
(2025) 04 DEL CK 1039

In the Delhi High Court

Case No : Criminal Miscellaneous Petition No. 4042 Of 2023, Criminal Miscellaneous Application Nos. 15224 Of 2023 & 23514 Of 2024

Mehta Prasantbhai Mukundray Partner M/S Coal Corporation APPELLANT
Vs

M/s Magnifico Minerals Pvt Ltd RESPONDENT

Date of Decision : 16-04-2025

Acts Referred:

Code of Criminal Procedure Code, 1973 — Section 482
Negotiable Instruments Act, 1881 — Section 138, 141, 141(1), 141(2), 142

Citation : (2025) 04 DEL CK 1039

Hon'ble Judges : Amit Sharma, J

Bench : Single Bench

Advocate : Priank Adhyaru, Harsh Surti, Alok Tripathi

Final Decision : Dismissed

Judgement

Amit Sharma, J.

1. The present petition under Section 482 of the Code of Criminal Procedure has been filed seeking the following prayers: -

"In view of stated above, the Petitioners most respectfully prays to this Hon'ble Court may pleased to: -

(a) Quash the Complaint Case No 44402 of 2016 dated 05.07.2016 under Section 138 and Section 142 of the NI Act 1881 pending before the Learned Presiding Officer, Special Court (NI ACT) Rouze Avenue Court, New Delhi.

(b) Pass any other further order which may deem fit and proper by this Hon'ble Court in the interest of justice."

2. The present petition arises out of a complaint case being CC No. 44402/2016 filed by the respondent/complainant against the present petitioner/accused for the offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short, 'NI Act'). The respondent/

complainant is Private Limited Company registered under the Companies Act, 1956 and is engaged in business of import and trading of Coal. Petitioner has been arrayed as an accused, in the aforesaid complaint by the respondent, in his capacity as "Proprietor" of M/s Coal Corporation at Trilok Dham Temple Road, Kuber Nagar, Morbi Gujarat. It was alleged, in the said complaint, that the petitioner/accused in discharge of part of admitted legal liability/debt on account of business transactions issued subject cheque in favour of the respondent/complainant. However, when the said cheque was presented by the Complainant for encashment, it was returned unpaid vide return memo dated 30.05.2016 as the payment was stopped by the drawer, accused-petitioner.

3. Thereafter, the petitioner was served with statutory notice in terms of proviso to Section 138 of the NI Act, however, the subject cheque remained unpaid and hence, the aforesaid complaint case was instituted by the respondent/complainant against the petitioner in his capacity as proprietor of M/s Coal Corporation. Learned Metropolitan Magistrate vide order dated 05.07.2016 took cognizance of the offences alleged in the aforesaid complaint and issued summons against the petitioner. Hence, the present petition has been filed seeking quashing of the said complaint case.

4. Learned counsel for the petitioner has submitted that the latter is not the proprietor of M/s Coal Corporation as the same is a Registered Partnership Firm. Attention of this Court has been drawn towards the partnership deed of the said corporation and also, towards the Form-G from the Registrar of Firms wherein, the present petitioner is shown as 'Partner No. 4'. It is the case of the petitioner that the present complaint case is liable to be quashed on account of the fact that the respondent/complainant has not arrayed the said corporation/partnership firm, i.e., M/s Coal Corporation, as accused. In support of this contention, reliance has been placed on para 16 of Dilip Hariramani v. Bank of Baroda, 2022 SCC OnLine SC 577 which reads as under: -

"16. 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,¹⁷ Himanshu v. B. Shivamurthy,¹⁸ and Hindustan Unilever Limited v. State of Madhya Pradesh.¹⁹ The exception carved out in Aneeta Hada (supra),²⁰ 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."

(emphasis supplied)

5. Per contra, learned counsel for the respondent/complainant has submitted that it is the petitioner only who had issued the subject cheque on behalf of M/s Coal Corporation in discharge of their legal liability towards the complainant. It is further submitted that the legal demand notice in terms of proviso to Section 138 of the NI Act was sent to the present petitioner and in response to the same, the petitioner had replied wherein the aforesaid ground of the corporation/partnership not being arrayed as accused was not taken. It is further the case of the respondent that, in fact, the petitioner had replied to the said legal demand notice in the same capacity in which he was arrayed as accused in the complaint, i.e., Proprietor of M/s Coal Corporation. It is further submitted that the case is pending before the learned Trial Court for cross-examination of the complainant's witness and therefore, the complaint cannot be quashed, at this stage, solely on the aforesaid ground.

6. Heard learned counsel for the parties and perused the records.

7. In the complaint filed by the respondent/complainant, it is their case that the petitioner had issued the subject cheque in their favour on behalf of M/s Coal Corporation, which is proprietorship concern, as its proprietor in discharge of part of admitted legal liability/debt incurred on account of business transactions.

8. The ground that the primary offender, i.e., M/s Coal Corporation, is partnership concern and has not been impleaded as accused in the complaint filed by the respondent/complainant was not taken by the petitioner in his reply to the legal demand notice. In reply to the legal demand notice under proviso to Section 138 of the NI Act, the petitioner had responded in the same capacity in which he was arrayed as accused in the complaint, i.e., Proprietor of M/s Coal Corporation. The relevant portion of the reply to the said legal demand notice read as under: -

"Your Registered Notice Dt.6-5-2016 but served on 21th May issued on behalf of your client M/s Magnifico Minerals Pvt. Ltd., New Delhi to my client Mr. Prashantbhai Mehta, Pro. of M/s Coal Corporation, Morbi is placed in my hands to give you the following reply Notice as follow :"(emphasis supplied)

9. It is well settled law that a sole proprietor firm has no separate identity and the sole proprietor will be responsible for the same. The Hon'ble Supreme Court in Raghu Lakshminarayanan v. Fine Tubes, (2007) 5 SCC 103 had observed and held as under: -

"9. The description of the accused in the complaint petition is absolutely vague. A juristic person can be a company within the meaning of the provisions of the Companies Act, 1956 or a partnership within the meaning of the provisions of the Partnership Act, 1932 or an association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. A proprietary concern, however, stands absolutely on a different footing. A person may carry

on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Company in terms of the Explanation appended to Section 141 of the Negotiable Instruments Act, means any body corporate and includes a firm or other association of individuals. Director has been defined to mean in relation to a firm, a partner in the firm. Thus, whereas in relation to a company, incorporated and registered under the Companies Act, 1956 or any other statute, a person as a Director must come within the purview of the said description, so far as a firm is concerned, the same would carry the same meaning as contained in the Partnership Act."

(emphasis supplied)

10. Reliance placed by the learned counsel for the petitioner on Dilip Hariramani (supra) is misplaced as the facts of the said case are distinguishable from the present case. In Dilip Hariramani (supra), the subject cheque on behalf of a partnership firm was not issued by the appellant therein and during the course of trial in the said case, it had come on record that the prosecution was not able to show and establish that the appellant therein was in charge of and responsible for the conduct of the affairs of the said firm. Moreover, legal demand notice, in the said case, under NI Act was not issued to the appellant therein. The relevant portion of the observation made by the Hon'ble Supreme Court in Dilip Hariramani (supra) reads as under: -

"13. 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. Mehta¹¹ 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.¹² 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."

However, in the present case, the subject cheque has been issued by the present petitioner for M/s Coal Corporation and the statutory legal demand notice dated 03.06.2016 was also sent to the petitioner, the authorised signatory for M/s Coal Corporation, and the trial before the learned Trial Court is still pending. It is pertinent to note that nothing has been placed on record to show that the account from which the subject cheque was issued belong to a partnership firm. In absence of the same and in view of petitioner himself admitting in the reply to the legal demand notice being Proprietor of M/s Coal Corporation, no grounds for interference are made out at this stage. The petitioner will have ample opportunity to demonstrate that subject cheque was issued by partnership firm

as claimed during the course of trial.

11. In view of the aforesaid discussion and facts and circumstances of the present case, this Court is of the considered opinion that the complaint case instituted at the behest of the respondent/complainant cannot be quashed at this stage.

12. In view thereof, no grounds for quashing of the Complaint Case No. 44402 of 2016 titled as "M/s Magnifico Minerals Pvt. Ltd. v. Prashantbhai Mehta Prop M/s Coal Corporation" are made out.

13. The present petition is dismissed and disposed of accordingly along with all pending applications, if any.

14. Interim order dated 30.05.2023 stands vacated.

15. Learned Trial Court is at liberty to proceed with the case pending before it in accordance with law.

16. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.

17. Judgment be uploaded on the website of this Court forthwith.