R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.4428 OF 2019

BETWEEN:

1. V.B. NAGARAJ,
MAJOR,
S/O. SRI. V.B.CHANNAPPA,
DOOR NO.87, 3RD WARD,
MAIN ROAD, MAGALA ,
TALUK-HUVINHADAGALI,
DISTRICT-BELLARY-583 201.
RESIDING AT NO.9, VARAGANAVARA ONI,
NANDIHALLI POST, HUVINAHADAGALI TALUK,
DISTRICT-BELLARY-583 201.

...PETITIONER

(BY SRI. B.M. HALASWAMY, ADVOCATE)

AND:

1. M/S. PEREGRINE PHOSPHATE (P) LTD.,
REP. BY DIRECTOR
MR. MADHU KUMAR VARMA,
AGED ABOUT 50 YEARS,
S/O. SRI. VIJAY VARMA RAJ B.M.
RESIDING AT NO.312, 'B' WING,
3RD FLOOR, MITTAL TOWER,
NO.6, M.G. ROAD,
BENGALURU-560 001.
REP. BY ITS MANAGER
MR. PAVAN G. PATIL,
AGED ABOUT 32 YEARS,
S/O. SRI. GANESHRAO PATIL.

...RESPONDENT

(BY SRI. K. PALANIMUTHU, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE PROCEEDINGS IN C.C.NO.25126/2018 PENDING BEFORE THE XLII ADDITIONAL CMM AT BENGALURU.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.09.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. In this petition, prayer is sought to quash the proceedings initiated against the petitioner under Section 138 of the Negotiable Instruments Act ('NI Act' for short) in C.C.No.25126/2018 taking cognizance and to pass such other order.

3. The factual matrix of the case is that a partnership firm was constituted in the name of Shree Vinayaka Traders on 20.06.2011 between accused Nos.2 and 3. The accused No.1 was dealing in fertilizers and pesticides. The complainant was supplying pesticides and fertilizers to accused No.1. The complainant had initially obtained signed blank cheques of accused No.1 represented by accused Nos.2 and 3. The accused No.2 was looking after the business and accused No.3

was not involved in the business of the firm. The complainant used to present the cheques as per the instructions of accused No.2 for the purchase of materials. The accused No.2 T.M.Prabhakaraiah died on 21.05.2017. The bank account of accused No.1 firm with Karnataka Bank, Hoovinahadagali Branch, was blocked by informing the death of T.M.Prabhakaraiah. The complainant's representatives had attended the obsequies of accused No.2. The complainant had taken back the leftover stock from accused No.1 firm and issued an acknowledgment on 06.06.2017. However, the complainant had presented a signed cheque, which was in their custody, on 28.03.2018 alleging that accused Nos.2 and 3 representing accused No.1 had issued the cheuqe on 28.03.2018. The said cheque was returned with an endorsement "account blocked" (situation covered in Sl.No.21-25). The complainant had issued notice to accused Nos.1 to 3. The notice issued to accused No.1 was returned with an endorsement "party left.' The notice issued to accused No.2 was returned with an endorsement "party expired." The accused No.3 had replied to the same. Inspite of it, the complainant initiated the proceedings under Section 138 of the NI Act and took the cognizance.

4. The learned counsel for the petitioner would vehemently contend that the return of the cheque was only for the reason account blocked in view of the death of signatory to cheque as could be seen from the endorsement issued by the bank. The learned counsel would contend that the Court below ought to have noticed that accused No.1 firm was not existing in view of death of a partner i.e., accused No.2 and there cannot be a partnership continuing accused No.3 as a partner. The complainant though was aware of the death of accused No.2 on 21.05.2017, has presented this cheque stating that cheque was given on 28.03.2018. The question of accused Nos.2 and 3 issuing cheque on 28.03.2018, would not arise on account of death of accused No.2. When the cheque was returned with an endorsement "account blocked" (situation covered in Sl.No.21-25), the proceedings under Section 138 of the NI Act, could not be invoked.

5. The learned counsel for the petitioner in support of his arguments, relies upon the judgment of the Apex Court in the case of **COMMISSIONER OF INCOME TAX v. SETH GOVINDRAM SUGAR MILLS** reported in **AIR 1996 SC 24,** wherein discussion was made with regard to applicability of Section 42(c) and Section 31(1) of the Partnership Act.

Partnership consisting of only two partners – Contract to continue partnership by admitting legal representative or nominee of deceased partner – Effect of death of one partner – Partnership does not exist for taking in new partner. Section 42(c) does not apply to such a case – Surviving partner continuing business of partnership – He and other members of deceased partner's family do not constitute a firm within Section 16(1)(b). The Apex Court overruled the earlier judgments reported in **AIR 1956 Nagpur 46** and **66 Cal W.N.** 262. The Apex Court has held that Section 42(c) of the Partnership Act can appropriately be applied to a partnership where there are more than two partners. If one of them dies, the firm is dissolved; but if there is a contract to the contrary, the surviving partners will continue the firm. On the other hand, if one of the two partners of a firm dies, the firm automatically comes to an end and, there is then no partnership for a third party to be introduced therein and, there is no scope for applying clause (c) of Section 42 in such a situation. It is further held that in this light, Section 31 falls in line with Section 42. An agreement between the two partners that on death of any of them, his legal heir or nominee would take the place of the deceased partner, will not, therefore, have the effect of automatically making such heir or the nominee a partner of the firm. But it is stated that pursuant to the wishes or the directions of the deceased partner, the surviving partner may enter into a new partnership with the heir of the deceased partner, but it would be a new partnership.

6. The learned counsel also relies upon the judgment of Delhi High Court in the case of **FARHAD SURI AND ANOTHER v. PRAVEEN CHOUDHARY AND OTHERS** delivered on 16.12.2025, and brought to the notice of this Court paragraph No.36, wherein it is made clear that the return memo reflects the remark "account blocked", which does not fall within the scope of Section 138 of NI Act, as held in the case of **RAJESH MEENA v. STATE OF HARYANA**, Punjab and Haryana High Court.

7. The learned counsel also relies upon the order of this Court passed in Crl.P.No.11207/2025 dated 04.03.2026, wherein also this Court taken note of account blocked situation covered under 21-25 and also considered whether the proceedings under Section 138 of the NI Act can be permitted to continue on account of dishonour of cheque due to blockage of the account or debit freezing of the account owing to

different crimes registered against the petitioners. This Court also considered the judgment of Delhi High Court in the case of **Farhad Suri** (supra), wherein the issue was discussed in paragraph No.79 that the dishonour occurred not due to insufficiency of funds, but due to statutory prohibition on payments during winding-up proceedings and appointment of IRP. This circumstance falls squarely outside the ambit of Section 138, as the essential ingredient of dishonour due to inadequate funds, remains unestablished. Thus, the necessary ingredient to bring home the offence under Section 138 of NI Act has not been proved and hence, quashed the proceedings.

8. Per contra, the learned counsel for the respondent in his arguments would vehemently contend that the Court has to take note of Section 25 of the Partnership Act and proceedings under Section 138 of NI Act cannot be thrown out. The learned counsel would contend that a post-dated cheque was issued and the death of accused No.2 was not intimated. The learned counsel relies upon the judgment of the Apex Court in the case of **DHANASINGH PRABHU v. CHANDRASEKAR AND ANOTHER** passed in **SLP (Crl.) No.5706/2024** dated 14.07.2025 and brought to the notice of this Court paragraph No.7.21, wherein the Apex Court discussed with regard to the

liability of a partner for act of the firm. Under the Partnership Act, every partner is liable, jointly with all the other partners and also severely, for all acts of the firm done while he is a partner. Insofar as criminal liability is concerned, once it is established that an illegal act has been committed by the firm or its partners, then the partners will be jointly liable for it. Moreover, the act constituting an offence will also have to be decided with reference to the statute creating such an offence i.e., Negotiable Instruments Act, which is the Act under consideration. When Section 25 of the Partnership Act is read together with Section 145 of the NI Act, in the context of dishonour of a cheque, the partner of a firm who is also liable jointly with a firm, can however rebut the statutory presumption. The learned counsel would contend that it is a matter of trial.

9. In reply to this argument, the learned counsel for the petitioner would contend that Section 42 of the Partnership Act is very clear and in the case on hand, account is blocked on account of death of accused No.2 and hence, Section 138 of the NI Act does not attract.

10. Having heard the learned counsel for the petitioner and the learned counsel for the respondent and also having

considered the principles laid down in the judgments referred supra by the respective counsel, the points that would arise for the consideration of this Court are:

(i) Whether the Trial Court has committed an error in taking cognizance for the offence under Section 138 of the NI Act in view of endorsement issued as "account blocked" (situation covered in Sl.No.21-25)?

(ii) What order?

Point No.(i):

11. Having considered the contents of the private complaint and also the allegations made in the complaint, it is not in dispute that the firm was in existence and accused Nos.2 and 3 are the partners. It is also not in dispute that one of the partner passed away. In support of the said contention, the learned counsel for the petitioner produced the death certificate of accused No.2 T.M. Prabakaraiah that he passed away on 21.05.2017. The same is not disputed by the learned counsel for the respondent. However, the learned counsel for the respondent took the contention that the death of accused No.2 was not intimated. But the fact is that on account of death of accused No.2, immediately the stock was taken back and to that effect, document No.2 is also produced before the Court

which is dated 06.06.2017 and the same is also not disputed. It is also the case of the petitioner that the complainant also attended the cremation of accused No.2 and had the knowledge of death of accused No.2. It is also important to note that the notice issued against accused No.2 was returned with an endorsement "he is no more". Hence, it is clear that when the notice was returned, he had the knowledge that accused No.2 was no more. It is important to note that accused No.2 passed away on 21.05.2017. But cheque is dated 28.03.2018. Hence, it is clear that a blank cheque was collected and the same is made use of for filing a complaint subsequent to the death of accused No.2. It is also to be noted that the validity of the cheque is only for 3 months in view of the RBI notification and earlier it was 6 months. It has to be noted that accused No.2 died on 21.05.2017 and the cheque is dated almost 10 months after the death of accused No.2, put the date as 28.03.2018 in respect of the blank cheque. In terms of the notification of the RBI, the cheque is not valid and apart from that, the executant of the cheque is also no more. It is also not in dispute that the reason covered for return of the cheque is "account blocked" (situation covered in Sl.No.21-25). Sl.No.23 is very clear that withdrawal stopped owing to death of account holder. It has to be noted that on account of the death of one of the partner, account was blocked.

12. The Apex Court in its judgment in the case of **Seth Govindram Sugar Mills** (supra), relied upon by the learned counsel for the petitioner, discussed with regard to Section 42(c) and Section 31(1) of the Partnership Act. The Apex Court held that Section 42(c) of the Partnership Act can appropriately be applied to a partnership where there are more than two partners. If one of them dies, the firm is dissolved; but if there is a contract to the contrary, the surviving partners will continue the firm. On the other hand, if one of the two partners of a firm dies, the firm automatically comes to an end and, there is then no partnership for a third party to be introduced therein and, there is no scope for applying clause (c) of Section 42 to such a situation. Pursuant to the wishes or the directions of the deceased partner, the surviving partner may enter into a new partnership with the heir of the deceased partner, but it would be a new partnership. Hence, it is clear that as on the date of the death of one of the partner, firm comes to an end. No doubt, the learned counsel for the petitioner also relied upon the partnership deed, wherein there is a clause with regard to the duration is concerned and in case of death of any

of the partner in partnership, covenant No.8 of the partnership deed is clear that the death, retirement or insolvency of any partners shall not dissolve the firm, but the reaming partners can carry on the said business or can take legal heirs of the deceased partner in said partnership business and to that effect no material.

13. It is also important to note that the Delhi High Court in the case of **Farhad Suri** (supra) met the issue with regard to the account blocked and categorically held that account blocked return of memo does not fall within the scope of Section 138 of the NI Act, as held in the case of Rajesh Meena v. State of Haryana, Punjab and Haryana High Court. This Court in Crl.P.No.11207/2025 (supra), relying upon the judgment of Delhi High Court in the case of **Farhad Suri** (supra), comes to the very conclusion that, account blocked not comes within the offence under Section 138 of the NI Act as the same is not on account of insufficiency of funds. In the present case on hand also, account is blocked due to the death of one of the partner.

14. The learned counsel for the petitioner also relies upon judgment of Punjab and Haryana High Court at

Chandigarh in the case of **ARVINDERJIT KAUR v. STATE OF HARYANA AND ANOTHER**, delivered on 29.10.2018, wherein in paragraph No.6 it is held that when the cheque was presented, it was dishonoured with the note that account blocked and it would not attract Section 138 of the NI Act.

15. No doubt, the learned counsel for the respondent also relies upon the judgment of the Apex Court in the case of **Dhanasingh Prabhu** (supra), wherein Section 25 of the Partnership Act was discussed and in paragraph No.7.21 with regard to the criminal liability is concerned, held that once it is established that an illegal act has been committed by the firm or its partners, then the partners will be jointly liable for it. Moreover, the act constituting an offence will also have to be decided with reference to the statute creating such an offence i.e., the NI Act, which is the Act under consideration. When Section 25 of the Partnership Act is read together with Section 145 of the Act, in the context of dishonour of a cheque, the partner of a firm who is also liable jointly with a firm, can however rebut the statutory presumption. In this judgment, the Apex Court also discussed with regard to the scope of Section 141 of NI Act as well as Partnership Act, but not in respect of the endorsement of account blocked and no law laid down in

respect of account blocked. When such being the case, the judgments are very clear that Section 138 proceedings could be invoked in case of insufficiency of funds and not an account of account blocked and hence, there is a force in the contention of the learned counsel for the petitioner that when the account is blocked, it will not attract Section 138 of NI Act. Apart from that, the cheque is also dated after almost 10 months of the death of accused No.2 who was looking after the transaction of the partnership firm. With regard to the validity of the cheque is concerned, the same is not a valid cheque in view of the RBI notification. Hence, there cannot be any proceedings under Section 138 of the NI Act.

Point No.(ii):

16. In view of the discussions made above, I pass the following:

ORDER

The petition is allowed. The initiation of proceedings under Section 138 of the NI Act against the petitioner is hereby quashed.

Sd/-
(H.P.SANDESH)
JUDGE

MD