IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE JUSTICE SRI RAKESH THAPLIYAL.

Reserved on: 06.08.2026
Delivered on: 18.08.2026

Criminal Misc. Application (C528) No. 1693 of 2026

Lalit Mohan Chandra Bhatt ……Petitioner

Vs.

Afsar Ali ……Respondent

Counsel for the Applicant: Mr. S.K. Pandey, learned counsel.

(Sri Rakesh Thapliyal, J.)

1. The instant application is preferred by the applicant Lalit Mohan Chandra Bhatt under Section 528 of BNSS 2023 for quashing of the proceeding of Complaint Case No. 124 of 2025, preferred under Section 138 of Negotiable Instruments Act titled as Afsar Ali vs. Vaishnavi Food Product and Others, pending in the court of learned Civil Judge (Jr. Div.)/Judicial Magistrate, Bazpur, District Udham Singh Nagar.

2. The main contention to challenge the proceeding is that the present applicant is not the signatory of the Cheque in question and the cheque has been signed by the authorized signatories, namely, Rajendra Kumar Sharma and Anil Kumar Sharma, therefore, the proceeding is bad in law qua the applicant. It is argued by the learned counsel for the applicant that the applicant was inducted as a partner in the firm, namely, M/s Vaishnavi Food Product by virtue of partnership deed dated 01.04.2023 and prior to this he had no concern whatsoever with the affairs and management of the partnership firm. He argued that the firm, namely, M/s Vaishnavi Food Product was originally constituted under a Partnership Deed dated 01.07.2011 and at that time the applicant was neither the partner nor the signatory since he was inducted as partner first time on 01.04.2023 and the reconstitution

of partnership was registered on 19.10.2023 and, therefore, since the applicant was inducted as partner only on 01.04.2023, therefore, he has no liability in any manner. He further submits that the present applicant was authorized to operate and sign the cheques of the firm jointly with other partners only w.e.f. 01.02.2025, and, therefore, in respect of the cheques in question he is neither liable nor responsible.

In support of such submissions certification of Bank of Baroda Branch at Sultanpur Patti dated 20.07.2026 is also placed on record.

3. It is argued by the learned counsel for the applicant that the learned Magistrate without examining the material placed on record and without examining who is the actual signatory of the cheque in question took cognizance and issued summons to the present applicant and even learned Magistrate have not recorded the reasons whether at the relevant point of time, the present applicant was responsible for affairs of the business of firm in terms of Section 141 of the N.I. Act.

4. To understand the issue in hand, first of all Section 141 of the N.I. Act is being reproduced herein as under:-

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 anybody corporate and includes a firm or other association of individuals; and

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

On close scrutiny of Section 141 of N.I. Act firstly it should keep in mind that partnership firm is not a distinct legal firm separate from it's partner and it is a collective name for the partners. To prosecute a non signatory partner the complainant must specifically alleged in the complaint that the partner was actively managing day to day business affairs of the firm when the cheque was bounced. So far as signatory status is concerned merely saying that applicant did not sign the cheque is not sufficient. If they are managing the business they remain vicariously liable. Conversely, if they were sleeping partner with no operational role, the case against them can be quashed.

5. On bare perusal of the complaint, the account payee cheque no. 26201 was issued on 06.11.2025 for an amount of Rs. 50 lakhs of account of Firm M/s Vaishnavi Food Product ,i.e. account no. 06560500000810 which was furnished for encashment at HDFC Bank Branch Rampur Road Bazpur District Udham Singh Nagar on 14.01.2025 which got dishonoured along with an endorsement of "funds insufficient" as evident from "Return-Memo-Report" dated 15.01.2025 thereafter, a notice was sent on 20.01.2025 which was return back with an endorsement of refusal.

As it appears from the complaint itself specific averment has been made that all the accused persons including present applicant are collectively responsible for day to day affairs of business of the Firm. The complaint also reveals that the complaint is filed in reference to an Account Payee Cheque issued on 06.01.2025 which got dishonoured on 15.01.2025 and admittedly in view of the statement as given in the objection, the applicant was inducted as a partner in the partnership firm on 01.04.2023 which itself reveals that as on date the Account Payee Cheque was issued, i.e. on 06.01.2025, the applicant was the active partner of the partnership firm and there is specific averment in the complaint to this extent. To understand the liability of the partner we must look into Section 141(1) of N.I. Act and explanation of which states that "company includes partnership firm" and "Director includes partner in a firm".

6. It is a settled law that when an offence under Section 138 of N.I. Act is committed by a firm every person who was in-charge of and responsible for the firm's business at the time of the offence is deemed guilty. It is repeatedly held by the Hon'ble Apex Court in the catena of judgments that the partnership firm has no separate legal personality from its individual partner. The liability of the partner under the Indian Partnership Act is joint and sever, therefore, if a cheque was issued on behalf of the partnership firm all active partner face direct and vicarious responsibility, however, the non-signatory partner cannot escape criminal prosecution simply because their signature is missing from the cheque or they are not the signatory of the cheque. The deciding factor is whether the person concerned is in-charge of the firm's business operation or not. So far as present applicant is concerned, admittedly on the date when account Payee Cheque was issued, i.e., on 06.01.2025, the applicant was the active partner of the firm which is his own admission in the petition, therefore, merely that he is not the signatory of the cheque he cannot be escaped from liability.

7. Thus in view of the discussion as above, the complaint prima facie discloses the necessary ingredients of the offence against the present applicant. The argument that the applicant is not the signatory to the cheques in question does not invalidate ongoing proceeding. The inherent power conferred under Section 528 of BNSS 2023 (corresponding section 482 Cr.P.C) should be exercised sparingly and with great caution and it is not be used to interfere with the proceeding of the subordinate courts. Thus, this Court is of the firm opinion that the learned Trial Court has not committed any jurisdictional infirmity so as to warrant interference in the present proceeding. Even otherwise in view of the discussion as above, the complaint prima facie discloses offence.

8. Consequently, the instant petition preferred under Section 528 of BNSS 2023 lacks merit and is hereby dismissed. The Trial Court is directed to proceed with the matter in accordance with law.

RAKESH THAPLIYAL, J.

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