

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION No. 4204 OF 2017
WITH
WRIT PETITION No. 4205 OF 2017**

Sudhir S. Jhunjhunwala ... Petitioner
vs.

Amoha Traders Pvt. Ltd.
through Murlidharan P.P. & Anr. ... Respondents

Mr. Aabad Ponda a/w. Sainyukta, Preeti Kashikar i/b. Mr.
Prabhanjay R. Dave, Advocate for the petitioner.
Mr. Kamran Shaikh, Advocate for respondent No. 1.
Mr. Vinod Chate, APP for respondent No. 2/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 9th January, 2019**

P.C. :

Rule. Rule made returnable forthwith. By consent of the parties, both the Writ Petitions are heard and decided together by a common order, at the stage of admission, as the short issue is involved in these Petitions.

2. In these Writ Petitions, the petitioner has challenged the order of issuance of process dated 4th August, 2017 against the petitioner under section 138 r/w. 141 of Negotiable Instruments Act by the learned Metropolitan Magistrate, 33rd Court at Ballard Pier,

Mumbai in C.C. No. 2189/SS/2016 and C.C. No. 2190/SS/2016 and pursuant to which, summons were issued directing the petitioner to appear on 9th August, 2018.

3. The petitioner and his wife hold a joint bank account and both of them are in the business of land dealing. The petitioner's wife, who is a co-accused, has issued three cheques in favour of the complainant, however, all the three cheques were dishonoured and so the complainant initiated action under the Negotiable Instruments. Therefore, he filed two complaints. Hence, these Writ Petitions.

4. The learned counsel for the petitioner has submitted that the petitioner and his wife are only the joint account holder. The cheques were issued by his wife, co-accused, as a joint account holder in her personal capacity. It is not issued either in the name of any company or a partnership firm, therefore, the present petitioner cannot be held vicariously liable for this legal debt as claimed under the Negotiable Instruments Act. In support of his submissions, the learned counsel relied on the judgment of the Supreme Court in the case of **Aparna A. Shah vs. Sheth**

Developers Pvt. Ltd. & Anr. reported in (2013) 8 SCC 71.

5. The learned counsel for respondent No. 1/complainant could not place any law taking other view than the ratio laid down in the case of **Aparna A. Shah** (*supra*). The learned counsel concedes to the legal position.

6. Considered the submissions of the learned counsel for the parties and the legal position.

7. In the case of **Aparna A. Shah** (*supra*), like the present case, the husband and wife were holding bank account jointly and the husband has issued the cheque. The wife challenged the issuance of process and the proceedings initiated against her on the ground that she is not a drawer of the cheque which was dishonoured. The Supreme Court accepted the case of the appellant and allowed it. The Supreme Court observed that -

“27. In the light 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.

28. We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant.”

8. The facts of the present case are identical to the case of **Aparna A. Shah** (*supra*) wherein the spouses are holding joint bank account and they do not form either a company or partnership firm, hence section 141 of Negotiable Instruments Act cannot be attracted to place vicarious liability on other account holder. Perused the three dishonoured cheques. The petitioner is

admittedly not a drawer of these three cheques. The cheques are *prima facie* issued by joint account holder, i.e., the wife of the petitioner. Under such circumstances, the prosecution under sections 138 r/w. 141 of Negotiable Instruments Act against the petitioner cannot stand. The orders passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai of the issuance of process in C.C. Nos. 2189/SS/2016 and 2190/SS/2016 are hereby quashed and set aside. It is to be noted that these Petitions are not argued on merits and hence nothing is discussed on merits.

8. Rule is made absolute in terms of prayer clause (a) of the Petitions.

9. Both the Petitions are allowed.

(MRIDULA BHATKAR, J.)