

CRM-M-4174-2022 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4174-2022 (O & M)

Date of decision:20.03.2023

Rachna

..... Petitioner

V/s

Joginder Singh and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Dinesh Mahajan, Advocate,
for the petitioner.

None for the complainant/respondent No.1.

Ms. Navreet Kaur Barnala, AAG, Punjab,
for respondent No.1/State.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the complaint bearing No.NIACT/944/2019 titled as 'Joginder Singh versus Rachpal Singh and others' under Section 138 of the Negotiable Instruments Act (Annexure P-3), the summoning order dated 13.03.2020 (Annexure P-2) under Section 138 of the Negotiable Instruments Act, the order dated 29.11.2021 (Annexure P-1) passed in the revision petition and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that the respondent No.1/complainant Joginder Singh filed a criminal complaint under Section 138 of the Negotiable Instruments Act against Mr. Rachpal Singh son of Mehngu, Mrs. Rachna (petitioner), wife of Rachpal Singh and M/s Rachna Trading Company through Rachpal Singh. As per the allegations in the complaint, the accused were running a trading company under the name and

style of M/s Rachna Trading Company and were acquainted with the

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complainant-party. The accused had taken a loan of Rs.10 lacs from the complainant-party. Mr. Rachpal Singh had furnished an affidavit dated 11.07.2019 admitting the receipt of Rs.6 lacs from Jasvir Singh son of the complainant and also making a mention of his having issued two cheques bearing No.001226 and 001227 for Rs.3 lacs each dated 15.03.2019 and 15.10.2019. The said affidavit was attested by the present petitioner as well. Thereafter, Mr. Rachpal Singh as a proprietor of M/s Rachna Trading Company issued the cheque in question bearing No.001239 dated 10.09.2019 for a sum of Rs.1 lac to the complainant party, which on presentation came to be dishonoured, leading to the filing of the complaint. A copy of the complaint dated 04.12.2019 is attached as Annexure P-3 to the present petition.

3. Based on the preliminary evidence led, the accused came to be summoned by the Court of the Chief Judicial Magistrate, Pathankot to face the Trial vide order dated 13.03.2020 (Annexure P-2).

4. The petitioner preferred a revision petition bearing CNR No.PBPO01 001272 2020 CRM/10/2021 against the order of summoning dated 13.03.2020. The said revision petition came to be dismissed vide order dated 29.11.2021 (Annexure P-1).

The aforementioned complaint (Annexure P-3), summoning order (Annexure P-2) and the order in revision (Annexure P-1) are impugned in the present petition.

5. The learned counsel for the petitioner contends that the petitioner is neither a signatory of the cheque in question nor holding a joint account with her husband-Rachpal Singh. She is also not a partner in the sole proprietorship concern of her husband. The complaint and the summoning order do not establish her liability in any manner whatsoever.

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Reliance is placed on a copy of the Registration Certificate of the Firm (Annexure P-6) which would show Rachpal Singh is the proprietor of the said proprietorship concern. He also contends that no amount had ever been received in the bank account of the petitioner as was borne out from her account statement (Annexure P-7). In fact, her husband had disappeared since 13.09.2019 and has not been located till date. Since no offence whatsoever was established against the petitioner, the proceedings emanating out of the instant complaint ought to be quashed qua her.

6. Despite service, none has appeared on behalf of the respondent No.1/complainant.

7. The learned counsel for the respondent No.2/State has filed a status report dated 27.04.2022 by way of an affidavit of Mangal Singh, PPS, Deputy Superintendent of Police, Sub Division Dharkalan, District Pathankot. As per the said status report, the petitioner is stated to be liable on account of the averments made in the complaint as also the fact that she has been summoned to face Trial and the revision against the said order has been dismissed. However, Para 08 of the said reply would reveal that the husband of the petitioner, namely, Rachpal Singh is missing and a DDR No.23 dated 23.09.2019 had been registered with respect to the said fact. Thereafter, it was found that Rachpal Singh had expired due to a road accident on 14.09.2019.

8. Before proceeding further, it would be apposite to refer to the provisions of Section 138 of the Negotiable Instruments Act. The same are reproduced hereinbelow:-

“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.”

9. In the case of ***‘Mrs. Aparna A. Shah versus M/s Sheth Developers Pvt. Ltd. and another, 2013(4) SCC (Cri) 241’***, the Hon’ble Supreme Court held as under:-

“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.

24) Under these circumstances, the appeal deserves to be allowed and process in Criminal Case No. 1171/SS/2009 pending before the Court of learned Metropolitan Magistrate

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13th Court, Dadar, Mumbai deserves to be quashed, accordingly, quashed against the appellant herein. The appeal is allowed.”

10. The Hon’ble Supreme Court in the case of ‘**Alka Khandu Avhad versus Amar Syamprasad Mishra & Anr. 2021(2) RCR (Criminal) 286**’, held as under:-

“7. On a fair reading of [Section 138](#) of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:

i) that the cheque is drawn by a person and on an account maintained by him with a banker;

ii) for the 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; and

iii) the said cheque 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.

Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. [Section 138](#) of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under [Section 138](#) of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque.

8. Now, so far as the case on behalf of the original complainant that the appellant herein – original accused No. 2 can be

convicted with the aid of [Section 141](#) of the NI Act is concerned, the aforesaid has no substance.

8.1 [Section 141](#) of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals. Learned counsel appearing on behalf of the original complainant has submitted that “Company” means any body corporate and includes, a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within “other association of individuals” and therefore with the aid of [Section 141](#) of the NI Act, the appellant who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted. Two private individuals cannot be said to be “other association of individuals”. Therefore, there is no question of invoking [Section 141](#) of the NI Act against the appellant, as the liability is the individual liability (may be a joint liabilities), but cannot be said to be the offence committed by a company or by it corporate or firm or other associations of individuals. The appellant herein is neither a Director nor a partner in any firm who has issued the cheque. Therefore, even the appellant cannot be convicted with the aid of [Section 141](#) of the NI Act. Therefore, the High Court has committed a grave error in not quashing the complaint against the appellant for the offence punishable under [Section 138](#) r/w [Section 141](#) of the NI Act. The criminal complaint filed against the appellant for the offence punishable under [Section 138](#) r/w [Section 141](#) of the NI Act, therefore, can be said to be abuse of process of law and therefore the same is required to be quashed and set aside.

9. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order dated 21.08.2019 passed by the High Court in Criminal Writ Petition No. 2595 of 2019 refusing to quash the criminal complaint against the appellant for the offence punishable under [Section 138](#) read with [Section 141](#) of the NI Act is hereby quashed and set aside. The complaint case pending in the

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Court of the learned Metropolitan Magistrate filed by respondent No. 1 – original complainant being C.C. No. 2802/SS/2016 is hereby quashed and set aside. The appeal is allowed accordingly.”

10. Coming back to the facts of the present case, a perusal of the complaint would reveal that there are no specific allegations against the petitioner so far as the issuance of the cheque in question is concerned. On the contrary, the cheque (Annexure P-11) has been signed by Rachpal Singh, Proprietor of Rachna Trading Company. The petitioner is neither a signatory to the cheque nor an office holder in the proprietorship concern as is clearly discernible from Annexure P-6, the Registration Certificate for GST. Since the petitioner is neither a signatory to the cheque in question nor a partner in the sole proprietorship concern of her husband-Rachpal Singh, the question of her liability of the petitioner does not arise.

11. In view of the above, the present petition is allowed and the complaint bearing No.NIACT/944/2019 titled as ‘Joginder Singh versus Rachpal Singh and others’ under Section 138 of the Negotiable Instruments Act (Annexure P-3), the summoning order dated 13.03.2020 (Annexure P-2) under Section 138 of the Negotiable Instruments Act, the order dated 29.11.2021 (Annexure P-1) passed in revision petition and all subsequent proceedings arising therefrom are quashed.

(JASJIT SINGH BEDI)
JUDGE

March 20, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No