

necessary orders on the application moved under Order XXI Rule 97 CPC by the petitioner in accordance with law keeping in mind the decisions of Apex Court rendered in cases of **Shingara Singh (Supra)**, **Siddamsetty Infra Projects Pvt. Ltd. (Supra)**, **Sriram Housing Finance and Investment (Supra)**, **Silverline Forum Pvt. Ltd. (Supra)** and **Periyammal (Supra)** as well as Rule 102 CPC and considering the doctrine of lis pendens, within a period of one month from the date of receipt of a certified copy of this order.

38. With the aforesaid directions, writ petition stands disposed of.

(2025) 3 ILRA 126

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 12.03.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE SAMIT GOPAL, J.

Application U/S 482 No. 13742 of 2021
With
Application U/S 482 No. 13816 of 2021

Mohd. Khalid ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:

Sri Ashish Malhotra, Ms. Pushpila Bisht

Counsel for the Opposite Parties:

Sri Ashutosh Upadhyay, Sri Birendra Singh,
Sri Ajay Kumar Singh, G.A.

Criminal Law – Criminal Procedure Code, 1973 - Section 482 - Negotiable Instruments Act, 1881 – Sections 138 & 142- Application U/s 482 – Larger Bench – constituted to address whether filing of a Impleadment application in a complaint filed

under Section 138 of the N.I. Act is valid, if filed solely against the proprietor without naming the company as an accused - Different High Court benches had given conflicting decisions - The reference arose due to conflicting High Court rulings interpreting *Aneeta Hada v. Godfather Travels*. – Later, the Supreme Court in *Pawan Kumar Goel v. St. of U.P.* clarified that if a company is involved, it must be named as an accused in the complaint. Also, once the legal time limit (limitation period) for taking action under Section 142 is over, no new accused can be added - held – no additional accused can be impleaded subsequent to filing of a complaint once the limitation prescribed for taking of cognizance of the offence under section 142 of the NI Act, has expired – hence, the reference was thus answered - and the matter will resume before the concerned Single Judge – Application is pending. (Para – 9, 10, 11)

Application Pending. (E-11)

List of Cases cited:

1. Mohd. Khalid Vs St. of U.P. & anr. - Criminal Misc. Application U/S 482 No. 11600 of 2021 decided on 19.08.2021,
2. Gaurav Sabbarwal Vs St. of U.P. - Criminal Misc. Application U/S 482 No. 1224 of 2021 – decided on 19.08.2021,
3. Aneeta Hada Vs Godfather Travels and Tours Private Limited: (2012) 5 SCC 661,
4. Pawan Kumar Goel Vs St. of U.P. & anr.: 2022 SCC OnLine SC 1598.

(Delivered by Hon'ble Samit Gopal, J.)

1. Heard Ms. Pushpila Bisht and Shri Ashish Malhotra, learned counsels for the applicant, Shri Ajay Kumar Singh, Holding Brief of Shri Birendra Singh, learned counsel for the O.P. No.2, Shri A.N. Mulla, Shri Shashi Shekhar Tiwari and Shri Jitendra Kumar Jaiswal, learned AGAs for

the State/O.P. No.1 and perused the records.

2. This matter has been placed before this Bench through nomination of this Larger Bench vide order dated 17.05.2024 of Hon'ble The Chief Justice.

3. The issue before the Larger Bench as has been raised vide order dated 25.11.2021 by learned Single Judge reads as under:-

"Written arguments filed on behalf of applicant is taken on record.

Heard Shri Satish Trivedi, learned Senior counsel assisted by Shri Ajay Kumar Pandey and Shri Ashish Malhotra, learned counsel for the applicant, Shri Birendra Singh, learned Senior advocate assisted by Shri Prashant Kumar on behalf of opposite party no.2 and learned A.G.A.

The only legal issue which crops up for consideration before this Court is that whether a complaint is maintainable in the form and style of the present complaint wherein notice has been issued to the proprietor of the company and complaint has been filed against Mohd. Khalid proprietor of M/s. Plenum Infrastructure Private Limited without impleading M/s. Plenum Infrastructure Private Limited as a party in its capacity of a corporate entity.

On the same controversy two judgments one delivered by Hon'ble Vivek Agarwal, J. vide order dated 19.8.2021 which has been corrected vide order dated 17.9.2021 and the second by Hon'ble Rajeev Misra, J. vide order dated 19.8.2021 and in both the judgments reliance has been placed upon Aneeta Hada and Others Vs. Godfather Travels and Tours Private Ltd. and Others, delivered by a Three Judges Bench of Supreme Court reported

in (2012) 5 SCC 661. In the aforesaid two cases Hon'ble Vivek Agarwal, J. quashed and allowed the application whereas Hon'ble Rajeev Misra, J. has passed the following order :-

"15. Upon consideration of above, this Court could have directed parties to exchange pleadings and granted an interim stay of the proceedings. However, considering the fact that complaint was filed in the year 2015 and the matter has remained pending for more than six years at initial stage, this court is of the view that interest of justice shall better be served in case the defect pointed out by applicant herein is equitably considered. 16. Accordingly,

Cognizance Taking Order as well as Summoning Order dated 23.01.2015 passed by court below is hereby quashed. Complainant/opposite party-2 shall move an impleadment application seeking amendment in the complaint by impleading the Company namely M/s. Saksham Services Pvt. Ltd. as a party in the complaint and further take necessary steps, to amend the complaint by way of amendment. Aforesaid exercise shall be completed by 30th of October, 2021. Thereafter, court below shall consider the complaint and proceed accordingly. "

The issue is whether the filing of impleadment application can be allowed or not.

In such circumstances, the matter is referred to Hon'ble The Chief Justice to constitute the larger Bench to settle down the issue.

Till then no coercive action shall be taken against the applicant."

4. Before the learned Single Judge two orders were placed of co-ordinate Benches amongst which one was in Criminal Misc. Application U/S 482 No.

11600 of 2021 (Mohd. Khalid Vs. State of U.P. and Another) on 19.08.2021 which was subsequently corrected vide order dated 17.09.2021 and the second was an order dated 19.08.2021 passed in Criminal Misc. Application U/S 482 No. 1224 of 2021 (Gaurav Sabbarwal Vs. State of U.P.). Both the matters relied upon the judgement of the Apex Court in the case of ***Aneeta Hada Vs. Godfather Travels and Tours Private Limited: (2012) 5 SCC 661*** but vide the former order the petition was allowed and the proceedings were quashed keeping the option to the complainant open, of availing civil remedy for recovery of debt if so advised whereas vide the latter order directions were issued in its paragraph 15 & 16 to the effect that the complainant / opposite party-2 shall move an impleadment application seeking amendment in the complaint by impleading the company as a party in the complaint and further take necessary steps to amend the complaint by way of amendment. The court concerned was directed to consider the complaint and proceed accordingly.

5. Learned Single Judge ceased with the present matter after referring to both the orders culled out the issue which reads as under:-

"The issue is whether the filing of impleadment application can be allowed or not."

6. Thus a reference was made to Hon'ble The Chief Justice to constitute a Larger Bench to settle down the issue. The matter is thus before this Larger Bench on the aforesaid pretext.

7. The issue thus which arose before the learned Single Judge in the present matter for consideration was

whether a complaint is maintainable in the form and style wherein notice has been issued to the proprietor of the company and the complaint has been filed against him arraying him as the proprietor of the company but without impleading the company as a party in its capacity of a corporate entity. Thus by referring to the two orders of different co-ordinate Benches the learned Single Judge framed the aforesaid issue and referred the matter to a Larger Bench.

8. The question whether filing of an impleadment application in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as N.I. Act) by a complainant for impleading a company as an accused is no more res integra. The Apex Court in the case of ***Pawan Kumar Goel Vs. State of U.P. & Another: 2022 SCC OnLine SC 1598*** (decided on 17.11.2022) was faced with the same issue.

9. The challenge before the Apex Court was of a final judgement & order of the High Court allowing the writ petitions and quashing the entire proceedings including the summoning order of the said case before it. The submissions before the Apex Court were that the High Court erred in appreciating that the respondent no.2 was arrayed by name describing him as a Director of the company and on account of typographical error, the company could not be arrayed as accused no.2 in complaint by name, though the details thereof were mentioned in the description of the accused no.1. The issue was considered in paragraph 26, 27, 28 of the said judgement and finally in paragraph 29 of the same, the Court held that an additional accused cannot be impleaded subsequent to the filing of the complaint where the limitation

period for taking the cognizance of the offence under Section 142 of the N.I. Act has expired. Paragraph 24 to 29 of the said judgement reads as under:-

"24. Coming to the facts of the present case at hand, a perusal of the complaint filed as Annexure P-1 clearly goes to establish two facts :-

(i) The description of the respondent-accused contained in the complaint is as under :-

"Mr. Devendra Kumar Garg, S/o Lala Jagdish Prasad Garg, Director, Ravi Organics Limited, 19-A, New Mandi, Police Station-New Mandi, District-Muzaffarnagar."

From the aforesaid, it is clear that though the respondent-accused was described as a Director of Ravi Organics Limited, but the company itself was not arrayed as a party in the complaint.

(ii) A perusal of the averments made in the complaint goes to show beyond a shadow of doubt that there are no averments that respondent no. 2, at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company.

25. This Court has been firm with the stand that if the complainant fails to make specific averments against the company in the complaint for the commission of an offence under Section 138 of NI Act, the same cannot be rectified by taking recourse to general principles of criminal jurisprudence. Needless to say, the provisions of Section 141 impose vicarious liability by deeming fiction which pre-supposes and requires the commission of the offence by the company or firm. Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-

Section (1) and (2) would not be liable to be convicted on the basis of the principles of vicarious liability.

26. Reference in this connection may also be made to another judgment of the two-Judge Bench of this Court in Himanshu Vs. B. Shivamurthy and Another (Supra), the facts wherein have a stark similarity to the facts of the present case, considering the issue where the complaint was lodged only against the director without arraigning the company as an accused and whether the company could be subsequently arraigned as an accused, it was observed as under:-

"11. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. The complaint was lodged only against the appellant without arraigning the company as an accused.

12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, 4 (2018) 13 SC 663 every person, who at the time when the offence was committed was in charge of or 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.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the

company could now be arraigned as an accused."

27. This issue stands concluded by a decision of three-Judge Bench of this Court in the case of *Aneeta Hada Vs. Godfather Travels & Tours (P) Ltd.* (Supra), wherein it has been held that for maintaining the prosecution under Section 141 of NI Act, arraigning of the company as an accused is imperative and non-impleadment of the company would be fatal for the complaint. It may be relevant to extract the following from the said judgment :-

"58. Applying the doctrine of strict construction, we are of the considered opinion that **commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.**

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself."

28. The observations made in the aforesaid judgment is also a complete answer to the arguments advanced by learned counsel for the appellant that in the absence of any prohibition under the NI Act, the amendment in the complaint is permissible and the impleadment of an additional accused subsequent to filing of the complaint, would not be barred. At this juncture, we may also refer to the following observations made in the case of *N. Harihara Krishnan Vs. J. Thomas* (Supra) :-

"26. The scheme of the prosecution in punishing under Section 138 of the Act is different from the scheme of CrPC. Section 138 creates an offence and prescribes punishment. No procedure for the investigation of the offence is contemplated. The prosecution is initiated on the basis of a written complaint made by the payee of a cheque. Obviously such complaints must contain the factual allegations constituting each of the ingredients of the offence under Section 138. Those ingredients are: (1) that a person drew a cheque on an account maintained by him with the banker; (2) that such cheque when presented to the bank is returned by the bank unpaid; (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier; (4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and (5) such a notice of payment is made within a period of 30 days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid. It is obvious from the scheme of Section 138 that each one of the ingredients flows from a document which evidences the existence of such an

ingredient. The only other ingredient which is required to be proved to establish the commission of an offence under Section 138 is that in spite of the demand notice referred to above, the drawer of the cheque failed to make the payment within a period of 15 days from the date of the receipt of the demand. A fact which the complainant can only assert but not prove, the burden would essentially be on the drawer of the cheque to prove that he had in fact made the payment pursuant to the demand.

27. By the nature of the offence under Section 138 of the Act, the first ingredient constituting the offence is the fact that a person drew a cheque. The identity of the drawer of the cheque is necessarily required to be known to the complainant (payee) and needs investigation and would not normally be in dispute unless the person who is alleged to have drawn a cheque disputes that very fact. The other facts required to be proved for securing the punishment of the person who drew a cheque that eventually got dishonoured is that the payee of the cheque did in fact comply with each one of the steps contemplated under Section 138 of the Act before initiating prosecution. Because it is already held by this Court that failure to comply with any one of the steps contemplated under Section 138 would not provide "cause of action for prosecution". Therefore, in the context of a prosecution under Section 138, the concept of taking cognizance of the offence but not the offender is not appropriate. Unless the complaint contains all the necessary factual allegations constituting each of the ingredients of the offence under Section 138, the Court cannot take cognizance of the offence. Disclosure of the name of the person drawing the cheque is one of the factual allegations which a complaint is required to contain. Otherwise in the

absence of any authority of law to investigate the offence under Section 138, there would be no person against whom a court can proceed. There cannot be a prosecution without an accused. The offence under Section 138 is person specific. Therefore, Parliament declared under Section 142 that the provisions dealing with taking cognizance contained in the CrPC should give way to the procedure prescribed under Section 142. Hence the opening of non obstante clause under Section 142. It must also be remembered that Section 142 does not either contemplate a report to the police or authorise the Court taking cognizance to direct the police to investigate into the complaint.

28. The question whether the respondent had sufficient cause for not filing the complaint against Dakshin within the period prescribed under the Act is not examined by either of the courts below. As rightly pointed out, the application, which is the subject-matter of the instant appeal purportedly filed invoking Section 319 CrPC, is only a device by which the respondent seeks to initiate prosecution against Dakshin beyond the period of limitation stipulated under the Act."

29. In view of the above, arguments advanced by learned counsel for the appellant that an additional accused can be impleaded subsequent to the filing of the complaint merits no consideration, once the limitation prescribed for taking cognizance of the offence under Section 142 of NI Act has expired. More particularly, in view of the fact that neither any effort was made by the petitioner at any stage of the proceedings to arraign the company as an accused nor any such circumstances or reason has been pointed out to enable the Court to exercise the power conferred by proviso to Section 142,

Counsel for the Opposite Parties:
Vijai Kumar Tiwari, G.A.

Criminal Law-The Code of Criminal Procedure,1973-Section 482 - The Indian Penal Coe, 1860-Sections 420, 323, 376, 344 - The Uttar Pradesh Conversion Prevention Act, 2020-Sections 3/4- Any compromise or settlement with respect to the offence of rape, against the honour of a woman, which shakes the very core of her life and tantamounts to a serious blow to her supreme honour, offending both, her esteem and dignity, is not acceptable to this Court--- The object of Act, 2020 is to provide for prohibition of unlawful conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means--- It is clear that unlawful religious conversion, particularly when achieved through coercion, fraud, or undue influence, is considered a serious offence, in which the Court cannot quash the proceedings on the basis of settlement between the parties--- The alleged offences under section 376 IPC and Section 3/4 (1) U.P. Conversion Prevention Act, 2020, are serious in nature and non-compoundable, therefore, the instant proceedings cannot be quashed on the basis of compromise between the parties in exercise of powers conferred under Section 482 Cr.P.C. **(Para 48, 54 & 56)**

Petition dismissed. (E-15)

List of Cases cited:

1. B.S. Joshi & ors. Vs St. of Har. & anr.;
(2003)4 SCC 675

2. Gian Singh Vs St. of Pun. (2012) 10 SSC 303

3. St. of M.P. Vs Laxmi Narayan & ors. (2019) 5 SCC 688

4. Madhu Limaye Vs The St. Of Mah. (1977) 4 SCC 551

5. St. of Karn. Vs L. Muniswamy (1977) 2 SCC 699

6. Madhavrao Jiwajirao Scindia Vs Sambhajirao Chandojirao Angre (1988) 1 SCC 692

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