

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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2026:PHHC:029955



CRM-M-45494-2022 (O&M)
Reserved on: 19.01.2026.
Date of Decision: 25.02.2026.
Uploaded On: 25.02.2026.

NARESH KUMAR JAIN

... Petitioner(s)

VERSUS

HARYANA STATE POLLUTION CONTROL BOARD AND OTHERS

... Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Raghav Sharma, Advocate,
for the petitioner(s).

Mr. Pawan Girdhar, Sr. Advocate, with
Mr. Ayush Neeraj Vaid, Advocate,
for respondent no.1

Mr. Arun Sharma, Advocate, for
Mr. Abhivadya Sood, Advocate,
for respondents No. 2 to 5.

VINOD S. BHARDWAJ, J.

1. The instant petition has been filed seeking quashing of complaint NO. 06/2022 dated 06.05.2022 titled as “Haryana Pollution Control Board vs M/s Shree Nathan Bricks Company and others” and all consequential

proceedings arising therefrom including the summoning order dated 06.05.2022 qua the present petitioner pending before the Special Environment Court, Kurukshetra.

2. The above complaint was filed by the Haryana State Pollution Control Board (hereinafter referred to as HSPCB) alleging that the accused partnership firm - M/s Shree Nathan Bricks Co., a partnership firm engaged in the business of manufacturing bricks and tiles, was operating a brick kiln in violation of statutory and regulatory mandates. It is specifically alleged in the complaint that the kiln was being run without conversion into the prescribed zig-zag technology and that prohibited fuel, namely rubber and plastic scrap, was being used for firing purposes. Such acts are in clear breach of the conditions imposed under the Consent to Operate (CTO) granted under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "Act of 1981), as well as in contravention of the order dated 11.12.2018, which enumerates the list of approved fuels permissible for such operations. It is further alleged that the petitioner herein is one of the partners of the said firm, actively managing and supervising its day-to-day affairs. By virtue of his position and control over the operations of the unit, he is deemed to be responsible for the acts, omissions and commissions carried out on behalf of the firm. The complaint asserts that the petitioner herein is liable not only in his representative capacity as a partner but also individually as the person in charge of the conduct of the business. It is alleged that the aforesaid violations were committed knowingly and with the consent and connivance of all the accused. Accordingly, the petitioner was

sought to be prosecuted under Sections 37 and 39 read with Section 40 of the Air (Prevention and Control of Pollution) Act, 1981.

3. Learned counsel appearing for the petitioner contends that in terms of the partnership agreement dated 01.04.2014 executed between the petitioner and respondents No. 3 to 5, the petitioner was entitled only to 5% of the net profits or losses arising from the business of the brick kiln. It is submitted that the petitioner's role was limited and confined to such financial participation, without any involvement in the operational or managerial affairs of the firm.

4. Counsel contends that the competent authorities had granted permission to M/s Shree Nathan Bricks Co. to operate the brick kiln for the period from 01.04.2018 to 31.03.2019. During an inspection conducted on 02.03.2019, certain deficiencies were allegedly noticed, pursuant to which the impugned complaint came to be filed on 06.05.2022. Learned counsel emphasizes that the petitioner has been residing in Canada since 1998 and has been granted Overseas Citizenship of India (OCI) status, holding a Canadian passport along with his family and was not physically present in India during the relevant period and had no role in the day-to-day functioning of the unit.

5. It is contended that the petitioner was merely a "sleeping partner" with a marginal share of 5% in the net profits or losses and was neither an active nor a working partner. He had no control over the management, supervision or conduct of the affairs of the brick kiln. It is contended that the complaint neither contains any averment demonstrating that the petitioner was in charge of or responsible for the conduct of the business at the relevant time

nor does it disclose any material to attract vicarious liability.

6. Counsel submits that the partnership agreement itself clearly delineates the respective roles of the partners. As per the terms thereof, respondents No. 2 to 4 were designated as the working partners and were expressly entrusted with the responsibility of managing and operating the brick kiln. The said working partners were also entitled to remuneration for the services rendered by them, which demonstrates that the operational control and managerial authority vested exclusively in them.

7. It is submitted that the status of the petitioner as a sleeping partner is further borne out from the contents of the complaint itself. It is pointed out that all statutory proceedings, inspections and interactions with the authorities were attended to by the other partners and that on the date of inspection, the petitioner was neither present nor shown to have participated in any capacity. Additionally, learned counsel has drawn attention of this court to the affidavits furnished by the co-partners in support of the petitioner's plea, wherein it has been categorically averred that the petitioner had no concern with the operational activities of the brick kiln and exercised no control over its management or affairs. Thus, the petitioner cannot be fastened with vicarious liability in the absence of specific material demonstrating his active involvement or responsibility for the alleged violations.

8. In support of the aforesaid submissions, learned counsel places reliance upon the judgments of the Hon'ble Supreme Court in **National Small Industries Corporation Ltd. v. Harmeet Singh Paintal & Another, 2010 (1) Apex Court Judgments (SC) 638**, and **Anita Malhotra v. Apparel Export**

Promotion Council & Another, 2011 (4) R.C.R. (Civil) 930, to contend that in the absence of specific averments establishing active involvement or responsibility for the conduct of business, a partner cannot be mechanically arraigned as an accused merely by virtue of holding such status.

9. Per Contra, learned senior counsel appearing for respondent no. 1 - HSPCB contends that the plea of the petitioner that he is merely a “sleeping partner” holding 5% share in the profits or losses of the firm does not, by itself, absolve him of statutory liability arising under the Air (Prevention and Control of Pollution) Act, 1981. Learned counsel submits that Section 40 of the Air Act specifically provides that where an offence has been committed by a company or firm, every person who, at the time of commission of the offence, was in charge of and responsible to the firm for the conduct of its business, shall be deemed to be guilty of the offence. The term “company” under the Act expressly includes a firm, and “director” in relation to a firm includes a partner. Therefore, every partner is prima facie liable unless he discharges the burden of proving that the offence was committed without his knowledge or that he exercised due diligence to prevent its commission.

10. It is further submitted that the partnership agreement dated 01.04.2014 demonstrates that the petitioner is an admitted partner of accused No. 1-firm. The firm had applied for and obtained Consent to Operate (CTO) under Section 21 of the Air Act in its name, and the operations were carried out under the collective authority and responsibility of all partners. Learned counsel contends that the inspection conducted on 02.03.2019 revealed serious violations, including failure to convert the kiln into prescribed zig-zag

technology and use of prohibited fuel such as rubber and plastic scrap. These violations were not minor procedural lapses but constituted substantive breaches of statutory conditions and environmental safeguards.

11. It is submitted that the contention that the petitioner resides in Canada and holds Overseas Citizenship of India (OCI) status is wholly irrelevant. Learned counsel submits that physical absence from India does not ipso facto negate legal responsibility. A partner cannot evade statutory liability merely by residing abroad while continuing to retain partnership rights, financial interest and legal status in the firm. If the petitioner chose to remain a partner and enjoy profit-sharing benefits, he cannot disclaim responsibility when statutory violations are detected.

12. It is further argued that the complaint contains specific averments that respondent Nos. 2 to 5 and the petitioner, were partners of the firm and were responsible for the day-to-day affairs of the business. At the stage of summoning or trial, detailed proof of individual roles is not required; the sufficiency of averments must be tested at trial. The question whether the petitioner had knowledge of or exercised due diligence to prevent the offence is a matter of evidence and cannot be adjudicated in proceedings seeking quashing.

13. It is finally submitted that environmental violations affect the community at large and regulatory compliance cannot be diluted by permitting partners to take refuge under the plea of being “sleeping partners.” The petitioner, being an admitted partner and beneficiary of the business, is rightly arrayed as an accused, and the complaint discloses sufficient material

to proceed against him in accordance with law.

14. I have heard the counsel appearing for the parties and have gone through the documents appended with the present petition.

15. The petitioner is admittedly one of the partners of respondent No. 2—firm, which is engaged in the business of operating a brick kiln. It is the case of the petitioner that he was inducted into the partnership merely as a sleeping partner. As per the terms of the partnership deed, his financial participation in the firm is restricted to 5% of the net profits or losses, whereas the remaining 95% share in the business vests with the other partners, namely respondents No. 3 to 5. The partnership deed, clearly demarcates the roles of the partners and indicates that respondents No. 3 to 5 were designated as the working partners, entrusted with the responsibility of managing, supervising and conducting the day-to-day operations of the brick kiln and that the petitioner neither participated in the management nor exercised any control over the operational or regulatory affairs of the firm. In further substantiation of this plea, affidavits sworn by respondents No. 3 to 5 have been placed on record along with the present petition. In the said affidavits, the working partners have categorically affirmed that the petitioner had no involvement in the daily functioning of the firm, did not supervise the operations of the brick kiln and exercised no control over compliance-related matters. They have reiterated that the petitioner's association with the firm was limited to a nominal financial stake, without any managerial authority

16. In view of the above undisputed position, the pivotal question that arises for consideration before this Court is whether a partner described

as a “sleeping partner,” having no active role in the management or day-to-day affairs of the partnership firm, can nevertheless be fastened with criminal vicarious liability for the acts and omissions of the firm. The determination of this issue necessitates an examination of the scope of deeming provisions under the Act of 1981 and the extent to which mere status as a partner without any active control or responsibility suffices to attract penal consequences.

17. Thus, it is deemed necessary to refer to relevant provisions of the Act of 1981 and the same are extracted as under: -

“40. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and 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 accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

- (a) “company” means any body corporate, and includes a firm or other association of individuals; and*
- (b) “director”, in relation to a firm, means a partner in the firm.”*
- (emphasis supplied)*

18. The provision uses certain specific expression while fastening vicarious liability under Section 40 (1). It mandates that a person should be ‘directly’ incharge of and responsible to the Company for the conduct of business. The expression “directly incharge” underlines a pro-active control and not a remote or distant indirect interest into the affairs.

19. The proviso to sub-Section (1) of Section 40 provides an additional defence, if a petitioner shows that the violation was not to his knowledge or that despite due diligence, offence was nonetheless committed.

20. While the expression “directly incharge” protects the partners not controlling the affairs, the proviso provides defence to the partners incharge of affairs in case they prove lack of knowledge or establishes having followed due diligence.

21. While the substantive part of Section 40(1) creates a deeming fiction whereby every person in charge of and responsible for the conduct of the business shall be deemed to be guilty of the offence committed by the company, the proviso carves out a statutory exception. The proviso expressly stipulates that such a person shall not be liable to punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence. Thus, although the initial presumption under Section 40(1) operates against persons in charge of

the business, the statute simultaneously recognises that criminal liability must be founded upon either knowledge, consent, connivance or failure to exercise due care.

22. The proviso thus ensures that vicarious criminal liability does not attach mechanically to every partner merely by virtue of his designation or formal association with the firm. Rather, liability is intended to be affixed only upon those who were either aware of the contravention or who, being in a position of responsibility, failed to exercise due diligence to prevent its occurrence. It functions as a statutory safeguard, preventing the unwarranted prosecution of individuals who were even though legally connected with the enterprise, neither had knowledge of the offending act nor participated in or permitted the breach.

23. In the present case, certain facts, as pleaded, have not been disputed by the respondents. Some of them are extracted as under: -

- (i) The petitioner claimed that he is an overseas citizen of India, residing in Canada, since 1997 and running his business of Pharmacy in Canada. Hence, he never exercised any direct control over management of the brick kiln.
- (ii) The petitioner attached the partnership agreement dated 01.04.2014, which has not been disputed. Clause 4 of the Partnership agreement records about managing partners. Clause 7 records the share of petitioner. The same are extracted as under: -

“4. It is agreed by and between the parties hereto that Sh. Sukhbir Singh, Sh. Rajender and Sh. Sanjay (herein after referred to as working partner) will devote their time and attention to the conduct of the affairs of the firm as the circumstances for and business need may require which they will be allowed remuneration. The total remuneration payable to the working partners shall be worked out as under:-

a	On the First of Rs. 3,00,000/- of the book profit or in case of loss	Rs.15000/- or 90% of the Book profit whichever is more
b	On the balance of the book profit	60%

Explanation:

For the purpose of the clause the expression book profit shall mean the book profit Income as defined in Section 40 (B) of the Tax Act. modification or enactment thereof for the time 1961 or any statutory being in force.

Such total remuneration shall be paid to the working partners in the following proportions: -

Sh. Sukhbir Singh	1/3rd
Sh. Rajender	1/3rd
Sh. Sanjay	1/3rd

The remuneration payable to the working partners as above shall be credited to their respective accounts on ascertainment of book profit.

xxx xxx xxx

7. That after defraying all business expenses including interest payable to the partners and had debts, if any, the net profits or losses of the business as the case may be shall be divided between or borne by the partners in the following proportions:-

<i>Sh. Naresh Kumar Jain</i>	05%
<i>Sh. Sukhbir Singh.</i>	50%
<i>Sh. Rajender</i>	25%
<i>Sh. Sanjay</i>	20%

The above reflects no role of petitioner in the management of kiln.

(iii) In the reply filed by Haryana State Pollution Control Board, they have admitted the partnership deed and Overseas Citizen of India status of the petitioner.

24. The respondent-Haryana State Pollution Control Board in its reply on merits rather takes a stand that all partners, whether present or not, are responsible for prosecution under Section 40 of the Act of 1981. The stand is clearly based on an improper reading of the statutory provisions. Although, the burden lies on the petitioner to prove that he was not 'directly incharge' of affairs, and cannot be cast upon the Haryana State Pollution Control Board at the first stage, however, where undisputed documents and pleadings lead to an admission about inactive role of petitioner the petitioner would be entitled to claim protection as per Statute and immunity from prosecution.

25. When the aforesaid statutory framework is examined in the

context of the present case, it assumes material significance. The consistent stand of the petitioner is that he was merely a sleeping partner with a limited 5% share in the profits or losses of the firm and had no role in the management or day-to-day functioning of the brick kiln. The partnership deed on record reflects that the operational control and managerial responsibilities vested exclusively with respondents No. 3 to 5, who were designated as working partners. The affidavits appended by the said partners further affirm that the petitioner neither supervised the operations nor participated in regulatory compliance matters. In such a factual backdrop, the deeming fiction under Section 40(1) cannot be applied in a mechanical manner. If the petitioner was neither in charge of nor responsible for, the conduct of the business at the relevant time the protection embodied in the proviso becomes directly attracted.

26. The Hon'ble Supreme Court in *Sham Sunder v. State of Haryana, (1989) 4 SCC 630* has held that vicarious liability of a partner in a firm is not automatic or universal. Only such person who was entrusted with the conduct of the business of the firm and was, at the relevant time, in charge of and responsible for its affairs can be prosecuted. Merely being a partner does not render every individual liable for offences committed by the firm. It has further been held that the initial burden lies upon the prosecution to establish that the accused was, in fact, responsible for carrying on the business of the firm and was in charge of its operations at the time when the alleged offence was committed. Only upon discharge of this foundational burden does the onus shift to the accused to demonstrate that the offence occurred without

his knowledge or that he had exercised due diligence to prevent its commission. In the absence of such foundational averments and proof by the prosecution, the question of invoking vicarious liability does not arise. The relevant extract of the aforesaid judgment is as under: -

“10. It is, therefore, necessary to add an emphatic note of caution in this regard. More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business. In the absence of any such proof, no partner could be convicted. We, therefore, reject the contention urged by counsel for the State.

27. In view of the foregoing discussion, I am of the opinion that vicarious criminal liability under Section 40 of the Air (Prevention and Control of Pollution) Act, 1981 cannot be fastened upon a partner merely by virtue of his designation, in the absence of specific material demonstrating

that he was in charge of and responsible for the conduct of the business at the relevant time.

28. In the present case, a careful perusal of the complaint as well as the partnership deed unmistakably indicates that the petitioner was neither in charge of nor responsible for the conduct of the day-to-day affairs of the accused-firm and was associated therewith only as a sleeping partner. No specific averments have been made to attribute to him any active role in the management or operational control of the brick kiln at the relevant time.

29. In such circumstances, permitting the criminal proceedings to continue against the petitioner would amount to an unwarranted abuse of the process of law. This Court, therefore, finds it to be a fit case for exercise of its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to secure the ends of justice and to prevent unnecessary harassment of the petitioner.

30. In view of the above, the present petition is allowed. Complaint No. 06/2022 dated 06.05.2022 titled as “Haryana Pollution Control Board Vs. M/s Shree Nathan Bricks Company and others” and all consequential proceedings arising therefrom including the summoning order dated 06.05.2022 are hereby quashed qua the petitioner.

February 25, 2026.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No