

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

**CRM-M-53733-2019
Reserved on:15.03.2022.
Pronounced on : 17.03.2022**

BHASKARAI AH POTHUGUNTA AND ANOTHER

...PETITIONERS

VERSUS

PARTAP RUDRA DASS

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. Ashish Gupta, Advocate
for the petitioners.

Mr. Rishi Pal Singh, Advocate
for the respondent.

VINOD S. BHARDWAJ, J.

The question that arises for consideration in the instant petition is as to whether a person can be summoned and prosecuted for dishonor of a cheque under Section 138/142 of the Negotiable Instruments Act, on account of being a joint account holder with the drawer of the cheque?

This instant petition under Section 482 Cr.P.C., has been filed for quashing of the Complaint No.NACT-1243 of 2016 instituted on 16.11.2016 (Annexure P-1) under Section 138/142 of Negotiable Instruments Act 1881 and summoning order dated 20.05.2017 (Annexure P-2) vide which the petitioners have been summoned under Section 138 of N.I. Act, passed by Judicial Magistrate Ist Class, Kurukshetra, District

Kurukshetra, order dated 13.08.2018 (Annexure P-3), order dated 13.11.2018 (Annexure P-5) and order dated 30.08.2019 (Annexure P-11) alongwith all the consequential proceedings in the complaint (Annexure P-1) pending in the Court of JMIC, Kurukshetra.

Facts:-

The respondent-complainant filed a complaint against the petitioners along with the drawer of the cheque alleging that the petitioners being followers of ISKCON introduced themselves to the complainant as Directors of Vernasko and developed intimacy with the complainant. Taking benefit of the relationship, the petitioners-accused asked for financial assistance at which various sums of money was advanced by the complainant to the accused-petitioners herein. On money being demanded, two cheques bearing cheque no. 483230 dated 21.09.2016 drawn on ICICI bank for a sum of Rs. 5,00,000/- from the joint account by co-accused (non-petitioner) Suresh Pothugunta and another cheque bearing no. 055976 dated 28.09.2016 drawn on Bank of India for a sum of Rs.6,00,000/- was also issued by co-accused (non-petitioner) Suresh Pothugunta himself. Both the said cheques were returned dishonoured on presentation resulting in institution of the complaint. It is not in dispute that the petitioners are not the signatories on any of the cheques. Whilst the first cheque was from the joint account, the second cheque was from the individual account. The amount in question is not alleged to be advanced to the company

Arguments of the petitioners

Learned counsel appearing on behalf of the petitioners has argued that the proceedings have been filed against the petitioners in violation of the settled law. He has drawn the attention of the Court to the

complaint (Annexure P-1) and to the averments raised therein. The relevant paragraph is reproduced hereinafter below:-

“2. Accused pose themselves as the director of the company Vernasco (worship via work). Taking the benefit of relation accused demanded finance assistance from the complainant as they are in need of money. Complainant gave him money at different point of time through RTGS and Cash. At the time of borrowing money accused person assured the complainant that they will return the money along with interest.”

He has further referred to the cheques that were dishonored and appended as Annexures P-6 and P-7 respectively to contend that the cheques in question had been signed by Suresh Pothugunta and that the petitioners are not signatories to said cheques. It is pointed out that the cheque No.483230 dated 21.09.2016 has been signed by Suresh Pothugunta individually and the account in question happens to be a joint account. While referring to the second cheque drawn on Bank of India account bearing No.055976, it has been pointed out that the said cheque pertains to the personal account of P. Suresh and not the petitioners. An argument thus has been advanced by the learned counsel that as per the allegations averred in the complaint, once the amount in question is stated to have been borrowed by the alleged accused in their individual capacity and the same was never borrowed for the Company-Vernasko, the company could not be prosecuted. Besides, the petitioners are not signatories to the cheque even though one of the dishonoured cheque belongs to a joint account. Hence they are not the drawer of the cheque.

Counsel for the petitioners further contends that it has been specifically averred by him in the petition itself that there is no company by the name of Vernasko and that the petitioners have never been

Directors of any such Company or firm at any point of time. He has also drawn attention to the memo of parties as figured in the complaint (Annexure P-1) to contend that the petitioners have been summoned in their capacity as authorized signatories of the said company despite the amount in question never being advanced to the company (assuming for the sake of arguments that a company by such name does exist and without conceding to the same) or even the cheques having been issued on behalf of the company. There is thus no occasion or reason for summoning of the petitioners in their capacity as the alleged authorized signatories of a non-existing company.

Arguments of the respondents

Per contra, learned counsel appearing on behalf of the respondents has contended that the complaint specifically gave details of the amounts given to the accused persons and that a table in this regard is extracted in the complaint itself. He argued that the payments of Rs.1 lakh each advanced on 16.09.2015 and 18.09.2015 relate to Pushpalatha Pothugunta and as such, she is a recipient of the money. Furthermore, it is argued that accused No.2 is a joint account holder with the signatory to the cheque and as such she was also responsible to maintain a sufficient amount in the account so as to honour the cheque. Learned counsel also argued that the petitioners have colluded with each other and defrauded the complainant/respondent to part with huge sums of money. He thus submitted that by virtue of the petitioners having a common account with the signatory to the cheque, the presumption enshrined under Section 118 read with Section 139 shall accrue against the petitioners as well and render them liable for being prosecuted for the commission of the offence.

It is prayed that no leniency be shown towards the petitioners and they

should be called upon to appear before the Trial Court and lead their defence.

I have heard learned counsel for the parties and have gone through the case as well as the documents appended along with the same with their able assistance.

Analysis

It is evident from the perusal of the complaint that the allegations levelled in the complaint is to the effect that the petitioners had posed as Directors of the Company, namely, Vernasco and they are alleged to have demanded the money. The advance is also stated in the complaint to have been made in favour of the accused persons in their individual capacity. The money was not advanced to the company. The said fact stands corroborated from the dishonoured cheque as well. The same have been issued from the joint account/personal account by Suresh Pothugunta. The said cheque has not been issued for and on behalf of the company in question (assuming for the sake of arguments that any company by the said name did exist). Company being a juristic entity enjoys an identity independent of its Directors. It cannot thus prosecuted or be held responsible for the individual acts of its Directors in their personal capacity that has no concern or relation to the affairs of the company. The liability to repay the amount so borrowed by any person acting as a Director of the company, in its individual capacity, is exclusively upon such a Director. The perusal of the complaint shows that the petitioners have been summoned in their capacity as authorized signatories of the company. It is incomprehensible that the complaint would be lodged against the company even when there is no liability to be discharged by the company and where the cheque in question has not been

issued by the authorized representative/signatory of the company in their capacity and for and on behalf of discharge of any liability of the company. The order of summoning pertains to the petitioners as authorized signatory of the company is thus bad and liable to be set aside. The cheque not having been issued for and on behalf of the company or on account of the company, the petitioners cannot be prosecuted in their capacity as office bearers of the said company. It is also well settled that the company cannot be held vicariously liable for the acts of its Directors in their individual capacity.

That delving further into the matter, it is also evident that the petitioners are not signatories to the dishonoured cheque.

The scheme of the Negotiable Instruments Act intends to fasten criminal liability on the person who is the drawer of the cheque. The liability cannot be fastened on the person who is not the signatory of the cheque in question. Merely for the reason that the account in question was jointly held by three persons would not render the other account holders culpably liable for prosecution under Section 138 of the Negotiable Instruments Act. Reference in this regard is made to the following extract of the judgement of the Hon'ble Supreme Court in the matter of *Mrs. Aparna A. Shah Vs. M/s Sheth Developers Pvt. Ltd., and another, Criminal Appeal No. 813 of 2013 (Arising out of S.L.P (Crl.) No. 9794 of 2010), d/d 01.07.2013.*

“8. 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.

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11. [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.”

12. As rightly pointed out by learned senior counsel for the appellant, the interpretation sought to be advanced by the respondents would add words to [Section 141](#) and extend the principle of vicarious liability to persons who are not named in it.

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19. In *Gita Berry vs. Genesis Educational Foundation*, 151 (2008) DLT 155, the petitioner therein was wife and she filed a petition under Section 482 of the Code seeking quashing of the complaint filed under Section 138 of the N.I. Act. The case of the petitioner therein was that the offence under Section 138 of the Act cannot be said to have been made out against her only on the ground that she was a joint account holder along with her husband. It was pointed out that she has neither drawn nor issued the cheque in question and, therefore, according to her, the complaint against her was not maintainable. Learned Single Judge of the High Court of Delhi, after noting that the complaint was only under Section 138 of the Act and not under Section 420 IPC and pointing out that nothing was elicited from the complainant to the effect that the petitioner was responsible for the cheque in question, quashed the proceedings insofar as the petitioner therein.

20. In *Smt. Bandeeep Kaur vs. S. Avneet Singh*, (2008) 2 PLR 796, in a similar situation, learned Single Judge of the Punjab and Haryana High Court held that in case the drawer of a cheque fails to make the payment on receipt of a notice, then the provisions of Section 138 of the Act could be attracted against him only. Learned Single Judge further held that though the cheque was drawn to a joint bank account which is to be operated by anyone, i.e., the petitioner or by her husband, but the controversial document is the cheque,

the liability regarding dishonouring of which can be fastened on the drawer of it. After saying so, learned Single Judge accepted the plea of the petitioner and quashed the proceedings insofar as it relates to her and permitted the complainant to proceed further insofar as against others.

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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.”

The same would now lead to the next argument raised by learned counsel for the respondent where it has been indicated that petitioner no.2-Pushpalatha Pothugunta is a recipient of a sum of Rs.2 lakhs at entry no.24 and 25 in the table extracted in the complaint for a sum of Rs. One lakh each. The aforesaid argument would not cut any ice inasmuch as the said entry would only be proof, at best, for having advanced the amount in favour of Pushpalatha Pothugunta and for seeking recovery of the same in an appropriate proceedings. In the absence of the said person having executed any cheque in discharge of such a liability, she cannot be held liable to be prosecuted for dishonor of a cheque that is not being issued by her. A plain reading of Section 138 of the NI Act shows that the same intends to empower the complainant to initiate proceedings wherein cheque issued by any person on an account maintained by him is dishonoured. The relevant provision of Section 138 of the Negotiable Instruments Act is extracted hereinafter below:-

138 Dishonour of cheque for insufficiency, etc., of funds in the account. —

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for¹⁹ [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the 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;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque,²⁰ [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

A bare reading of the same lays emphasis within Court ‘cheque drawn by a person’. Hence, the offence in question would not get attracted where the cheque in question has not been drawn by the person sought to be prosecuted.

Drawer has been defined under Section 7 of the Negotiable Instruments Act and reads thus:-

“7. “Drawer”, “drawee”- The maker of a bill of exchange or cheque is called the drawer”, the person thereby directed to pay is called the “drawee”.

A joint reading of the same establishes that a drawer of the cheque alone can be prosecuted. The petitioners are not the drawer of the cheque as per Section 7 of the Negotiable Instruments Act, 1881.

Having considered the case on the first principles itself, I refrain from entering into the area as to whether any company by the said name exists or not.

In view of the facts of the case as noticed above and the ingredients attracting offence under Section 138 NI Act, it is held that the following circumstances must exist before a person can be prosecuted for offences as above:-

- (i) There must be a pre-existing liability and legally enforceable debt; and
- (ii) The cheque should be issued in discharge of pre-existing liability and legally enforceable debt; in whole or in part; and
- (iii) The accused should be signatory to the cheque or should be responsible for management and supervision of the affairs (in the case of a juristic entity); and
- (iv) The cheque should be drawn by the maker on the account maintained by him; and
- (v) The cheque should be presented to the bank within a period of its validity; and

- (vi) Cheque should be returned unpaid; and
- (vii) Payee or holder in due course makes a demand for payment of the amount by notice in writing; and
- (viii) The drawer of the cheque fails to make payment within the period prescribed despite notice.

A perusal of the facts shows that the said ingredients are not satisfied in the present case.

Furthermore, it is specifically held by the Hon'ble Supreme Court that extending the principle of vicarious liability to the persons who do not fall under Section 138 NI Act would amount to misreading of Section 141 of the Negotiable Instruments Act and the same would not be permissible. Resultantly, I am of the view that the Complaint No.NACT-1243 of 2016 instituted on 16.11.2016 under Section 138/142 of Negotiable Instruments Act (Annexure P-1), as well as order of summoning dated 20.05.2017 (Annexure P-2), and the subsequent orders passed by the Judicial Magistrate against the petitioners are liable to be quashed alongwith all subsequent proceedings.

The instant petition is accordingly allowed.

(VINOD S. BHARDWAJ)
JUDGE

March 17, 2022
rekha sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No