KASM600005092024

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.10047/2024

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)

O R D E R

The Revision Petitioner has preferred this petition U/Sec.397 of Code of Criminal Procedure to set aside the impugned order dated 02.07.2024 in CC.No.237/2019 passed by the Prl. Civil Judge & JMFC, Sagar, wherein the trial court has allowed the amendment application filed by the complainant and dismissed the application filed by the revision petitioner to dismiss the complaint.

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 complaint was registered as CC.No.237/2019. After service of summons, the revision petitioner/accused appeared before the court and filed application to dismiss the complaint on the ground that the company is not made a party in the complaint. The complainant filed application before the trial court seeking permission of the court to amend the cause title of the complaint by showing the name of the company in a proper order in the complaint. The complainant filed objections to the application filed by the revision petitioner for dismissal of complaint. The revision petitioner, filed objections to the amendment application filed by the complainant. After hearing both the parties, the trial court vide its order dated 02.07.2024 allowed the amendment application filed by the complainant and dismissed the application filed by the revision petitioner for dismissal of complaint.

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 has also gone against the provision of law, where no amendment is allowed in criminal proceeding by amendment which prejudices the accused. The trial court erred in allowing the complainant to carry out the amendment, in spite of defective complaint, which is contrary to the law and against the jurisprudence of the criminal law. 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. The trial court failed to understand that, the amendment which results in prejudice to the other side cannot be allowed. On above said grounds, the revision petitioner has sought this Court to set aside the impugned order of the trial Court dated 02.07.2024 and dismiss the complaint.

5. After filing of the 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. Heard arguments of the counsel for the petitioner. Perused the records.

7. 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

8. Following points arise for consideration are as under:

1) Whether the impugned order dated 02.07.2024 passed by the trial court in C.C.No.237/2019 calls for interference by this court as sought by the petitioner in the petition?

2) What order?

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

Point No.1 : In the Negative.

Point No.2 : As per final order for the following-

REASONS

10. **Point No.1:** The main contention of the revision petitioner is that there no provision in the code of criminal procedure to amend the complaint. The trial court erred in

allowing the amendment application to amend the complaint to add company as accused in the complaint. Further, it is contended that, it is mandatory to serve notice on the company separately before filing complaint. The trial went against the provision of law by allowing the amendment application filed by the complainant.

11. Perusal of the records reveal that the demand notice dated 18.09.2018 was sent to Mehfooz Khan/revision petitioner in his capacity as Managing Director of the Company. The notice was not sent to the revision petitioner in his individual capacity. 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.

12. 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".

13. 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**".

14. Even in the instant case, the notice was served on revision petitioner in his capacity as Managing Director of the Company. The cheque has been signed by the revision petitioner as Managing Director of the Company. 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.

15. 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 as “Stone Export House Private Limited represented by its Managing Director”, has inverted the description, first mentioning the name of the Director and thereafter appending the designation and the company’s name. Such a mode of description, though somewhat irregular, does not alter the substance of the pleading. It still conveys in unambiguous terms that the complaint is directed against the company, with reference to its M.D.

16. In the above referred Judgment of the Hon’ble High Court, the complainant had first mentioned name of the Director and thereafter mentioned the name of the company. The Hon’ble High Court has held that, ***“the***

cause title, when read as a whole, clearly established that the company is very much impleaded as an accused. The only discernible defect is that the Director who signed the cheques has not been separately arrayed as accused no.2, alongside the company. Such an omission is not of a nature that renders the proceedings void ab initio; rather, it is a curable defect that can be remedied during the course of proceedings".

17. In the instant case, the complainant filed application to cure the defects in arraignment of the accused. The trial court allowed the application and permitted to cure the defects in arraignment of the accused. The said amendment will not cause any prejudice to the accused. The contention of the revision petitioner that the company is not made a part at all is, far too hypertechnical and cannot be accepted.

18. Further, in the said Judgment, the Hon'ble High Court has also referred the Judgment of the Hon'ble Supreme Court in **Aneetha Hada Vs Godfather Travels & Tours (P) Limited and Himanshu Vs B Shivamurthy**

and another. By referring the said Judgments, our Hon’ble High Court has held as under:

“(iv) The Hon’ble Apex Court, in the case of ***Aneetha Hada .vs. Godfather Travels & Tours (P) Limited2***, has categorically laid down the principle that arraigning of the company as an accused is a mandatory requirement for maintaining prosecution under Section 141 of the Negotiable Instruments Act, 1881. In the said judgment, the Apex Court drew a clear distinction between two situations: (i) cases where the company itself is not made an accused at all, and (ii) cases where the company has indeed been arrayed as an accused but, owing to a legal bar, no proceedings could be continued against it. The Court held that the prosecution of the company is a *sine qua non* for prosecuting the persons who fall within the second and third categories, namely Directors, Officers, or other persons responsible for the conduct of the business of the company. It was in this background that the Apex Court concluded that for a valid prosecution under Section 141 of the N.I. Act, the company must necessarily be impleaded as an accused. In arriving at this conclusion, the

Court expressly overruled the view taken in ***Sheoratan Agarwal and another .vs. State of M.P3*** and clarified that the ratio laid down in ***U.P.Pollution Control Board .vs. Modi Distillery4*** must be treated as confined to its own facts and cannot be generalized.

(v) Similarly, in ***Himanshu*** *(supra)*, the Hon'ble Apex Court reiterated the same position of law while dealing with the maintainability of a prosecution under Section 141 of the N.I. Act where the complaint was filed solely against a Director without arraigning the company as an accused. The Court reaffirmed that such prosecution is not maintainable in the absence of the company being made a party to the proceedings.

(vi) However, it is pertinent to note that neither of the aforesaid judgments rendered by the Hon'ble Apex Court have adverted to the issue of whether such a defect could be cured even after the Magistrate has taken cognizance of the offence. To illustrate, if the holder of a cheque issues a statutory demand notice under Section 138(b) of the N.I. Act to a Director in his capacity as the person who had issued the cheque on behalf of the company, such notice must necessarily be deemed to be a notice served upon the company as well. In such circumstances, the requirements under Section 138(b) of the N.I. Act stand substantially complied with. **Consequently, 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 the Magistrate.**

(vii) Conversely, in cases where the statutory demand notice under Section 138(b) of the N.I. Act is issued only to an individual in his personal capacity and not in his representative capacity as a Director, CEO, or authorized signatory of the company which had issued the cheque, the position of law would be different. In such cases, if a complaint is lodged against the individual alone and cognizance is taken by the Magistrate, the defect of non-impleadment of the company as an accused is incurable. The company cannot later be impleaded post cognizance, as the foundational requirement of statutory notice to the company would be absent, thereby vitiating the proceedings".

19. Even in the instant case, the statutory demand notice under section 138(b) of N.I Act is issued to the Managing Director of the company i.e., the revision petitioner herein, who had issued the cheque on behalf of the company. Hence, such notice must necessarily be deemed to be a notice served upon the company as well. 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. But in the instant case, in the cause title of the complaint, the complainant has inverted the description, first mentioning the name of the Director and thereafter appending the designation and the company’s name. In view of the aforesaid discussion, there is no infirmity in the impugned order passed by the trial court and does not call for interference by this court. Accordingly, point no.1 is answered in **Negative.**

20. **<u>POINT No.2</u>**:- In view of the above discussion, I proceed to pass the following-

ORDER

The Revision Petition filed by the petitioner is hereby dismissed.

Consequently, the impugned order dated 02.07.2024 passed by the trial court in CC.No.237/2019 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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