IN THE SUPREME COURT OF INDIA

APPELLATE JURISDICTION / LANDMARK PRECEDENT

N. Harihara Krishnan v. J. Thomas

Registry Status : REPORTED PRECEDENT -- OFFICIAL RECORD

1. EXECUTIVE SUMMARY & KEY HIGHLIGHTS

InN. Harihara Krishnan v. J. Thomas(2018) 13 SCC 663, the Supreme Court established a crucial jurisdictional limitation in Negotiable Instruments Act jurisprudence: Section 319 CrPC (power to proceed against additional accused) cannot be invoked to implead a company as an accused in a Section 138 complaint to circumvent the strict one-month period of limitation prescribed under Section 142(1)(b). The Court ruled that cognizance under Section 138 is person-specific, and failure to arraign the corporate drawer within limitation is fatal to vicarious prosecution of its directors.

* Section 319 CrPC / BNSS 358 Cannot Bypass Limitation:A complainant who failed to implead the company within the statutory limitation under Section 142(1)(b) cannot introduce the company via Section 319 CrPC during trial.
* Cognizance Under Section 138 is Person-Specific:Unlike general criminal offences where cognizance is of the offence, Section 138 cognizance is uniquely tied to the drawer who failed to pay after statutory demand notice.
* Inseparability of Section 141 and Company Arraignment:Following Aneeta Hada, a director cannot be held vicariously liable without arraigning the company; Section 319 cannot be used as a backdoor cure.
* Procedure for Condonation of Delay:Condonation of delay under the proviso to Section 142(1)(b) can only be granted prior to taking cognizance on a formal application showing sufficient cause.

2. FACTUAL MATRIX & IMPUGNED PROCEEDINGS

The respondent-complainant, J. Thomas, instituted a complaint under Section 138 NI Act alleging dishonour of a cheque for Rs. 50,00,000/- drawn on the account of M/s Dakshin Granites (P) Ltd., signed by director N. Harihara Krishnan.

Although the statutory demand notice was issued to both the company and the director, the complainant in his Section 138 complaint named only N. Harihara Krishnan as the sole accused in his personal capacity, completely omitting the corporate drawer Dakshin Granites (P) Ltd.

During trial, realizing that under the landmark 3-judge bench ruling in Aneeta Hada v. Godfather Travels (2012) 5 SCC 661 the prosecution of a director without the company is legally unsustainable, the complainant moved an application under Section 319 CrPC to implead the company as an accused.

The Trial Court dismissed the application as barred by limitation under Section 142(1)(b). In Criminal Revision, the Madras High Court reversed the Trial Court and allowed impleadment of the company under Section 319 CrPC.

N. Harihara Krishnan appealed to the Supreme Court challenging the belated impleadment of the company.

3. RATIO DECIDENDI (VERBATIM COURTROOM HOLDING)

Supreme Court's Authoritative Ruling on Section 142 Limitation & Section 319 CrPC:

4. OBITER DICTA & JUDICIAL OBSERVATIONS

The Supreme Court delved into the distinct nature of special penal statutes versus general criminal jurisprudence:

* Distinction from General IPC Offenses:Under the general provisions of the CrPC (e.g. *Raghubans Dubey v. State of Bihar*), cognizance is taken of the 'offence' and not the 'offender', permitting addition of accused under Section 319 CrPC at any stage. However, Section 138 NI Act is a special statutory scheme where the offence is defined around the specific drawer and the failure to pay within 15 days of notice.

* Strict Construction of Limitation:The Parliament prescribed a short limitation period of one month under Section 142 to prevent harassment in commercial transactions. Circumventing this limitation through Section 319 CrPC would render Section 142(1)(b) a dead letter.
* Fatal Consequence for Director Prosecution:Because the company could not be impleaded due to limitation, the condition precedent for vicarious liability under Section 141 (as established in *Aneeta Hada*) could never be fulfilled, rendering the entire prosecution against the director void.

5. POINTS OF LAW FRAMED & ANSWERED

Legal Issue Framed	Supreme Court's Holding
Can Section 319 CrPC (now Section 358 BNSS) be invoked in a Section 138 proceeding to add a company as an accused beyond limitation?	No. The Supreme Court held that Section 319 CrPC cannot be used to bypass the mandatory one-month limitation period prescribed under Section 142(1)(b) of the NI Act.
Is cognizance under Section 138 NI Act taken of the offence generally or against a specific person/drawer?	Cognizance under Section 138 is person-specific and tied strictly to the drawer who drew the cheque and failed to make payment within 15 days of receiving the statutory notice.

6. STATUTORY FRAMEWORK & MODERN LEGISLATIVE ALIGNMENT

Precedent Reference / Former Statute	Modern Act (BNSS / BNS / BSA / CPA)	Doctrinal & Procedural Analysis
Section 142(1)(b), Negotiable Instruments Act, 1881	Section 142(1)(b), NI Act (Limitation for Cognizance)	Strict 1-month limitation period from cause of action; operates as a jurisdictional bar against belated impleadments.
Section 319, Code of Criminal Procedure, 1973	Section 358, Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)	Power to proceed against additional persons appearing guilty; subordinated to special limitation in NI Act.
Section 141, Negotiable Instruments Act, 1881	Section 141, NI Act (Offences by Companies)	Requires primary arraignment of the corporate drawer as a sine qua non for prosecuting vicarious directors.
Section 5, Limitation Act, 1963	Proviso to Section 142(1)(b), NI Act	Condonation of delay must be formally sought and granted prior to taking cognizance, not during trial.

7. SUBSEQUENT JUDICIAL TREATMENT & LINEAGE

* Himanshu v. B. Shivamurthy (2019) 3 SCC 797:Quashed proceedings against a director where the company was omitted in the complaint and limitation had expired, following Harihara Krishnan.
* Dilip Hariramani v. Bank of Baroda (2022) 5 SCC 665:Applied Harihara Krishnan to hold that a partner cannot be held vicariously liable under Section 141 without the partnership firm being prosecuted.
* Pawan Kumar Goel v. State of U.P. (2022) SCC OnLine SC 1598:Reaffirmed that Section 319 CrPC cannot be used to cure non-impleadment of companies in cheque bounce cases.
* Ashok Shewakramani v. State of A.P. (2023) 8 SCC 473:Reiterated strict statutory adherence required for corporate arraignment under Section 141.

8. PRACTICAL LITIGATION PLAYBOOK & STRATEGIC CHECKLIST

* Arraign the Company as Accused No. 1:Ensure the corporate drawer is always named as Accused No. 1 in both the statutory demand notice and the complaint petition.
* File Condonation Application Before Cognizance:If limitation is missed, file an application under the Proviso to Section 142(1)(b) supported by an affidavit explaining sufficient cause prior to issuance of process.

* Never Rely on Section 319 / BNSS 358 as a Fix:Do not attempt to add the company later during trial; it will be dismissed as an illegal circumvention of limitation.
* Serve Notice on Registered Office:Dispatch the statutory demand notice by registered post / speed post to the registered office of the company as well as individual directors.
* Check Memo of Parties for Omission of Company:Immediately inspect whether the company was arraigned as an accused in the complaint; if omitted, do not alert the complainant until the 30-day limitation expires.
* Oppose Section 319 / BNSS 358 Applications:Cite N. Harihara Krishnan v. J. Thomas directly to defeat any belated impleadment application filed by the complainant.
* Seek Complete Discharge / Quashing:Move an application for discharge or quashing under Section 528 BNSS / Section 482 CrPC on the ground that prosecution of the director without the company is non-maintainable under Aneeta Hada and Harihara Krishnan.
* Resist Backdoor Condonation:Argue that the Magistrate has no jurisdiction to condone delay retrospectively after taking cognizance.