# IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-34987 of 2015.
Decided on:-28.08.2017.

Baljeet Kaur.

………Petitioner.

Versus

Tarandeep Singh.

………Respondent.

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

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Present:- Mr. Vaibhav Sehgal, Advocate for the petitioner.

Mr. Saurabh Bhatia, Advocate for Mr. S.S. Rangi, Advocate for the respondent.

***HARI PAL VERMA, J.***

The petitioner has filed present petition under Section 482 Cr.P.C. for quashing of criminal complaint No.12851 dated 25.04.2013 (Annexure P-1) under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) filed by the respondent as well as order dated 25.04.2013 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ludhiana vide which the petitioner was summoned to face trial.

Briefly stated, the respondent-complainant had filed a complaint under Section 138 of the Act read with Section 420 IPC. As per the compliant, in order to discharge her liability of loan, the petitioner had issued a cheque No.161002 dated 05.11.2012 for Rs.1 lakh in favour of the respondent-complainant drawn on HDFC Bank, 318-L, near Gulati Chowk, Model Town, Ludhiana from her joint account with her husband, namely, Bhupinder Singh. On presentation, the said cheque was dishonoured by the bank with the remarks "Payment stopped by drawer". Thereafter, legal notice was issued to the petitioner-accused, but she failed to make the payment.

Vide order dated 25.04.2013, learned Judicial Magistrate 1st Class, Ludhiana had summoned the petitioner-accused to face trial under Section 138 of the Act.

Learned counsel for the petitioner has submitted that the petitioner is the daughter of Bhupinder Singh and not the wife, as mentioned in the complaint and a note in this regard has been given in the Memo of Parties of the present petition. Thus, the petitioner be read as daughter of Bhupinder Singh.

He has argued that while summoning the petitioner, provision of Section 138 of the Act have not been complied with by the trial Court. As per Section 138 of the Act, the offence is made out only when a cheque is drawn by a person in the account maintained by him. In the present case, the cheque in question has been issued by the father of the petitioner, namely, Bhupinder Singh, who has already been arrayed as accused No.2 in the complaint. The cheque in question has never been drawn by the petitioner, though the account is joint between the petitioner and her father. The petitioner is not a signatory to the cheque in question.

He has relied upon the judgment of Hon'ble Supreme Court in ***Mrs. Aparna A. Shah Versus M/s Sheth Developers Pvt. Limited and another 2013(3) RCR (Criminal) 686*** to contend that when a cheque is drawn by an accused from a joint account, it is only the drawer of the cheque, who can be made an accused in the proceedings under Section 138 of the Act.

Since the petitioner has not issued the cheque in question, she cannot be held liable under Section 138 of the Act.

He has further argued that pursuant to order dated 12.10.2015 passed by this Court and in order to show her bonafide, the petitioner has already deposited Rs.1 lakh before the trial Court. On account of alleged issuance of the cheque in question, the father of petitioner is already facing prosecution in the complaint filed by the complainant under Section 138 of the Act.

On the other hand, learned counsel for the respondent has argued that even if the petitioner is not a signatory to the cheque in question, the fact remains that the cheque has been issued from a joint account maintained by her along with her father. Therefore, the petitioner is equally liable to face prosecution under Section 138 of the Act.

I have heard learned counsel for the parties.

In view of the law laid down by Hon'ble Supreme Court in ***Mrs. Aparna A. Shah's case (supra)***, it is only the drawer of the cheque, who can be made an accused in any proceeding under Section 138 of the Act. In this regard, relevant para No.8 of the said judgment reads as under:

> *"8. In order to constitute an offence under Section 138 of the N.I. Act, this Court, in Jugesh Sehgal vs. Shamsher Singh Gogi, (2009) 14 SCC 683, noted the following ingredients which 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 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.*

*Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act."*

*Considering the language used in Section 138 and taking note of background agreement pursuant to which a cheque is issued by more than one person, we are of the view that it is only the "drawer" of the cheque who can be made liable for the penal*

> *action under the provisions of the N.I. Act. It is settled law that strict interpretation is required to be given to penal statutes.*"

There is no dispute that the petitioner is not a signatory to the cheque in question. Therefore, having recourse to the aforesaid judgment of the Apex Court in ***Mrs. Aparna A. Shah's case (supra)***, this Court finds that the complaint in question as well as the summoning of the petitioner as issued by the trial Court, are not legally sustainable in the eyes of law qua the petitioner.

Accordingly, the criminal complaint No.12851 dated 25.04.2013 (Annexure P-1) under Section 138 of the Act filed by the respondent is dismissed qua the petitioner. Consequently, the impugned order dated 25.04.2013 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ludhiana vide which the petitioner was summoned to face trial under Section 138 of the Act is also set aside.

In case the petitioner has deposited Rs.1 lakh before the trial Court, the same shall be refunded to her as she has not been found to be a signatory of the cheque in question and the complaint filed against her under Section 138 of the Act is quashed qua her for the reason indicated above.

The petition stands allowed in these terms.

**(HARI PAL VERMA)**
**JUDGE**

**August 28, 2017**
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No