CNR No: PHHC010752282023
2026:PHHC:116550

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29598-2023
Date of Decision: 21.08.2026
Uploaded on: 21.08.2026

RAHUL SHARMA

... Petitioner

Versus

M/S IAG AUTOMATION PVT. LTD.

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Premjit Singh Hundal, Sr. Advocate with
Mr. Kanwar Harjinder Singh, Advocate
for the petitioner.

Mr. Rakshit Gupta, Advocate
for the respondent.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of Criminal Complaint No.NACT-1189-2018 dated 26.10.2018 (Annexure P-1) titled as "M/s IAG Automation Pvt. Ltd. vs. M/s Crystal Chemicals & Engineers etc." registered under Section 138 of the Negotiable Instruments Act, 1881, the summoning order dated 14.11.2018 (Annexure P-4) passed by the JMIC, Panchkula and all consequential proceedings arising therefrom.

2. The brief facts of the case are that a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed by the respondent-complainant (hereinafter referred to as the 'complainant') with the allegations that the accused, in discharge of their legal liability had issued a cheque for

an amount of Rs. 11,32,639/- bearing No.495845 dated 25.06.2018, which on presentation came to be dishonoured. A legal notice was sent. When no payment was made in furtherance of the same, the complaint came to be instituted. The copy of the complaint dated 26.10.2018 is attached as Annexure P-1 to the petition. Based on the said complaint, the summoning order dated 14.11.2018 (Annexure P-4) was passed.

3. The complaint dated 26.10.2018 (Annexure P-1) and summoning order dated 14.11.2018 (Annexure P-4) are under challenge in the present petition.

4. The learned Senior Counsel for the petitioner contends that the petitioner is just an employee of the proprietorship concern and the sole proprietor is Vinod Kumar Sharma, his father. The cheque has also been signed by the proprietor, Vinod Kumar Sharma. Once, it is a proprietorship concern, then it is the proprietor alone who can be held liable and not an employee. Therefore, the complaint and summoning order are liable to be quashed. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Raghu Lakshminarayanan Vs. M/s Fine Tubes, 2007(2) R.C.R. (Criminal) 571***.

5. The learned counsel for the respondent-complainant (hereinafter referred to as the 'complainant'), on the other hand, contends that the petitioner was actually dealing with the complainant as the proprietor of the firm. All business correspondence was between the petitioner and the complainant firm. Emails were exchanged between the petitioner on the one hand and the complainant firm on the other. The cheque was handed over by the petitioner, and therefore there is a presumption that he signed it. Whether

he was a proprietor or not is a matter of Trial. The petitioner and the firm of which his father is admittedly the proprietor did not care to respond to the legal notice sent by the complainant denying their liability. Therefore, the petitioner and his father have also cheated the complainant firm. Thus, the present petition is liable to be dismissed. Reliance is placed on the judgments of the Hon'ble Supreme Court and this Court in ***Bijoy Kumar Moni Versus Paresh Manna & another, 2025(1) RCR (Criminal) 265***, ***Sanjabij Tari Versus Kishore S. Borcar & another, 2025(4) RCR (Criminal) 420***, ***Sanjeev Vijaya Rao Betigeri & another Vs. Bharti Telemedia Ltd. in CRM-M-30361-2019, decided on 13.08.2026*** and ***Kuntegowda Versus Thurubaiah, 2026 SCC Online SC 1485***

6. I have heard the learned counsel for the parties.

7. In ***Raghu Lakshminarayanan Vs. M/s Fine Tubes, 2007(2) R.C.R. (Criminal) 571,*** the Hon'ble Supreme Court held as under:-

> *5. In the complaint petition, however, it was alleged ;*
>
> *"1. The complainant is a partnership duly registered with the Registrar of firms at Delhi, and Mohit Gupta is one of its partner and duly authorised and empowered to file this complaint for and on behalf of the complainant.*
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> *2. That the respondent No. 1 is a business concern and the respondent Nos. 2 and 6, alongwith other officer(s) etc., are its disclosed in charges, Managers, Director (s) and partners as they have through out been dealings with the complainant by representing themselves to be so responsible for the dealings and day to day working of the respondent No. 1."*
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> *6. The learned Chief Metropolitan Magistrate issued summons on the other accused persons relying or on the basis of the averments made in the said complaint petition filed by the respondent herein. An application filed by the appellant herein for quashing the summons issued to him in an application filed before the High Court*

under Section 482 of the Code of Criminal Procedure was dismissed stating :

".....After the pre-summoning evidence was recorded the learned MM found that prima facie case was made out against all the accused persons and, therefore, summoned these accused. challenging these summoning orders accused No. 3 has filed this petition under Section 482 Criminal Procedure Code it is inter alia, contended that he was never the director of the said accused No. 1: cheque in question was not signed by him and that he was not responsible for the conduct of business of accused No. 1 it is the case of the petitioner that he was an employee of the accused No. 1. In support appointment letter dated 15.7.2000 is enclosed as per which petitioner was appointed as "Director-Production". In this capacity he was to be responsible for entire production, including machine selection as well as labour, process and material management. Thereafter, vide letter dated 21.10.2001, which is also produced by the petitioner, he was asked to head the marketing department and was given the designation "Director-Marketing". Prima facie, as Director-Marketing the petitioner was in-charge of the marketing division of the accused No. 1. I find that there are specific averment made in the complaint that the petitioner in that capacity was dealing with the complainant and was handling day-to-day affairs of the accused No. 1. Therefore, what the petitioner contends are the disputed questions of fact and it forms his defence which is to be led before the Trial Court. Such questions cannot be entertained in this petition under Section 482 Criminal Procedure Code.."

7. A bare perusal of the complaint petition would show that the accused No. 1 was described therein as 'a business concern'. It was not described as a Company or a partnership firm or an Association of Persons.

*** *** ***

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 Indian

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 Indian Partnership Act.

10. It is interesting to note that the term "Director" has been defined. It is of some significance to note that in view of the said description of "Director", other than a person who comes within the purview thereof, nobody else can be prosecuted by way of his vicarious liability in such a capacity. If the offence has not been committed by a Company, the question of there being a Director or his being vicariously liable, therefore, would not arise.

11. Appellant herein categorically contended that accused No. 1 was a proprietary concern of the accused No. 2 and he was merely an employee thereof.

12. If accused No. 1 was not a Company within the meaning of Section 141 of the Negotiable Instruments Act, the question of an employee being preceded against in terms thereof would not arise. Respondent was aware of the difference between a 'partnership firm' and a 'business concern' as would be evident from the fact that it described itself as a partnership firm and the accused No. 1, as a business concern. Significantly, Respondent deliberately or otherwise did not state as to in which capacity the appellant had been serving the said business concern. It, as noticed hereinbefore, described him as in charge, Manager and Director of the accused

No. 1. A person ordinarily cannot serve both in the capacity of a Manager and a Director of a Company.

13. The distinction between partnership firm and a proprietary concern is well known. It is evident from Order 30 Rule 1 and Order 30 Rule 10 of the Code of Civil Procedure. The question came up for consideration also before this Court in ***M/s. Ashok Transport Agency v. Awadhesh Kumar and another, 1999(1) RCR (Civil) 197 : [(1998)5 SCC 567]*** *wherein this Court stated the law in the following terms :-*

> *"6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order 30, Rule 1, Civil Procedure Code enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 Order 30, which make applicable the provisions of Order 30 to a proprietary concern enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 Order 30 have no application to such a suit as by virtue of Order 30, Rule 10 the other provisions of Order 30 are applicable to a suit against the proprietor of proprietary business "in sofar as the nature of such case permits." This means that only those provisions of Order 30 can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."*

14. We, keeping in view the allegations made in the complaint petition, need not dilate in regard to the definition of a 'Company' or a 'Partnership Firm' as envisaged under Section 34 of the Companies Act, 1956 and Section 4 of the Indian Partnership Act, 1932 respectively, but, we may only note that it is trite that a proprietary concern would not answer the description of either a Company incorporated under the Indian Companies Act or a firm within the meaning of the provisions of the Section 4 of the Indian Partnership Act.

*** *** ***

16. For the reasons aforementioned, we are unable to agree with the High Court that no case had been made out for exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure. The impugned judgment is set aside. Appeal is allowed. The complaint case against the appellant is quashed.

Appeal allowed.

(Emphasis supplied)

8. Thus, it is apparent that it is only the signatory of the cheque who is also a proprietor who can be liable under Section 138 of the Negotiable Instruments Act. A proprietorship concern cannot be equated to a Company or a partnership and therefore, there is no concept of vicarious liability.

9. In ***Bijoy Kumar Moni Versus Paresh Manna & another, 2025(1) RCR (Criminal) 265***, the Hon'ble Supreme Court held as under:-

"69. As discussed above, in the case on hand, the accused was prosecuted in his individual capacity and not in his capacity of being the Director of the Shilabati Hospital Pvt. Ltd. Although it is undisputed that the accused signed the cheque in question, yet as the cheque was drawn not on an account maintained by him with a Banker but was issued on an account maintained by the hospital, the requirement of Section 138 of the Act cannot be said to have been complied with.

70. It would have been altogether a different situation if the accused was prosecuted in his capacity as a Director of the Shilabati Hospital. In such a scenario, the cheque drawn by him on an account maintained by the Company would have satisfied the requirement of Section 138 of the Act but as the accused has been proceeded against for an offence under Section 138 of the Act in his individual capacity and inasmuch as the cheque dishonoured for insufficiency of funds was drawn on the account maintained by the Company, namely, Shilabati Hospital Pvt. Ltd., and not by the accused herein, no offence could be said to have been committed under Section 138 of the Act. The High Court rightly held that in the absence of the principal offender having been arraigned as an accused, prosecution for the commission of an offence under Section 138 of the NI Act could not have proceeded against the accused.

71. As is evident from the discussion in the preceding parts of this judgment, the requirement of Section 138 of the NI Act is that for fastening criminal liability on the accused, the cheque which was dishonoured for insufficiency of funds etc., must have been drawn on an account maintained by the accused. The mere fact that the cheque signed by the accused in his capacity as a "Director" of the Company would in the normal course be honoured by the Bank to which it was presented does not satisfy the statutory requirement of Section 138 of the Act.

72. Section 138 of the Act exposes the person who has drawn the cheque and which has been returned for insufficiency of funds to criminal liability. The provision, therefore, must be construed strictly. However, such a strict construction should not result in defeating the very purpose for which the provision has been enacted as held by this Court in the case of NEPC Micon Limited and Others v. Magma Leasing Limited reported in (1999) 4 SCC 253. At the same time, the statutory provisions creating penal liability cannot be stretched too far to embrace the persons and situations patently excluded from its purview as discernible from clear and unequivocal language used in the provision.

73. Section 138 of the NI Act clearly postulates that the cheque returned for insufficiency of funds should have been drawn by a person on an account maintained by him. It will amount to doing violence to the language of the statute if Section 138 of the Act is interpreted to mean that even if a person draws a cheque on an account not maintained by him, he shall be liable if the cheque is returned for insufficiency of funds. Such an interpretation will lead to absurd and wholly unintended results.

74. However, the peculiar factual situation of the present case and the plight of the complainant is not lost upon us. We are conscious of the fact that the option of bringing civil action against the accused or the hospital will be of no avail to the complainant as the claims are hopelessly time barred. Further, it is also not open for the complainant to initiate proceedings under Section 138 of the NI Act afresh by impleading Shilabati Hospital Pvt. Ltd. as an accused as the time period prescribed for issuance of statutory notice under Section 138 has long expired.

75. It is trite law that an act may constitute an offence under more than one statute. The encashment of the cheque for an amount of Rs 7,00,000/- issued by the complainant in favour of the accused stood proved during the course of the trial. Further, the conduct of the accused in not replying to the statutory notice of dishonour of cheque issued by the lawyer for the complainant and in not taking the plea of the cheque having been drawn on the account of the company in his capacity as a Director during the course of trial undoubtedly raises questions as regards his dishonest intention in not repaying the amount borrowed by him from the complainant.

76. In such circumstances, although it is not possible to hold the accused liable for the offence under Section 138 of the NI Act, yet the possibility of him having committed the offence of cheating cannot be ruled out. Prima facie, the mens rea (guilty mind) of the accused speaks for itself.

77. We leave it open to the complainant to approach the jurisdictional police station and lodge an appropriate FIR against the accused. If the complainant lodges an FIR, the concerned police *officer in-charge of the police station shall investigate the same in accordance with law.*

(Emphasis supplied)

10. In ***Sanjabij Tari Versus Kishore S. Borcar & another, 2025(4) RCR (Criminal) 420***, the Hon'ble Supreme Court held as under:-

> *"29. Furthermore, the fact that the accused has failed to reply to the statutory notice under Section 138 of the NI Act leads to an inference that there is merit in the Appellant-Complainant's version. This Court in Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735 has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced herein below:-*
>
> > *"10. ... The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence."*

(emphasis supplied)

30. This Court in MMTC Ltd. and Another v. Medchl Chemicals & Pharma (P) Ltd. and Another, (2002) 1 SCC 234 has specifically held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability.

(Emphasis supplied)

In ***Kuntegowda Versus Thurubaiah, 2026 SCC Online SC 1485***, the Hon'ble Supreme Court held as under:-

"6.7 Furthermore, the failure of the accused to respond to the statutory notice issued under Section 138 of the NI Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in the reply to the demand notice. In the absence of such a plea, the complainant cannot be expected, to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence. The accused may discharge this burden by producing independent witnesses or documentary evidence to demonstrate the complainant's lack of financial means. Alternatively, he may rely upon the materials produced by the complainant himself or establish the same through an effective cross-examination of the complainant and his witnesses. In the facts of the present case, no such contra material has been placed on record before us to further the case of the accused that the complainant did not have any means to extend the hand loan and therefore the argument and defence of the accused on this aspect falls flat."

(Emphasis supplied)

11. In ***Sanjeev Vijaya Rao Betigeri and anr. Versus Bharti Telemedia Ltd., in CRM-M-30361-2019, decided on 13.08.2026***, this Court held as under:-

"15. Coming back to the facts of the present case, there is no doubt whatsoever that the Carriage Fee Agreement was executed between Yash Broadcasting Industries Pvt. Ltd. (accused No.1) and the respondent. It is also not in dispute that the petitioners were Directors/Managing Directors of the accused No.1-Company. However, undoubtedly, the cheque in question has been issued by accused No.2-Laxmi Prasad Vajpayee, the Chief Executive Officer of the Company from an account maintained by him. Therefore, the liability, if any, would be of accused No.2-Laxmi Prasad Vajpayee only as the cheque in question has been issued from the account maintained by him.

16. In view of the above discussion, I find considerable merit in the present petition. Therefore, the same is allowed and the complaint dated 25.07.2017 (Annexure P-1), summoning order dated 09.10.2017 (Annexure P-3) and all the consequential proceedings arising therefrom stand quashed qua the petitioners only.

17. However, it cannot be lost sight of that all the accused including the Company and the petitioners did not reply to the statutory notice of dishonour of the cheque and consequently, did not take pleas denying their liability and/or accepting the liability of the Company, if at all. The instant quashing petition has been filed wherein the respondent has been taken by surprise as to who, if at all was liable for the dishonour of the cheque. The conduct of the petitioners amounts to dishonest intent. Therefore, the respondent, if so advised, is at liberty to lodge an appropriate FIR against the petitioners and/or the other accused or institute a private complaint within a period of 60 days from the date of receipt of a copy of this order. If such an FIR/private complaint is instituted within the 60 days' period, the delay in initiating such proceedings would not be called into question by the concerned Court/police authorities.

(Emphasis supplied)

12. From a reading of the aforementioned judgments, it is apparent that in case the accused fails to reply to a statutory notice under Section 138 of the Negotiable Instruments Act, it leads to an inference that there is merit

in the complainant's version. However, this inference cannot be drawn in every case and would have to be seen on a case-by-case factual basis.

13. Coming back to the facts of the present case, there is no doubt whatsoever that Vinod Kumar Sharma was the proprietor of M/s Crystal Chemicals & Engineers, 8-25, RIICC Housing Colony, Road No.1-D, Vishwakarma Industrial Area, Jaipur, Rajasthan. The petitioner is the son of Vinod Kumar Sharma. It is also not in doubt that it was the petitioner who had business dealings with the complainant, as is evident from the exchange of emails and various other documents on record with the reply of the respondent.

14. However, in view of the judgment in ***Raghu Lakshminarayanan*** (supra), it is the proprietor and signatory alone who can be held liable for the dishonour of a cheque issued from an account maintained by a proprietorship concern. It is Vinod Kumar Sharma who is the proprietor and signatory of the cheque and not the petitioner.

15. In view of the aforementioned facts and circumstances, the Criminal Complaint No.NACT-1189-2018 dated 26.10.2018 (Annexure P-1) titled as "M/s IAG Automation Pvt. Ltd. vs. M/s Crystal Chemicals & Engineers etc." registered under Section 138 of the Negotiable Instruments Act, 1881, the summoning order dated 14.11.2018 (Annexure P-4) passed by the JMIC, Panchkula and all consequential proceedings arising therefrom qua the petitioner stand quashed.

16. However, it cannot be lost sight of that neither the petitioner nor his father, who is admittedly the proprietor of M/s Crystal Chemicals & Engineers, replied to the statutory notice of dishonour of the cheque and

consequently did not take pleas denying their liability and/or accepting the liability of the proprietor, if at all. Had the petitioner denied his liability stating that he was not a proprietor and his father Vinod Kumar Sharma was, then the respondent would have arrayed Vinod Kumar Sharma the actual proprietor as an accused. However, the instant quashing petition has been filed wherein the complainant has been taken by surprise as to who, if at all, was liable for the dishonour of the cheque. The conduct of the petitioner and the proprietorship concern of Vinod Kumar Sharma, father of the petitioner amounts to dishonest intent. Therefore, the complainant, if so advised, is at liberty to lodge an appropriate FIR against the petitioner and/or other accused, including Vinod Kumar Sharma or institute a private complaint within a period of 60 days from the date of receipt of a copy of this order. If such an FIR/private complaint is instituted within the 60 day period, the delay in initiating such proceedings would not be called into question by the concerned Court/police authorities.

17. The present petition stands disposed of in the aforesaid terms.

(JASJIT SINGH BEDI)
JUDGE

21.08.2026
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No