

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

CRIMINAL APPLICATION NO.747 OF 2023

Aarti Shailesh Shah

.... Applicant

versus

Satish Vasant Dharukkar & Anr.

.... Respondents

.....

- Mr. Tariq Khan, Advocate for Applicant.
- Mr. Abhishek Jadhav, Advocate for Respondent No.1.
- Mr. Arfan Sait, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 29th NOVEMBER, 2023

P.C. :

1. The Applicant is the original accused No.2 in C.C. No.4822/SS/2019 before the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai. The learned Magistrate issued process vide the order dated 27/11/2019 against the Applicant and the original accused No.1 who was her husband u/s 138 of the Negotiable Instruments Act.

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2. Heard Mr. Tariq Khan, learned counsel for the

Applicant, Mr. Abhishek Jadhav, learned counsel for the Respondent No.1 and Mr. Arfan Sait, learned APP for the State.

3. The complaint is filed by the Respondent No.1 herein. It is his case, that, both the accused were husband and wife. In June 2018, they had approached the Respondent No.2 for financial help. The Respondent No.2 gave them Rs.12 lakhs by two cheques. The original accused No.1 i.e. the husband issued a receipt dated 18/06/2018 for Rs.12 lakhs in favour of the Respondent No.1. It is his case that even the present Applicant was aware of these facts. After that, the accused No.1 paid him a sum of Rs.3 lakhs on 22/02/2019. For the remaining amount of Rs.9 lakhs, the accused No.1 and 2 issued three cheques dated 15/07/2019, 15/08/2019 and 15/09/2019 for Rs.3 lakhs each from their joint account. The Respondent No.1 deposited those cheques with his bank. They were dishonoured. It is his case, that, the cheques were issued from the joint bank account of both the accused. The Applicant was the wife of the accused No.1 and was looking after the day to day affairs of the accused

No.1 and therefore even the Applicant was responsible for the act committed by the accused No.1 as she was conversant with the facts, and had knowledge of these facts. After dishonour of the cheques, and after satisfying the legal requirements, the complaint was filed. Thereafter, the learned Magistrate issued the process.

4. Learned counsel for the Applicant submitted that though the cheques were issued from the joint account, they were signed only by the accused No.1 i.e. the Applicant's husband and therefore the Applicant cannot be held liable. Learned counsel for the Applicant relied on the judgment of the Hon'ble Supreme Court in the case of ***Aparna A. Shah Vs. Sheth Developers Pvt. Ltd. and Ors.*** decided on 01/07/2013 in ***Criminal Appeal No.813 of 2013*** to support his contention.

5. Learned counsel for Respondent No.1 submitted that the Applicant was aware of the transaction. She was the joint account holder and therefore she was also liable to be

prosecuted. He submitted that the reasons given by the Trial Court were probable. He therefore opposed grant of any relief in this application.

6. I have considered these submissions. The photocopy of the cheque annexed to this application shows that it was signed only by the accused No.1 i.e. the Applicant's husband. The receipt on page No.25 and the copy of the cheque at page No.26 show only one signature each. It is not the complainant's case specifically, that the Applicant had also signed the cheque. She is roped in, by making the averment that the Applicant was looking after day to day affairs of her husband and therefore she was also responsible for the act committed by her husband i.e. the accused No.1. Therefore it is also not disputed that the cheque was signed only by the Applicant's husband. The learned Magistrate has observed in the impugned order that both the accused are signatories of the disputed cheque. This is factually incorrect. The Hon'ble Supreme Court has dealt with a similar issue in the aforesaid case of Aparna Shah. In that case, the

cheque in question was issued by the husband of the Appellant before the Hon'ble Supreme Court from their joint account. The said cheque was dishonoured. In that context the Hon'ble Supreme Court made observations in paragraph Nos.22 and 23 as follows :

“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.”

7. These observations, in the factual matrix of the present case, are squarely applicable in favour of the Applicant. Therefore, the prosecution cannot stand against the present Applicant and hence the impugned order is liable to be set aside as far as the present Applicant is concerned.

8. Hence, the following order :

ORDER

- (i) The order dated 27/11/2019 passed by the Metropolitan Magistrate, 63rd Court, Andheri,

Mumbai, in C.C. No.4822/SS/2019 issuing process against the present Applicant i.e. the original accused No.2 in the said proceeding is quashed and set aside.

- (ii) It is clarified that this order is passed only in respect of the original accused No.2, who is the present Applicant before the Court and this order does not give any benefit to the original accused No.1.
- (iii) The application is disposed of.

(SARANG V. KOTWAL, J.)