2025 INSC 831

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(Arising out of Special Leave Petition (Criminal) No.5706 of 2024)

DHANASINGH PRABHU .... APPELLANT

VERSUS

CHANDRASEKAR & ANOTHER .... RESPONDENTS

J U D G M E N T

NAGARATHNA, J.

Leave granted.

Factual Background:

2. Appellant has preferred the present criminal appeal being aggrieved by the final judgment and order of the Madras High Court dated 26.02.2024, whereby the High Court allowed the Criminal Original Petition No.1533/2024 preferred by the respondents-accused and thereby quashed Complaint bearing STC No.1106/2022 filed by the appellant-complainant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter "the Act", for the sake of brevity) against the respondents.

2.1 By virtue of a partnership deed, respondent Nos.1 and 2 are partners in the partnership firm 'Mouriya Coirs' and are engaged in manufacturing and allied activities of coir products in Periyamamarthupatti, Thenkumarapalayam Post, Pollachi, Tamil Nadu.

2.2 From March 2019 to August 2019, the appellant, through banking channels as well as by cash, advanced a loan of Rs.21,00,000/- (Rupees Twenty-One Lakhs) to the respondents for business purposes. In order to discharge the debt, on 01.02.2021, respondent No.1-accused issued Cheque No.802077 for Rs. 21,00,000/-(Rupees Twenty-one Lakhs) in favour of the appellant-complainant from Account No.4393002100113025 maintained at Punjab National Bank, New Scheme Road, Pollachi, in the name of the partnership firm. Notably, the cheque issued in the name of the firm was signed only by respondent No.1. However, upon presentation of the said cheque on 02.02.2021, it was returned as dishonoured *vide* cheque return memo by noting that the partnership firm's account has been frozen.

2.3 As required under Section 138 of the Act, the appellant-complainant issued a statutory notice to the

respondents on 01.03.2021 demanding discharge of the legally enforceable debt within fifteen days. Subsequently on 23.04.2021, the appellant-complainant filed complaint bearing STC No. 1106/2022 before the Court of the Judicial Magistrate No.II, Pollachi (hereinafter "trial Court") contending that the respondents have committed offences under Section 138 read with Section 142 of the Act.

2.4 Our attention has been drawn to the uncontested fact that neither was the statutory notice issued to the partnership firm nor was the firm arraigned as an accused in the complaint. Instead, the statutory notice and the complaint mentioned the names of both the respondents who are the partners to the said firm.

2.5 During the pendency of the complaint, the respondents preferred Criminal Original Petition being Crl. O.P. No 1533/2024 under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") before the High Court to quash the complaint in STC No. 1106 of 2022 pending on the file of the trial Court. By the impugned order dated 26.02.2024, the High Court allowed the Criminal Original Petition and proceeded to quash the complaint in STC No.

1106 of 2022 on the ground that while the cheque was issued on behalf of the partnership firm, no statutory notice was issued to the partnership firm and it was also not arraigned as an accused in the complaint. Therefore, according to the High Court, as the rigours of Section 141 of the Act were not complied with, the complaint was not maintainable as against both the respondents, who were merely partners in the firm. Hence, the complaint was quashed.

2.6 Being aggrieved, the appellant/complainant has preferred this appeal.

Submissions:

3. Learned counsel for the appellant made the following submissions to differentiate a partnership firm from other entities with limited liability, such as a company, to support his contention that the partners of a partnership firm are liable to be prosecuted individually sans the partnership firm being arraigned as an accused or being issued notice under Section 138 of the Act or as required under Section 141 of the Act, in the following manner:

(i) Firstly, he submitted that unlike a company which is a separate legal entity from its shareholders, a partnership is only a compendious name for its partners. That the partners are jointly and severally liable for the profit and loss of the partnership firm and further, in a company, its shareholders have limited liability, whereas in a partnership firm, the partners have unlimited liability.

(ii) Secondly, under Section 42 of the Partnership Act, 1932 ('Partnership Act' for short), subject to contract between the partners, a partnership firm gets dissolved on events specified in sub-sections (a) to (d) of Section 42.

(iii) Thirdly, a partnership firm cannot on its own create or enter into any contract and that either those partner(s) authorized by all the partners or all the partners of the firm, must execute the contract. Further, subject to the partnership agreement, a partnership firm is made party to a contract only at the time of execution in order to make all the

partners and the firm jointly and severally liable to the contract.

(iv) Fourthly, though Order XXX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter "CPC") allow for suing of partners in the name of the firm, it is only a convenient method for referring to the persons who constitute the firm at the time of the accruing of the cause of action and that a decree in favour of or against a firm, in the name of the firm, has the same effect as a decree in favour of or against all the partners.

(v) Fifthly, unlike a limited liability partnership or a company, an ordinary partnership is not a juristic person as such, and that the real legal entity is the partners themselves. That in an agreement involving a partnership firm, all partners in their individual capacity ought to additionally be part of such agreement as parties and execute it in their individual capacity. This is because a partnership firm has no separate legal existence of its own.

3.1 On the above premise, learned counsel for the appellant sought for setting aside of the impugned order and restoration of the complaint on the file of the court of the learned Magistrate.

4. On the other hand, learned senior counsel for the respondents, Sri S. Nagamuthu submitted that Section 141(1) of the Act does not define the expression 'company', but Explanation (a) states that a "company" means any body corporate and includes a firm or other association of individuals. He submitted that the terms 'association of persons' or 'body of individuals' have a legal connotation and concern an entity having certain defined rights and duties as opposed to a group of persons or body of individuals in the literal sense. In this regard, the learned senior counsel submitted that a partnership firm is not an association of persons in the literal sense. He referred to Section 4 of the Partnership Act which defines the expression 'partnership' and the terms 'partners', 'firm', and 'firm name' to submit that the expression 'company' in section 141 of the Act includes a partnership firm by a legal fiction.

4.1 Learned senior counsel, Sri Nagamuthu, then referred to the expression 'person' in Section 141 of the Act and submitted that the said expression includes a company as well as a natural person. Extending the above argument, he submitted that the expression 'person' would also include a partnership firm, as Section 141 of the Act deems a partnership firm to be a company. That this deeming fiction is also evident in Explanation (b) to Section 141 of the Act, which defines the expression "director", in relation to a firm, to mean a partner in the firm.

4.2 In view of the above arguments, learned senior counsel submitted that a firm is deemed to be a company and if a firm commits an offence under Section 138 of the Act, that firm should also be added as an accused and found guilty. Further, the partners of a firm should be arraigned as accused along with the firm and such partners should be liable for punishment vicariously/constructively for the offence committed by the firm.

4.3 Learned senior counsel contended that in the absence of the firm being issued the statutory notice or arraigned as an accused in the complaint, the same was not maintainable

at all. Therefore, the High Court rightly quashed the complaint and there is no merit in this appeal.

Points for consideration:

5. On hearing the learned counsel for the appellant and the learned senior counsel for the respondent, the points that arise for our consideration revolve around the interpretation of the expressions, ***company*** and ***director*** in the Explanation to Section 141 of the Act in the context of the partners of a partnership firm. In other words, the questions are:

(i) "Whether the High Court was right in dismissing the complaint on the ground that the name of the partnership firm was not mentioned in the statutory notice issued by the appellant / complainant to the respondents under Section 138 of the Act and was also not arraigned as an accused in the complaint filed by the appellant / complainant?

(ii) What order?"

6. Before we proceed further, it is necessary to refer to the judgments in the following cases cited by the learned senior counsel, Sri S. Nagamuthu:

6.1 ***Aneeta Hada vs. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 ("Aneeta Hada")*** is a judgment of a three Judge Bench of this Court wherein the core question considered was, whether, in view of Section 141 of the Act, a company could have been made liable for prosecution without being impleaded as an accused, and whether a director of a company could have been prosecuted for offences punishable under the provisions of the Act without the company being arraigned as an accused. It is in the aforesaid context that after referring to several judgments of this Court, it was observed that the commission of an offence by a company is an express condition precedent to attract the vicarious liability of others such as directors or employees of a company. Thus, the words "as well as the company" appearing in the Section make it absolutely clear that when the company could be prosecuted then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and

proof thereof. This is because a company is a separate juristic person and thus the imperative for arraigning the company as an accused for maintaining the prosecution under Section 141 of the Act. It was therefore held that it is only when the company is held to be guilty of the offence under Section 138 read with Section 141 of the Act that the other categories of offenders could also be proceeded against on the touchstone of the principle of vicarious liability as the same has been mandated by Section 141 of the Act itself. It is necessary to note that the company in the aforesaid case was a private limited company incorporated under the provisions of the Companies Act, 1956.

6.2 In the said case, the three Judge Bench followed the ratio of the judgment in ***State of Madras vs. C.V. Parekh, (1970) 3 SCC 491*** and opined that the judgment in ***Sheoratan Agarwal vs. State of M.P., (1984) 4 SCC 352*** did not lay down the correct law and was therefore overruled. It was further observed that the decision of this Court in ***Anil Hada vs. Indian Acrylic Ltd., (2000) 1 SCC 1*** was also not the correct law insofar as it stated that the director or any other officer of a company can be prosecuted without

impleadment of the company. It was further observed that the judgment of this Court in ***U.P. Pollution Control Board vs. Modi Distillery, (1987) 3 SCC 684*** was also restricted to its own facts. In our view, the aforesaid decisions are not applicable to the present case inasmuch as the said decisions concerned the vicarious liability of the directors of a company when the company itself was not prosecuted against or made liable. We say so for the reason that the distinction between a company and a partnership firm has to be borne in mind while approaching these cases. Hence, the judgment of this Court in ***Aneeta Hada*** is of no assistance to the respondent herein.

6.3 In ***Dilip Hariramani vs. Bank of Baroda, 2022 SCC OnLine SC 579 ("Dilip Hariramani"),*** the issues raised were (i) whether the appellant therein, being a non-signatory to the dishonoured cheque, could have been convicted under Section 138 read with Section 141 of the Act on the basis that there was vicarious criminal liability of a partner; and (ii) whether the partner could be convicted and held to be vicariously liable when the partnership firm was not made an accused and therefore not tried for a primary or substantive

offence. The facts of the case are necessary to be discussed inasmuch as in this case the respondent-Bank of Baroda had granted term loan on cash credit facility to a partnership firm- M/s Global Packaging and the repayment of the loan by the firm was through its authorized signatory who had issued three cheques which were dishonoured on presentation due to insufficient funds. A demand notice was issued to the authorized signatory under Section 138 of the Act by the bank which later filed the complaint against the authorized signatory as well as the appellant therein but the firm was not made an accused. The authorized signatory of the cheques of the appellant therein was shown as a partner of the firm. It was contended that there was no assertion or statement in the complaint made to establish the vicarious liability of the appellant therein. Both the accused were convicted by the trial court and sentenced to imprisonment for six months and asked to pay compensation under Section 357 (3) of the CrPC and in default to suffer additional imprisonment for one month. The appeal preferred before the District and Sessions Court was allowed in part by reducing the sentence till the rising of the court and enhancing the

compensation amount to Rs. One Crore Twenty Lakhs with the stipulation that both the accused would suffer additional imprisonment of three months in case of failure to pay. The accused challenged the judgment before the Chhattisgarh High Court which dismissed the appeal and hence the appeal was preferred before this Court. This Court noted the following facts in the said case:

i. The Demand Notice issued on 04.11.2015 by the bank through its Bank Manager was served solely to the authorized signatory of the firm.

ii. The complaint dated 07.12.2015 under Section 138 of the Act was made against the authorized signatory as well as the appellant therein.

iii. The partnership firm was not made an accused or ever summoned to be tried for the offence.

6.4 After referring to ***Aneeta Hada,*** this Court considered Section 141 of the Act which imposes vicarious liability by a deeming fiction which presupposes and requires the commission of the offence by the company or firm. It was observed thus:

> "14. ... unless the company or firm has committed the offence as a principal accused, the person mentioned in sub-section (1) or (2) would not be liable and convicted as vicariously liable. Section 141 of the Act extends vicarious criminal liability to officers associated with the company or firm when the 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 commit the offence as a primary offender".
>
> (underlining by us)

In the above context, the appeal was allowed and the conviction of the appellant therein was set aside.

6.5 The reason as to why relief was granted by this Court in ***Dilip Hariramani*** was because it was observed that the partnership firm was not said to have committed the offence and was not made the principal accused. In such a circumstance, there could be no vicarious criminal liability to the officers associated with the company or firm. It is necessary to note that the complainant bank in the aforesaid case had not served the notice to the appellant therein but it was served only on the authorized signatory of the firm. Hence, relief was granted by this Court to the appellant therein. On the other hand, in the instant case, the notice was sent by the complainant to both the partners of the firm.

6.6 We are of the view that having regard to the distinct facts in the aforesaid case, relief was granted by this Court but the present case cannot be decided on the basis of the aforesaid judgment.

The three significant facts noted in the aforesaid judgment must be contrasted with the facts which arise in the present case, which are as under:

i. Notice of the complainant was not issued only to one partner or only to the authorized signatory of the partnership firm. It was issued to both partners in the present case.

ii. The cheque was issued in the name of partnership firm "Mouriya Coirs". However both the partners were issued notice by the complainant which was not so in the aforesaid case, although the partnership firm was not issued any statutory notice.

iii. The complaint has been made against both the partners even though the firm has not been made an accused in the complaint in the instant case.

6.7 In fact, in an earlier judgement ***G. Ramesh vs. Kanike Harish Kumar Ujwal, (2020) 17 SCC 239*** which is also a judgment of a two Judge Bench of this Court, it was noted from the complaint considered in the said case that the same contained a sufficient description of (i) nature of the partnership; (ii) the business which was being carried out; and (iii) role of each of the accused in the conduct of the business and specifically in relation to the transaction which took place with the complainant. In the averments, the accused had been referred to in the plural sense. This Court observed that Section 141 uses the expression "company" so as to include a firm or association of a persons. That the first accused in the said case was a partnership firm of which the remaining two accused were the partners which fact had been missed by the High Court and therefore the appeal was allowed.

Paragraphs 11 and 12 of the judgment read as under:

> "11. In terms of the explanation to Section 141, the expression "company" has been defined to mean any body corporate and to include a firm or other association of individuals. Sub-section (1) of Section 141 postulates that where an offence is committed under Section 138 by a company, the company as well as every person who, at the time when the offence was

> committed, was in charge of and was responsible to the company for the conduct of the business shall be deemed to be guilty of the offence.
>
> 12. In determining as to whether the requirements of the above provision have been fulfilled, it is necessary to bear in mind the principle of law that a partnership is a compendious expression to denote the partners who comprise of the firm. By the deeming fiction in Explanation (a) the expression company is defined to include a firm."

6.8 While holding that Section 141 is a deeming provision, it was also observed that a partnership is a compendious expression to denote the partners who comprise the firm which means that a firm without a reference to its partners has no juristic identity in law. By a deeming fiction, in Explanation (a) to Section 141, the expression "company" has been defined to include a firm. Since the High Court had lost sight of the fact that a partnership firm has to be read within the meaning of Section 141 which uses the expression "company", the appeal filed by the complainant therein was allowed.

6.9 On considering the aforesaid judgments, we observe that even if we have to come to the conclusion that the juristic entity i.e., the partnership firm is the primary

accused in the instant case it would be necessary for us to also state that such a juristic entity, namely, a partnership firm is not distinct from the partners who comprise the partnership. In other words, if the complainant had proceeded only against the partnership firm and not the partners it possibly could have been held that the partnership firm in the absence of its partners is not a complete juristic entity which can be recognised in law and therefore cannot be proceeded against. On the other hand, in the instant case the complainant has proceeded against the two partners. The complainant is aware of the fact that the cheque has been issued in the name of the partnership firm "Mouriya Coirs" and has been signed by one of the partners. The complainant has proceeded against the partners only without arraigning the partnership firm as an accused. It is necessary to reiterate that a partnership firm in the absence of its partners cannot at all be considered to be a juristic entity in law. On the other hand, the partners who form a partnership firm are personally liable in law along with the partnership firm. It is a case of joint and several liability and not vicarious liability as such. Therefore, if the complainant

herein has proceeded only against the partners and not against the partnership firm, we think it is not something which would go to the root of the matter so as to dismiss the complaint on that ground. Rather, opportunity could have been given to the complainant to implead the partnership firm also as an accused in the complaint even though no notice was sent specifically in the name of the partnership.

6.10 Alternatively, notice to the partners/accused could have been construed as notice to the partnership firm also. We say so for the reason that unlike a company which is a separate juristic entity from its directors thereof, a partnership firm comprises of its partners who are the persons directly liable on behalf of the partnership firm and by themselves. Therefore, a partnership firm, in the absence of the partners being arraigned as accused would not serve the purpose of the case and would be contrary to law. On the other hand, even in the absence of making a partnership firm an accused in the complaint, the partners being made the accused would be sufficient to make them liable inasmuch as the partnership firm without the partners is of no consequence and is not recognised in law. This is because in

the case of a partnership firm, the said juristic entity is always understood as a compendious term namely, the partnership firm along with its partners. Therefore, if the appellant-complainant had proceeded only against the partnership firm and not its partners then possibly the respondents would have been right in contending that the complaint was not maintainable but here the case is reversed. The complainant herein has not arraigned the firm but has arraigned the partners of the firm as accused and has also issued notice to them; therefore, we find that the defect, if any, is not significant or incurable in these circumstances. Permission is therefore to be granted to the complainant to arraign the partnership firm also as an accused in the complaint. Moreover, the cheque was issued in the name of the firm and signed by one of the partners, for and on behalf of the other also, therefore, the liability is deemed to be on both the partners of the firm.

Hence permission is given to arraign the partnership firm as an accused having regard to the peculiar characteristics of a partnership firm and a company on which aspect we will discuss further.

***Difference between a partnership firm and a company*:**

7. Predominantly a product of judge-made law, the law of partnership was first codified in India by the Indian Partnership Act, 1932. Prior to the coming in force of the Partnership Act, Chapter XI of the Indian Contract Act, 1872 (hereinafter 'ICA') defined a partnership, outlined the rights and obligations of partners and provided various provisions governing the operation and existence of partnerships. Section 239 of ICA defined a partnership as:

> "Partnership is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business and to share the profits thereof."

7.1 The Partnership Act was promulgated as it was considered expedient to define and amend the law relating to partnership. As it stands today, partnership law is codified in the Partnership Act and the Limited Liability Partnership Act, 2008. It is trite that these legislations, like all codifications of partnership law in common law, are based on the law of agency.

7.2 Section 4 of the Partnership Act defines a partnership, partner, firm and firm name as follows:

> **"4. Definition of "partnership", "partner", "firm" and "firm name".—**
>
> "Partnership" is the **relation between persons** who have agreed to share the profits of a business carried on by all or any of them **acting for all**.
>
> Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name".
>
> (underlining by us)

7.3 The definition in Section 4 of the Partnership Act is a departure from the erstwhile definition of partnership in Section 239 of ICA. A significant departure, *inter alia*, is the insertion of "*acting for all*" which brings in the concept of agency. An amendment of substantial import carried out by the Special Committee was with the intent to elucidate clearly the fundamental principle that the partners when carrying on the business of the firm are agents as well as principals.[1] Pollock & Mulla also notes the salient distinction between the meanings of 'partnership' and 'firm'. Tracing from Section 4, Pollock & Mulla clarifies that the word "partnership" is used throughout the Partnership Act in the defined sense of a relationship and where the partners are referred to

[1] Chapter 2, Pollock & Mulla, *The Indian Partnership Act*, 8th Edn. Lexis Nexis Butterworths.

collectively, the word "firm" is used. It is pertinent to recall that Explanation to Section 141 of the Act provides that for the purposes of that section, a company includes a firm or other association of individuals. Nevertheless, the distinction is crucial because it lends credence to the interpretation that reference in Section 141 is as much to the partners of the firm as it is to directors of a company.

7.4 According to Pollock and Mulla, 8th Edition, the definition of partnership in Section 4 of the Partnership Act contains three elements; (i) there must be an agreement entered into by all the persons concerned; (ii) the agreement must be to share the profits of a business; and (iii) the business must be carried on by all or any of the persons concerned, acting for all. All these elements must be present before a group of associates can be held to be partners. These three elements may appear to overlap, but they are nevertheless distinct. The third element shows that the persons of the group who conduct the business do so as agents for all the persons in the group and are therefore liable to account for all. This Court while elaborating the third essential element has held that the position of a partner in

the firm is thus not of a master and a servant or employer and employee which concept involves an element of subordination, but that of equality. It may be that a partner is being paid some remuneration for any special attention which he devotes but that would not involve any change of status or bring him within the definition of employee, *vide* ***Regional Director, Employees' State Insurance Corporation vs. Ramanuja Match Industries, (1985) 1 SCC 218, Paras 4 and 9.***

7.5 In Section 4 of the Partnership Act, it is clearly stated that persons who have entered into partnership with one another are individually called partners and collectively a firm and the name under which their business is carried out is called a firm name. Thus, while partnership is the relation between persons who have agreed to share profits of the business carried on by all or any of them acting for all, the persons are collectively called a firm and the name of the firm is the firm name which is a compendious or collective term of partnership of the partners. The said Section also clearly implies that a firm or partnership is not a legal entity, separate and distinct from its partners.

7.6 As already stated above, the firm is a compendious term not distinct of the individuals who compose the firm. In other words, partnership is merely a convenient name to carry out business by partners. Thus, a firm is not an entity of persons in law but is merely an association of individuals and firm name is only a collective name of those individuals who constitute the firm. In other words, the firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership.

Thus, a firm may not be a legal entity in the sense of a corporation or a company incorporated under the Companies Act, 1956 or 2013, but it is still an existing concern where business is done by a number of persons in partnership.

7.7 Insofar as the statutory definition of a company is concerned, the legislature has found it particularly cumbersome to provide a descriptive and inclusive definition. Perhaps this is why the Parliament in its wisdom defined 'company' in Section 2(2) of the Companies Act, 2013 ('Companies Act') not by enumerating the essential features of a company but "as a company incorporated under this Act or

under any previous company law".[2] Keeping aside the omnibus statutory definition, several jurists have attempted to outline a definition of a company for doctrinal and precedential analysis. Lindley, a Jurist and Judge defined a company in the following terms:

> "A company is an association of many persons who contribute money or monies worth to a common stock and employed in some trade or business and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute to it or to whom it pertains are members. The proportion of capital to which each member is entitled is his share. The shares are always transferable although the right to transfer is often more or less restricted."[3]

Section 9 of the Companies Act, 2013 provides as follows:

> **"9. Effect of registration**
>
> From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under

[2] Section 2(2), Companies Act, 2013
[3] N. Lindley, Lindley on Partnership (12th ed, Sweet & Maxwell, 2007)

> this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name."

7.8 While modern legislations and instruments have outlined and carved out more complex features, rights and obligations of a 'company', the fundamentals of Lindley's definition continue to hold ground. The salient distinctions between a company and a partnership, including the rights and obligations flowing therefrom which are fundamental to common law, as well as the relevant statutes promulgated by the Parliament could be discussed at this stage.

Separate Legal Personality:

7.9 A partnership firm, unlike a company registered under the Companies Act, does not possess a separate legal personality and the firm's name is only a compendious reference for describing its partners. This fundamental distinction between a firm and a company rests on the premise that the company is separate from its shareholders. In that context, the words of Lord Macnaghten in ***Salomon vs. Salomon & Co. Ltd., [1897] AC 22 (HL), ("Salomon")*** are instructive:

> "the company is at law a different person altogether from the subscribers.....; and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands receive the proceeds, the company is not in law, the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act."

7.10 This distinction does not, however, continue to hold true for a partnership firm. In the seminal case of ***Bacha F. Guzdar vs. CIT, (1954) 2 SCC 563***, this Court had an opportunity to briefly address this distinction between a partnership firm and a company, wherein it was observed thus:

> "13. It was argued that the position of shareholders in a company is analogous to that of partners inter se. This analogy is wholly inaccurate. Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. Such is, however, not the case of a company which stands as a separate juristic entity distinct from the shareholders."

7.11 The partnership name being only a compendious method of describing the partners, it stands to reason that a reference to the partners in their capacity as partners of the

firm will be sufficient to impute liability on the partners themselves, whereas directors of a company are made liable vicariously through the company, upon whom falls the primary liability. Thus, the partners and the partnership firm are one and the same. Unlike a company, a partnership firm has no independent corporate existence and has no distinct legal persona independent of its partners. Similarly, the partners of a firm are co-owners of the property of the firm unlike shareholders in a company who are not co-owners of the property of the company. This principle was also explained by the Calcutta High Court in ***Re: The Kondoli Tea Co. Ltd., (1886) ILR 13 Cal 43*** where the transferors of a tea estate claimed that they were eligible to claim exemption from payment of *ad valorem* duty because the transferee was a company in which they themselves were shareholders. Negativing this contention, it was held that the company was a separate person and the transfer of the tea estate was a conveyance and in substance, a transfer to another person.

7.12 Although the course of jurisprudential pronouncements led by the dictum of Privy Council in ***Bhagwanji Morarji Goculdas vs. Alembic Chemical Works***

Company Ltd., AIR 1948 PC 100 ("Bhagwanji Morarji Goculdas"), intermittently understood that Indian law – particularly, the Partnership Act – which has proceeded beyond English law and attributed some degree of personality to a partnership in accordance with the law in Scotland, a clarification was provided by this Court through its decision in ***Dulichand Laksminarayan vs. CIT, AIR 1956 SC 354 ("Dulichand")***, which settled the position. It was held therein that any treatment as a separate unit for purposes of accommodating mercantile practices and commercial convenience did not obliterate the fundamental principle in law that a partnership firm is not a legal person. When this Court acknowledged in ***Dulichand*** that Indian law had relaxed its rigid notions to extend limited personality to a firm, this Court referred to the gradual relaxation of procedure to facilitate commercial convenience. For instance, it was explained that merchants show a firm as a debtor to each partner for what is brought into the common stock and each partner is shown as a debtor to the firm for all that he takes out of that stock. As traditionally, under the common law, a firm, not being a legal entity, could not sue or be sued

in the firm name or sue or be sued by its own partner, for one cannot sue oneself, the rigid law of procedure was relaxed to give way to considerations of commercial convenience and a firm was permitted to sue or be sued in the firm name much like a corporate body. This Court further noted how Order XXX Rule 9 of the CPC allowed a firm to sue or be sued by another firm having some common partners or even to sue or be sued by one or more of its own partners, as if the firm is an entity distinct from its partners.

7.13 Similarly, it was explained that in taking partnership accounts and in administering partnership assets, the law has to some extent, adopted the mercantile view and the liabilities of the firm are regarded as the liabilities of the partners only in case they cannot be met and discharged by the firm out of its assets.

7.14 Most pertinent is that despite noting these relaxations in the rigid rules of procedure, this Court observed in ***Dulichand*** that '*a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership*'. Any relaxations, either aforementioned or not, borne out of commercial

convenience or otherwise, do not deviate from the settled position that the name of a partnership firm is a convenient manner of referring to its partners.

7.15 We need not further dilate in extenso on this subject than to simply revisit the following erudite words of Krishna Iyer, J. in ***CIT vs. R.M. Chidambaram Pillai, (1977) 1 SCC 431*** which also engage and follow this Court's view in ***Dulichand***:

> "**5.** First principles plus the bare text of the statute furnish the best guidelight to understanding the message and- meaning of the provisions of law. Thereafter, the sophisticated exercises in precedents and booklore. ***Here the first thing that we must grasp is that a firm is not a legal person even though it has some attributes of personality. Partnership is a certain relation between persons, the product of agreement to share the profits of a business. "Firm" is a collective noun, a compendious expression to designate an entity, not a person.*** In income tax law a firm is a unit of assessment, by special provisions, but is not a full person; which leads to the next step that since a contract of employment requires two distinct persons viz. the employer and the employee, there cannot be a contract of service, in strict law, between a firm and one of its partners. So that any agreement for remuneration of a partner for taking part in the conduct of the business must be regarded as portion of the profits being made over as a reward for the human capital brought in.

Section 13 of the Partnership Act brings into focus this basis of partnership business.

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16. The Indian law of partnership is substantially the same and the reference in counsel's submissions to the Scottish view of a firm being a legal entity is neither here nor there. Primarily our study must zero on the Indian Partnership Act and not borrow courage from foreign systems. In *Bhagwanji Morarji Gokuldas [AIR 1948 PC 100 : (1948) 18 Comp Cas 205, 209]* the Privy Council ruled that the Indian Partnership Act went beyond the English Partnership Act, 1890, the law in India attributing personality to a partnership being more in accordance with the law of Scotland. ***Even so, Sir John Beaumont, in that case, pointed out that the Indian Act did not make a firm a corporate body.*** Moreover, we are not persuaded by that ruling of the Privy Council, particularly since a pronouncement of this Court in *Dulichand* [*Dulichand Laksminarayan* v. *CIT*, AIR 1956 SC 354 : 1956 SCR 154 : (1956) 2 ITR 535] strikes a contrary note. We quote:

> "In some systems of law this separate personality of a firm apart from its members has received full and formal recognition as, for instance, in Scotland. That is, however, not the English common law conception of a firm. English lawyers do not recognise a firm as an entity distinct from the members composing it. Our partnership law is based on English law and we have also adopted the notions of English lawyers as regards a partnership firm."

The life of the Indian law of partnership depends on its own terms although habitually

courts, as a hangover of the past, have been referring to the English law on the point. The matter is concluded by the further observations of this Court:

> "It is clear from the foregoing discussion that the law, English as well as Indian, has, for some specific purposes, some of which are referred to above, relaxed its rigid notions and extended a limited personality to a firm. ***Nevertheless, the general concept of a partnership, firmly established in both systems of law, still is that a firm is not an entity or 'person' in law but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership.*** According to the principles of English jurisprudence, which we have adopted, for the purposes of determining legal rights 'there is no such thing as a firm known to the law as was said by James, L.J., in *Ex parte Corbett* : *In re Shand* [(1880) 14 Ch D 122, 126 : 42 LT 164 : 28 WR 569] . In these circumstances to import the definition of the word 'person' occurring in Section 3(42) of the General Clauses Act, 1897, into Section 4 of the Indian Partnership Act will, according to lawyers, English or Indian, be totally repugnant to the subject of partnership law as they know and understand it to be."

> In *Narayanappa [Addanki Narayanappa v. Bhaskara Krishtappa, AIR 1966 SC 1300, 1303 : (1966) 3 SCR 400]* the view taken by this Court accords with the position above stated."
>
> (emphasis supplied)

7.16 Finally, on this question, Krishna Iyer, J. speaking for this Court noted that under Indian law, a partnership is only a collective of separate persons and is not a legal person in itself.

Perpetual Succession:

7.17 As a logical corollary of distinct and separate juristic identity, an incorporated company also has perpetual succession i.e., perpetual existence agnostic of transfer of shares. A company does not ordinarily extinguish because of change in shareholding. On the other hand, a partnership firm's fundamental identity is contingent on the partners and undergoes a change with a change in partners, subject to contract. Section 42(c) of the Partnership Act provides that subject to contract between the partners, a firm is dissolved by the death of a partner. Per contra, the position of a company could not be made clearer than by the following

illustration in Professor Gower's Principles of Modern Company Law (3rd Edn. 1969), at p.76:

> "During the war all the members of one private company, while in general meeting, were killed by a bomb. But the company survived; not even a hydrogen bomb could have destroyed it."

7.18 Although one might argue that from the perspective of a merchant or even income tax law, a firm appears to continue irrespective of the entrance and exit of partners, Lindley explained the orthodox legal view, which continues to hold ground, on partnership, in the following words:

> "The law, ignoring the firm, looks to the partners composing it; any change amongst them destroys the identity of the firm; what is called the property of the firm is their property, and what are called the debts and liabilities of the firm are their debts and their liabilities. In point of law, a partner may be the debtor or the creditor of his co-partners, but he cannot be either debtor or creditor of a firm of which he is himself a member."
>
> (Underlining by us)

Liability of Partners:

7.19 The liability of partners for the debts of the business is unlimited and they are jointly and severally liable for all business obligations of the partnership firm. Sections 25 and

26 of the Partnership Act are relevant in this regard, which are reproduced as under:

> **"25. Liability of a partner for acts of the firm.**—Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.
>
> **26. Liability of the firm for wrongful acts of a partner.**—Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner."

Section 25 provides that every partner is liable jointly with all the other partners and also severally for all acts of the firm done by the partner. Since a firm is not a legal entity but only a collective name for all the partners, it does not have any legal existence apart from its partners. Therefore, any liability of a firm has the same effect of a liability against the partners. This is because, the partners remain liable jointly and severally for all acts of the firm, *vide* ***Dena Bank vs. Bikhabhai Prabhudas Parekh and Co., (2000) 5 SCC 694***.

7.20 Moreover, the partners of a firm have unlimited liability to the creditors of the firm. This is as opposed to a

limited company or a limited liability partnership, wherein the liability of the directors or the shareholders is to the extent of their share in the limited company or limited liability partnership and limited to the nominal value of the shares held by them or the amount guaranteed by the shareholder when it comes to a company. Thus, the debt of the firm is the personal debt of a partner and the debt of the firm has to be incurred by each partner as a financial personal liability.

7.21 Insofar as criminal liability is concerned, once it is established that an illegal act has been committed by the firm or its partners, then the partners will be jointly liable for it. Moreover, the act constituting an offence will also have to be decided with reference to the statute creating such an offence i.e. the Negotiable Instruments Act, which is the Act under consideration. When Section 25 of the Partnership Act is read together with Section 145 of the Act, in the context of dishonour of a cheque, the partner of a firm who is also liable jointly with a firm, can however rebut the statutory presumption.

7.22 Conversely, Section 26 states that where by the wrongful act or omission of a partner, acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injuries are caused to any third party, or any penalties are incurred, the firm is liable therefore to the same extent as the partner. The liability of the firm for acts done by the partner would arise when such acts are done in the ordinary course of the business of the firm.

7.23 Moreover, since the firm by itself cannot transact any business, if a partner of the firm commits any breach, all the partners would become liable for the consequent penalties, just as the firm would be liable. Further, if a penalty is imposed on a partnership firm for contravention of a statute, it amounts to levy of penalty on the partners also and there is no separate or independent penalty on the partners for the said contravention.

7.24 However, the liability of a shareholder in a company is limited to the nominal value of shares held by them or the amount guaranteed by the shareholder. The separate property of the shareholder is beyond a creditor seeking to enforce its dues against the company.

Firm Name:

8. It is therefore appropriate to remind ourselves that a partnership firm, unlike a company registered under the Indian Companies Act or a limited liability partnership registered under the Limited Liability Partnership Act, 2008, is not a distinct legal entity and is only a compendium of its partners. Even the registration of a firm does not mean that it becomes a distinct legal entity like a company. Hence, the partners of a firm are co-owners of the property of the firm, unlike shareholders in a company who are not co-owners of the property of the company.

8.1 According to Lindley and Banks on Partnership, 21st Edition, it is important to identify the precise significance of a firm name since it represents an attribute which tends to encourage the commercial rather than the legal view of a firm. According to Lindley, *".....the name under which a firm carries on business is in point of law a conventional name applicable. Only to the persons who on each particular occasion when the name is used, are members of the firm."*

8.2 The firm name is thus a convenient method of describing a group of persons associated together in business

at a certain point of time: no more or no less. If a number of people carry on business under such name or style, anything which they may do in that name or style will be just as effective as if their individual names had been used. An obvious example of this is the use of firm name on bills of exchange and promissory notes.

9. The aforesaid principles have to be applied to Sections 138 and 141 of the Act. For immediate reference, the said sections are extracted as under:

> **"138. Dishonour of cheque for insufficiency, etc., of funds in the account**. — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:
>
> Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months* from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

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141. Offences by companies.—

(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he

had exercised all due diligence to prevent the commission of such offence.

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

9.1 Section 138 of the Act creates an offence for dishonour of a cheque for, *inter alia,* insufficiency of funds in the account by a deeming fiction. The complainant who is a victim of the dishonour of cheque issued by an accused has

the right to file a private complaint in terms of Section 200 of the CrPC, (equivalent to Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS")). When the said offence is proved against an individual/natural person, he is punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque. But when such an offence is committed by a company, which is an artificial juristic entity, Section 141 of the Act applies. The said Section states that if the person committing an offence under Section 138 of the Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Since an artificial juristic entity such as a company cannot be punished with imprisonment, by a deeming fiction certain persons associated with such an artificial juristic entity are deemed to be guilty of the offence and made liable to be proceeded against and punished accordingly. This is an instance of vicarious liability on every

person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company. This is for the reason that a company is a separate entity *vis-à-vis* its shareholders or those who are in charge of the conduct of its business since a company is an artificial juristic entity. Thus, the liability would be on the company as well as on the category of persons mentioned above. Such a person must be both in charge of, as well as responsible to, the company for the conduct of the business of the company. However, the aforesaid category of person who is deemed to be guilty of the offence along with the company, can escape punishment (i) if he can prove that the offence was committed without his knowledge; or (ii) that he had exercised all due diligence to prevent the commission of such an offence. Hence, by way of a proviso to sub-section (1) to Section 141 of the Act, two defences are provided for the category of persons named in sub-section (1) of Section 141.

9.2 The second proviso to sub-section (1) of Section 141 is an exception for a person who is a director of the company who shall not be liable for prosecution under Chapter XVII of

the Act. The second proviso is not relevant for the purpose of this case as the said proviso refers to *ex-officio* directors representing the Central Government or state governments or a financial corporation owned or controlled by the Central Government or the state government, as the case may be.

9.3 Sub-section (2) of Section 141 begins with a non-obstante clause. It extends the scope of categories of persons associated with the company who could also be deemed to be guilty of an offence under Section 138 of the Act and shall be liable to be proceeded against and punished accordingly. Sub-section (2) of Section 141 states that where the offence has been committed by a company and it is proved that the offence has been committed with the (i) consent; or (ii) connivance of; or (iii) is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such aforesaid categories of persons shall also be deemed to be guilty, proceeded against and punished accordingly. While sub-section (1) of Section 141 restricts the category of persons who would be deemed to be liable when the offence is committed by a company, sub-section (2) of Section 141 extends the scope of liability to further categories

of persons namely, director, manager, secretary or other officer of the company to be made liable provided there is proof that such category of persons associated with the company had committed the offence with the consent or connivance of, or due to any negligence on their part. The expression "shall also be deemed to be guilty" in sub-section (2) of Section 141 of the Act would imply that the object and purpose of the said provision is to encompass the categories of persons mentioned in that sub-section owing to a criminal intent or negligence attributable on their part.

9.4 Thus, while under sub-section (1) of Section 141 of the Act, the criminal liability on the category of persons named in the said sub-section is owing to the position that person holds in the company, when the company is said to have committed the offence under Section 138 and therefore the deeming fiction under sub-section (2) of Section 141 of the Act, on the other hand, there has to be a proof with regard to consent or connivance for the committing of the offence or a criminal negligence on the part of the director, manager, secretary or other officer of the company who shall also be deemed to be guilty of the offence under Section 138 of the

Act. Thus, under sub-section (2) of Section 141 of the Act, when the company is guilty of the offence under Section 138 of the Act, a director, manager, secretary or other officer of the company shall also be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly, provided there is proof of *mens rea* on the part of such category of persons. Hence, a director, manager, secretary or other officer of the company cannot be proceeded against *per se* by virtue of the position they hold in the company but can be proceeded against only when there is proof that the offence under Section 138 was committed by the company with their consent or connivance or due to negligence on their part. The standard of proof is higher under sub-section (2) of Section 141 *vis-à-vis* the category of persons mentioned therein with regard to their specific role in the commission of the offence under Section 138. This implies that the primary liability of the company is transferred to the above categories of persons who are deemed to be guilty vicariously having regard to the deemed penal nature of the offence under Section 138 of the Act.

9.5 The Explanation to Section 141 has two clauses. Clause (a) defines a company to mean any body corporate and includes a firm or other association of individuals. The expression "company" encompasses, *inter alia,* a body corporate which refers to a company incorporated under the provisions of the Companies Act or a statutory body. The expression "company" is inclusive inasmuch as it includes a firm, meaning thereby a partnership firm, as per the provisions of the Partnership Act, as well as a limited liability partnership or other association of individuals. Clause (b) of the Explanation defines a director as mentioned in sub-section (2) of Section 141 of the Act in relation to a firm to mean a partner in the firm. Thus by a legislative device an inclusive definition is added by way of an Explanation to Section 141 of the Act inasmuch as in jurisprudence and in law, a company is a distinct body corporate and separate juristic entity as compared to a partnership firm.

9.6 On a conjoint reading of the various clauses of Section 141, what emerges is that the expression "company" has been used in an expansive way to include not just a company incorporated under the provisions of the Companies Act

stricto sensu but also any body corporate such as a statutory company as well as other artificial juristic entity such as a partnership firm or other association of individuals. Hence, the expression "director" in sub-section (2) of Section 141 is not restricted to a director of an incorporated company or a statutory body, but also includes a partner of a firm. The expression "director" in sub-section (2) of Section 141 of the Act in relation to a firm means a partner, which is also a legislative device adopted by the Parliament knowing fully well and being conscious of the fact that a partnership firm, jurisprudentially speaking, does not stand on par with a director of a body corporate. Since the Parliament has used the expression "company" encompassing all types of juristic persons, it was necessary to give an expanded definition to the expression "director" in relation to a firm to mean a partner in the firm. Therefore, the inclusion of a firm within the meaning of the expression "company" is by a legal fiction and by way of a legislative device only for the purpose of creating a liability on the partners of the firm, which in any case, they are liable under the law of partnership in India. But the definition of the word company including a

partnership firm has been incorporated in the Explanation for the sake of convenience, as otherwise a similar provision would have to be inserted for the very same purposes. Instead of replicating the same definition for different kinds of juristic entities, the Parliament has thought it convenient to add an Explanation to define a company for the purpose of Section 141 of the Act in the context of an offence committed by, *inter alia*, a company, as understood within the meaning of the Companies Act, and also include a firm or other association of individuals within the definition of company. Similarly, under clause (b) of the explanation, the expression "director", in relation to a firm, means a partner in the firm.

9.7 This also demonstrates the fact that while a director is a separate persona in relation to a company, in the case of a partnership firm, the partner is not really a distinct legal persona. This is because a partnership firm is not really a legal entity separate and distinct as a company is from its directors but can have a legal persona only when the partnership firm is considered along with its partners. Thus, the partnership firm has no separate recognition either jurisprudentially or in law apart from its partners. Therefore,

while a director of a company can be vicariously liable for an offence committed by a company, insofar as a partnership firm is concerned, when the offence is committed by such a firm, in substance, the offence is committed by the partners of the firm and not just the firm *per se*. Therefore the partners of the firm are liable for the dishonour of a cheque, even though the cheque may have been issued in the name of the firm and the offence is committed by the firm. Therefore, in law and in jurisprudence, when a partnership firm is proceeded against, in substance, the partners are liable and the said liability is joint and several and is not vicarious. This is unlike a company which is liable by itself and since it is an artificial juristic entity, the persons in charge of the affairs of the company or who conduct its business only become vicariously liable for the offence committed by the company.

9.8 However, jurisprudentially speaking, the partners of a partnership firm constitute the firm and a firm is a compendious term for the partners of a firm. This is opposed to the position of a director in a company which is a body corporate *stricto sensu* and such a company is a separate juristic entity *vis-à-vis* the directors. On the other hand, a

partnership firm has no legal recognition in the absence of its partners. If a partnership firm is liable for the offence under Section 138 of the Act, it would imply that the liability would automatically extend to the partners of the partnership firm jointly and severally. This underlying distinction between a partnership firm and a company which is a body corporate has to be borne in mind while dealing with an offence committed by a company or a partnership firm, as the case may be, within the meaning of Section 138 read with Section 141 of the Act. To reiterate, in the case of a partnership firm, there is no concept of vicarious liability of the partners as such. The liability is joint and several because a partnership firm is the business of partners and one cannot proceed against only the firm without the partners being made liable.

9.9 Therefore, even in the absence of partnership firm being named as an accused, if the partners of the partnership firm are proceeded against, they being jointly and severally liable along with the partnership firm as well as *inter-se* the partners of the firm, the complaint is still maintainable. The accused in such a case would in substance be the partners of the partnership firm along with the firm itself. Since the

liability is joint and several, 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, (equivalent to Section 223 of the BNSS), such a complaint is maintainable.

9.10 Thus, when it is a case of an offence committed by a company which is a body corporate *stricto sensu*, the vicarious liability on the categories of persons mentioned in sub-section (1) and sub-section (2) of Section 141 of the Act accordingly would be proceeded against and liable for the offence under Section 138 of the Act. In the case of a partnership firm on the other hand, when the offence has been proved against a partnership firm, the firm *per se* would not be liable, but liability would inevitably extend to the partners of the firm inasmuch as they would be personally, jointly and severally liable with the firm even when the offence is committed in the name of the partnership firm.

9.11 To reiterate, when the partnership firm is only a compendious name for the partners of the firm, any offence committed under Section 138 read with Section 141 of the

Act would make the partners of the firm jointly and severally liable with the firm. If, on the other hand, the Parliament intended that the partners of the firm be construed as separate entities for the purpose of penalty, then it would have provided so by expressly stating that the firm, as well as the partners, would be liable separately for the offence under Section 138 of the Act. Such an intention does not emanate from Section 141 of the Act as the offence proved against the firm would amount to the partners of the firm also being liable jointly and severally with the firm. Therefore, there is no separate liability on each of the partners unless sub-section (2) of Section 141 applies, when negligence or lack of *bona fides* on the part of any individual partner of the firm has been proved.

10. In view of the aforesaid discussion, we hold that the High Court was not right in rejecting or dismissing the complaint for the reason that the partnership firm was not arraigned as an accused in the complaint or that notice had not been issued to it under Section 138 of the Act. In view of the aforesaid discussion, the notice issued to the partners of the firm in the instant case shall be construed to be a notice

issued to the partnership firm also viz., 'Mouriya Coirs'. Permission is granted to arraign the partnership firm as an accused in the complaint.

11. Consequently, the impugned order of the High Court is ***set aside***. The complaint bearing STC No.1106/2022 is restored on the file of the Court of the learned Judicial Magistrate No. II, Pollachi. The trial court is directed to dispose of the complaint in accordance with law.

12. The appeal is ***allowed*** in the aforesaid terms.

.....J.
(B.V. NAGARATHNA)

.....J.
(SATISH CHANDRA SHARMA)

NEW DELHI;
JULY 14, 2025.