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

**CRM-M-35724 of 2014
DECIDED ON: FEBRUARY 09, 2016**

PRABHA GOYAL

.....PETITIONER

VERSUS

RAJESH KUMAR

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

Present: Mr. R.S. Madan, Advocate
for the petitioner.

Mr. Sanjay Mittal, Advocate
for the respondent.

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JASPAL SINGH, J (ORAL)

By virtue of this petition preferred under Section 482 Cr.P.C., Prabha Goyal has sought quashing of Criminal Complaint No. NACT. 544 of 2013 dated September 23, 2013 (Annexure P-1) filed under Section 138 of Negotiable Instruments Act, 1881 (for short 'Act') as well as order dated September 27, 2013 (Annexure P-2) whereby she has been summoned to face trial under Section 138 of the Act and all subsequent proceedings arising therefrom.

2. Brief facts giving rise to the instant *lis* are that the respondent-complainant is alleged to have advanced a friendly loan of ₹30,00,000/- to the husband of petitioner. On September 18, 2012 he executed a promissory note alongwith receipt; besides an undertaking/affidavit dated September 27, 2012. It has further been alleged that petitioner and her husband also handed over a

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post dated cheque bearing No. 415005 dated April 20, 2013 for an amount of ₹30,00,000/- drawn on State Bank of Patiala, Sector 26, Grain Market, Chandigarh to the respondent-complainant. It has further been alleged that when respondent-complainant approached the petitioner and her husband in the month of April 2013 for re-payment of loan amount, they requested him to present the above-said cheque which on presentation was dishonoured with remarks “funds insufficient” vide memo dated July 16, 2013. Thereafter, notice under Section 138 of the Act was served upon the husband of the petitioner but it was not responded and ultimately, a complaint was filed.

3. The contention of learned counsel for the petitioner is that petitioner has been dragged in the complaint filed under Section 138 of the Act by respondent being the wife of signatory of the cheque from the joint account. It is pretty settled that in case the drawer of the cheque fails to make the payment on receipt of notice then the provision of Section 138 of the Act could be attracted against him only. Even though the cheque was drawn to a joint bank account being operated by the petitioner and her husband but since the controversial document is the cheque, the liability regarding its dishonour can be fastened only on the drawer of it. To buttress this contention, learned counsel for the petitioner has relied upon the pronouncements of this Court in the case of ***Smt. Bandeep Kaur v. S. Avneet Singh;*** ***2008 (2) RCR (Criminal) 66*** and ***Jugesh Sehgal v. Shamsher Singh Gogi;*** ***2009 93) RCR (Criminal) 712*** as well as of the Apex Court captioned as ***Mrs. Aparna A. Shah v. M/s Sheth Developers Pvt. Ltd. and another;*** ***2013 (3) RCR (Criminal) 686.***

4. On the other hand, learned counsel for the respondent has controverted the afore-said contention submitting that proceedings under

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Section 138 of the Act are pending before learned trial Court which are being faced by the petitioner and the petitioner can raise all the pleas which have been taken now before learned trial Court during the course of evidence or at the time of arguments. The above-mentioned judgments which are being relied upon by the petitioner are not applicable to the facts and circumstances of the case in hand at this stage. Accordingly, he prayed for dismissal of instant petition.

5. This Court has given an anxious thought to the submissions made by learned counsel for the parties and has scanned the complaint as well as impugned order.

6. Undoubtedly, petitioner is the wife of Subhash Chand Goyal who is the alleged signatory of the cheque in question which is the basis for launching the prosecution under Section 138 of the Act. There is nothing on the record to suggest that petitioner was also under some legal debt recoverable by respondent-complainant. Similarly, the mere fact that she is a joint bank account holder with her husband does not *ipso facto* mean that she is also liable for the consequences of dishonoring of cheque issued by her husband. The controversial document is the cheque and the liability regarding its dishonour can be fastened only on the drawer of it i.e. signatory of the cheque. There is also nothing on record to suggest that petitioner is actively participates in the business of her husband. It can be safely be concluded that she cannot be fastened with any liability simply on the ground that she was a joint bank account holder along-with her husband. She has neither drawn nor issued cheque in question and therefore, complaint against her is/was not maintainable. The lodging of complaint and the passing of impugned summoning order are nothing but an abuse of process of law as well as Court.

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8. In the light of what has been discussed above, instant petition is allowed whereby, impugned complaint (Annexure P-1) i.e. complainant No. NACT. 544 of 2013 dated September 23, 2013 and summoning order dated September 27, 2013 (Annexure P-2) as well as all subsequent proceedings arising therefrom are quashed qua petitioner.

FEBRUARY 09, 2016 **(JASPAL SINGH)**
sham **JUDGE**

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