

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

**CRM-M No.18730 of 2022**

Date of decision: 8<sup>th</sup> February, 2023

M/s Dev Enterprises & another

... Petitioners

Versus

State of Haryana & another

... Respondents

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Aakash Juneja, Advocate for the petitioners.

Mr. Chetan Sharma, Assistant Advocate General, Haryana  
for respondent No.1/State.

Mr. Sukhdeep Singh, Advocate for respondent No.2

**MANJARI NEHRU KAUL, J.**

Petitioners in the instant petition filed under Section 482 Cr.P.C. are seeking quashing of complaint (Annexure P-3) bearing No.NACT/2146/2020 dated 06.08.2020 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act') as well as the summoning order dated 07.01.2021 (Annexure P-4) passed by the learned trial Court Karnal.

Learned counsel for the petitioners has vehemently contended that while summoning the petitioners to face trial, learned trial Court had failed to appreciate that the petitioners were neither signatory of the dishonoured cheque nor had the same been issued by them. It has been further contended that the cheque in issue had been

issued by Manoj Kumar, brother of petitioner No.2, and still further, it was also a matter of record that the cheque in question had been issued from the bank account of Manoj Kumar. Learned counsel has submitted that since the account was not even joint with that of the petitioners, they could not be prosecuted for an offence under Section 138 of the Act. In support, he has placed reliance upon '**Alka Khandu Avhad vs. Amar Syamprasad Mishra & another**' 2021(2) RCR (Criminal) 286.

On the other hand, learned counsel for the respondents while controverting the submissions made by the counsel opposite, has contended that since the petitioner No.2 and Manoj Kumar were real brothers, and were jointly running petitioner No.1 firm, thus, the petitioner No.2 was equally liable to repay the amount, more so, since the amount advanced by the respondent had been received by petitioner No.2 in his own bank account. He further argued that the cheque in question had been issued by Manoj Kumar on behalf of the petitioners and hence, they could not escape the liability for being prosecuted under Section 138 of the Act.

I have heard learned counsel for the parties and perused the relevant material on record.

The Hon'ble Supreme Court in **Alka Khandu Avhad's case (supra)**, has held as follows:

*"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.”*

Adverting to the case in hand, admittedly the cheque in question was issued in favour of respondent by one Manoj Kumar, drawn from his own bank account and even signed by him. The said

cheque was not issued by Manoj Kumar as an authorized signatory of the petitioner No.1 firm. Furthermore, the petitioners admittedly are neither signatory to the cheque in question, nor was it drawn from their bank account. Therefore, this Court finds force in the submissions made by the learned counsel for the petitioners that the petitioners cannot be prosecuted for an offence under Section 138 of the Act. Still further, even if the loan amount had been deposited in the bank account of petitioner No.2, it would still not be sufficient enough ground to fasten his liability under Section 138 of the Act as it does not cover within its domain joint liability.

As a sequel to the above, instant petition is allowed and the complaint under Section 138 of the Act (Annexure P-3) as well as the order dated 07.01.2021 (Annexure P-4) are quashed only qua the petitioners. Needless to add, the trial shall continue qua the remaining accused.

**(MANJARI NEHRU KAUL)**  
**JUDGE**

**February 8, 2023**

*rps*

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