

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 724 OF 2016

Babita Sanjay Patil,
Aged 40 years,
Plot No. 532, Hanuman Nagar, Nagpur,
Tq. and District Nagpur.

.... **APPLICANT**

VERSUS

1) Sunil s/o Vasantro Deshmukh,
Aged about 46 years, Occ. - Business,
R/o Akola, Tq. and District – Akola.

2) Sanjay s/o Laxmikant @ Laxmanrao Patil,
Adult, Occupation – Business,
R/o Plot No. 532, Hanuman Nagar,
Tq. and District – Nagpur.

.... **NON-APPLICANTS**

Mr. V.B. Bhishe, Counsel for the applicant,
Mr. A.J. Thakkar, Counsel for non-applicant 1,
None for non-applicant 2.

CORAM : ROHIT B. DEO, J.
DATED : 25th FEBRUARY, 2021

ORAL JUDGMENT :

The applicant, who is arraigned as accused in Criminal Case 598/2009 instituted by non-applicant 1 under Section 138 of the Negotiable Instruments Act, is questioning the order of issuance of process and seeking quashment of the complaint.

2. Mr. V.B. Bhishe, learned Counsel would submit that the applicant is, irrefutably, not the signatory of the cheques and that she is arraigned as accused only on the ground that the cheques are issued by her husband and are drawn against an account which is jointly held by the applicant alongwith her husband.

3. Mr. A.J. Thakkar, learned Counsel would support the order of issuance of process.

4. The issue is not *res integra*. Since the applicant is not a signatory to the cheques nor is otherwise responsible to discharge the alleged debt, whether under a tripartite agreement or otherwise, she could not have been arraigned as accused only on the ground that the cheques are drawn against an account which is held jointly by the applicant and her husband. It would be relevant to notice paragraphs 22 and 23 of the Supreme Court's decision in ***Mrs. Aparna A. Shah v. Sheth Developers Pvt. Ltd. and Another***, AIR 2013 SC 3210, which read thus :

22) 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.

23) 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. It cannot be said that the complainant has no remedy against the appellant but certainly not under [Section 138](#). The culpability attached to dishonour of a cheque can, in no case “except in case of [Section 141](#) of the N.I. Act” be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under [Section 138](#) of the Act. Even the High Court has specifically recorded the stand of the Appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the Appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage.”

5. Criminal Case 598/2009 is quashed as regards the applicant herein.
6. The learned Magistrate shall continue with the trial against non-

applicant 2 and shall endeavour to decide the same expeditiously.

7. The application is allowed in the aforestated terms.

JUDGE

adgokar