

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CrI.M.C.No. 1808/2016 & CRL. M.A. 7671/2016**

Judgment reserved on : 08.02.2018

Date of decision : 19.11.2018

SHRI ANIL KINGRANI Petitioner

Through: Mr. Vivek B. Saharya,
Advocate

versus

SHRI VINOD KUMAR Respondent

Through: Mr. Sitab Ali Chaudhary, Adv

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide this petition under Section 482 of the Code of Criminal Procedure, 1973 seeks quashing of a complaint case No. 04/4R/2016 under Section 139/142 of the Negotiable Instruments Act, 1881, read with Section 420 of the Indian Penal Code, 1860, and as per order dated 29.5.2015, the proceedings are stated to be pending before the learned Metropolitan Magistrate-03, Rohini.

2. A perusal of the record indicates that vide order dated 29.5.2015, the petitioner herein was summoned for an offence punishable under Section 138 Negotiable Instruments Act, 1881 (as amended) on a complaint filed by the respondent herein under Section 138 read with 142 of the Seciton138 Negotiable Instrument Act, 1881 (as amended) read with Section 420 of the Indian Penal Code, 1860.

3. The petitioner submits that qua the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (as amended), it is well settled that it is only the signatory of the allegedly dishonoured cheque who can be made liable in relation thereto. The averments made in the complaint bearing No. 17733/15 filed before the Chief Metropolitan Magistrate (South-East) and now bearing no.04/4R/2016 pending in the Rohini Courts as filed by the complainant/the respondent herein, alleges that the petitioner Anil Kingrani and his wife Taruna Kingrani, approached the plaintiff for the sale of Plot bearing No.1402, measuring 32.00 sq. meters in Block & Pocket-C-1, Sector-34, situated in the lay out Plan of Rohini Residential Scheme, Rohini, Delhi- 110085 vide Application No.24187 and application No.23629 for a consideration of Rs.11,00,000/- and the petitioner herein and his wife being owners of the said plot entered into an agreement to sell dated 12.12.2013 with the complainant and against that agreement, the complainant had paid a sum of Rs.5,00,000/- to the tune of Rs.2,00,000/- in cash and two cheques amounting to Rs. 1,50,000/- each drawn on Andhra Bank, Pitampura Branch, Delhi and that the petitioner and his wife executed another agreement to sell dated 30.12.2013 against which the complainant had paid the balance amount of Rs.6,00,000/- in respect of the said plot.

4. As per the averments made in the complaint filed by the respondent, the petitioner and his wife after sometime, showed their inability to sell the above said plot to the complainant due to some unavoidable circumstances and the complainant agreed to his difficulty cooperated with the petitioner herein allegedly and a

Cancellation Deed was executed in respect of the agreement dated 12.12.2013 by the petitioner and his wife and the petitioner returned the entire consideration amount of Rs.5,00,000/- to the complainant, which was duly acknowledged by the complainant but the petitioner and his wife despite repeated demands and requests made by the complainant did not return the amount of Rs.6 lacs against the second agreement which was executed by the petitioner and his wife for a sum of Rs.6,00,000/- as per the agreement dated 30.12.2013 which amount as per the complainant (i.e. the respondent herein) is still due against the petitioner and his wife.

5. The complainant (i.e. the respondent to the present petition) in his complaint under Section 138 read with Section 142 & Section 138 of the Negotiable Instrument Act, 1881 (as amended) read with Section 420 of the Indian Penal Code, 1860, further submitted that in the middle of March, 2015 the complainant personally visited the accused i.e. the petitioner herein and his wife, namely, Smt. Taruna and demanded a sum of Rs.6,00,000/- which he had paid against the second agreement dated 30.12.2013 and the petitioner allegedly in discharge of his legal liability issued a cheque bearing No.000070 dated 12.3.2015 for a sum of Rs. 1,00,000/-, drawn on the Bank of Baroda, Zamrudpur Branch, New Delhi and the complainant represented the same to his banker for encashment but the same was returned dishonoured with the remarks "FUNDS INSUFFICIENT" vide Returning Memo dated 6.4.2015.

6. The complainant further contended that after receiving back the cheque in question which was dishonoured, the complainant contacted

the petitioner a number of times and apprised him about the dishonour of the cheque, however, the petitioner herein allegedly did not pay any heed to the request of the complainant and thus the complainant sent a legal notice to the petitioner for making of the payment of the said dishonoured cheque.

7. The legal notice dated 20.4.2015 issued on behalf of the complainant (i.e. the respondent herein) indicates that it was in relation to an alleged commission of an offence punishable under Section 138 read with Section 142 & Section 138 of the Negotiable Instruments Act, 1881 (as amended) in relation to the cheque bearing No.000070 dated 12.3.2015 for a sum of Rs. 1,00,000/-, drawn on the Bank of Baroda, Zamrudpur Branch, New Delhi.

8. The complainant (i.e. the respondent herein) averred through the complaint that despite service of the said legal notice, the petitioner did not make the payment of the dishonoured cheque and thus committed an offence punishable under Section 138 read with 142 Seciton138 Negotiable Instruments Act, 1881 (as amended) and as the petitioner was well aware about the issuance of the same and that the cheque would not be honoured on presentation thus the petitioner also committed an offence punishable under Section 420 of the Indian Penal Code by causing wrongful gain to himself and wrongful loss to the complainant.

9. Through the present petition and the oral submissions made, the chief contention of the petitioner has been that the cheque in question does not bear his signatures and that the signatory thereof is his wife Taruna Kingrani and that the account on which the cheque had been

been drawn belongs to M/s Thought Work Events which is the sole proprietorship concern of his wife and that thus the complaint against the petitioner cannot be sustained and is liable to be quashed. There are other submissions that the petitioner has made to the effect that the allegations levelled by the complainant are wholly false and it is further submitted that the agreement between the parties had been mutually terminated on 9.3.2015. There was thus an estoppel against the respondent i.e., the complainant qua his contention that the cheque was issued in discharge of a legally recoverable debt and that in fact the cheques had been issued in discharge of whole or a part of a liability towards mutation proceedings before the concerned authority and the same has been misused by the respondent and it was thus submitted through the petition that an offence punishable under Section 405 of the Indian Penal Code, 1860, against the defendant has been made out.

10. Through the submissions made on behalf of the respondent it has been denied that the allegations levelled against the petitioner are false and the respondent also denied that as per the mutual terms agreed between the parties after signing a cancellation agreement it had been agreed that the parties would not claim anything from each other against the party in question. The respondent also denied that the cheque in question had been handed over on the basis of meeting out miscellaneous incidental expenses towards the mutation proceedings as contended by the petitioner and the respondent also denied the allegation of the petitioner that a blank cheque had been filled in by him and thereafter presented *mala fide*ly.

11. The respondent complainant further denied that the cheque in question had not been drawn by the petitioner.

12. During the course of submissions that had been made on behalf of the petitioner, the petitioner submitted the re-verification of signatures qua account No. 41810200000017 as issued by the Bank of Baroda, Zamrudpur Branch dated 4.2.2017 vide which the said Bank verified the signatures of Taruna Kingrani, proprietor of M/s Thought Work Events as the Account Holder of the said account. The cheque in question as placed on record is in the form of the copy thereof as Annexure P-6 is indicated to have been issued from the said account No. 41810200000017 from the Bank of Baroda, Zamrudpur Branch with the signatures thereon as of the verified signatures of Taruna Kingrani, proprietor of M/s Thoughts Works Events.

13. In the circumstances, the reliance that has been placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in *Aparna A. Shah v. Sheth Developers private Limited and Another:* (2013) 8 SCC 71, wherein it has been categorically observed to the effect: that under Section 138 of the Negotiable Instruments Act, 1881 (as amended) it is only the drawer of the Cheque that can be prosecuted and that the penal provisions have to be strictly construed and no one can be held criminally liable for an act of another with the specific reliance placed on behalf of the petitioner on the observations in paragraph Nos. 13, 16, 18, 20 and 27 of the said verdict which read to the effect:-

“13. 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.

14.

15.

16) [In Sham Sunder and Others vs. State of Haryana](#), (1989) 4 SCC 630, this Court held as under:

“9. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. [Section 10](#) does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not.”

17.

18) In the case on hand, we are concerned with criminal liability on account of dishonour of a cheque. It primarily falls on the drawer, if it is a Company, then Drawer Company and is extended to the officers of the company. The normal rule in the cases involving criminal liability is against vicarious liability. To put it clear, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. For example, [Section 141](#) of the [N.I. Act](#) is an instance of specific provision that in case an offence under [Section 138](#) is committed by a company, the criminal liability for dishonour of a cheque will extend to the officers of the company. As a matter of fact, [Section 141](#) contains conditions which have to be satisfied before the liability can be extended. Inasmuch as the provision creates a criminal liability, the conditions have to be strictly complied with. In other words, the persons who had nothing to do

with the matter, need not be roped in. A company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, the officers of the company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the acts which result in criminal action being taken against the company. In other words, it makes every person who, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. It is true that the proviso to sub- section enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability under [Section 141](#) of the N.I. Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability.

19.

20 Mr. Mukul Rohtagi, learned senior counsel for respondent No.1, by drawing our attention to the definition of “person” in [Section 3\(42\)](#) of the General Clauses Act, 1897 submitted that in view of various circumstances mentioned, the appellant herein being wife, is liable for criminal prosecution. He also submitted that in view of the explanation in [Section 141\(2\)](#) of the N.I. Act, the appellant wife is being prosecuted as an association of individual. In our view, all the above contentions are unacceptable since it was never the case of respondent No.1 in the complaint filed before learned Magistrate that the appellant wife is being prosecuted as an association of individuals and, therefore, on this ground alone, the above submission is liable to be rejected. Since, this expression has not been defined, the same has to be interpreted ejusdem generis having regard to the purpose of the principle of vicarious liability incorporated in [Section 141](#). The terms “complaint”, “persons” “association of persons” “company” and “directors” have been explained by this Court in [Raghu Lakshminarayanan vs. Fine Tubes](#), (2007) 5 SCC 103.

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27. *In the light of the above discussion, we hold that under [Section 138](#) of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in- chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque., ”*

with further reliance having placed on behalf of the petitioner on the verdict of the Supreme Court in ***Jugesh Sehgal v. Shamsher Singh Gogi***: (2009) 14 SCC 683 with the reliance having been placed on the observations in paragraph No. 2 and 22 of the said verdict which on a perusal thereof make it apparent that to attract a penal action under Section 138 of the Negotiable Instruments Act, 1881 (as amended) it is the drawer of the cheque which has been dishonoured who is to be made accountable under Section 142 of the Seciton138 Negotiable Instrument Act, 1881 (as amended) and not someone else and thus in the circumstances of the instant case, the said verdicts relied upon on behalf of the petitioner make it apparent in view of the re-verification report of the Bank of Baroda verifying the signatures of the account holder thereof as visible on annexure P-6 as being of Ms. Taruna Kingrani and there being no signatures of the petitioner on the same it is apparent that the proceedings under Section 138 read with Section

142 of the Negotiable Instruments Act, 1881 (as amended) in Complaint No. 04/4R/16 to that extent cannot be continued.

14. The summoning order dated 29.5.2015 as had been issued by the then Metropolitan Magistrate Seciton138 Negotiable Instruments Act, bearing No. 17733/15 and now bearing No.4/4R/2016 as pending in the Ld. Court of MM(NW) cannot continue and is thus set aside. The complainant may however seek redressal qua the offence punishable under Section 420 of the Indian Penal Code, 1860, against the petitioner in accordance with law.

15. The petition Crl. M.C. No.1808/2016 and the accompanying application CRL. M.A. 7671/2016 are disposed of accordingly.

NOVEMBER 19, 2018/SV

ANU MALHOTRA, J.

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