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

CRM-M-27438-2017 (O&M)
Date of decision: 30.05.2022

ASHOK NAGPAL AND ANR

...Petitioner

Versus

INDER KHURANA AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Dr. Anand Kumar Bishnoi, Advocate
for the petitioners.

Mr. Rose Gupta, Advocate
for respondent No.1.

SURESHWAR THAKUR, J. (ORAL)

1. In complaint No.1996 of 11.04.2016, titled as '**Mr. Inder Khurana V. Mr. Ashok Nagpal and others**', an offence constituted under Section 138 of the Negotiable Instruments Act, is, alleged to be committed at the instance of the three accused, as become carried thereins.

2. After the learned trial Magistrate concerned, upon, drawing satisfaction rather from the preliminary evidence adduced before him, about the *prima-facie* inculpation, of the accused, and, hence requiring theirs being summoned for each facing, the notice of accusation, ordered for the making of a summoning order, upon, each of the accused. The summoning order is drawn on 31.05.2016, and, is carried in Annexure P-1. Annexure P-1 is challenged before this Court.

3. The dishonoured negotiable instruments are respectively, carried in Annexures P-3 and P-4, and, each contain therein a sum of Rs.5 lacs each, and,

both are not signed by the petitioners, but is signed by accused Anil Nagpal despite therein the names of the present petitioners also occurring. The occurrence of typed names thereons of co-accused Sanjay Nagpal, and, Ashok Nagpal, along with the signatory thereof, inasmuch as, of Anil Nagpal, does obviously suggest, that each of the persons, as, type scribed in the cheque, were rather holding a joint account.

4. The learned counsel for the petitioners one, Sanjay Nagpal, and, one, Ashok Nagpal, who are not signatories to the dishonoured negotiable instrument(s), has contended that the mere factum of both of them, holding a joint account rather with one, Anil Nagpal, who has signed the dishonoured negotiable instrument(s), does not make them vicariously liable for inculcation along with him, irrespective of the fact, that may be they were joint account holders along with one, Anil Nagpal.

5. The above submission, as addressed before this Court, is completely covered by a decision made by Hon'ble Apex Court, in case titled as '**Mrs. Aparna A. Shah V. M/s. Sheth Developers Pvt. Ltd. and another**', to which Criminal Appeal No.813 of 2013 is assigned, wherein, in paragraph 22 thereof, which becomes extracted hereinafter.

“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.”

6. Conspicuously, the above made argument has been completely answered in favour of those accused, who though hold a joint account along with the accused, who, has made his signatures on the dishonoured negotiable instrument concerned, but the mere factum of the names of the joint account holders, becoming also carried in negotiable instrument concerned, does not make them vicariously liable for inculcation, along with the accused, who alone has made his signatures thereons.

7. In view of the above, the petition is allowed, and, the impugned order drawn on 31.05.2016 (Annexure P-1) is quashed, and, set aside only qua the petitioners herein.

8. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

30.052022

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Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No