

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

**Criminal Misc. No. M-2797 of 2013
Date of Decision:-08.02.2016**

Amit Singla

..Petitioner

Versus

Idea Cellular Ltd. and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. K.S. Dhaliwal, Advocate for the petitioner.

Mr. Vishal Gupta, Advocate for respondent No.1.

Mr. Parveen Chauhan, Advocate for
Mr. Gagandeep Singh Wasu, Addl. P.P.
for U.T. Chandigarh/respondent No.3.

HARI PAL VERMA J.(Oral)

Prayer made in the present petition fled under Section 482 Cr.P.C. is for quashing of Criminal Complaint No.1452, dated 10.02.2012 under Sections 138 read with Section 142 of Negotiable Instruments Act, 1881 (for brevity "the Act") titled as "**Idea Cellular Ltd. vs. Amit Singla & another**", pending in Court of Ld. Judicial Magistrate Ist Class, Chandigarh (Annexure P-1) and summoning order dated 10.02.2012 passed by learned JMJC, Chandigarh (Annexure P-2) qua the petitioner.

Learned counsel for the petitioner contends that the cheque in question was never issued by the petitioner rather, the same was issued by Amit Bhatnagar and, therefore, the petitioner does not fall within the ambit of Section 138 of the Act.

On the other hand, learned counsel for the respondents fairly states that though, the petitioner has not issued the cheque in question but the same was issued by Amit Bhatnagar in discharge of liability with regard to the petitioner.

In support of his contention, learned counsel for the petitioner while relying upon a judgment of Hon'ble Apex Court in **Jugesh Sehgal Vs. Shamsher Singh Gogi, 2009(3) R.C.R. (Criminal)**, contends that in order to invoke Section 138 of the Act, a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person. Since the petitioner has never issued the cheque in question, therefore, the complaint in question cannot survive and is liable to be dismissed.

I have heard learned counsel for the parties.

Hon'ble the Apex Court in **Jugesh Sehgal' case(supra)** has held that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

- “(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;
- (ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;
- (iii) that cheque has been presented to the bank within a

period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is 7 insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice."

Taking into consideration the law laid down in **Jugesh Sehgal's case(supra)**, as well as the fact that the petitioner has not issued the cheque in question from his account, the present petition is allowed, summoning order dated 10.02.2012 passed by learned JMJC, Chandigarh (Annexure P-2) is set aside and as a consequence thereof, Criminal Complaint No.1452, dated 10.02.2012 under Sections 138 read with Section 142 of the Act, titled as "**Idea Cellular Ltd. vs. Amit Singla & another**", pending in Court of Ld. Judicial Magistrate Ist Class, Chandigarh (Annexure P-1) is quashed qua the petitioner.

08.02.2016
Anjal

(HARI PAL VERMA)
JUDGE