing Director of the Company. By considering the said circumstances, the trial court rejected the amendment application filed by the complainant by giving liberty to the complainant to file fresh amendment application to rectify the error.

15. At this juncture it is relevant to refer here the Judgment of our **Hon'ble High Court dated 03.09.2025 in Criminal Petition No.6013/2025 between Smt. Shaik Nowhera Vs M/s 1- Help Technology and Software Solutions private limited reported in NC: 2025:KHC:34483**. The facts in the said judgment are similar to the facts of the present case. In the said Judgment, the Hon'ble High Court has held as under:

“12. Section 141 of the N.I. Act, supplies the statutory basis on which liability may be visitable upon directors and

other persons connected with a company, once the conditions specified in that Section are satisfied. By contrast, the requirement imposed by clause (b) of Section 138 is procedural and specific: the legal notice must be sent to the drawer of the cheque. Clause (b) does not, by its terms, require that notice be sent separately to every person who might, by virtue of Section 141 of N.I.Act, be held liable in addition to the drawer. The statutory requirement is therefore directed at service on the drawer; identification of other potentially liable persons under Section 141 is a separate substantive question.

13. Viewed in light of the statutory scheme, a further consequence follows. Section 141 of the N.I. Act, enacts a legal fiction by which acts or omissions of specified office-bearers are attributable to the company for the purposes of the Act. Where, therefore, the drawer of a cheque is an office-bearer who is shown to have acted on behalf of the company, a notice lawfully addressed to and served upon that officer in his or her official capacity operates, in practical and legal effect, as a notice directed at the company as well. In short, service of the Section 138 notice on the

CEO and Managing Director, addressed and shown to be in their official capacity, will ordinarily satisfy the service requirement vis-à-vis the company.

14. Section 141(1) of N.I. Act, attributes vicarious or derivative liability to the persons enumerated therein for offences committed by the company; the provision thereby interlinks the responsibility of the corporate entity and of the individuals who act on its behalf. Applying this principle in the present context, a notice addressed to the CEO and MD (who signed the cheque and who are the persons contemplated by Section 141 of the N.I. Act) engages the statutory nexus between the company and its officers: notice to those officers is, by the scheme of the statute, notice that is capable of being treated as notice to the company for the limited purpose of invoking proceedings under Section 138 of the N.I. Act, in the present case on hand”.

16. Further, in the same Judgment, the Hon’ble High Court regarding the validity of service of notice under Section 138 (b) of N.I Act to the MD of the company has held as under:

“(i) *On service of notice under Section 138(b) of N.I. Act:*

The settled principle of law is that in a prosecution under Section 138 of the N.I. Act, the company, being the drawer of the cheque, is ordinarily a necessary party. However, once the Magistrate has taken cognizance of the offence, the proceedings cannot be quashed on a mere technical plea that the company has not been properly described in the cause title, unless it is demonstrably shown that no notice under Section 138(b) of N.I. Act, was served on the company. Service of statutory notice on the company is the sine qua non for initiation of proceedings, absence of such service goes to the root of jurisdiction and vitiates the complaint. **But where notice has been duly issued and served on the company through its CEO, MD or authorised signatory, the mere inversion or irregularity in the description of the accused cannot be a ground to terminate the prosecution.**

The requirement of clause (b) of Section 138 of N.I. Act is that notice must be addressed to the drawer of the cheque. Where the cheque is drawn by a company, the company is

the principal drawer. Yet, the cheque necessarily bears the signature of an officer of the company, such as its CEO, MD or authorised Director. In such circumstances, service of notice on the officer who signed the cheque in his or her official capacity constitutes valid notice on the company itself. Conversely, where the company has been duly served, such notice, by operation of Section 141, is deemed notice to the Directors and officers responsible for the conduct of its business. **Thus, there is a reciprocal principle: notice on the company is constructive notice on its Directors; and notice on the Directors, when they have acted as authorised signatories of the company, is deemed service on the company”.**

17. The another contention of the revision petitioner is that company is not made a party to the case. Hence, the complaint is not maintainable. Perusal of the cause title of the complaint reflects that the accused has been described as “Mehfooz Khan, Managing Director, Stone Export House Private Limited”. The complainant instead of describing the accused in the conventional form i.e, first mentioning the company’s name, has inverted the descrip-

tion, first mentioning the name of the Director and thereafter appending the designation and the company's name. As stated earlier, the complainant had filed application to rectify the irregularity in mentioning the company's name in proper order. Since, in the amendment application, the complainant had mentioned name of the company as Stone Export House Private Limited instead Stone Ispat Company, the trial court rejected the application by giving liberty to file fresh application to rectify the error. As per the above referred Judgment of our Hon'ble High Court, even if the company was not initially arraigned as an accused at the time of filing of the complaint, it can still be impleaded as an accused subsequently, even after cognizance has been taken by Magistrate. There is no infirmity in the said order passed by the trial court and does not call for interference by this court. Accordingly, point no.2 is answered in **Negative**.

18. **POINT No.3:-** In view of the above discussion, I proceed to pass the following-

ORDER

The application filed by the revision petitioner to condone the delay of 1200 days in preferring the revision petition is hereby allowed and delay is condoned.

The Revision Petition filed by the petitioner is hereby dismissed.

Consequently, the impugned order dated 19.02.2018 and 02.07.2024 passed by the trial court in CC.No.133/2018 is hereby confirmed.

Send a copy of this order forthwith to the trial Court.

*(Typed to my dictation by Stenographer directly on Computer, corrected by me and then pronounced in the open Court on this the **15th Day of June 2026**)*

(Ravindra. R)

V Addl.District & Sessions Judge,
Shivamogga. (Sitting at Sagar).

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