IN THE COURT OF MR. HARGURVARINDER SINGH JAGGI, ADDL. SESSIONS JUDGE (FTC– 01), SOUTH DISTRICT, SAKET COURTS, NEW DELHI

Cr. Rev No.:	333/2025
CNR No.:	DLST010109162025
Police Station:	Hauz Khas
u/Section:	138 of the NI Act 1881 438, 440 of the BNSS 2023

IN THE MATTER OF:

Small Farmers Agribusiness Consortium (SFAC) … Petitioner

Through – Mr. Jatin Julka, Advocate for the Petitioner.

v.

Suresh Kumar K.K. & Anr. … Respondents

Through – Mr. Rishab Mistry, Advocate for the Respondent No. 1.

Date of filing of petition:	**18.07.2025**
Date of reserving order:	**28.03.2026**
Date of pronouncement of order:	**25.04.2026**

ORDER
25.04.2026

1. Small Farmers Agribusiness Consortium (hereinafter referred to as the "petitioner") has invoked the revisionary jurisdiction of the Court by preferring a criminal revision petition under Section 438 read with Sections 440 and 441 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The petitioner has challenged the judgment dated 21.04.2025 (hereinafter referred to as the "impugned judgment") passed by the Court of Ms. Shraddha Tripathi, Judicial Magistrate First Class – 02, N.I. Act (SD), Saket Courts, New Delhi (Trial Court) in the complaint case titled as ***Small Farmers Agribusiness Consortium (SFAC) v. Suresh Kumar K.K. & Anr. – CT Case No. 463676/2016***.

2. The Trial Court *vide* the impugned judgment acquitted the accused persons/respondent Nos. 1 and 2, concluding that the complaint under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) was not maintainable against the partners since the primary drawer of the cheque, the partnership firm, M/s Rare Industries, had not been arraigned as an accused.

Factual Matrix

3. The petitioner society is a statutory body established by the Government of India to facilitate agribusiness ventures. The respondents approached the petitioner for venture capital assistance to set up a manufacturing unit. Accordingly, the petitioner sanctioned a loan of ₹5,11,000/- *vide* a sanction order dated 19.08.2010.

4. To discharge their liability, the respondents issued Cheque No. 123634 dated 31.01.2016 for an amount of ₹5,11,000/-, drawn on the account of M/s Rare Industries, a partnership firm. However, upon presentation, on 03.02.2016 the cheque was returned unpaid with the remarks "*Account closed/transferred to…*". The petitioner subsequently issued a legal demand notice on 18.02.2016 to the respondents. Due to non-payment, the petitioner filed a complaint under Section 138 read with Section 142 of the NI Act.

5. The respondents faced trial and admitted their signatures on the cheque but took the defense that the cheque was of 'Rare Industries', a partnership firm, and since the firm had not been arraigned as an accused, the case against them as individual partners was not maintainable.

6. The Trial Court, relying upon the Hon'ble Supreme Court's judgment in ***Dilip Hariramani v. Bank of Baroda 2022 INSC 539***, held that the vicarious liability under Section 141 of the NI Act requires the commission of the offence by the company or firm as the principal accused. Since the primary liability was against the firm and the legal demand notice was sent only to the partners without making the firm an accused, the Trial Court acquitted both respondents.

Submissions by the Counsel for Parties

7. Mr. Jatin Julka, learned counsel for the petitioner, submitted that though the Trial Court acquitted the accused persons in the complaint case by the impugned judgment, the petitioner has consciously

challenged the impugned order *via* revision petition because the same suffers from jurisdictional and material irregularity.

8. The learned counsel contended that the failure to formally implead the partnership firm M/s Rare Industries and address the legal notice to it separately was a purely procedural lapse arising out of the inadvertence and negligence of the erstwhile counsel. The legal notice was duly dispatched to the partners, the respondents herein, sufficiently intimating them of the dishonor.

9. Mr. Julka learned counsel for the petitioner further argued that under Section 141 of the NI Act, the respondents, being the partners in charge of the business affairs of M/s Rare Industries, are jointly and vicariously liable. The learned counsel prayed that an innocent litigant should not suffer due to the counsel's default, and an opportunity ought to have been afforded to cure the procedural defect rather than dismissing the complaint outright.

10. On the other hand, Mr. Rishab Mistry, learned counsel for the respondent, vehemently contended the arguments advanced by the learned counsel for the petitioner. The learned counsel submitted that the impugned judgment does not suffer from any impropriety as the same has been passed by the Trial Court after full blown trial.

11. The learned counsel for the respondent submitted that the present revision petition is an utter abuse of process of law. The learned counsel submitted that even though the respondent herein have multiple times offered to amicably settle the matter and the

respondents have even paid certain sum of money, which the petitioner has readily accepted, the petitioner still chooses to haggle the respondents by embroiling them in a false and frivolous case.

12. Mr. Mistry learned counsel for the respondent urged that the revision petition be dismissed with exemplary costs and the impugned judgment passed by the Trial Court be affirmed and upheld.

Legal Principles and Analysis

13. The core issue before this Court is whether a complaint under Section 138 of the NI Act is maintainable against the partners of a partnership firm when the firm itself has not been arraigned as an accused, nor issued a separate statutory notice.

14. While the Trial Court relied on Dilip Hariramani v. Bank of Baroda, the legal position regarding the prosecution of partners sans the partnership firm has been comprehensively settled by the recent judgment of the Hon'ble Supreme Court in ***Dhanasingh Prabhu v. Chandrasekar & Another 2025 INSC 831***.

15. In ***Dhanasingh Prabhu's case***, the Hon'ble Supreme Court specifically differentiated the legal status of a partnership firm from that of a registered company under the Companies Act. The Supreme Court observed that unlike a company, which is a separate juristic entity distinct from its shareholders or directors, a partnership firm has no independent corporate existence and is merely a compendious name for describing its partners.

16. Elaborating on the liability under Section 141 of the NI Act, the Apex Court held that while the inclusion of a firm within the meaning of "company" in the Explanation to Section 141 is a legislative device, it does not elevate a firm to a distinct legal persona separate from its partners. Therefore, when an offence is committed by a partnership firm, in substance, the offence is committed by the partners, and their liability is joint and several, not merely vicarious.

17. The Hon'ble Supreme Court of India conclusively held:

> *"...even in the absence of a partnership firm being proceeded against by the complainant by issuance of legal notice as mandated under Section 138 of the Act or being made an accused specifically in a complaint filed under Section 200 of CrPC... such a complaint is maintainable. The accused in such a case would in substance be the partners of the partnership firm along with the firm itself."*

18. The Supreme Court further ruled that notice issued to the partners of the firm can be construed as notice to the partnership firm itself, and Courts should grant permission to arraign the partnership firm as an accused to cure the defect, as it does not go to the root of the matter.

Decision

19. Applying the *dictum* of ***Dhanasingh Prabhu v. Chandrasekar & Another 2025 INSC 831*** to the present factual matrix, this Court finds that the Trial Court committed a patent illegality by dismissing the complaint solely on the technical ground of non-impleadment of the partnership firm. The respondents, being the partners who signed the

cheque and were managing the affairs of M/s Rare Industries, are jointly and severally liable. The statutory notice served upon the respondents is deemed to be sufficient notice to the partnership firm.

20. The lapse of not formally arraigning the firm is a curable defect, and the petitioner's substantive right to recover public funds cannot be defeated due to an inadvertent procedural omission by their erstwhile counsel.

21. In view of the aforesaid legal position, the impugned judgment dated 21.04.2025 passed by the Trial Court suffers from a fundamental error of law and cannot be sustained.

22. Accordingly, the criminal revision petition titled as ***Small Farmers Agribusiness Consortium v. Suresh Kumar K.K. & Anr. – Cr. Rev. No. 333/2025*** is hereby allowed. The impugned judgment dated 21.04.2025 passed by the Judicial Magistrate First Class – 02, N.I. Act (SD), Saket Courts in ***Small Farmers Agri Business Consortium (SFAC) v. Suresh Kumar K.K. & Anr. – CT Case No. 463676/2016*** is set aside.

23. The complaint is restored to its original number on the file of the Trial Court. The petitioner is granted permission to amend the complaint to formally arraign the partnership firm, M/s Rare Industries, as an accused. The Trial Court is directed to proceed with the adjudication of the complaint on merits in accordance with the law. **The parties are directed to appear before the Trial Court on 02.05.2026 at 1400 Hrs.**

24. Let the Trial Court Record (TCR) along with a certified copy of this judgment be transmitted to the Trial Court forthwith for information and compliance. The revision file be consigned to the record room only after due compliance as per applicable Rules.

Hargurvarinder Singh jaggi

Digitally signed by Hargurvarinder Singh jaggi
Date: 2026.04.25 16:27:10 +0530

Pronounced in the open Court on April 25, 2026	**(Hargurvarinder Singh Jaggi)** **Addl. Sessions Judge (FTC-01)** **South District** **Saket Courts, New Delhi**

***<u>Note</u>**: This order comprises of **8** pages in total. The electronic signature certificate (digital signature) of the Presiding Officer has been appended on the last page of the electronic or digital copy (PDF) of this document.*