



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. 4363 OF 2024

SHIVAPPA REDDY

... APPELLANT

VERSUS

S. SRINIVASAN

... RESPONDENT

J U D G M E N T

AUGUSTINE GEORGE MASI, J.

1. Present Appeal is challenging the order dated 23.09.2023 passed by the Single Judge of the High Court of Karnataka at Bengaluru, whereby the petition filed under Section 482 of the *Code of Criminal Procedure, 1973* (hereinafter, “CrPC”) challenging the proceedings arising out of a complaint filed by the Appellant under Section 200 CrPC for the offence punishable under Section 138 of the *Negotiable Instruments Act, 1881* (hereinafter, “NI Act”) has been allowed at the behest of Respondent-Accused No.4.

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2. In brief, the facts leading to the filing of the petition before the High Court were that the Appellant had filed a complaint against M/s AVS Constructions - a Partnership Firm (Accused No.1), and its partners i.e., S. Yuvaraju (Accused No.2), S. Sundaraiah (Accused No.3 and S. Srinivasan (Accused No.4) for dishonouring of twelve cheques of ₹50,00,000/- (Rupees Fifty Lakhs) each aggregating ₹6,00,00,000/- (Six Crore) towards the refund of sale consideration as issued by accused No.1 - M/s AVS Constructions (hereinafter, "Partnership Firm") being signed by Accused No.2, the authorized signatory. The cheques, upon presentation, stood dishonoured due to 'stop payment' instructions issued by the drawee.
3. After duly serving the Statutory notice upon the Respondent and the other accused, when no amount was received of the dishonoured cheques, a complaint under Section 200 CrPC for an offence punishable under Section 138 of the NI Act was preferred. After recording the preliminary evidence, summons was issued to the accused

on taking cognizance of the offence under Section 138 of the NI Act.

4. At this stage, S. Srinivasan (Accused No.4) (Respondent herein), preferred a petition under Section 482 CrPC before the High Court, taking the plea that the proceedings against the Respondent could not be continued as he had ceased to be a partner of the Partnership Firm (Accused No.1).

- 4A. It was asserted therein that in reply to the legal notice which was served upon the Accused by the Appellant-Complainant, Respondent-Accused No.4 brought to the notice of the Appellant the fact that he had retired from the Partnership Firm on 01.04.2015, and hence the proceedings could not be sustained against him.

5. Upon notice being issued, the Appellant appeared and filed his response wherein it was clearly stated that the Statutory mandates as provided under Sections 32, 62 and 63 of the *Indian Partnership Act 1932* (hereinafter, "Partnership Act") had not been complied with.

- 5A. The Appellant obtained a certified copy of Form-A on 27.08.2020, maintained by the Registrar of Firms, which depicted that the Respondent is the partner of Partnership Firm (Accused No.1). It was only after verifying the said aspect that the legal notice was issued to the Respondent. Allegations were also made that the Respondent, in an attempt to escape his liability, had fabricated a backdated retirement deed in connivance with the other accused and got an entry made in the ledger of the Registrar of Firms on 20.10.2020 that he had ceased to be a partner.
- 5B. It is asserted that this entry in the Register maintained by the Registrar of Firms is subsequent to the date of issuance of the cheques as also after the issuance of the legal notice.
- 5C. Section 72 of the Partnership Act has also not been complied with, which mandates and requires a retired partner to publish a public notice in one of the vernacular newspapers circulated in the district where the Firm is located. No such document or publication had been produced, nor any such public notice mentioned to have

been published in any newspaper in the reply filed to the legal notice. The mandate of the Statute has not been followed, and in the absence of public notice, the Respondent cannot wriggle out of the liability as a partner of the Firm.

5D. Another aspect which has been asserted is that after cognizance was taken by the Court, an application under Section 239 of the CrPC had been preferred by the Respondent seeking discharge on the ground that he had ceased to be a partner of the Partnership Firm (Accused No.1). The Appellant had filed detailed objections to this application.

5E. The Trial Court, after hearing both parties, dismissed the application on merits vide order dated 01.09.2021. On these grounds, the petition under Section 482, as preferred by the Respondent, was opposed.

6. The learned Single Judge, on considering the submissions, had allowed the petition. The Court observed that the cheques had not been signed by the Respondent. Rather, it is S. Yuvaraju (Accused No.2), who had issued the

cheques in his individual capacity and not as a partner of the Partnership Firm (Accused No.1). It was held that there was no legally enforceable debt against the Respondent for which the cheques were issued. Further, the High Court accepted the contention that it had been established that the Respondent had ceased to be the partner of the Firm on the date of issuance of the cheques, and therefore could not be prosecuted for an offence under Section 138 of the NI Act.

7. The Counsel for the Parties have argued their case on the basis of the above pleadings and factual assertions.
8. On considering the submissions made by the Counsel for the parties. It is apparent that the plea of the Respondent, as has been accepted by the High Court vide impugned order, regarding his claim of not being a partner of the Partnership Firm (Accused No.1), in whose name and on whose behalf the cheques have been issued, signed by S. Yuvaraju (Accused No.2), an authorized signatory, does not in any manner, foist liability upon the Respondent

herein needs to be tested on the anvil of the pleadings and the Statutory requirements.

9. Since the Partnership Firm (Accused No.1) is a Firm registered with the Registrars of Firms, the provisions of the Partnership Act need to be referred to. A perusal of Section 72 of the Partnership Act would show that notice of retirement must be given to the Registrar of Firms under Section 63 and by publication in the Official Gazette, and in at least one vernacular newspaper circulated in the district where the Firm to which it relates has its place or principal place of business, such notice needs to be published. This should relate to the retirement of a partner, which includes admission, expulsion, or resignation from the Firm in any manner that is including or excluding a partner in a partnership Firm. Section 32 of the Partnership Act deals with the retirement of a partner. In addition, Section 62 of the Partnership Act deals with the information to be submitted with regard to the change in the names and addresses of the partners to the Registrar of Firms. What, therefore, is mandated under the Statute is that if any registered Firm intends to include or

exclude by way of resignation, expulsion or addition of any partner in the Firm, an intimation to the said effect has to be forwarded and conveyed to the Registrar of Firms. As per Section 63, the Registrar shall make a record of the notice in the entry relating to the Firm in the Register of Firms and shall file a notice along with a statement relating to the Firm as provided for under Section 59 of the Partnership Act.

10. None of these requirements as provided and mandated for under the Statute, have been adhered to by Respondent No.1. Merely putting forth a resignation or the partners entering into an agreement or drafting a deed or/and accepting the resignation of a partner of the Firm is insufficient for discharging the liability of a partner of the Firm unless a proper entry to the said effect after the publication has been given effect to with the same, having been recorded in the Register of Firms in the office of the Registrar of Firms as provided for in Section 63 of Partnership Act.

11. Further, simply because the cheques were signed by S. Yuvaraju (Accused No.2), who was the authorized signatory of the Partnership Firm (Accused No.1), does not discharge the liability of the Respondent. This is especially so when in the complaint filed under Section 200 of the CrPC by the Appellant, a categorical averment is made that the Respondent along with the other two partners of the Partnership Firm (Accused No.1) is involved in day-to-day affairs of the said Firm. In the complaint, it has clearly been pleaded that the Respondent-Accused No.4 was present at the residence of Accused No.2 when the cheques were signed. Further allegations are there to the effect that Accused No.3 and Respondent Accused No.4 had stated that they would ensure that the money is repaid. These facts collectively demonstrate that the requirements under Section 141 of the NI Act have been satisfied. Therefore, the Respondent cannot escape from the liability concerning the cheques which were issued by the Respondent.

12. The findings, therefore, with regard to the Respondent being no longer a partner of Partnership Firm (Accused No.

1) on the date of the issuance of the cheques is unsustainable, as it is contrary to the mandate of the Statute and *prima facie* the factual aspect.

13. All these aspects are mixed questions of fact and law touching on the anvil of disputed questions calling for proof by way of evidence, which cannot be gone into and decided in a proceeding under Section 482 CrPC. Such matters require the parties to lead evidence as per their respective stands, and hence, calling for no interference by the High Court. Without further going into the details of the pleadings relatable to the facts, we are of the view that the High Court has erred in law by exceeding its jurisdiction while exercising its powers under Section 482 CrPC.

14. In view of the above, the present appeal is allowed. The order dated 23.09.2023 passed by the High Court is hereby set aside. Proceedings before ACMM, Bengaluru in CC No.17788/2020 are restored. Trial Court is directed to proceed in accordance with the law.

15. Any observations made in this order shall have no bearing on the merits of the case in the trial, and the same, if any, are restricted to the decision in the limited compass of the jurisdictional sphere as exercised by the High Court.
16. Pending application(s), if any, stand disposed of.

.....J.
[ABHAY S. OKA]

.....J.
[AUGUSTINE GEORGE MASIH]

**NEW DELHI;
MAY 19, 2025**