

ORDER BELOW EXH. 48

The present application is filed by the complainant to addition of the accused by way of this amendment application. The Ld. Advocate accused No. 1 and 2 filed there say at Exh. 52 and 53.

2. Heard learned counsel for the complainant and learned counsel for accused Nos. 2 and 3.

3. Perused the application and say. The present application is filed by the complainant seeking permission to amend the complaint under Section 138 of the Negotiable Instruments Act, 1881, by impleading an additional accused, who is stated to be a partner of the partnership firm. The ground urged is that at the time of filing of the complaint, the complainant had no knowledge regarding the existence of the said partner and that such fact came to light during the course of at the time of a deciding Section 143(A) application. The application is strongly opposed by the learned advocate for accused Nos. 2 and 3 on the ground that the plea of the accused has already been recorded and the matter has proceeded to the stage of evidence. It is submitted that at this advanced stage, the complainant cannot be permitted to add a new accused, as the same would amount to filling lacunae in the complainant case and would cause serious prejudice to the accused. Upon consideration of the rival submissions, it is necessary to examine the legal framework governing complainant under Section 138 of the Negotiable Instruments Act. The said provision creates a penal liability subject to strict compliance of statutory requirements, including issuance of demand notice within the prescribed period and filing of complaint within limitation.

4. Further, the liability of partners of a firm is Governed by Section 141 of the Negotiable Instruments Act, which provides that only those persons who were, at the time of commission of the offence, in charge of and responsible for the conduct of the business of the firm can be proceeded against. It is also well settled that specific averments to that effect must be made in the complaint at the inception.

5. In the present case, admittedly, the name of the proposed accused was not included in the complaint at the time of its institution. There are no foundational averments in the complaint demonstrating that the said person was in charge of and responsible for the conduct of the business of the firm at the relevant time. The explanation offered by the complainant that he had no knowledge of the existence of the said partner at the time of filing of the complaint cannot be accepted at this stage, particularly when the complaint has already progressed to the stage of recording of evidence. The complainant is expected to exercise due diligence before instituting criminal proceedings. More importantly, the offence under Section 138 of the Negotiable Instruments Act is complete only upon fulfillment of statutory conditions, including issuance of demand notice to the accused. In the present case, there is nothing on record to show that the statutory notice, as contemplated under law, was issued to the proposed accused. In absence of such compliance, no cause of action arises against the said person. It is a settled position of law that a person cannot be arraigned as an accused in a complaint under Section 138 of the Negotiable Instruments Act without compliance of mandatory statutory requirements. Allowing such implemented at a belated stage would defeat the very scheme of the Act. The contention of the complainant that the amendment is necessary for effective adjudication cannot be accepted in the facts of the present case. The proposed amendment is not merely a formal correction but

seeks to introduce a new accused, thereby altering the scope and nature of the complaint. It is also pertinent to note that the proceedings have already reached the stage of evidence after recording of plea. Permitting the complainant to implead a new accused at this stage would cause serious prejudice to the existing accused and would amount to permitting the complainant to fill up lacunae in the case. Criminal law cannot be set in motion in a casual or mechanical manner. The safeguards provided under the statute cannot be diluted by permitting such amendments at a belated stage. In view of the above discussion, this Court is of the considered opinion that the application filed by the complainant is devoid of merits and cannot be allowed. Hence, I passed the following order.

ORDER

Application is rejected.

Date : 27/04/2026

Place: Khed-Rajgurunagar

(S. V. Utkar)

Judicial Magistrate First Class

3rd Court, Khed-Rajrugunagar.