

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

204

CRM-M-32783-2016

Date of Decision: October 08, 2018

Parvesh Chadha

.....Petitioner(s)

versus

Balwinder Singh

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Pushpinder Kaushal, Advocate for the petitioner.

Sudhir Mittal, J. (Oral)

The petitioner seeks quashing of complaint No.999/2015 dated 25.02.2015 (Annexure P-4) as well as summoning order dated 26.02.2015 (Annexure P-5). The complaint has been filed under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act ')

The cheques have been placed on record as Annexure P-1. Both of them have been signed on behalf of Surindra Electric Works. The signatory is one Surindra, proprietor of M/s Surindra Electric Works.

In the complaint (Annexure P-4), the petitioner has been arrayed as an accused allegedly being co-proprietor of Surindra Electric Works.

It is submitted that under section 138 of the Act, only the person who issued the cheque can be made liable. Surindra Electric Works, is a proprietorship concern and is not a juristic person. It is only a business name. The proprietor of the said firm is thus, the person who has issued the cheque and is also

the signatory thereof. Only he can be made liable for an offence under section 138 of the Act. Being a proprietorship firm, the petitioner cannot be made liable even as a partner.

The language of section 138 of the Act leaves no room for doubt that a person who draws the cheque for payment of a debt or other liability, alone can be made liable. In the case of a juristic person, every person who is in charge of the business of the said juristic person and responsible for the conduct of its business, can also be made vicariously liable by virtue of section 141 of the Act.

In the instant case, the cheques have been issued by a proprietorship firm. Liability can thus, be fastened only on the Proprietor thereof. In the complaint Annexure P-4, the petitioner is shown to be co-proprietor, whereas there is no such concept in law. The petitioner can not be a partner as the firm is proprietorship firm. Thus, the summoning of the petitioner is an abuse of the process of law.

In view of the above, the petition is allowed and complaint No. complaint No.999/2015 dated 25.02.2015 (Annexure P-4) pending before Judicial Magistrate Ist Class, Chandigarh as well as summoning order dated 26.02.2015 (Annexure P-5) passed thereon, are hereby quashed.

October 08, 2018
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No