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

% *Reserved on: March 21, 2025*
Pronounced on: July 01, 2025

+ CRL.A. 818/2013

NOIDA DHATU PVT. LTD.Appellant

Through: Mr. Vishwendra Verma & Ms.
Shivali, Advocates

Versus

UDAI CONTINENTALS & ANR.Respondents

Through: Mr. Roshan Lal Saini,
Advocate for Respondent No.2

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present Criminal Appeal under Section 378 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been filed by the Appellant, assailing the Judgment dated 24.09.2011 ("Impugned Order"), passed by the learned Metropolitan Magistrate, Karkardooma Courts, Delhi, in Complaint Case No. 401/2004, titled "*M/s Noida Dhatu Pvt. Ltd. vs. M/s Udai Continentals & Anr*", whereby the Respondent No.2 has been acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 ("NI Act").



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2. Before proceeding to the submissions addressed on behalf of the parties, it would be relevant to set out the factual matrix, which has led to the filing of the present Criminal Appeal.

Factual Background

3. The Appellant, M/s. Noida Dhatu Pvt. Ltd., a company registered under the Companies Act, 1956, is engaged in the business of manufacturing of Acoustic Enclosures (Canopy) and Genset Control Panels. The Respondent No.1, M/s Udai Continentals, a proprietorship concern, is engaged in the business of trading of Diesel Generating Sets, under the Proprietorship of Mr. D.P. Singh, who has been arrayed as Respondent No. 2.

4. It is the case of the Appellant that the Appellant and Respondent No. 2 had entered into business transaction wherein an order for supply of canopies was placed by Respondent No.1 with the Appellant. Accordingly, the goods conforming to the agreed specifications were duly supplied by the Appellant to Respondent No.1. The Respondent No. 2 issued an advance cheque bearing No. 040164, dated 12.11.2003 in the sum of Rs.1,10,000/-, drawn on ICICI Bank, Kanpur Branch to the Appellant. Consequent thereto, the Appellant presented the afore-noted cheque for encashment through its banker, however, the same was returned dishonored.

5. Upon being informed of the dishonor of the said cheque, the Appellant claims to have approached Respondent No.2, who, while requesting that no legal proceedings be initiated, cited financial constraints and assured the Appellant, that the outstanding amount



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would be discharged in two installments, first, by way of a Cheque bearing No. 040167 dated 18.11.2003 for an amount of Rs. 50,000/-, and second, by way of a post-dated Cheque bearing No. 040166 dated 15.12.2003 in the sum of Rs. 60,000/-, both drawn on ICICI Bank, Kanpur Branch.

6. The Appellant presented the Cheque bearing No. 040166 dated 15.12.2003 for encashment, however, the same was returned unpaid with the endorsement "*funds insufficient.*"

7. The Respondent No.2 once again assured the Appellant that upon completion of modification work of canopies, sufficient funds would be arranged for the payment of the goods supplied. Thus, the cheque no. 040166 dated 15.12.2003 for Rs. 60,000/- was again presented in the bank for encashment on 21.05.2004 for realization of money, however, the same was again returned unpaid *vide* Cheque Return Memo dated 21.05.2004 with the remarks "*payment stopped by drawer*".

8. Upon completion of the said work, the Appellant discovered that a total sum of Rs.62,200/- was pending from the Respondents, including the interest at the rate of 18%. Consequently, a Legal Demand Notice dated 02.06.2004 was issued by the Appellant, calling upon the Respondents to make the payment of the arrears within a period of 15 days.

9. Pursuant to the Respondents' failure to make the payment, the Appellant filed a Complaint under Sections 138/141 of the NI Act,



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along with Sections 420/406 of the Indian Penal Code, 1860 (IPC) before the learned Trial Court.

10. The learned Trial Court, *vide* the Order dated 20.07.2004, took cognizance of the complaint and summoned the Respondents. On 27.06.2009, a Notice under Section 251 of the Cr.P.C. was framed, to which the Respondents pleaded not guilty and claimed trial.

11. During the course of trial, the Appellant/ Complainant examined its Authorized Representative Mr. Bhanu Prasad as CW-1, in support of its case and concluded his evidence. The Statement of Respondent No.2 under Section 313 of the Cr.P.C. was recorded and he examined Mr. Mohd. Alam, DW-1, in his defence. Subsequently, the Appellant/ Complainant also moved an application seeking summoning of Ms. Sarika Singh Kuchhawaha, the actual Proprietor of the Respondent No.1, which came to be dismissed on 05.02.2011.

12. Additionally, the Appellant also preferred an application under Section 340 of the Cr.P.C., seeking prosecution of Respondent No. 2 on the ground that he had misrepresented himself as the Proprietor of Respondent No. 1 and had thereby committed fraud upon the Court. The said application was dismissed *vide* a separate Order dated 24.09.2011.

13. Upon considering the evidence led, material on record and the submissions of the parties, the learned Trial Court *vide* the Impugned Order dated 24.09.2011, dismissed the complaint and acquitted Respondent No. 2.

14. Aggrieved thereof, the Appellant has approached this Court by



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way of the present appeal.

Submissions on behalf of the Appellant

15. The learned counsel for the Appellant assailed the Impugned Order and submitted that the Respondents No. 1 & 2 were duly impleaded as the accused in Memo of Parties and their specific roles were clearly assigned in the Complaint. Furthermore, both the Respondents were summoned by the learned Trial Court and they entered appearance and participated in the proceedings.

16. He further submitted that Respondent No. 2 filed a *Vakalatnama* specifically in the capacity of Proprietor of Respondent No.1, thereby acknowledging his role in the proceedings and actively represented himself in that capacity. Moreover, at no stage prior to the recording of his statement under Section 313 of the Cr.P.C. did he dispute his impleadment or claim that he had been wrongly described as the Proprietor of Respondent No. 1.

17. The learned counsel submitted that Respondent No. 2 moved various applications before the learned Trial Court, explicitly acknowledging himself to be the proprietor of the Respondent No. 1, including repeated applications seeking an exemption from personal appearance. In view of such consistent conduct, he submitted that the learned Trial Court committed an error in acquitting the Respondent No.2 without appreciating material on record, which indicated misrepresentation.

18. The learned counsel, thus, submitted that the Respondent No. 2 had represented himself to be the proprietor of Respondent No. 1



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and in view of his such consistent conduct, now he cannot be permitted to resile from his status as proprietor of Respondent No. 1.

19. The learned counsel further submitted that the Respondent No. 2, in his capacity as the Proprietor of Respondent No.1, was responsible for issuance of cheque-in-question, which formed the basis of the complaint. Moreover, at the stage of framing of Notice under Section 251 of the Cr.P.C., Respondent No.2 did not dispute the issuance of the said cheque. Further, his conduct throughout the proceedings clearly demonstrated that he was in charge of, and responsible for, the day-to-day affairs of Respondent No.1.

20. He submitted that in his statement recorded under Section 313 of the Cr.P.C., the Respondent No. 2 again introduced himself as the Proprietor of Respondent No.1, therefore, this deliberate assertion, contrary to his subsequent stand, amounts to an attempt to mislead the learned Trial Court.

21. The learned counsel submitted that even though the cheque-in-question was issued for an amount of ₹60,000/-, and the Legal Notice served prior to the filing of the complaint had raised a demand for ₹62,000/-, being inclusive of interest at the rate of 18%. However, the learned Trial Court erred in observing that the demand made in the Legal Notice was unjustified and not proportionate. More so, the Respondent never challenged the Legal Notice during cross-examination of the Appellant.

22. To conclude, the learned counsel submitted that even in the memo of parties of the present appeal, the Respondent No.2 has



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represented himself to be the proprietor of Respondent No. 1.

Submissions on behalf of the Respondents

23. *Per contra*, the learned counsel for Respondent No. 2 while supporting the Impugned Order, submitted that the Appellant had moved an application for summoning of Ms. Sarika Singh Kuchhawaha W/o Respondent No. 2, who is the actual proprietor of Respondent No. 1. He submitted that she, being the proprietor, is responsible for day-to-day affairs of Respondent No. 1. However, the learned Trial Court dismissed the application, which has attained finality as the order of dismissal was not assailed by the Appellant before the Appellate Court.

24. He submitted that in the statement recorded of Respondent No. 2 under Section 313 of the Cr.P.C., he has specifically denied to be the proprietor of Respondent No. 1. He further stated that he was not the signatory of the cheque in question and had no business relationship with the Complainant or with the transaction in question.

25. The learned counsel further submitted that the cheque in question was never issued by the Respondent No. 2 and he is not the proprietor of M/s Udai Continentals i.e. Respondent No. 1.

26. The learned counsel drew the attention of this Court to the testimony of Mohd. Alman, Branch Manager, ICICI Bank, who was examined as DW-1 and submitted that the said witness has proved that Ms. Sarika Singh Kuchhawaha was the sole proprietor of Respondent No. 1. The testimony of the witness is unrebutted; therefore, the Appellant has miserably failed to prove that the Respondent No. 2 was



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the proprietor of Respondent No.1, having any liability to pay the amount under the disputed cheque.

Analysis and Findings

27. The arguments advanced by both the sides were heard at length and this Court has gone through the Impugned Order as well as material placed on record.

28. The Appellant had filed the Complaint under Sections 138/141 of the NI Act read with Sections 420/406 of the IPC before the Court of the learned Metropolitan Magistrate. In the complaint, the Appellant had claimed that Respondent No. 2 is the proprietor of Respondent No. 1 and had assured the Appellant that the cheque in question may be presented by the Appellant after completion of the work for modification of canopies at Kanpur. He further assured that he will arrange sufficient funds. Despite these assurances, the Respondent No. 2 failed to clear the dues that remained unpaid and the Appellant presented the cheque in question, which was dishonored.

29. The Respondent No. 2 has emphatically pleaded that he had no liability to pay the cheque-in-question as he neither issued the cheque nor is the signatory to the said cheque. He claimed that Ms. Sarika Singh Kuchhawaha is the proprietor of M/s Udai Continentals and he has no business relation with the Appellant.

30. It is a settled position of law that in case of a Proprietorship concern, it is only the proprietor who can be held liable under Section 138 of the NI Act since the Proprietorship concern has no separate legal identity. Section 141 of the NI Act does not cover within its



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ambit the proprietary concern as same is not a juristic person, so as to attract vicarious liability. A Proprietorship firm in fact is a business name of the sole Proprietor, therefore, only the Proprietor can be held liable under Section 138 of the NI Act as the Proprietorship concern and the Proprietor are one and the same.

31. Further, Section 138 of the NI Act manifests that it is the drawer of the cheque-in-question, which is liable for punishment as per the provisions of the Act, in case the cheque is dishonored on the grounds as provided under Section 138 of the NI Act.

32. At this stage, therefore, it is apposite to refer to the observations of the Supreme Court in case of **Raghu Lakshminarayanan Vs. Fine Tubes**, (2007) 5 SCC 103, wherein, it was held as under:

“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 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 anybody 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 Partnership Act.

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 **Ashok Transport Agency v. Awadhesh Kumar** [(1998) 5 SCC 567] wherein this Court stated the law in the following terms : (SCC pp. 569-70, para 6)

“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 30 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 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 of 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



‘insofar 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 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 Companies Act or a firm within the meaning of the provisions of Section 4 of the Partnership Act.”

33. This Court, in the case of ***M.M. Lal v. State NCT of Delhi*** 2012

(4) JCC 284, held as under:

“4. It is well settled that a sole proprietorship firm has no separate legal identity and in fact is a business name of the sole proprietor. Thus any reference to sole proprietorship firm means and includes sole proprietor thereof and vice versa. Sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, which envisages that if the person committing an offence under Section 138 is a company, every person who, at the time of 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. Company includes a partnership firm and any other association of individuals. The sole proprietorship firm would not fall within the meaning of partnership firm or association of individual. Vicarious liability cannot be fastened on the employees of a sole partnership firm, by taking aid of Section 141 of the Act, inasmuch as, no evidence has been led to show that



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the business was run by the respondent no. 2...”

34. From the aforesaid decisions, what emerges is that a Proprietary concern stands on an absolutely different footing. A person being the Proprietor thereof would be solely responsible for the affairs and the conduct of a proprietary concern.

35. In the present case, Ex. CW-1/2, the dishonored cheque indicates that the same has been signed by one Ms. Sarika Singh Kuchhawaha as Proprietor for Udai Continentals. DW-1, who had produced the record pertaining to Current Account No. 628805003759 in the name of Respondent No. 1 deposed that the said account belonged to a Proprietorship Firm in the name of Ms. Sarika Singh Kuchhawaha. This witness also proved the documents containing specimen signatures, nature of account and name of the Proprietor of Respondent No.1 as Ex. DW-1/1 (colly.)

36. The testimony of DW-1 is unchallenged as the witness was not cross-examined by the Appellant. Therefore, from the evidence on record, it is evident that the Respondent no. 2 is not a signatory to the cheque Ex. CW-1/2. Ms. Sarika Singh Kuchhawaha had issued the said cheque in the capacity of Proprietor of Respondent No. 1. In fact, if there was any responsibility to honor the cheque Ex. CW-1/2, it was of Ms. Sarika Singh Kuchhawaha. Unfortunately, she was neither served with any legal demand notice nor arraigned as an accused in the complaint filed by the Appellant under Section 138 of the NI Act. Although, the Appellant made a futile effort to get her summoned under Section 138 of the NI Act by filing an application before the



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learned Trial Court at the stage of final arguments. The application was dismissed by the learned Trial Court *vide* Order dated 05.02.2011, which has attained finality.

37. Hence, the Appellant has miserably failed to establish that Respondent No. 2 was responsible, being the proprietor of Respondent No. 1 to make the payment under the cheque Ex. CW-1/2.

38. In view of the above, the case attempted to be built by the Appellant appears to be suffering from fatal infirmities so much so, it goes directly to the root of the case and shakes the very foundation on which the Appellant's complaint had been registered. Thus, in the present case, no cause of action accrues in favour of the Complainant against Respondent No. 2, hence, this Court does not find any perversity in the Impugned Order dated 24.09.2011 *vide* which the Respondent No. 2 has been acquitted.

39. With aforesaid observation, the present Appeal is dismissed and the pending Application, if any, is accordingly disposed of.

(SHALINDER KAUR)
JUDGE

JULY 01, 2025/kp/r