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CRL RC No. 1538 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20-02-2026

PRONOUNCED ON:24-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL RC No. 1538 of 2023

M.Karthikeyan
S/o. Mayilsamy, Managing Partner / Authorised
Signatory of M/s.Rajalakshmi Fabrics, No.1, 296,
Velankadu Thottam, Chinniyagoundampalayam,
Panicampati Post, Palladam, Tiruppur District.

..Petitioner/A2

Vs

M/s. Soliswara Tex
Rep.by its Managing Partner, V.Arunkumar S/o.
Viswanathan, No.1/179, Vellakattu Thottam,
Krichipalayam, Elavendhi Post, Palladam Taluk,
Tiruppur District.

..Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the Judgment made in CA.No.85/2022 dated 04.08.2023 on the file of the learned Principal Sessions Judge, Tiruppur, confirmed the Judgment in STC.No.2072 of 2017 dated 24.06.2022 on the file of Learned Judicial Magistrate Court, Palladam.

For Petitioner:

Mr.V. Ramamurthy

For Respondent:

Mr.R.Vivekananthan



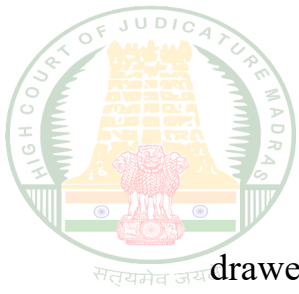
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ORDER

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The Criminal Revision Case is filed by the petitioner/A2 challenging the Judgment dated 04.08.2023 in Crl.A.No.85 of 2022 on the file of the learned Principal Judge, Tiruppur, thereby confirming the Judgment dated 24.06.2022 in STC No.2072 of 2017 on the file of the learned Judicial Magistrate, Palladam, convicting the petitioner for the offence under Section 138 of the Negotiable Instruments Act [in short, 'the NI Act'] and sentenced him to undergo 11 months simple imprisonment and to pay twice the cheque amount to the complainant as compensation, in default to undergo three months simple imprisonment

2. It is the case of the respondent that the petitioner is a partner in a firm, which is arrayed as A1 in the complaint filed by the respondent; that the partnership firm was due to pay a sum of Rs.48,97,397/- towards five invoices raised by the respondent; that towards the discharge of the liability, a cheque dated 25.05.2017 drawn in favour of the respondent was issued from the firm's account and signed by the petitioner for a sum of Rs.47 Lakhs; that the said cheque was presented for collection on 10.07.2017 and it was returned for the reason 'Payment stopped by the



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drawer'; that statutory notice was issued on 24.07.2017; that inspite of receipt of notice, the firm did not make the payment and had sent a reply notice with false averments and thus, the firm committed the offences under Section 138 of the Negotiable Instruments Act; and that the petitioner is the Managing Partner of the said firm and the 3rd accused was a partner of the said firm.

3. Before the trial Court, the respondent had examined himself as PW1 and marked 14 documents as Ex.P1 to Ex.P14. The trial Court had acquitted the firm which was arrayed as A1 and the other partner arrayed as A3 and convicted the petitioner/A2 stating that the respondent had proved the case against the petitioner and sentenced him as stated above. The appellate Court confirmed the said finding of guilt and sentence imposed by the trial Court.

4. The learned counsel for the petitioner would submit that admittedly the cheque was issued by the firm; that the trial Court having acquitted the firm of the offence under Section 138 of the NI Act, ought not to have convicted the partner alone and that the said approach of the



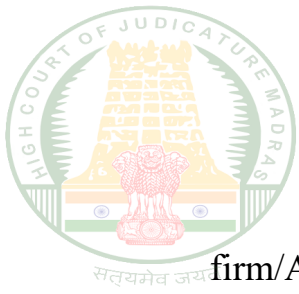
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learned Magistrate is opposed to settled position of law; that the petitioner had rebutted the statutory presumption in the cross-examination; and that therefore, the finding of guilt of the trial Court as confirmed by the appellate Court is liable to be set aside.

5. (i) The learned counsel for the respondent *per contra* submitted that the Hon'ble Supreme Court in a recent decision in ***Dhanasingh Prabhu v. Chandrasekar and another***, reported in **2025(10) SCC 96** held that even if the firm is not made an accused, the partners can be prosecuted under Section 138 of the NI Act, as the partnership firm is not a legal entity separate and distinct as a company from its Directors and the partnership firm has no separate recognition and that in case of a partnership firm, the offence is committed by the partners of the firm and not just the firm *per se*. The learned counsel therefore submitted that notwithstanding the acquittal of the firm, the petitioner as the partner of the firm can still be convicted and prayed for dismissal of the revision.

(ii) The learned counsel for the respondent also submitted that the respondent has now challenged the judgment of acquittal in respect of the



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firm/A1 and the other partner/A3 and therefore, the prayer for acquittal of the petitioner/A2 on the ground that the firm has been acquitted, cannot be sustained.

6. As stated above, the respondent had examined himself as PW1 and had marked 14 documents. The petitioner had not disputed his signature in the cheque. He has also not disputed the fact that the cheque was issued from the account maintained by the firm. The respondent had marked five invoices to prove the firm's liability to pay the respondent. The petitioner had marked two document on his side besides examining DW1 and DW2 to show that they are not liable to pay the amount covered under the invoices and that the invoices are forged. In fact DW1 would state that in the Sales Tax Returns there is no reference to any sales made between 01.03.2017 and 31.03.2017 and the invoices are said to have been made within those days.

7. Therefore, from the available evidence on record it can be seen that the respondent had established that the firm had issued the cheque and consequently, the presumption under Section 139 of the NI Act has to



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be drawn. The question is whether the respondent and the firm had rebutted the statutory presumption.

8. However, unfortunately the learned Magistrate has not appreciated the legal position as regards vicarious liability and has committed a fundamental factual error. The learned Magistrate has assumed that the first accused is also a partner whereas the first accused is the firm in this case. The observations made by the learned Magistrate is extracted hereunder for better appreciation of the findings.

“The Honourable Supreme Court in **Dilip Hariramani v. Bank of Baroda CDJ 2022 SC 541**, held that S.141 does not make all the Directors liable for the offence. Vicarious liability on the part of a person must be pleaded and proved and not inferred. By applying this principle in this case on hand, there is no averments and evidence to show the 1st and 3rd accused persons were in charge of an responsible for the conduct of the affairs of the firm. Hence both the 1st and 3rd accused cannot be convicted merely because of partnership.”

9. The above extract would reveal that the learned Magistrate has proceeded on the premise that the first and third accused persons are in-charge of the conduct of the firm whereas the first accused is actually the firm. There has been a total non application of mind in this regard. The



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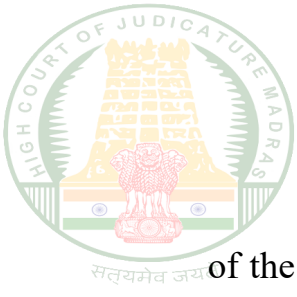
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learned Magistrate therefore found the second accused, the petitioner herein guilty.

10. This is not a case where the firm is not prosecuted and the partners alone were prosecuted. Therefore, the judgment relied upon by the learned counsel for the respondent that even if the firm is not made an accused, the partners can be prosecuted, would not be of any avail to the respondent. In this case, the learned Magistrate was not sure of who is being found guilty as could be seen from the aforesaid observations. Unfortunately the appellate Court had also not noticed this error and had confirmed the judgment of conviction of the petitioner.

11. Therefore, this Court is of the view that the impugned judgments holding the petitioner guilty of the offence, is based on an erroneous presumption of fact and hence, cannot be sustained. The findings therefore are perverse and are liable to be set aside.

12. The third accused is the mother of the petitioner. In the complaint there is no allegation that she had any role in the alleged affairs



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of the firm. Therefore, the finding with regard to vicarious liability of the learned Magistrate as regards the role of the third accused cannot be faulted. This Court is of the view that interest of justice demands that a retrial is conducted to adjudicate the complaint on merits. This Court is of the view that the firm and the petitioner have to be retried. This Court is adopting this course in exercise of the revisional jurisdiction as the error apparent on the face of the record has been brought to the notice of this Court. This Court is also of the view that no notice is required to be sent to the firm for the purpose of remanding the matter as unlike a company as held by the Hon'ble Supreme Court in ***Dhanasingh Prabhu v. Chandrasekar and another (cited supra)*** the firm is not a legal entity, separate and distinct. The relevant portion of the said Judgment reads as follows;

“64.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 rally 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



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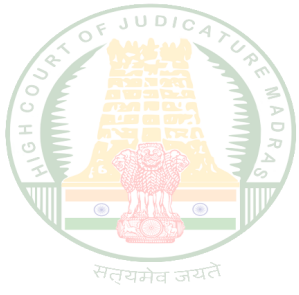


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no separate recognition either jurisprudentially or in law apart from its partners. Therefore, while a Director of a company can be vicariously liable for an offence committed by a company, insofar as a partnership firm is concerned, when the offence is committed by such a firm, in substance, the offences 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”

13. As stated earlier, the acquittal of the third accused is confirmed.

The matter is remanded for retrial against the firm and the petitioner. The appeal if any filed by the respondent against acquittal would become infructuous in view of the aforesaid observations. The evidence adduced in the trial shall be taken into consideration and the parties are permitted to adduce additional evidence if necessary. The learned Magistrate shall complete the exercise of concluding the trial within a period of two months from the date of receipt of a copy of this order.



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14. The Criminal Revision Case is disposed of, accordingly.

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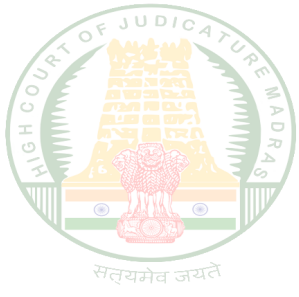
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Principal Sessions Judge,
Tiruppur,

2. The Judicial Magistrate Court,
Palladam.



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SUNDER MOHAN, J.

ars/Tsg

**Pre-delivery order in
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