



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Case Comment: Rangabashyam v Ramesh: A Dilemma of an Unregistered Firm

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Received 21 April 2023; Accepted 13 May 2023; Published 17 May 2023

INTRODUCTION

When a cheque gets dishonored due to insufficient funds, the provision mentioned in Section 138¹ deals with the issue. The section notes that if the Cheque issued by a person gets dishonored due to insufficient funds or due to non-acceptance by the bank, the person withdrawing the money or encasing the Cheque is entitled to file a suit against the payor, and the payor is liable for imprisonment or paying double the price mentioned in the Cheque or both. Looking at the present facts, we will find that a cheque was issued in favor of Defendant, and the Cheque was dishonored, which compelled Defendant to file a case against the present case petitioner.

The case is widely discussed in Section 141², which deals with offenses by a company. The section mentions that if a cheque is issued on behalf of a company, then the person responsible for the Company, i.e., the Director or the board of members of the Company, shall be liable for the offense under Section 138 act³. This statute is used in the present case⁴ because it applies to

¹ Negotiable Instruments Act 1881, s 138

² Negotiable Instruments Act 1881, s 141

³ Negotiable Instruments Act 1881, s 138

⁴ *Rangabashyam v Ramesh* (2019) HC (6) CTC 392

partnership firms. In the present case, the Cheque is issued on behalf of the Firm, and the question arises if the partners of the Firm are to be held liable for the same or not. One of the significant contentions both parties rely on is the registration of the Firm, which is discussed in Section 69(2)⁵. The section states that no suit can be filed by or filed against an unregistered firm. The present case is an exception to the said rule, and the researcher will highlight the contention put forth by the petitioner expressing why the case is an exception.

The facts of the case and the arguments of both parties are captivating and urge the reader to interpret the law regarding the situation. The case amalgamates two laws: the Negotiable Instruments Act and The Partnership Act. Here, the Judges had a choice of harmoniously interpreting two closely related sections, but they decided against it and gave their Judgment. As the paper progresses, the researcher has brought forward their assertion. The case is an appeal filed by the petitioners to quash the criminal case against them, arguing that it is not in the purview of the law. The researcher has mentioned the arguments to understand the case better and precisely acknowledge what the judges had heard and put forth their decision the way they did.

FACTS

The Respondent, a partner in a firm known as Laxmi Agencies, was forced to take leave. Some sums owed to the Respondent had to be paid to satisfy the obligation, so a cheque was issued on behalf of the Firm of Rupees three lakhs. The Cheque, as mentioned above, was dishonored due to insufficient funds, and a statutory notice was also given. After issuing the notice, the Respondent brought a criminal action against the petitioners. The petitioners, listed as defendants in this complaint, filed this motion to release the parties and halt the case because the disputed Cheque was solely written in the Respondent's favor. The partners of the firm issued the Cheque in place of the firm. It was argued that the case could only be continued by giving the partnering Firm the required notice and mentioning it in the complaint.

⁵ Partnership Act 1932, s 69(2)

CONTENTIONS BY BOTH PARTIES

Petitioners: The claim should be rejected since the Respondents did not add the Firm as a party to the litigation, even though by virtue of the Cheque's issuance on behalf of the Firm, the Firm must be included by law. It was further argued that the rules outlined in Section 141⁶, which deals with corporations, also apply to partnership firms. The Firm's registration—or lack thereof—was argued to be significant under Section 141⁷. It was contended that Sections 69(2)⁸ and 141⁹ cannot be coherently understood¹⁰.

Respondent: Only partnership firms that comply with the legal enterprise criteria are subject to Section 141¹¹. They argued that the Firm could not be considered a legal body because it was not registered. According to the attorney, only the current Firm's partners have been named as defendants in the action because the present Firm is not registered. Therefore, stating the Firm is unnecessary because it is unlawful.

ISSUES

1. Can a case be filed against an unregistered firm according to Section 141¹²?
2. Can a partnership firm also be included along with the partners in a complaint of a criminal offense by Section 138¹³?

JUDGMENT

The Hon'ble Court analyzed both sides arguments in great detail. The Court promptly addressed the legal issue brought up in this case. The Court was in complete agreement with the judgments made in the cases of *Abdul Gafoor v Abdurahiman*¹⁴ and *Haldiram Bhujawala*

⁶ Negotiable Instruments Act 1881, s 141

⁷ *Ibid*

⁸ Partnership Act 1932, s 69(2)

⁹ Negotiable Instruments Act 1881, s 141

¹⁰ Akshita Saxena, 'Dishonour of Cheque: Complaint against Partnership Firm Not Maintainable without Making the Firm an Accused: Madras HC' (*Live Law*, 27 July 2019) <<https://www.livelaw.in/news-updates/dishonour-of-cheque-complaint-against-partnership-firm-not-maintainable--146720>> accessed 13 May 2023

¹¹ Negotiable Instruments Act, (1881) s 141

¹² *Ibid*

¹³ Negotiable Instruments Act 1881, s 138

¹⁴ *Abdul Gafoor v Abdurahiman* (1999) 4 SCC 98 (Ker)

& Anr v Anand Kumar Deepak Kumar & Anr.¹⁵ The judge determined that Sections 138 and Section 69(2) cannot be interpreted coherently. The court determined that the bar under Section 69(2) would not apply in this case because the action under Section 138 is not one to enforce a claim arising out of a contract. The term 'Suit' does not include criminal procedures in Section 69(2). A criminal investigation is never initiated to demand payment or put up security, by definition. Depending on the weight of the guilt-indicating evidence, a conviction and punishment are imposed for violating Section 138.

According to Section 141, the directors, board members, or partners deemed to be in charge of the Firm or Company and responsible for the Firm's daily operations will be held accountable for any crimes committed by the Company or a partnership firm. While discussing the provision, the Court transcribed that for the Company's directors to be held liable, the Company must be mentioned in the suit. The same law applies to firms as well. The Court believed that the registration of the Firm was immaterial to be considered following Section 141. The Court disagreed with the contentions made by the Respondent that since the Firm does not qualify to be a legal entity, the suit was filed against the partners. The Court held that the Cheque was issued in favor of the Respondent by the Firm, and after the Cheque was dishonored, no statutory notice was issued to the Firm, and the Firm was also not made a party to the case. Only the partners were mentioned in the suit. This is not following Section 141. Therefore, the Court ruled in favor of the petitioners and dismissed the criminal case filed against them while exercising its jurisdiction.

OBSERVATION

The researchers needed to agree with the Judgment given in the current case completely. The Judgment that the registration of the Firm has no regard while deciding the issue, the researchers are of a different opinion that the registration of the Firm has a significant standing in the case.

The researcher presents the case of Delhi Development Authority v Kochhar Construction¹⁶ work where the Judge quashed the case because the Firm in question was an unregistered Firm

¹⁵ *Haldiram Bhujawala & Anr v Anand Kumar & Anr* (2011) SCC Del 3334

¹⁶ *Delhi Development Authority v Kochhar Construction Work* (1998) 8 SCC 559

on the day the criminal proceedings were filed. Respondent 1, an unlisted company, initiated legal action before the Delhi High Court, as was previously reported. In a countersuit, the Delhi Development Authority challenged the proceedings on several grounds, including the statute of limitations and Section 69(2). The Respondent filed a first appeal at the High Court in opposition to the countersuit. It was later dismissed because the subsequent registration of the Firm rectified the original flaw. After all, it was done so within the limitation period. The Court, however, overruled the High Court's judgment and found that the procedures were intrinsically flawed because they were illegitimate in the first place.

Therefore, the researcher believes that the Judge in the present case should have considered the abovementioned case, and Issue - A could have ruled in favor of the Respondent. Section 69(2) of the Partnership Act also talks about the consequence of an unregistered firm, and the Judge of the present case should have taken into account the broader aspect of the law as well.

CASE ANALYSIS

The researcher of the paper proceeds to analyze the issues mentioned in the case and has come up with an issue of their own. The researcher takes up the issue and presents case laws for a better understanding of the issue.

I. Can a case be filed against an unregistered firm according to Section 141?

Given that the action under Section 138 is not one to enforce a claim arising out of a contract, the bar under Section 69(2) will not apply in this case.¹⁷ Criminal procedures are not included in the definition of 'Suit' as used in Section 69(2). A criminal investigation is never launched to impose security or collect money. Based on the weight of the evidence of guilt, a conviction and punishment are imposed for violating Section 138.

The Court has relied upon the Kerala High Court decision in *Abdul Gafoor v Abdurahiman*¹⁸ The repercussions of failing to register a partnership under Section 69(2) only apply to instances

¹⁷ 'Section 69(2) Partnership Act Does Not Bar Suit Filed by an Unregistered Firm If Contract in Question Was Not in the Course of Its Business Dealings: Supreme Court' (*Live Law*, 31 January 2022)

<<https://www.livelaw.in/top-stories/supreme-court-partnership-act-unregistered-firm-business-dealings-190777>> accessed 20 April 2023

¹⁸ *Abdul Gafoor v Abdurahiman* (1999) 4 SCC 98 (Ker)

involving civil rights, and an unregistered partnership business may file a complaint under Section 138.

The Court relied on a similar case: *Kerala Arecanut Stores v Ramkishore and Sons & Anr.*¹⁹ In the case above, The conflict between Kerala Arecanut Stores and Ramkishore and Sons involved the second Defendant endorsing cheques in the plaintiff's favor even though the commodities were not supplied. The plaintiff claimed payment for the Cheque plus interest and any discounts the bank had received from the Company. In the end, the petitioner agreed to resolve the issue by repaying. The suit was opined to be barred by Section 69 (2). The case has come up in several different court processes, including one where it was decided that, in certain situations, an unregistered partnership firm might indict a complaint. It has also come up in other legal dispute-related issues. The court decided in the plaintiff's favor, stating that the complaint was legitimately filed.

In the case of *N. Elangovan v C. Ganesan*,²⁰ The Magistrate, Saidapet, Chennai, while passing the impugned Judgment, had inter-alia observed 'that the Appellant in his written complaint, argument, evidence, and notice had stated that the Respondent issued a Cheque in his favor based on private money transaction since it transpires that Cheque was issued in favor of Partnership Firm of 'Sri Karpaga Vinayagar Jewellery' and also that the Appellant in para 3 of his complaint had admitted that the Respondent was the partner in the 'Sri Karpaga Vinayagar Jewellery' Partnership Firm and in that case, other partners were not shown as Accused and also that in the case as mentioned earlier, the Appellant. Since the Appellant had only filed the present case against the Respondent and had not named 'Sri Karpaga Vinayagar Jewellery' as the first accused, although 'Sri Karpaga Vinayagar Jewellery' was not currently in existence, there was no pleading in the complaint by the Appellant regarding this. As a result, the case filed by the Appellant is not maintainable and consequently gave the Respondent the benefit of the doubt, finding him not guilty and acquitting him following Section 255(1) of the Criminal Procedure Code.

¹⁹ *Kerala Arecanut Stores v Ramkishore and Sons & Anr* (1975) Ker 144

²⁰ *N.Elangovan v C Ganesan* (2014) (4) MLJ 517 (Crl)

II. Can a partnership firm also be included along with the partners in a complaint of a criminal offense by Section 138 of the Negotiable Instrument Act?²¹

Section 141 deals with offenses committed by corporations. Everyone in charge of and responsible to the Company at the time the offense was committed and the Company itself shall be regarded guilty of the offense and shall be subject to prosecution and punishment following the law, it is said. This provision is applicable only if a company committed the offense. The same applies to Partnership firms as well. While analyzing the provision, the Court has categorically stated that the complaint cannot be issued against the Company's directors without charging the Company. This idea has been made applicable to Partnership Firms as well. Therefore, the registration or non-registration of the Partnership has no significant impact on Section 141.

The Court relied on *Purushottam v Shivraj Fine Art Litho Works*²² The bar in Section 69(2) will not apply if the unregistered firm is a party to the agreement and was not made in connection with what the firm did with a third party. In this case, the respondent firm and Purushottam, the preceding owner of the Company, entered into a contract. The partnership company was then established. The owner Purushottam, who operated his own Company under the name and alias "Dinesh Paper Mart," was owed the money stated in the lawsuit. When he entered into a partnership with others, contributing to the funds, he brought all the assets and liabilities of his former proprietary business into the arrangement. As a result, even though the unregistered partnership firm gained the ability to enforce the contract that the defendant firm owed Purushottam, it did not enter into the agreement with a third party or as part of its business dealings with the defendants. If Section 69(2) is appropriately implemented, the Plaintiff-appellants' lawsuit cannot be dismissed.

One similar case is *Aneeta Hada v Godfather Travels and Tours Private Limited*.²³ The brief facts of the case are as follows: The Appellant's cheque made payable to the Respondent was

²¹ Thakur PR, 'DISHONOUR OF A CHEQUE – A DEEMED OFFENCE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT 1881 (AS AMENDED IN 1988)' (1991) 33(3) Journal Of Indian Law Institute <<https://www.jstor.org/stable/43951372>> accessed 20 April 2023

²² *Purushottam v Shivraj Fine Art Litho Works* (2007) (4) JT 564

²³ *Aneeta Hada v Godfather Travels and Tours Private Limited* (2012) 5 SCC 661

returned unpaid. The Respondent started criminal proceedings by submitting a complaint following Section 138. The Company was not named as an accuser in the complaint filing. However, the magistrate acknowledged the alleged Appellant's offense. The appellant requested permission from the Hon'ble High Court to discontinue the criminal inquiry because of the previous judgment. The case was brought before the Hon'ble Supreme Court due to disagreements between the two judges that made up the two-judge bench. It was decided that the officers of the drawer company are likewise liable in criminal court for the dishonor of the check when the circumstances mentioned in Section 141 are satisfied. As a result, Section 141 charges must be brought against the corporation.

One of the landmark cases with similar facts is *Haldiram Bhujawala & Anr v Anand Kumar & Anr*²⁴ for Section 69(2) to be applicable, the disputed contract had to be one that the Plaintiff Company made with Defendant while doing business. It is further determined that Section 69(2) does not bar a lawsuit filed by an unregistered firm from asserting a statutory or common law claim.

The disputed transaction was a separate sale of the Firm's interest in the suit property to the arguing Defendants rather than one that the Plaintiff firm—which specializes in building construction—engaged in as part of its line of business. As was already noted, the bar of Section 69(2) can be more alluring regarding the sale. Furthermore, it cannot be said that the issue involves enforcing a contractual right; instead, the plaintiff requests common law remedies while asserting fraud and misrepresentation and the statutory right to an injunction. The prohibition outlined in Section 69(2) does not apply to the current situation.

The claim filed by the appellant is exempt from Section 69(2) 's bar. The Trial Court denied the weak application from the opposing Respondents because it accurately comprehended the facts of the case. The High Court's disputed order must be overturned because it violates the pertinent legal regulations. The request is granted.

²⁴ Haldiram Bhujawala (n 14)

III. Whether the Court should have harmoniously interpreted Section 138 and Section 69(2)?

In the present case, the Court chose not to interpret the law harmoniously, but the researcher believes the two statutes should have been read together. The researcher believes that if the Court had read the two laws together, a different judgment would have been passed by the Court, and it would have favored the Respondents.

To support the argument put forth by the researcher, the case *Sai Accumulator Industries, Sangamner v Sethi Brothers*,²⁵ is brought to light by the researcher. The complaint brought by an unregistered firm under Section 138 was found to be unsustainable in law by the Single Bench of the Court due to the bar under Section 69(2).²⁶

One similar landmark case was *Amit Desai v Shine Enterprise*²⁷. The facts of the case are as follows: The complainant-first Respondent, in this case, filed an accusation against the petitioners in the court of the judicial magistrate. The petitioners who are accused of the charges have submitted the current petition. According to the complainant, M/s. Shine Enterprises, a partnership concern, is the name under which the complainant conducts business in Madanapalle Town. The complainant's additional argument is that she had a business relationship with the accused. Since 1996, they have bought the 'P.E.P.U.P.' black label, a non-alcoholic beverage. After placing an order with him, they gave the accused a demand draught for Rs. 1,67,328 to purchase non-alcoholic beverages.

However, the supply could not be sold because of pressure from the neighborhood police when they received a second consignment. So they gave the accused person the item back. The accused pledged to return the stock value they received in exchange for a credit note for Rs. 1,55,080. The defendant wrote a check for Rs. 1,65,080/- payable to Co-operative Bank of Ahmedabad Limited, Ahmedabad. The complainant attempted to cash the check by presenting it to their financier, Canara Bank, Madanapalle branch. However, the cheque was returned with the notation funds are insufficient.

²⁵ *Sai Accumulator Industries Sangamner v Sethi Brothers* (2003) CrI App No 426/2003

²⁶ Aparna Das et al., 'Critical Analysis of Section 138 of Negotiable Instruments Act, 1881' (2021) 4(6) International Journal of Law, Management and Humanities <<https://doi.org/10.10000/IJLMH.112254>> accessed 20 April 2023

²⁷ *Amit Desai v Shine Enterprises* (2000) (1) ALD Cri 587

Under section 138, the complainant complained about the accused. The accused came to the court to have the proceedings stopped. The case needs to be more attainable, the court said, because the complainant firm must be established following section 69 (2). The Court decided on the case after reading the two pieces of legislation coherently.

CONCLUSION

Rangabashyam v Ramesh 2019 concerns the Negotiable Instruments Act 1881 and Partnership Act 1932. The researcher disagrees with part of the Judgment of the Madras High Court and believes that the Judge should have looked at the broader aspect of the law. The courts should interpret the law while also considering the general part. If the law creates confusion as it did in the present case, the courts should develop a more feasible version. In the present case, the use of Section 69(2) was questioned; therefore, to avoid uncertainty in the future, the laws can be either amended, or a better explanation with illustrations should be provided for better administration of justice.