



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 19TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO. 100478 OF 2023

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BETWEEN:

SHRI. BABURAO
S/O HEMACHANDRAPPA KALAL,
AGE. 64 YEARS, OCC. BUSINESS
R/O. BASAVESHWAR NAGAR 'B' BLOCK,
HAVERI, TQ & DIST. HAVERI-581106.

... PETITIONER

(BY SRI. LAXMAN T. MANTAGANI, ADVOCATE)

AND:

SHRI. S.M. RAVINDRASHETTY
S/O NARAYANASHETTY,
AGE. 64 YEARS, OCC. BUSINESS,
R/O. HUVINAHADAGALI,
TQ & DIST. VIJAYNAGAR-583219.

... RESPONDENT

(BY SRI. K.L. PATIL, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C. SEEKING TO QUASH THE ORDER DATED 18.07.2018 PASSED BY THE COURT OF CIVIL JUDGE AND JMFC, HUVINAHADAGALI IN CC NO.407/2018 ARISING OUT OF PCR NO.79/2017 AND QUASH THE CRIMINAL PROCEEDINGS PENDING ON THE FILE OF COURT OF CIVIL JUDGE AND JMFC, HUVINAHADAGALI IN C.C.NO.407/2018 ARISING OUT OF PCR NO.79/2017 FOR THE ALLEGED OFFENCES P/U/S 138 OF NI ACT IN PETITIONER/ACCUSED, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:





ORDER

The petition is filed praying to quash the order dated 18.07.2018 and proceedings in C.C.No.407/2018 pending on the file of the Civil Judge and JMFC, Huvinhadagali registered for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I Act', for brevity) against the petitioner – accused.

2. Heard learned counsel for the petitioner and learned counsel for the respondent.

3. Petitioner is accused and respondent is complainant in C.C.No.407/2018 pending on the file of the Civil Judge and JMFC, Huvinhadagali registered for offence punishable under Section 138 of the N.I Act. The respondent has filed complaint against the petitioner for dishonour of cheque for offence punishable under Section 138 of N.I Act. The learned Magistrate after recording sworn statement has taken cognizance against the petitioner for offence punishable under Section 138 of N.I



Act and ordered to register a criminal case by order dated 18.07.2018. The said order and proceedings in C.C. No.407/2018 are sought to be quashed.

4. Learned counsel for the petitioner would contend that the payee of the cheque is Sri Vasavi Traders and complaint has been filed not by the Sri Vasavi Traders but it is filed by the respondent – Sri S. M. Ravindrashetty. He contends that as per Section 142 of the N.I. Act, the complaint is required to be made by the payee and therefore the complaint filed by the respondent in his personal name cannot be entertained and therefore, the cognizance taken by the learned Magistrate is bad in law. He placed reliance on the decision of the Hon'ble Apex Court in the case of **Raghu Lakshminarayan V. M/s Fine Tubes¹**.

5. Learned counsel for the respondent would contend that the respondent who has filed complaint is a sole proprietor of the Sri Vasavi Traders and the complaint

¹ Reported in AIR 2007 SC 1634



has been filed by the sole proprietor. He further contends that on perusal of para Nos. 4 and 8 of the complaint the Sri Vasavi Traders is the proprietary concern of the respondent-complainant. He further submits that proprietary concern is trade name and it is carried on by the sole proprietor who is owner of the said proprietary concern and for all practical purposes the sole proprietor is owner responsible for all transactions of the proprietary concern. He also placing reliance on the decision of the Hon'ble Apex Court in the case of **Raghu Lakshminarayan V. M/s Fine Tubes** (*supra*) which is relied by learned counsel for the petitioner, contended that a proprietary concern is only a business name in which the proprietor of the business carries on business; a suit by or against a proprietary concern is by or against the proprietor of the business; the real party who is being sued is the proprietor of the said business. He also placed reliance on the decision of the Co-Ordinate Bench of this Court in the case of **H.N Nagaraj Vs. Suresh Lal**



Hira Lal², wherein Co-Ordinate Bench has held that proprietary concern is not required to be arrayed as a separate party in a proceedings under Section 138 of N.I.Act. He also placed reliance on the decision of the Hon'ble Apex Court in the case of **M/s Shankar Finance and Investments v. State of A.P. And Ors³**, wherein it is held that payee is a proprietary concern, the complaint can be filed by the proprietor of the proprietary concern, describing himself as sole proprietor of the payee. He further contended that the proprietorship firms are businesses that are owned, managed and controlled by one person and they are most common form of business in India and are based on unlimited liability of the owner. He further contended that legally a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business. On that point he placed reliance on the decision of the Hon'ble Apex Court in the case of **Vinayak Purshottam Dube(Deceased) through**

² Reported in ILR 2023 KAR 1631

³ Reported in AIR 2009 SC 422



Lrs Vs Jayashree Padamkar Bhat and Others⁴. He further contended that the complaint filed by the respondent who is the proprietor of the Sri Vasavi Traders is maintainable.

6. Having heard learned counsel for the petitioner and learned counsel for the respondent, this Court has perused the records.

7. The petitioner has issued a cheque in favour of Sri Vasavi Traders. On dishonour of the said cheque, after issuance of notice the respondent has filed a complaint. The Magistrate after recording the sworn statement of the respondent has taken cognizance against the petitioner for offence punishable under Section 138 of N.I. Act and issued process and registered a criminal case in C.C.No.407/2018 pending on the file of the Civil Judge and JMFC, Huvinhadagali. As per the said cheque Sri Vasavi Traders is the payee and petitioner is drawer. The complaint is filed by Sri S.M. Ravindrashetty S/o

⁴ Reported in 2024 INSC 159



Narayanshetty, Sri Vasavi Traders, Huvinhadagali. It is the case of the respondent that Sri Vasavi Traders is a proprietary concern and Sri S.M. Ravindrashetty s/o Narayanshetty is its sole proprietor.

8. Considering the arguments advanced by learned counsels, the point arises for my consideration is

"Whether complaint filed by the proprietor is maintainable, if the payee is a proprietary concern?"

9. As per the Chambers Dictionary 10th edition the word proprietor means "an owner". As per the Black's Law Dictionary 8th edition the word proprietor means "an owner, esp. one who runs a business" and sole proprietorship means "a business in which one person owns all the assets, owes all the liabilities, and operates in his or her personal capacity". As per Judicial Officers Law Lexicon the word proprietary concern means "a proprietary concern is only the business name in which the proprietor of the business carries on business" and Proprietary means



of a proprietor, that is, holding proprietary rights. A 'proprietor' is one who has the legal right or exclusive title to anything. It is synonymous with owner.

10. The proprietary concern is not a legal entity or juristic or legal person unlike partnership firm or company which are created or formed under Indian Partnership Act and Indian Companies Act. There are no legal requirements for establishing a single proprietorship. In other cases, legal formalities are necessary. The owner/proprietor has the authority to close the firm at any time. The proprietor/owner is personally accountable for all consequences. If he takes out a loan for its firm, he will be held accountable for any obligations. Proprietor is entitled to all earnings and losses generated by the proprietary concern. Sole proprietor is personally accountable for paying any debts if he cannot pay with its revenues. He might be sued individually by creditors to recover the debt.



11. Whether the proprietor is required to be separately arrayed as a party accused in a proceedings under Section 138 of N.I. Act came for consideration before the Co-Ordinate Bench of this Court in the case of **H.N Nagaraj Vs. Suresh Lal Hira Lal**(supra) whereunder the Co-ordinate Bench held as under

"11.5 Insofar as a proprietary concern is concerned, as the name indicates there can only be one proprietor and it is the said proprietor who would be incharge of the affairs of the proprietary concern. Thus, it is not required for any pleading to be made as regards who is the person in charge of proprietary concern when there is only one proprietor. I am unable to agree with the decision of the Hon'ble Panjab and Haryana High Court in the case of SARDAR BUPENDER SINGH [CRM-M-54111/2021] where the definition of a company has been extended to a proprietary concern to contend that the proprietary concern has a separate and independent existence. In my considered opinion a proprietary concern cannot have any independent or separate existence dehors the proprietor thereof."



12. The Co-ordinate Bench further held that in a proceeding under Section 138 of N.I Act, the arraying of a proprietor as an accused or a proprietary concern represented by the proprietor would be sufficient compliance with the requirements under Section 138 of N.I. Act, the proprietor and the proprietary concernaries not required to be separately arrayed as a party accused.

13. The Hon'ble Apex Court in the case of ***Vinayak Purshottam Dube(Deceased) through Lrs Vs Jayashree Padamkar Bhat and Others*** (supra) while considering jurisprudential status of a proprietary concern has observed as under

"13. In this regard, it is necessary to discuss the jurisprudential status of a proprietary concern. In a report of the Insolvency Law Committee submitted in February, 2020, the definition of 'Proprietorship Firms' reads as under:

"2.DEFINITION OF 'PROPRIETORSHIP FIRMS'



2.2 Proprietorship firms are businesses that are owned, managed and controlled by one person. They are the most common form of businesses in India and are based in unlimited liability of the owner. Legally, a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business.

[Raghu Lakshminarayanan vs. Fine Tubes (2007) 5 SCC 103.]

Due to this, proprietorships are usually not defined in statutes. Though some statutes define proprietorships, such definition is limited to the context of the statute. For example, Section 2 (haa) of the Chartered Accountants Act, 1949 defined a 'sole proprietorship' as "an individual who engages himself in practice of accountancy or engages in services...". Notably, 'proprietorship firms' have also not been statutorily defined in many other jurisdictions."

[Source: Report of the Insolvency Law Committee, Page No.117-118, Government of India (Ministry of Corporate Affairs, February, 2020).]



14. The Hon'ble Apex Court in the case of ***Raghulakshminarayan V. M/s Fine Tubes*** (supra) while considering distinction between partnership firm and a proprietary concern has observed as under

"13. The distinction between partnership firm and a proprietary concern is well known. It is evident from Order XXX Rule 1 and Order XXX Rule 10 of the Code of Civil Procedure. The question came up for consideration also before this Court in Ashok Transport Agency v. Awadhesh Kumar [(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 Partnership Act, 1932. Though a partnership is not a juristic person but Order XXX Rule 1 CPC 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 of Order XXX which make applicable the provisions of Order XXX 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 of Order XXX have no application to such a suit as by virtue of Order XXX Rule 10 the other provisions of Order XXX are applicable to a suit against the proprietor of proprietary business 'insofar as the nature of such case permits'. This means that only those provisions of Order XXX can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

15. A similar question where the payee is proprietary concern who can file complaint has come up for consideration before the Hon'ble Apex Court in the case



of ***M/s Shankar Finance and Investments v. State of A.P. And Ors*** (supra) wherein it is observed as under

"8. As contrasted from a company incorporated under the Companies Act, 1956 which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law where an individual carries on business in a name or style other than his own name, he cannot sue in the trading name but must sue in his own name, though others can sue him in the trading name. Therefore, if the appellant in this case had to file a civil suit, the proper description of plaintiff should be "Atmakuri Sankara Rao carrying on business under the name and style of M/s Shankar Finance & Investments, a sole proprietary concern". But we are not dealing with a civil suit. We are dealing with a criminal complaint to which the special requirements of Section 142 of the Act apply. Section 142 requires that the complainant should be payee. The payee is M/s Shankar Finance & Investments. Therefore, in a criminal complaint relating to an offence under Section 138 of the Act, it is permissible to lodge the complaint in the name of the proprietary concern itself.



9. *The next question is where a proprietary concern carries on business through an attorney holder, whether the attorney holder can lodge the complaint? The attorney holder is the agent of the grantor. When the grantor authorises the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder, and not by the attorney holder in his personal capacity. Therefore where the payee is a proprietary concern, the complaint can be filed: (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee"; (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. It follows that in this case the complaint could have been validly filed by describing the complainant in any one of the following four methods:*

"Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments"

Or



"M/s Shankar Finance & Investments, a sole proprietary concern represented by its proprietor Atmakuri Shankara Rao"

Or

"Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments, represented by his attorney holder Thamada Satyanarayana"

Or

"M/s Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his attorney holder Thamada Satyanarayana".

What would have been improper is for the attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant."

15. Considering the above aspects if payee is the proprietary concern the proprietor can file complaint while describing as sole proprietor of proprietary concern.

16. In the case on hand, the complaint has been filed by the sole proprietor of Sri Vasavi Traders. Therefore, contention of learned counsel for the petitioner that complaint is not filed by the payee cannot be



accepted since proprietary concern and proprietor are inseparable as proprietor is owner of the proprietary concern.

17. Hence, the petition is ***dismissed***. In view of the dismissal of the petition pending applications does not survive for consideration.

Sd/-
JUDGE

DSP
CT:BCK
List No.: 1 Sl No.: 21