



2026:CGHC:14528

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRR No. 1367 of 2025

Order Reserved on : 09.03.2026

Order Delivered on : 27.03.2026

1. Smt. Birja Zena W/o Rameshwar Zena Aged About 46 Years R/o
B.K.D./02- Sector- 09, Bhilai, District Durg Chhattisgarh

... Applicant

versus

1. Yashraj Mehra S/o Namalum Aged About 42 Years R/o Makan No.
31, Jipsi Ganpati Vihar, Birsi Durg Tahsil And District Durg
Chhattisgarh

... Respondent

For Applicant : Mr. Hariom Rai, Advocate

For Respondent : Mr. Ali Afzal Mirza, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

(CAV Order)

1. The applicant has filed the present criminal revision under Section 438 read with Section 442 of Bhartiya Nagarik Suraksha Sanhita, 2023 challenging the order dated 17.04.2025 passed by the learned 8th Additional Sessions Judge, Durg (C.G.) in Criminal Appeal No. 74/2024 by which the learned Additional Sessions Judge has set aside the judgment of conviction and sentence under Section 138 of Negotiable Instruments Act, 1881 (in short "Act of 1881") dated 21.02.2024 (Annexure P/2) passed by the learned Judicial

Magistrate First Class Durg (C.G.) in Criminal Complaint Case No. 1511/2017.

2. **Brief facts of the case are that:**

- (a) It is the case of the complainant that the complainant and the accused had a prior acquaintance having domestic relationship. The accused was engaged in the business of construction activity, sale of land for which he required funds, as such, he oftenly asked the complainant to provide funds. Further case of the complainant that in February 2014, the accused asked the complainant to arrange Rs. 30,00,000/- for a project, accordingly the complainant has given the amount to the accused as a loan. As per the understanding arrived at between them, the accused promised to repay the amount within 3-4 months without interest.
- (b) When the agreed time was lapsed the complainant requested to repay the amount, but instead of paying the amount he started avoiding complainant. On persuasion made by the complainant, on 19.07.2016, the accused gave her a cheque No. 847714 for Rs. 30,00,000/- drawn on United Bank of India, Branch B. Market Street No. 25, Plot No. 5, Sector 6, Bhilai, and asked her not to present it for encashment immediately, saying that he would receive money from the sale of some land/house purchaser and would repay the amount in cash and take back the cheque.
- (c) It is also the case of the complainant that after some time, the accused instructed the complainant to present the cheque for encashment. The complainant deposited the said cheque in her bank account maintained in Bank of Baroda, Branch - Civic

Centre Bhilai on 24.08.2016 for clearance, but it was dishonoured due to "insufficient funds" in the accused's bank account. When the complainant orally informed the accused about the dishonour of the cheque, he said that he would arrange and pay the entire amount, but he did not pay any amount. Thereafter, the complainant sent a registered notice through her advocate to the accused on 20.09.2016, informing him about the dishonour of the cheque and requesting payment of the amount. The said notice was returned to the complainant on 26.09.2016, with the remark that the accused's house was locked on five consecutive days. Despite oral intimation to the accused personally and through mobile, he did not pay the amount to the complainant which has necessitated the complainant to file a complaint against the appellant/accused before the learned Judicial Magistrate First Class under Section 138 of the Negotiable Instruments Act.

3. The complainant to prove her case has examined herself by way of an affidavit as provided under Section 145 of Act of 1881 wherein she has reiterated the stand taken by her in the complaint. The complainant has exhibited documents i.e. Statement of Bank of Baroda (Exhibit P/1), Cheque dated 19.07.2016 (Exhibit P/2), Cheque dishonour memo issued by the Bank (Exhibit P/3), Registered Legal Notice dated 20.09.2016 (Exhibit P/4), Postal Receipt (Exhibit P/5) and Acknowledgment (Exhibit P/6) in support of his complaint.
4. The witness was extensively cross-examined wherein in paragraph 10 she has affirmed that she has withdrawn Rs. 25,50,000/- from her

account and handed it over to the accused in cash; furthermore, at the behest of the accused, she transferred an amount of Rs. 4,50,000/- via RTGS to another individual, but she does not recall his name. In paragraph 16, she has admitted that in the complaint case she has neither arrayed Shree Siddhivinayak Buildcon as accused nor demand notice was given to the Shree Siddhivinayak Buildcon. In paragraph 18, she has admitted that in Ex. P/3 neither the seal of the Bank nor signature of any officer is reflected. She has stated that the notice was sent on the address was returned along with acknowledgment card. She has admitted that in Ex. P/1 which the bank statement wherein regarding withdrawal of Rs. 25,50,000/-, the name of accused has been written. She has stated that the said name has been written on instruction of her husband.

5. The accused has examined himself as defence witness No. 1 who has stated that Birja Jena had provided a sum of Rs. 4,50,000/- to the Siddhivinyak firm in the year 2014, out of this amount, he repaid Rs. 1,00,000/- in cash and in return received Cheque No. 847710 dated 20.05.2014 from Birja Jena. Amount of Rs. 30,00,000/- erroneously entered into the cheque. The said witness was extensively cross-examined by the complainant wherein he has admitted in paragraph 6 that he is the partner of Shree Siddhivinayak Buildcon and also admitted that on 12.02.2014 an amount of Rs. 4,50,000/- was transferred from the account of the firm through RTGS. He has also admitted that in Ex. D/7 which is document related to the registry of the property his name has been recorded as seller. He has stated that he is not aware that the cheque was dishonored due to "insufficient funds". He has also

admitted that he has not lodged any complaint against the complainant.

6. The accused examined Bank Officer (DW/2) who has stated that in account cheque No. 847714 was submitted which was dishonored due to "insufficient funds" on 24.08.2016 itself and also admitted Ex. P/3 which is the memo regarding intimation of dishonor of cheque issued by the Bank.
7. The learned Judicial Magistrate First Class on the basis of evidence and material on record has recorded its finding in paragraph 12 that the accused is unable to dislodge the fact that the cheque was not given towards any debt or liability which is *sine qua non* for attracting the offence enumerated in Section 138 of Act of 1881. The learned trial Court has also recorded its finding that in the cross-examination the accused has admitted that he is partner of Shree Siddhivinayak Buildcon and on 12.02.2014 Rs. 4,50,000/- has been transferred from RTGS. It has also recorded its finding that the accused has admitted his signature in Ex. P/2 i.e. dishonored cheque, as such, there is sufficient material to record presumption. It has also assigned the reason that though the accused has raised doubt about his handwriting but no expert opinion or any evidence has been brought on record to establish that he has signed in a blank cheque. Accordingly, it has convicted the accused with six months simple imprisonment and compensation of Rs. 30,00,000/- payable to the complainant, in default situation three months simple imprisonment.
8. Being aggrieved with the order of acquittal the accused has preferred appeal before the learned 8th Additional Sessions Judge Durg (C.G.)

who by impugned judgment dated 17.04.2025 has set aside the order of conviction and acquitted the accused. Being aggrieved with the acquittal of the accused, the applicant has preferred this criminal revision.

9. Learned counsel for the appellant would submit that the learned Appellate court has failed to appreciate that the complainant has proved its case beyond all reasonable doubts and the appellate Courts has ignored the evidence, material on record, on perverse finding the learned appellate Court has passed the impugned judgment of acquittal which is liable to be set aside by this Court. He would further submit that in the recent judgment the Hon'ble Supreme Court in case of **Dhansingh Prabhu vs. Chandrashekhar and Another** in **Special Leave Petition (Criminal) No. 5706 of 2024** vide judgment dated 14.07.2025 has held that the complaint under Section 138 of Act of 1881 for dishonor of cheque is maintainable against partner without arraigning partnership firm as partnership firm under the Partnership Act, 1932 (in short "Act of 1932") as company registered under the Companies Act, 1956 or Companies Act, 2013 are two distinct legal entity." Thus, he would pray for allowing the revision.
10. Per contra, learned counsel for the respondent would submit that the complainant has not placed any record to demonstrate that the said cheque was given by the accused towards any debt or liability. He would further submit that the applicant is unable to establish the fact that the respondent was solely responsible for the day to day functioning of the firm. He would submit that there was no legally

enforceable debt on the part of the respondent, as the applicant could not establish the correctness of the amount which was alleged to have been loaned to the respondent nor the applicant had adequately explained as to why and for what purpose the loan was given.

11. He would further submit that admittedly the complainant has given loan to Shree Siddhivinayak Buildcon for purchasing of property, but he has not arrayed the firm as party to the case. He would further submit that finding recorded by the First Appellate Court that the cheque was not given towards liability is legal, justified and does not warrant interference by this Court. He would further submit that the learned appellate Court has not committed any material illegality and irregularity in passing the order of acquittal which warrants interference by this Court in the revisional jurisdiction exercised by this Court. He would further submit that there is no material irregularity and illegality which warrants interference by this Court in the revisional jurisdiction and would pray for dismissal of the revision.
12. To substantiate his submission, learned counsel for the respondent has referred to the judgments of the Hon'ble Supreme Court in case of **Shakti Travel & Tours vs. State of Bihar and Another** reported in **2002 (9) SCC 415**, **Bijoy Kumar Soni vs. Paresh Manna vs. Another** reported in **2024 INSC 1024**, **Ajeet Seeds Ltd. vs. K. Gopal Krishnaian** reported in **2014 (12) SCC 685**, **Anil Chanana vs. M/s Gyani Ram Ruliya Ram (P&H)** reported in **2019 (1) RCR (Criminal) 388**, **Sudhir Kumar Bhalla vs. Jagdish Chand** reported

in **AIR 2008 SC 2407, Aneeta Handa vs. Godfather Travels & Tours (P) Ltd.** reported in **2012 (5) SCC 661**.

13. I have heard learned counsel for the parties and perused the record with utmost circumspection.
14. Considering the rival submissions of the parties, the point emerged for determination by this Court is:

“Whether the impugned order of acquittal passed by the appellate Court dated 17.04.2025 on account of non-arraying firm as accused in the complaint case or non-issuance of notice under Section 138 of Act of 1881 to the firm vide order is legal, justified and warrants interference by this Court?”

15. To appreciate this point emerged for determination by this Court, it is expedient for this Court to go through the relevant provisions of Indian Partnership Act, 1932. Section 4, 13 and 25 of Act of 1932 as well as Section 141 of N.I. Act, 1881 which are extracted as under:

“Section 2(a) - an“act of a firm” means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

Section 4. Definition of “partnership”, “partner”, “firm” and “firm name” - “Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually “partners” and collectively “a firm”, and the name under which their business is carried on is called the “firm name”.

Section 13. Mutual rights, and liabilities.- Subject to contract between the partners—

(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;

(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

(c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;

(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent, per annum;

(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

(f) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

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.”

141. Offences by companies.- (1) If the person committing an offence under section 138 is a company, every person who, at the time the 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:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

16. From perusal of the provisions of Section 4 of the Act of 1932, it is quite vivid that Section 4 of the Partnership Act contains three elements; (i) there must be an agreement entered into by all the persons concerned; (ii) the agreement must be to share the profits of a business; and (iii) the business must be carried on by all or any of the persons concerned, acting for all. All these elements which must be present before a group of associates can be held to be partners. The third element shows that the persons of the group who conduct the business do so as agents for all the persons in the group and are therefore liable to account for all. It is equally well settled position of law that position of a partner in the firm is thus not of a master and a servant or employer and employee which concept involves an element of subordination, but that of equality. Section 4 of the Partnership Act clearly provides that persons who have entered into partnership with one another are individually called partners and collectively a firm and the name under which their business is carried out is called a firm name.
17. Thus, while partnership is the relation between persons who have agreed to share profits of the business carried on by all or any of them acting for all, the persons are collectively called a firm and the name of the firm is the firm name which is a compendious or collective term of partnership of the partners. The said Section also clearly implies that a firm or partnership is not a legal entity, separate and distinct from its partners. Thus, partnership is merely a convenient name to carry out business by partners. Thus, a firm is not an entity of persons in law but is merely an association of individuals and firm name is only a collective name of those

individuals who constitute the firm. In other words, the firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership. Thus, a firm may not be a legal entity in the sense of a corporation or a company incorporated under the Companies Act, 1956 or 2013, but it is still an existing concern where business is done by a number of persons in partnership.

18. Thus, partnership firm, does not possess a separate legal personality and the firm's name is only a compendious reference for describing its partners and there is fundamental distinction between a firm and a company as company is separate from shareholders.
19. The issue whether the complaint under Section 138 of Act of 1881 filed against the partner of the firm without impleading the firm or statutory notice to the firm has recently come up for consideration before the Hon'ble Supreme Court in case of **Dhanasingh Prabhu vs. Chandrasekar & Another** reported in **2025 INSC 831**, wherein the Hon'ble Supreme Court has held in paragraphs 9.8 to 9.11 and 10 as under:

“9.8 However, jurisprudentially speaking, the partners of a partnership firm constitute the firm and a firm is a compendious term for the partners of a firm. This is opposed to the position of a director in a company which is a body corporate *stricto sensu* and such a company is a separate juristic entity *vis-à-vis* the directors. On the other hand, a partnership firm has no legal recognition in the absence of its partners. If a partnership firm is liable for the offence under Section 138 of the Act, it would imply that the liability would automatically extend to the partners of the partnership firm jointly and severally. This underlying distinction between a partnership firm and a company which is a body corporate has to be borne in mind while dealing with an offence committed by a company or a partnership firm, as the case may be, within the meaning of Section 138 read with Section 141 of the Act. To reiterate, in the case of a partnership firm,

there is no concept of vicarious liability of the partners as such. The liability is joint and several because a partnership firm is the business of partners and one cannot proceed against only the firm without the partners being made liable.

9.9 Therefore, even in the absence of partnership firm being named as an accused, if the partners of the partnership firm are proceeded against, they being jointly and severally liable along with the partnership firm as well as inter-se the partners of the firm, the complaint is still maintainable. The accused in such a case would in substance be the partners of the partnership firm along with the firm itself. Since the liability is joint and several, even in the absence of a partnership firm being proceeded against by the complainant by issuance of legal notice as mandated under Section 138 of the Act or being made an accused specifically in a complaint filed under Section 200 of CrPC, (equivalent to Section 223 of the BNSS), such a complaint is maintainable.

9.10 Thus, when it is a case of an offence committed by a company which is a body corporate *stricto sensu*, the vicarious liability on the categories of persons mentioned in sub-section (1) and sub-section (2) of Section 141 of the Act accordingly would be proceeded against and liable for the offence under Section 138 of the Act. In the case of a partnership firm on the other hand, when the offence has been proved against a partnership firm, the firm *per se* would not be liable, but liability would inevitably extend to the partners of the firm inasmuch as they would be personally, jointly and severally liable with the firm even when the offence is committed in the name of the partnership firm.

9.11 To reiterate, when the partnership firm is only a compendious name for the partners of the firm, any offence committed under Section 138 read with Section 141 of the Act would make the partners of the firm jointly and severally liable with the firm. If, on the other hand, the Parliament intended that the partners of the firm be construed as separate entities for the purpose of penalty, then it would have provided so by expressly stating that the firm, as well as the partners, would be liable separately for the offence under Section 138 of the Act. Such an intention does not emanate from Section 141 of the Act as the offence proved against the firm would amount to the partners of the firm also being liable jointly and severally with the firm. Therefore, there is no separate liability on each of the partners unless sub-section (2) of Section 141 applies, when negligence or lack of bona fides on the part of any individual partner of the firm has been proved.

10. In view of the aforesaid discussion, we hold that the High Court was not right in rejecting or dismissing the complaint for the reason that the partnership firm was not arraigned as an accused in the complaint or that notice had not been issued to it under Section 138 of the Act. In view of the aforesaid discussion, the notice issued to the partners of the firm in the

instant case shall be construed to be a notice issued to the partnership firm also viz., 'Mouriya Coirs'. Permission is granted to arraign the partnership firm as an accused in the complaint."

20. Evidence recorded during trial would clearly demonstrate that the accused has admitted that he is the partner of the firm and in view of the provisions of Act of 1932 *vis-a-vis* provisions of the Act of 2013 as well as law laid down by the Hon'ble Supreme Court in case of **Dhanasingh Prabhu (Supra)**, the partnership firm does not possess a separate legal personality and the firm's name is only a compendious reference for deciding its partner, as such, there is fundamental distinction between a firm and a company on the premises that company is separate from shareholders. Therefore, the learned first appellate Court has committed material irregularity and illegality in dismissing the complaint on the count that the complainant has neither made party to the case nor issued notice to the firm. The judgment cited by the learned counsel for the respondent is not applicable to the present facts of the case as they relates to provisions of Companies Act, whereas, the case in hand relates to firm which has separate statutory provisions governing the provisions relating to partnership firm i.e. Indian Partnership Act, 1932.
21. The learned appellate Court has not touched the findings of the trial Court regarding commission of offence under Section 138 of Act of 1881 whereas the learned trial Court has elaborately discussed the evidence and material on record in paragraphs 12 to 14 of its judgment and held that the accused has committed the offence under Section 138 of Act of 1881 which cannot be held to suffer from

perversity or illegality. The well reasoned finding recorded by the learned trial Court regarding commission of offence by the respondent has not been disturbed by the appellate Court, as such, it has attained finality. It is pertinent to mention here that the respondent has not challenged that finding before this Court, as such, the finding recorded by the trial Court regarding commission of offence by the respondent attained finality, therefore, the conviction of the respondent for commission of offence deserves to be restored and accordingly it is restored.

22. Consequentially the criminal revision is allowed. The judgment passed by the learned appellate Court dated 17.04.2025 is set aside and order passed by the learned Judicial Magistrate First Class is restored with modification granting compensation along with the cheque amount and in default situation R.I. for six months, Accordingly the accused is directed to pay within **four months** the amount of dishonored cheque amounting to Rs. 30,00,000/- with 10% of cheque amount as victim's compensation from date of filing of the complaint i.e. 13.10.2016 before the Judicial Magistrate First Class Durg (C.G.) failing which the accused shall undergone six month R.I..

Sd/-
(Narendra Kumar Vyas)
Judge

Head Note:

“Without impleading firm or issuing notice to the firm, the complaint under Section 138 of Negotiable Instruments Act, 1881 is maintainable against the partner of the firm.”

मुख्य बिंदु:

“फर्म को पक्षकार बनाए बिना या फर्म को नोटिस जारी किए बिना भी, परक्राम्य लिखत अधिनियम, 1881 के धारा 138 के अंतर्गत फर्म के साझेदार के विरुद्ध परिवाद प्रचलन योग्य है।”