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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 28th April, 2025*

+ **W.P.(CRL) 3781/2018**

MADHURAM PAPER PVT. LTD.Petitioner

Through: Mr. Tarun Aggarwal, Advocate.

versus

1. **STATE**Respondent No. 1

2. **M/S SHUBHAM PACKAGING INDUSTRIES**

Through its Partner

Sh. Shubham Sharma

.....Respondent No.2

3. **SH. SHUBHAM SHARMA**

Partner of

M/s Shubham Packaging Industries

PAC Link Road, Subhash Nagar

Jwalapur, haridwar-249407

Uttarakhand.

.....Respondent No.3

Through: Mr. Amol Sinha, Ld. ASC for State
with Mr. Kshitiz Garg, Mr. Ashvini
Kumar, Mr. Nitish Dhawan and Ms.
Sanskriti Nimbekar, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (Oral)

1. Petition under Article 226 of Constitution of India has been filed for setting aside Order of Ld. ACMM dated 27.10.2018 dismissing the Application under Section 319 Cr.P.C. to summon Respondent No. 3 –



Shubham Sharma as accused as well as Complaint Case No. 51386/16 under Section 138 Negotiable Instruments Act, 1881(N.I. Act) as abated due to demise of the sole accused Amreesh Sharma.

2. ***Briefly stated***, the Petitioner- *M/s Madhuram Paper Pvt. Ltd.* a Private Limited Company, was in the business of sale and supply of Craft Papers, who had supplied raw material for manufacturing of Corrugated Board/kraft papers through Invoice bearing No. 1269 dated 30.12.2011 for a sum of Rs. 3,83,509/- and Invoice bearing No. 1279 dated 01.01.2012 for a sum of Rs. 4,04,449/-, to M/S Shubham Packaging Industries, Partnership Firm.

3. Sh. Amrish Sharma, Partner of Respondent No.2 Firm had issued the Cheques No. 162310 dated 25.09.2012, No. 162312 dated 19.10.2012 and No. 162308 dated 19.12.2012 of Rs. 1,22,000/- each, in favour of the Petitioner on account of their outstanding liability.

4. The said cheques on presentation for encashment on 14.12.2012 in Kotak Mahindra Bank, Laxmi Nagar, Delhi were dishonoured on 17.12.2012 with Memo with the remarks "*Payment stopped by drawer*".

5. Despite sending the Legal Demand Notice dated 04.01.2013 to Respondent No. 2 and Sh. Amreesh Sharma, no payment was made. Petitioner thus, filed Complaint on 28.01.2013 under Section 138 read with Section 142 of Negotiable Instruments Act against only Amreesh Sharma- Partner of Respondent No. 2.

6. The Ld. ACMM *vide* its Order dated 01.04.2013 passed a summoning Order against Shri. Amreesh Sharma. However, during the service of Respondent/accused under Section 138 of N.I. Act, Petitioner discovered that Amreesh Sharma, Partner of Respondent No. 2 had expired and



Respondent No. 3, Mr. Shubham Sharma was managing the day-to-day affairs of the Firm.

7. The Petitioner thus, moved an Application under Section 319 Cr.P.C. on 11.01.2018, for summoning the Respondent No. 3 Mr. Shubham Sharma which was dismissed by Ld. ACMM *vide* Order dated 27.10.2018 and the Complaint was abated.

8. Aggrieved by the said Order, the Petitioner/Complainant has preferred the present Petition.

9. The Petitioner has challenged the Impugned Order on the ***primary grounds*** that the Ld. ACMM failed to consider that three cheques of total amount Rs. 3,66,000/- were issued by the Deceased Partner, Mr. Amreesh Sharma for and on behalf of Respondent No. 2/Firm and therefore, Respondent No. 3 being the partner of Respondent No. 2- Firm is jointly and severally liable as per Section 25 of the Indian Partnership Act. Ld. ACMM has also failed to consider Section 17(3), 18, 35 45(1), 47, and 48(b)(i) of Indian Partnership Act.

10. Moreover, Ld. ACMM didn't appreciate that the Petitioner had served the Statutory Legal Notice dated 04.01.2013 on Respondent No. 2- Firm and its deceased Partner and thus, the Firm/Respondent No.2 and Respondent No.3/Shubham Sharma being the Partner of the Respondent No.2, and managing and controlling the day to day affairs of the Firm, should have been allowed to be summoned under Section 319 Cr.P.C. as Section 141 N. I. Act makes the Firm as well as its Partners equally liable and should not have dismissed the Complaint as abated. However, the date of demise of Amreesh Sharma has not been mentioned anywhere and it is



not evident that whether Amreesh Sharma died before the institution of Complaint or subsequent thereto.

11. Lastly, it is submitted that abatement of the Complaint has caused grave financial hardship to the Petitioner of Rs. 3,66,000/- and therefore the Impugned Order dated 27.10.2018 is liable to be set aside.

12. The Respondent No. 2 and 3 were served *vide* Order dated 06.02.2020. However, no Reply has been filed on behalf of either of the Respondents.

13. *The Ld. ASC for the State* has submitted that the impugned Order of Ld. ACMM does not suffer from any infirmity since the Complaint u/s 138 NI Act was filed only against Mr. Amreesh Sharma who has died during the pendency of the proceedings and the Complaint has rightly been held to be abated. Therefore, the present Petition be dismissed.

14. **Submissions Heard and Record Perused.**

15. Essentially, three Cheques of Rs. 1,22,000/- each were issued by Mr. Amreesh Sharma, partner of Respondent No.2, in favour of the Petitioner when presented were returned with remarks "*Payment stopped by drawer*". This led to issuance of Statutory Demand Notice dated 04.01.2013 to Mr. Amreesh Sharma and Respondent No. 2-Firm. However, the Complainant, in its wisdom filed the Complaint only against Mr. Amreesh Sharma, who is since deceased. The Complaint had not arrayed the Respondent No. 2, Partnership Firm or Respondent No.3, /Shubham Sharma, other partner as accused in the said Complaint.

16. On receiving the information given on the summons sent for service the about the demise of Accused-Amreesh, an Application under Section 319



of the Cr.P.C. was preferred by the Petitioner to array Respondents no. 2 and 3 herein as accused, which was dismissed by the learned ACMM *vide* Order dated 27.10.2018 and has been challenged by way of the present Petition.

17. The main contention of the Petitioner is that three cheques were issued by the Deceased partner- Mr. Amreesh Sharma for and on behalf of Respondent No. 2-Firm and Respondent No. 3/Shubham Sharma being the partner of Respondent No. 2- Firm, is jointly and severally liable as per Section 25 of the Indian Partnership Act which reads as follows:-

“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.”

18. Pertinently, the perusal of the Cheque shows that it had been signed by Mr. Amreesh Sharma and it also bears the stamp “For Shubham Packaging Industries”. The Cheques are as under:

Annexure 1-3 Collg-

पंजाब नेशनल बैंक Punjab National Bank न्यू कलेक्टर, रोशनबाद (हरिद्वार) उत्तराखण्ड (1333) New Collectorate, ROSHNABAD (Haridwar) Uttarakhand - 249412 RTGS/NEFT IFS Code : PUNB0133300	वरम. शाखाओं पर देय PAYABLE AT ALL BRANCHES 25-9-18 D D M Y Y Y Y
MADHURAM PAPER PVT LTD	या धारक को OR BEARER
रुपये RUPEES ONE LAC TWENTY TWO THOUSAND RUPEES ONLY	18
अदा करें ₹ 1,22,000.00	
अका सं. V.C. No. 1333008706100266 चालू खाता CURRENT A/c	FOR SHUBHAM PACKAGING INDUSTRIES अमरेश शर्मा PARTNER
Kotak Mahindra Bank Ltd. 110485046	UGM PLEASE SIGN ABOVE
* 16 23 10 * 0000 24000 *	24



पंजाब नैशुनल बैंक punjab national bank
न्यू कलेक्टरेट, रोशनबाद (हरिद्वार) उत्तराखण्ड (1333)
New Collectorate, ROSHNABAD (Haridwar) Uttarakhand - 249402
RTGS/NEFT IFS Code : PUNB0133300

सभी शाखाओं पर देय PAYABLE AT ALL BRANCHES
19/12/2012
D D M M Y Y Y Y

MADHURAM PAPER PVT. LTD.
या धारक को OR BEARER

रुपये RUPEES ONE LAC TWENTY TWO THOUSAND RUPEES ONLY (19)

अदा करें ₹ 1,22,000.00

खाता नं. / A/c. No. 1333008700100266
वर्तमान खाता / CURRENT A/c

Kotak Mahindra Bank Ltd.
110485046
UGM

FOR SHUBHAM PACKAGING INDUSTRIES
31/12/2012
PARTNER

PLEASE SIGN ABOVE!

पंजाब नैशुनल बैंक punjab national bank
न्यू कलेक्टरेट, रोशनबाद (हरिद्वार) उत्तराखण्ड (1333)
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सभी शाखाओं पर देय PAYABLE AT ALL BRANCHES
19/12/2012
D D M M Y Y Y Y

MADHURAM PAPER PVT. LTD.
या धारक को OR BEARER

रुपये RUPEES ONE LAC TWENTY TWO THOUSAND RUPEES ONLY (20)

अदा करें ₹ 1,22,000.00

खाता नं. / A/c. No. 1333008700100266
वर्तमान खाता / CURRENT A/c

Kotak Mahindra Bank Ltd.
110485046
UGM

FOR SHUBHAM PACKAGING INDUSTRIES
31/12/2012
PARTNER

PLEASE SIGN ABOVE!

19. Admittedly, Legal Notice dated 04.01.2013 seeking dues was addressed by the Petitioner to Mr. Amreesh Sharma and Respondent No. 2-Firm. However, in Complaint Case No. 51386/16 u/s 138 r/w 142 NI Act, only Mr. Amreesh Sharma has been made an Accused.

20. **First and foremost**, the partners can be made liable for the acts of the Firm only if the Partnership Firm is a Party to the Complaint. The Apex Court in Dilip Hariramani v. Bank of Baroda, 2022 SCC OnLine SC 579 has held that Partner cannot be held to be vicariously liable under NI Act, 1881 when Partnership Firm was not the primary accused.

21. The Supreme Court in Aneeta Hada vs M/s Godfather Travels & Tours Pvt. Ltd., AIR 2012 SC 2795, after referring to judgments in Iridium India Telecom Ltd. v. Motorola Inc and Ors., 2004 (1) BOM CR 479 and Standard Chartered Bank and others v. Directorate of Enforcement and others, AIR 2006 SC 1301, has observed that "for maintaining the



prosecution under Section 141 of the Act, arraigning of a Company as an accused is imperative." The same principle is applicable to the present case.

22. Pertinently, unfortunate as it may be, while the Cheques were issued in the name Firm and the Legal Notice dated 04.01.2013 was sent to the Firm, but were but not made a party and only Mr. Amreesh Sharma was named as Respondent, in the Complaint under Section 138 and 142 NI Act. **Without the Firm being a party, the Complaint only against the Partner was not maintainable at the time of its inception.**

23. A still born Complaint, which also got abated on demise of Mr. Amreesh Sharma, could not have been infused with life after it got abated by impleading the Firm and Respondent No. 3, Shubham Sharma, as Respondents under Section 319 Cr.P.C. Significantly, the date of demise of Amreesh Sharma has not been mentioned anywhere and it is not evident that whether Amreesh Sharma died before the institution of Complaint or subsequent thereto.

24. **Secondly**, no specific allegations have been made against Respondent No. 3, Shubham Sharma qua the liability either in the Legal Notice dated 04.01.2013 or in the Complaint filed u/s 138 r/w 142 NI Act.

25. In S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Another, (2005) 8 SCC 89, the Apex Court held that mere designation as a Director is not sufficient; specific role and responsibility must be established in the Complaint under Section 138 NI Act. Similarly, in N.K. Wahi vs. Shekhar Singh, (2007) 9 SCC 481 it is held that that to launch a prosecution against the alleged Directors, there must be a specific allegation in the Complaint as to the part played by them in the transaction. There should be clear and



unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the Company. This principle has been extended in the case of partnership firms as well by the Apex Court in Dilip Hariramani v. Bank of Baroda (supra) wherein it was observed:

“Vicarious liability under sub-section (1) to Section 141 of the NI Act can be pinned when the person is in overall control of the day-to-day business of the company or firm.Vicarious liability under sub-section (2) is attracted when the offence is committed with the consent, connivance, or is attributable to the neglect on the part of a director, manager, secretary, or other officer of the company.”

26. Admittedly, the Cheques were not issued by Respondent No. 3- Shubham Sharma and there are no specific allegations against him that show that he was in overall control of the day-to-day business of the Firm on the date of default. Further, the accused partner i.e. Amreesh Sharma is already deceased.

27. In light of decision of the Apex Court in Dalip Hariramani (supra), the Ld. ACMM has rightly dismissed the Application under Section 319 Cr.P.C. and abated the Complaint on the death of the sole Accused.

28. There is no merit in the present Petition which is hereby dismissed.

29. The Petition along with pending Application(s) is disposed of accordingly.

**NEENA BANSAL KRISHNA
(JUDGE)**

APRIL 28, 2025/RS