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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 794/2018
DESHBANDHU SHARMA Petitioner
Through: Mr. Prashant Singh, Adv.
versus

INDERJEET SINGH & ANR Respondents
Through: Mr. Jatin Sharma, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **24.04.2018**

Petitioner is father of respondent no.2-Amit Sharma (accused no.2). Respondent no.1 (complainant) filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) against the respondent no.2 (accused no.1) wherein petitioner was also impleaded as accused no.2. Respondent no.1 (complainant) alleged in the complaint that accused persons approached him for a friendly loan of ₹13.50 lacs. Accordingly, he transferred ₹3,32,500/- in the joint account of accused persons. Rest of the amount was paid in cash. In discharge of part legal liability, respondent no.2-Amit Sharma (accused no.1) issued three cheques, details whereof are as under :-

Cheque	Date	Amount	Drawn on
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No.			
515387	23.09.2015	₹4 lacs	HDFC Bank, Jangpura Extension Branch
000001	24.09.2015	₹2 lacs	HDFC Bank, Jangpura Extension Branch
052169	24.09.2015	₹2 lacs	SBI Defence Colony Flyover Market Branch

It was further alleged that on presentation of aforesaid cheques the same were returned dishonoured on the ground of account closed. Since the amount was not paid despite notice, hence, accused persons had committed offence under Section 138 of the Act.

By placing reliance on Pratap Singh Yadav & Another Vs. Atal Behari Pandey 2003 (66) DRJ 101 and Gita Berry Vs. Genesis Educational Foundation MANU/DE/0242/2008, learned counsel for the petitioner has contended that cheques were issued by the respondent no.2, drawn on the bank where he was maintaining account, therefore, petitioner cannot be said to have committed an offence under Section 138 of the Act. Petitioner is neither account holder nor the signatory of the cheques. He is not the drawer of the cheque.

In part 4 of the complaint, respondent no.1 has categorically stated thus “that the accused no.1 (Amit Sharma) in discharge of his part legal liability as well to discharge the legal liability of the accused no.2 (petitioner) had issued five cheques to complainant. It is clear from the above averments made in the complaint it is clear that cheques were issued by respondent no.2-Amit Sharma, who has been arrayed as accused no.1 in the complaint and not by the petitioners. Even a perusal of cheques makes it clear that same bear the signatures of respondent no.2-Amit Sharma only.

In Pratap Singh Yadav (Supra), it has been held as under :-

“In the instant case, petitioner No. 1 has not drawn any cheque in favor of the respondent. It is petitioner No. 2 who had drawn the cheque for Rs. 1,05,000/- at his own bank account for discharging the liability, payment of debt of his father, petitioner No. 1 herein. The offence within the purview of Section 138 is committed by petitioner No. 2 whose cheque was bounced by the bank on which it was drawn for insufficiency of funds in the account of petitioner No. 2 (to be precise closure of account) and his subsequent failure to make the payment. It is a criminal offence. Only petitioner No. 2 can be said to have committed the offence covered by Section 138. How will petitioner No. 1 be guilty of an offence under Section 138 of the Act has not been explained. He cannot have vicarious liability for offence by implication or otherwise as certain other persons have by

application of Section 141 of the Act. There is no other provision under the Act or under the ordinary criminal law under which petitioner No. 1 could be held guilty of an offence which has been committed by petitioner No. 2 under Section 138 of the Act. Therefore, there is gross miscarriage of justice when the trial court took cognizance of the offence under Section 138 against petitioner No. 1 and summoned him for standing trial Along with petitioner No. 2 and issued notice for offence under Section 138 for trial of petitioner No. 1.”

In Gita Berry (Supra) also, similar view has been taken.

For the foregoing reasons, complaint case is quashed only against the petitioner, since cheques have not been issued by him, as per the own admission of the complainant (respondent no.1), inasmuch as, cheques were issued by Petitioner’s son, that is, Amit Sharma (respondent no.2).

Petition is disposed of in the above terms.

A.K. PATHAK, J.

APRIL 24, 2018

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